
Maryland State Highway Administration Americans with Disabilities Act (ADA) Policy on Sub-Recipients

Purpose

The Maryland State Highway Administration (SHA) remains committed to providing full accessibility for all of its customers. The purpose of this document is to provide SHA's plan to ensure compliance with the Americans with Disability Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Sec. 504), specifically in the area of sub-recipients. Sub-recipients include all entities that receive federal-aid through SHA.

Background

The Federal Highway Administration (FHWA) and the Department of Justice consider the State Highway Administration both a State Transportation Agency (STA) and a recipient because it receives and distributes federal funds to public entities, such as local governments. As an STA, SHA has the responsibility to monitor sub-recipients to ensure their compliance with Title II of the ADA and Sec. 504 with respect to STA-funded (both federal and state dollars) projects and programs that the sub-recipient implements.

Under ADA (28 CFR § 35.130(b)(1)(v)), the state cannot aid or perpetuate discrimination against an individual with a disability by providing significant assistance to an entity that discriminates in providing any aid, benefit, or service to beneficiaries. Similarly, Section 504 (49 CFR § 27.7 (b) (v)) provides that a recipient of FHWA funds (e.g. the State) cannot provide financial or other assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit or service. Similarly stated, SHA cannot provide aid to an organization that is not in compliance with ADA and Section 504.

Currently, guidance on how state transportation agencies are to monitor, oversee or enforce the ADA laws and regulations is very general. Therefore, this policy will outline the measures SHA will take to provide the mandated oversight of sub-recipients.

Who is covered? If SHA provides federal aid to a local government agency or other entity, all of the operations of the agency, department or organization to which the funds are distributed are covered. Thus all local governments are covered as well as any private entities that accept federal grants. Enhancement grants, safe routes to school funds, earmarks, as well as local highway user revenue distributions are all qualifying funds and therefore recipients must demonstrate compliance in all of their programs.

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What is required of Local governments and other entities? The State, local government and other entities employing 50 or more people must meet the following requirements:

- Apply ADA law
- Apply Section 504
- Develop and disseminate a non-discrimination statement
- Appoint an ADA/Sec. 504 coordinator (employing 15 or more people)
- Publish a grievance procedure (employing 15 or more people)
- Conduct a Self-Evaluation
- Develop a Transition Plan
- Provide Auxiliary Aids (TTD/TTY)
- Provide assurances of compliance through the development of standards, guidelines, policies, procedures, and adequate record keeping.

SHA's Plan for Sub-Recipient Oversight

SHA's plan is multi-faceted and includes education, oversight, design review, consultation and monitoring. The elements of the plan are outlined below.

Sub-Recipient Responsibilities. SHA will distribute information to its sub-recipients outlining their responsibilities under ADA and Section 504. This will be accomplished through letters to each County Engineer as well as in the materials accompanying grant applications such as Transportation

Enhancement Program projects or Safe Routes to School Projects. Projects along SHA's roadways must meet SHA's design guidelines and other projects must, at a minimum, comply with the Americans with Disabilities Act Accessibility Guidelines (ADAAG), Letters (with annual updates) to the County Engineers will be prepared by the Title II Coordinator. Information included in the grant applications will be the responsibility of the coordinator for each individual program providing funds to sub-recipients.

Acknowledgement of Requirements. With each letter to the County Engineer as well as with each application for federal funds, sub-recipients will be asked to acknowledge their understanding of the requirements of the ADA and Section 504 and certify by signature, that they do/will comply with those requirements. SHA reserves the right to review any of the required materials/policies/programs of the sub-recipient.

Training. SHA will continue to offer training to sub-recipients. Training can include both technical design training as well as construction training for construction staff, contractors and inspectors. Training modules include copies of design standards and a field guide

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for construction. Training is coordinated and provided by SHA's Office of Highway Development (OHD).

Technical Advice/Consultation. OHD is available to consult, when needed, to provide technical advice on particular projects or design challenges.

Design Review. OHD will continue to conduct ADA design reviews of sub-recipient projects. SHA reserves the right to have the authority to allow a sub-recipient to self-certify their projects at SHA's discretion once the following conditions are met:

1. Provide evidence that a Self-Evaluation of their transportation system has been completed;
2. Provide evidence that a Transition Plan has been developed;
3. Provide evidence of standards, guidelines, policies, and/or procedures that have been developed to ensure projects meet the ADA requirements (unless written local guidelines meet ADAAG have been specifically approved by SHA, in which case SHA's ADA guidelines apply); and
4. Maintain complete records of internal reviews and waivers.

The viability of a sub-recipient to self-certify their projects will likely be entertained only for those governments that use federal funds through SHA on a frequent basis. Once a sub-recipient has been self-certified, the sub-recipient will submit an annual report to SHA summarizing their design and construction program and efforts made to address elements in their Transition Plan. SHA will also reserve the right to conduct a formal audit review of a sub-recipient's program to substantiate data submitted in the annual report.

Field Verification. SHA will conduct post-construction field verification on all projects along SHA facilities. In addition, SHA reserves the right to conduct field verification on other sub-recipient projects.

Monitoring/Oversight. If ADA compliance issues arise with a sub-recipient there are several possible outcomes that include but are not limited to the loss of federal funds. For specific issues of noncompliance during construction, the design and/or construction can be modified to correct the deficiency. For administrative issues, SHA may work with the sub-recipient to develop a plan and schedule for implementation of their program. Each situation is unique and will be addressed individually with appropriate SHA ADA Steering Committee members. Any of these situations would likely result in a greater level of oversight and monitoring.



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Date

