

ADA and Title VI Compliance

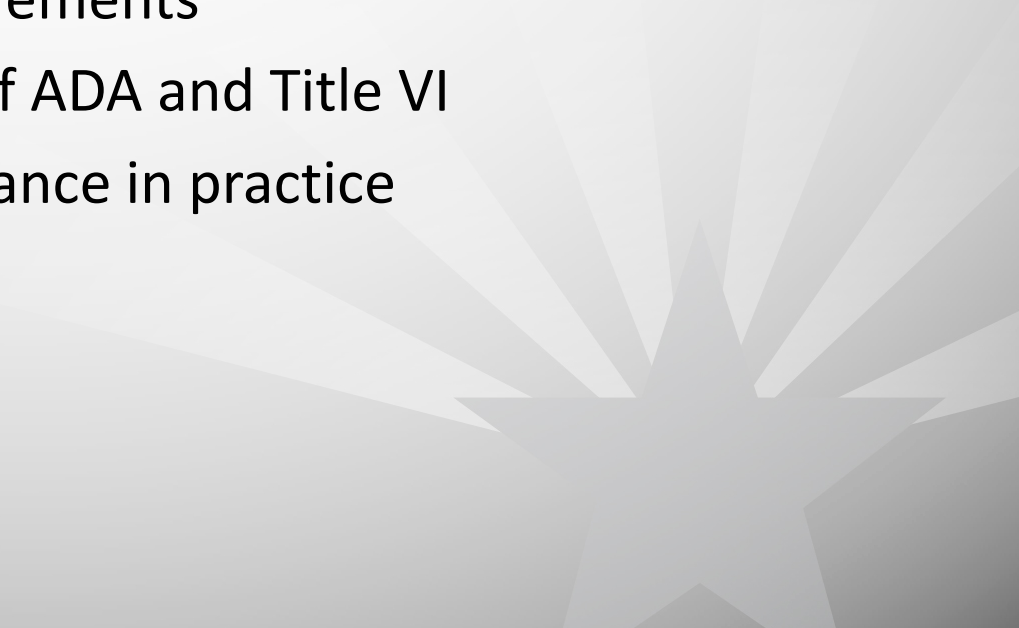
5310-5311 Subrecipients



Civil Rights Office

Jordan Johnson and Jose Alarcon

Learning Objectives

- ❑ ADOT's Oversight Requirements
 - ❑ Understand the basics of ADA and Title VI
 - ❑ ADA and Title VI Compliance in practice
 - ❑ FAQs
- 

FTA / ADOT Coordination

Federal Transit Administration (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

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: Service Animals

Reminders

- Individually trained to work or perform tasks for an individual with a disability
- 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?*
- You can require the service animal be under the owner's control.



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
- Any situation that disrupts the provision of service should be based on reasonable judgment
 - 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)
 - Nondiscrimination 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

The Civil Rights Act of 1964

Title I – Voting Rights

Title II – Discrimination in Public Accommodations

Title III – Desegregation of Public Facilities

Title IV – Desegregation of Public Education

Title V – Commission on Civil Rights

Title VI – Non Discrimination in Federally Assisted Programs

Title VII – Equal Employment Opportunity

Guidance on Title VI of the Civil Rights Act of 1964, LEP and EJ

- 49 Code of Federal Regulations Part 21
- FTA Circular 4702.1B (Title VI and LEP Guidance)
- FTA Circular 4703.1 (EJ Guidance)
- Executive Order 13166 - Limited English Proficiency (LEP)
- Executive Order 12898 - Environmental Justice (EJ)

Title VI Roles and Responsibilities

ADOT 5310 FTA Subrecipients

- Title VI/ADA Implementation Plan due in 2021 (year after next)
- Title VI/ADA Self-Certification due this upcoming year in 2020
- Collaboration with your MPO or COG agency

- Who here used the new Title VI/ADA Implementation Plan template this year? What did you think?

Self-Certification Compliance Review (2nd year of cycle)

Purpose: To ensure that each subrecipient is continuing to update and implement their Title VI Implementation Plan.

- Any transit-related complaints?
- Immediate notification to ADOT CRO upon complaint receipt?
- Changes in agency leadership?
- Title VI/ADA Public Notice post locations?
- Updates to the PPP or LEP sections of the Title VI Implementation Plan submitted last year?
- Do you have subrecipients?
- Constructed any new facilities?
- Have you held or attended Title VI/ADA training in the last year?

Limited English Proficiency Plan or Language Assistance Plan- Compliance with EO 13166 LEP

Recipients have considerable flexibility in developing a LEP Plan:

- Four Factor Analysis
- Provides language assistance
- Trains employees to provide timely and reasonable language assistance
- Provides notice to LEP persons about the availability of language assistance
- Monitors, evaluates and updates the language access plan

Limited English Proficiency Plan Cont.

The Four Factor Analysis:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by your agency.
2. The frequency with which LEP individuals come in contact with your agency.
3. The nature and importance of the program, activity, or service provided by your agency to people's lives.
4. The resources available to your agency.

Limited English Proficiency Plan Cont.

Vital documents

After completing the Four Factor Analysis, a recipient may determine that an effective LEP plan includes translation of vital documents. **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.

FAQs from the 2019 Application Cycle Limited English Proficiency

- Do we need to translate documents if we have not received requests for translation in the past?
- Our Four Factor Analysis shows that a language has surpassed the Safe Harbor Threshold. What does that mean? What is required?

See FTA Title VI Circular 4702.1B

FAQs from the 2019 Application Cycle Limited English Proficiency

- What if our organization provides services between two cities or two counties? What demographic region do we use for Factor 1 of the Four Factor Analysis?
- For Factor 2, how do we determine how frequent our organization comes into contact with an Limited English Proficient person?

See FTA Title VI Circular 4702.1B

FAQs from the 2019 Application Cycle

- My organization does not conduct public meetings. Am I still required to submit a Public Participation Plan?
- If we contract out the use of a driving service, are we still required to submit an ADA policy with the Title VI/ADA Implementation Plan?
- Where can I find information and resources to put together an effective training on Limited English Proficiency and the Four Factor Analysis.

See FTA Title VI Circular 4702.1B

Questions & Comments?



Contact Us

ADOT Civil Rights Office

206 S. 17th Ave. MD 155A

Phoenix, AZ 85007

602.712.8946

CivilRightsOffice@azdot.gov