

# Arizona Department of Transportation

## Civil Rights Office

2017 AzTA/ADOT Annual Transit Conference  
Title VI and ADA Compliance for ADOT FTA Subrecipients



Monday, April 10, 2017

ADOT Civil Rights Office – 206 S. 17th Avenue, Phoenix AZ 85007 – (602) 712.8946

# Learning Objectives

- ❑ Understand the basics of Title VI and ADA
- ❑ Title VI and ADA compliance in practice



# FTA / ADOT Coordination

## FTA

- ▶ Provides stewardship and oversight
- ▶ Approves Title VI Programs
- ▶ Conducts State Management Reviews
- ▶ Provides policy/technical training

## ADOT (Primary Recipient of FTA funds)

- ▶ Performs required actions under:
  - FTA C 4710.1
  - FTA C 4702.1B
- ▶ Submits triennial Title VI Program to FTA
- ▶ Conducts external reviews
- ▶ Processes complaints against subrecipients

# ADA/Title II

The Americans with Disabilities Act (ADA) of 1990 is a federal civil rights law that protects qualified individuals with disabilities from discrimination and provides for equal access. The ADA, like other civil rights statutes, prohibits the denial of services or benefits on specified discriminatory grounds.

Title II of the ADA covers all programs, services, and activities operated by state and local governments. It applies to all state and local governments, their departments and agencies, and any other agency of state and local governments.

# Section 504, Rehabilitation Act of 1973

- ▶ Prohibits discrimination on the basis of disability in any program, service, activity, or benefit of a recipients/sub-recipient of Federal financial assistance.
- ▶ Many of the responsibilities under Section 504 are similar or identical to those under Title II of the ADA.

# ADOT FTA Subrecipients

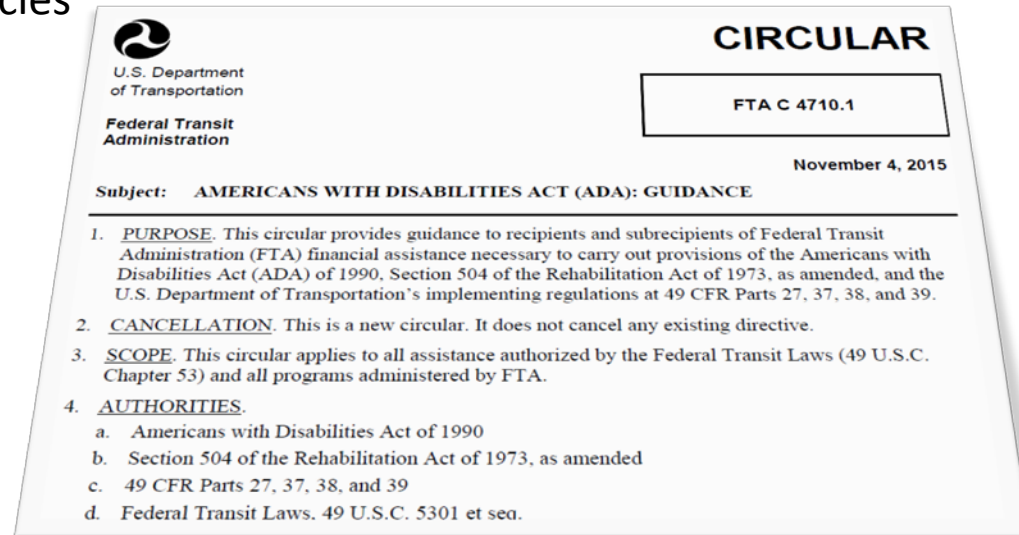
- ▶ Must ensure their services, vehicles, and facilities are accessible to and useable by individuals with disabilities.
- ▶ Make reasonable modifications/accommodations in policies, practices, or procedures when such modifications/accommodations are necessary to avoid discrimination on the basis of disability.
- ▶ Each agency is independently responsible for ADA compliance in their facilities and operations.

# ADOT's Oversight


- ▶ Ensure sub-recipients are informed of their responsibilities to provide reasonable modifications/accommodations and provide accessibility to their programs, services, and facilities (public rights-of-way)
- ▶ Ensure sub-recipients are applying appropriate accessibility standards to all transportation facilities.
- ▶ Ensure all complaints filed under Section 504 or the ADA are processed in accordance with established complaint procedures

# FTA ADA Circular 4710.1

- ▶ Effective November 2015
- ▶ Guidance on implementing existing ADA regulations
- ▶ Options and tools to avoid deficiencies
- ▶ Sample Forms, letters, and policies



The image shows the cover page of a circular from the U.S. Department of Transportation, Federal Transit Administration. The page is titled "CIRCULAR" in large, bold, black letters. Below the title, the text "FTA C 4710.1" is enclosed in a rectangular box. The date "November 4, 2015" is printed in the bottom right corner. The subject line reads "Subject: AMERICANS WITH DISABILITIES ACT (ADA): GUIDANCE". The main body of the page contains four numbered items, each with a sub-heading in all caps and a brief description of its purpose.

  
U.S. Department  
of Transportation

**Federal Transit  
Administration**

**CIRCULAR**

FTA C 4710.1

November 4, 2015

**Subject: AMERICANS WITH DISABILITIES ACT (ADA): GUIDANCE**

1. **PURPOSE.** This circular provides guidance to recipients and subrecipients of Federal Transit Administration (FTA) financial assistance necessary to carry out provisions of the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, as amended, and the U.S. Department of Transportation's implementing regulations at 49 CFR Parts 27, 37, 38, and 39.
2. **CANCELLATION.** This is a new circular. It does not cancel any existing directive.
3. **SCOPE.** This circular applies to all assistance authorized by the Federal Transit Laws (49 U.S.C. Chapter 53) and all programs administered by FTA.
4. **AUTHORITIES.**
  - a. Americans with Disabilities Act of 1990
  - b. Section 504 of the Rehabilitation Act of 1973, as amended
  - c. 49 CFR Parts 27, 37, 38, and 39
  - d. Federal Transit Laws. 49 U.S.C. 5301 et seq.



# ADA Policies

- ▶ Written policies, procedures, or information regarding the following ADA requirements:
  - Lift vehicle availability
  - Maintenance of accessible features on vehicles
  - Adequate time for vehicles boarding and disembarking
  - Use of portable oxygen/respirator equipment
  - Service Animals
  - Personnel Training
- ▶ Civil Rights Office has created a standard template for reference.

*See FTA ADA Circular 4710.1*

# ADA: Top Issues

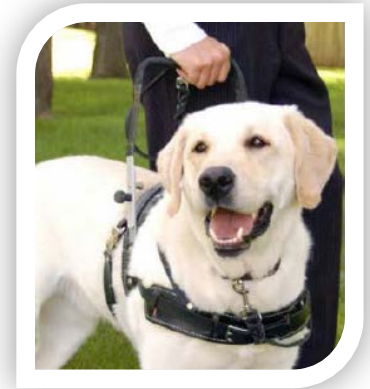
- ▶ According to the FTA the highest rural issues are:

Subject	Circular chapter
Service animals	2
Wheelchairs	2
Rider conduct and service denial	2

# ADA: Service Animals

## Reminders

- ▶ Individually trained to work or perform tasks for an individual with a disability
- ▶ You can require the service animal be under the owner's control.
- ▶ Transit agencies can ask:
  1. *Is the animal a service animal required because of a disability?*
  2. *What work or task has the animal been trained to perform?*



See FTA ADA Circular 4710.1 Section 2.6

# ADA: Wheelchairs

## Reminders

- ▶ If the device fits and meets the definition in § 37.3, you must transport
- ▶ No requiring “cleanliness,” footplates or other features
- ▶ Provide a reasonable level of assistance
- ▶ Unusual device? See Appendix D to § 37.3

*See FTA ADA Circular 4710.1 Section 37.3*



# ADA: Service Denial for Conduct

- ▶ May refuse service to individuals with disabilities who engage in:
  - Violent
  - Seriously disruptive
  - Illegal conduct, or
  - Are a direct threat to self or others
- ▶ High threshold for the behavior needs to be more than offensive

*See FTA ADA Circular 4710.1 Section 37.5 (h)*

# ADA: Service Denial for Conduct

## Reminders

- ▶ The focus is on due process
- ▶ Document internally how thresholds were met
- ▶ Reasonable terms
- ▶ No permanent bans
  - Riders must have opportunity to demonstrate the issue is fixed and resume service

*See FTA ADA Circular 4710.1 Section 2.6*

# ADA Complaint Process

- ▶ Complaints
  - Advertised to the public
  - Accessible to and usable by individuals with disabilities
- ▶ Combining ADA and Title VI Complaint Procedures
  - ADA complaints must be categorized distinctly from Title VI complaints
  - Discrimination Complaint Form (Standard template created for reference)
  - Discrimination Complaint Procedures (Standard template created for reference)
- ▶ Recordkeeping

*See FTA ADA Circular 4710.1 Section 12.7 for your options*

# What is Title VI?

Title VI is a federal law that prohibits discrimination on the basis of race, color, or national origin in federally assisted programs & activities.

The law specifically states:



“No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance.”

—Civil Rights Act of 1964



# Execution of Title VI of the Civil Rights Act of 1964

- ▶ 49 Code of Federal Regulations Part 21 (Nondiscrimination in Federally-Assisted programs of DOT)
- ▶ FTA Circular 4702.1B (Title VI Requirements and Guidelines)

# Title VI Roles and Responsibilities

## ADOT FTA Subrecipients

- Shall develop a Title VI Program as per FTA Circular 4702.1B to be submitted for review by the primary recipient (ADOT) on a schedule determined by ADOT. (During funding applications cycles)
- Title VI Programs shall also incorporate Executive Order (EO) guidance for limited English proficient (LEP) (E.O. 13166) and minority and low-income populations (E.O.12898), Environmental Justice (EJ)

# Title VI Roles and Responsibilities

A Title VI Program for submission shall include:

- Nondiscrimination public notice.
- Nondiscrimination compliant procedures.
- Discrimination compliant form.
- A record of any public transit-related Title VI/ADA investigations, complaints, or lawsuits filed with the subrecipient.

# Title VI Roles and Responsibilities

## A Title VI Program for submission shall include:

- Public Participation Plan that includes an outreach plan to engage minority and Limited English Proficient (LEP) populations, as well as a summary of outreach efforts made since the last Title VI Program submittal.
- Language Assistance Plan for providing language assistance to LEP persons, based off of DOT LEP guidance.
- *If applicable* a table depicting the membership of non-elected committees and councils, the membership of which is selected by the subrecipient, broken down by race, and a description of the process the agency uses to encourage the participation of minorities on such committees.

# Public Participation Plan

Recipients have wide latitude to determine how, when, and how often specific public participation activities should take place, and which specific measures are most appropriate based on:

- Demographic analysis of the population affected
- Program, and/or service under consideration and
- The resources available to the agency

# Public Participation Plan

Plans should also reflect efforts to involve minority and Limited English Proficient (LEP) populations in public participation activities through measures such as:

- Placement of public notices or handouts at all transit stations, stops, and vehicles
- Coordination with community- and faith-based organizations, educational institutions, and other organizations to implement public engagement strategies that reach out specifically to members of affected minority and/or LEP communities
- Public interaction and announcements through Agency websites

# Language Assistance Plan-Compliance with EO 13166

## LEP

Recipients have considerable flexibility in developing a Language Assistance Plan, or LEP Plan. An LEP Plan shall, at a minimum:

- Include the results of the Four Factor Analysis
- Describe how the recipient provides language assistance services by language
- Describe how the recipient trains employees to provide timely and reasonable language assistance to LEP populations
- Describe how the recipient provides notice to LEP persons about the availability of language assistance
- Describe how the recipient monitors, evaluates and updates the language access plan

# Language Assistance Plan Cont.

## The Four Factor Analysis:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service of the recipient or grantee. (Insert demographic chart from US Census)
2. The frequency with which LEP individuals come in contact with the program.
3. The nature and importance of the program, activity, or service provided by the recipient to people's lives.
4. The resources available to the recipient and costs.



# Language Assistance Plan Cont.

## Vital documents

After completing the Four Factor Analysis, a recipient may determine that an effective LEP plan for its community includes the translation of vital documents into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the recipient's programs and services. **Vital documents include, but are not limited to:**

- Consent and complaint forms
- Written notices of rights
- Decreases in benefits or services
- Notices advising LEP individuals of free language assistance services
- Other documents that provide access to essential services your agency provides

# The DOT LEP guidelines offer “Safe Harbor” for written translations only

States that:

- (a)** The recipient provides written translation of vital documents for each eligible LEP language group that constitutes 5% or 1,000, whichever is less of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or
  
- (b)** If there are fewer than 50 persons in a language group that reaches the 5% trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

# Title VI Roles and Responsibilities

## A Title VI Program for submission shall include:

- Provide the process of how they monitor any subrecipients, *if any* for compliance with Title VI and a schedule of subrecipients Title VI Program submissions.
- Conduct a Title VI equity analysis if the subrecipient has constructed a facility, such as a vehicle storage facility, maintenance facility, operation center, etc.

## And lastly....

- A copy of board meeting minutes, resolution, or other appropriate documentation showing board approval or governing entity responsible for policy decisions.

# Questions & Comments?



# Contact Us

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