



U.S. Department
of Transportation

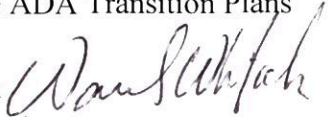
Federal Highway
Administration

Memorandum

Subject: **INFORMATION and ACTION:**

Submission of State ADA Transition Plans

Date: November 17, 2014

From: Warren S. Whitlock 
Associate Administrator
Office of Civil Rights

In Reply Refer To: HCR-20

To: FHWA Division
Administrators and
Civil Rights Personnel

Part of the reorganization of the headquarters Office of Civil Rights (HCR) is a renewed focus on ensuring that the programs administered by our office conform to the regulatory and other legal requirements of each program. As part of ensuring that the programs are running effectively and are being consistently administered across the country, HCR is striving to clarify our policies and procedures and give background to those who are tasked with carrying out the oversight, compliance and implementation of these programs.

To this end, I wanted to address one important policy and guidance question that has recently been brought to my attention; that of the "approval" process for State Transportation Agency (STA) Transition Plans under the Americans with Disabilities Act (ADA). We ask that all Division Offices review their STA ADA Transition Plan and determine if it meets the regulatory requirements as set out in 28 CFR 35.150(d) (3). If so, please send documentation of such to both the STA and to HCR (Attention Nichole McWhorter). Upon receipt of such documentation, HCR will report that the STA has an approved transition plan.

In support of this approval process, I have attached the statutory and regulatory requirements related to the ADA transition plan approval process. In addition, you will find attached a draft letter that may be used to document whether or not the STA ADA Transition Plan meets the regulatory requirements as set out in 28 CFR 35.150(d)(3).

enclosures

FHWA Division Offices Approval of STA Transition Plans

Under **49 CFR Part 27**, public entities may not discriminate on the basis of disability in programs or activities receiving federal financial assistance. Specifically in **49 CFR 27.3(a)** this applies to each recipient of federal financial assistance from the U. S. Department of Transportation (DOT) and to each program or activity that receives such assistance. In effect this means that a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting qualified handicapped persons to discrimination on the basis of disability. **49 CFR 27.7(b)(vii)(4) (i)**.

I. Jurisdiction

By ADA regulations (**28 C.F.R. 35.190**), the DOT has been designated by the Department of Justice (DOJ) as the federal agency responsible for overseeing and implementing ADA compliance for all programs, services and regulatory activities relating to transportation. Under **49 C.F.R. 27.19**, DOT recipients must comply with DOJ's ADA regulations to be considered in compliance with DOJ's regulations under Section 504 of the Rehabilitation Act of 1973 (Section 504). DOT has designated FHWA as the responsible operating administration to oversee and implement compliance with DOJ's regulations for FHWA funded projects. In doing so, FHWA Division Offices work with STAs to ensure that the ADA and Section 504 requirements are incorporated in all program activities for projects within the public rights-of-way. The Section 504 regulations at **49 C.F.R. 27.11** require FHWA to monitor an STA's compliance with the ADA, DOJ and DOT regulations that address self-evaluation and transition plans. This includes conducting periodic program reviews of STAs' highway planning, design and construction activities so as to ensure pedestrian accessibility compliance.

II. Transition Plan a requirement under ADA and the Rehabilitation Act

Every STA is required by the DOJ's regulations at **28 CFR 35.150(d)** to have developed an ADA Transition Plan within six months of January 26, 1992. The DOT regulations at **49 CFR 27.3-7** prohibit discrimination on the basis of disability in any "method of administration," including programs that have the effect of subjecting persons with a disability to discrimination. This includes the lack of an ADA Transition Plan, which we use to ensure that existing facilities of recipients come into compliance. So, a failure to have a compliant Transition Plan would violate **49 CFR 27.7**, because it would be a discriminatory method of administration.

III. Transition Plan as part of compliance review

Under **49 CFR 27.123**, if FHWA receives any information that indicates a possible failure to comply, including not having a Transition Plan that meets the regulatory requirements, the responsible Departmental official will inform the recipient and seek to correct the failure by informal means. If informal means do not correct the problem, the responsible Departmental

official may recommend suspension or termination of, or refusal to grant or to continue, Federal financial assistance, or take any other steps authorized by law. **49 CFR 27.125.**

IV. Requirements for approval of the ADA and Section 504 provisions

At least every four years, the State shall submit an updated STIP concurrently to the FHWA and the FTA for joint approval. At the time the STIP or STIP amendments are submitted, the State shall certify that the transportation planning process is being carried out in accordance with all applicable requirements of the provisions of the ADA and Section 504 of the Rehabilitation Act. **23 CFR 450.218(a)(6), (10).** So, every four years the STAs are certifying that they meet the requirements of the ADA and Section 504, which in the planning process would include transition plans. FHWA and FTA are approving these plans and amendments as meeting all of the requirements of ADA and Section 504. However, it is possible for the Division Civil Rights personnel to note the lack of an approved transition plan at the time of approval and certify the STIP with the deficiency noted.

Conclusion

The regulations cited support HCR's direction that Division Offices review and approve ADA transition plans. More specifically, in its review of a transition plan, a Division Office receiving "any...information that indicates a possible failure to comply" with the ADA Transition Plan requirement should work with the STA to correct that deficiency prior to approving the Plan. In addition, the regulation at **23 CFR 450.218** requires that every State submit an updated STIP to the FHWA for approval which certifies that the transportation planning process is being carried out in accordance with all applicable requirements of the ADA. A current ADA transition plan is clearly one of these "applicable requirements."



U.S. Department
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**Federal Highway
Administration**

Jane Doe
CEO, State DOT
Home City, X ZipCode

Subject: ADA Transition Plan

Dear Ms. Jane Doe,

The Federal Highway Administration's (FHWA) _____ Division Office has received the Transition Plan that your State has submitted, as required by the Americans with Disabilities Act of 1990 (ADA). Based upon our analysis, it appears that your Transition Plan meets the requirements of regulations implementing the ADA at 28 CFR Part 35.

While your current Transition Plan appears to meet the regulatory requirements, FHWA Guidelines provide that ...[insert plans for strengthening Plan here]. The self-evaluation portion of the Transition Plan is intended to be regularly revised and updated, as required by 28 CFR Part 27.11.

As part of our oversight responsibilities, our office will continue to monitor ADA activities and ask that you submit regular progress updates on the fulfillment of your ADA responsibilities.

Sincerely,

John Doe
Division Administrator
FHWA _____ Division (HAD-X)

cc: Nichole McWhorter, Division Manager, Coordination and Compliance Division