

## **CHAPTER 9**

# **AMERICANS WITH DISABILITIES ACT AND SECTION 504 OF THE REHABILITATION ACT NONDISCRIMINATION REQUIREMENTS**

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## 9.1 OVERVIEW

The Department is the primary recipient of FAHP funds and passes through the funds to subrecipients to plan, design, and construct local transportation project priorities. To receive FAHP funds, the LA, and their contractors and consultants, must comply with Federal and State disability act authorities, including Florida statutes; USDOJ, USDOT and FHWA regulations, orders and notices; and the policies and procedures implemented by the Department in this Chapter. In addition, to maintain LAP certification, LAs must submit the [Sub-recipient Compliance Assessment Tool \(SCAT\)](#) in the GAP database once every three (3) years or at the request of the Department or the FHWA (see **Chapter 8.6**).

## 9.2 REHABILITATION ACT OF 1973, SECTION 504

[Section 504 of the Rehabilitation Act, as amended \(Section 504\) and codified in 29 USC 794](#) and related authorities provide that no person shall on the grounds of disability be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. The **Civil Rights Restoration Act of 1987** further clarified **Section 504** in specifying that all programs, services, and activities of institutions receiving Federal funds must comply with Federal civil rights laws, not just the particular programs or activities that receive the funds. The regulatory authority for [Section 504 is at 49 CFR 27](#).

### 9.2.1 Section 504 Scope

**Section 504** applies not only to primary recipients like STAs, but also to any subrecipients, specifically including but not limited to LAs and their contractors and consultants. Regardless of the entity or the program receiving FAHP funds, all parties must take steps to prevent discrimination and ensure nondiscrimination in all programs, services, and activities. Thus, all programs, services, and activities of LAs receiving FAHP funding must comply with nondiscrimination requirements, whether or not the individual programs or activities receive Federal funding.

## 9.3 AMERICANS WITH DISABILITIES ACT OF 1990

The [Americans with Disabilities Act of 1990, as amended \(ADA\)](#) and related authorities provide that no person shall on the grounds of disability be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity, whether or not the program or activity receives Federal financial assistance.

### 9.3.1 Title II of the ADA Scope

Title II of the **ADA** requires that the Department and its LAs prevent discrimination and ensure nondiscrimination in all of their programs, services, and activities, whether or not they receive any Federal financial assistance. The regulatory authority for **ADA** in transportation is at [49 CFR 27, 37, and 38](#) and at [28 CFR 35](#). Title III of the **ADA** has similar requirements for corporations, partnerships and other private organizations.

### 9.3.2 Program and Facility Access Plans

States and LAs must have plans for providing accessibility to their programs and facilities by those who are disabled. However, those agencies with fifty (50) or more employees have additional responsibilities under **ADA/Section 504**, as outlined in **Section 9.5**.

## 9.4 ASSURANCES

The Department will ensure that the LA executes and provides an assurance in the form of the [Title VI/Nondiscrimination Agreement](#), per [49 CFR 27.9](#) and as described in **Chapter 8**.

### 9.4.1 Scope of Assurances

Essentially, assurances serve two (2) purposes. First, they provide written commitment from the LA that no person will on the grounds of disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity conducted by the LA or its contractor(s) and consultant(s), regardless of whether those programs and activities are Federally funded or not. Second, assurances serve as a contract agreement for which remedy may be sought for breach.

### 9.4.2 Contract Insertions

The **Title VI/Nondiscrimination Agreement** contains required contract assertions labeled [Appendices A and E](#). It is important for the LA to ensure that the clauses are included in all LAP contracts and agreements. Appendices A and E are incorporated into the **LAP Terms for Federal-Aid Professional Services Contracts (FDOT Form No. 375-040-84)** and by reference in **FHWA 1273** (revised October 23, 2023).

## 9.5 IMPLEMENTATION PROCEDURES (ADA AND SECTION 504)

Compliant implementation of **ADA** and **Section 504** is a cooperative effort by the Department and its subrecipients.

### 9.5.1 Local Agency Responsibilities

- Issue a policy statement, which expresses its commitment to the nondiscrimination provisions of the **ADA** and **Section 504**. The policy statement must be circulated internally within the LA and to the general public. For convenience, the policy statement can also include other required protected classes, such as race, national origin, color, sex, age, religion, and family status. For more information and sample documents visit the LAP Title VI webpage and see the [Nondiscrimination Handbook for Local Agencies](#) and the [Sample Title VI/Nondiscrimination Policy and Plan for Sub-Recipients in the Local Agency Program \(LAP\)](#).
- Complete and submit the **SCAT** in the GAP database every three (3) years, in conjunction with LAP certification or upon request by the Department or FHWA. For more information on how to submit a SCAT in the GAP database see the [GAP SCAT User Guide for Local Agency Users](#).
- Perform a self-assessment of the accessibility of the programs and services provided by the LA, including pedestrian facilities, in accordance with [28 CFR 35.105](#).
- Utilize current design standards that comply with minimum ADA requirements and Florida Laws and rules. Subrecipients of FAHP funds must comply with the ADA in all aspects of design and construction. Florida laws and rules require use of the **Florida Greenbook** design standards when planning, designing, and constructing transportation facilities for projects located on local roadways. FAHP funded projects require use of the **FDOT Design Manual (FDM)** when designing and constructing projects located on the SHS or NHS. Both the **Florida Greenbook** and the **FDM** meet or exceed the [US Department of Justice ADA Standards \(2010\)](#) and [US Department of Transportation ADA 2006 Standards for Transportation Facilities \(2006\)](#), the [Public Rights of Way Accessibility Guidelines \(PROWAG\)](#).
- Ensure compliance with the [DOJ/DOT Technical Memo](#) regarding alteration versus maintenance activities and the corresponding **ADA** requirements.
- Take action to correct any deficiencies found by the Department or FHWA within a reasonable time period, not to exceed ninety (90) days, in order to implement **ADA/Section 504** compliance in accordance with this agreement. The chief

executive officer of the LA shall be held responsible for implementing **ADA** and **Section 504** requirements.

- The LA is required to adhere to the design exception and variation processes in the **Florida Greenbook** and/or the **FDM** to document any conditions of 'technical infeasibility,' which prohibit the provision of all required accessibility elements or features.
- Ensure any person who believes that he or she, or any specific class of persons has been subjected to discrimination or retaliation prohibited by the **ADA or Section 504**, as amended and related authorities, may file a complaint. **Section 9.6** describes the complaint process in further detail.

### 9.5.2 Responsibilities of Local Agencies with 50 or More Employees

In addition, LAs with fifty (50) or more employees shall:

- Establish a complaint process to respond to accessibility complaints. As discussed in **Chapter 8**, the complaint process can include other discrimination complaint bases such as race, national origin, color, sex, age, religion, and family status. **Section 9.6** describes the complaint process in further detail.
- Designate an ADA Coordinator and publish their name and contact information. This person must have 'easy' access to the LA chief executive officer due to their role in recording and investigating complaints received by the agency.
- Develop and provide for public comment an ADA Transition Plan to prioritize, schedule, and report corrections of deficiencies identified during the self-assessment in accordance with [28 CFR 35.150\(d\)](#). This is a requirement of all government agencies with fifty (50) or more employees *without* respect to funding [see **28 C.F.R. 35.105** and **150(d)**]. ADA Transition Plans must be publicly posted and updated periodically. If an agency has not started or has not maintained its ADA Transition Plan the Department offers resources to assist in the development of a plan. An ADA Transition Plan Template may be found under Additional Resources on the FDOT LAP Title VI & Nondiscrimination webpage at the following website: [Title VI and Nondiscrimination](#). Additional resources may be found here: [FDOT ADA Website Main](#). Contact the [State ADA Coordinator](#) or the State LP Administrator for additional information.

### 9.5.3 Department Responsibilities

- Review LA SCAT documents in GAP to verify LAs have current signed nondiscrimination assurances, a sufficient nondiscrimination plan, policy statement, and complaint procedure.

- Provide technical and program assistance to those LAs that are unable to demonstrate substantial compliance through the SCAT process.
- Review designs for FAHP projects to determine compliance with **ADA Standards**. Ensure the LA is following the **DOJ/DOT Technical Memo** on installing or upgrading curb ramps as part of alterations.
- Oversight of FAHP project construction to include regular and final inspections, to ensure compliance with **ADA Standards**. Ensure the LA is following the **DOJ/DOT Technical Memo** on installing or upgrading curb ramps as part of alterations.
- Provide LAs with assistance and suggestions in cases of technical infeasibility or any other situations where a design exception or variation may be needed due to constraints.
- Cooperate and assist in FHWA investigations of **ADA** complaints filed against LAs, to include docketing complaints, forwarding complaints to the appropriate FHWA authority, and conducting site inspections or remediation verification as requested or required.
- Questions related to **SCAT** submission may be directed to [co-scat@dot.state.fl.us](mailto:co-scat@dot.state.fl.us)
- A GAP SCAT Tool user guide for Local Agency User's may be found at the following link: [Click Here](#)
- A GAP SCAT Tool user guide for State Employee User's may be found at the following link: [Click Here](#)

## 9.6 DISCRIMINATION COMPLAINTS

Any person or any specific class of persons who believes they have been subjected to discrimination or retaliation prohibited by the **ADA** or **Section 504**, as amended and related authorities, may file a complaint. LAs follow their posted complaint filing/processing procedures, notifying the [FDOT State ADA/Section 504 Coordinator](#) for any complainants involving pedestrian or transportation facilities. However, if at any time a discrimination complaint cannot be satisfactorily resolved by the LA, it forwards the entire complaint and investigative file to the FDOT Statewide ADA/Section 504 Coordinator or the [FDOT State Title VI Coordinator](#). The Department and FHWA are designated nondiscrimination clearinghouses and will either assume jurisdiction for the complaint or forward it to the appropriate Federal or State authority for further processing.

### 9.6.1 Notification to the Florida Department of Transportation

Whenever possible, the LA will notify the FDOT State ADA/Section 504 Coordinator within five (5) calendar days of receiving a complaint involving pedestrian or transportation facilities. If possible, the following information should be included in the notification of complaint.

- Name and contact information of the Complainant, if available.
- Name(s) and contact information of the official(s) alleged to have discriminated.
- Basis of complaint (disability).
- Date of alleged discriminatory act(s).
- Date of complaint received by the LA ADA/Section 504 Coordinator.
- A description of the complaint.
- Other agencies (local, State, or Federal) where the complaint has been filed, if applicable.
- An explanation of the actions the LA has taken or is proposing to take to resolve the complaint.

### 9.6.2 Limitation on Local Agency Complaint Processing

Because laws may impose time limits on a Complainant's right to file discrimination complaints in Federal or State courts, at no time should the LA's processing of pedestrian or transportation facility complaints extend beyond ninety (90) calendar days without advising the FDOT State ADA/Section 504 Coordinator or the FDOT State Title VI Coordinator.

### 9.6.3 Employment Discrimination Complainants Excluded

Employment Discrimination Complaints under ***Title I of the ADA*** or other equal employment laws are specifically excluded from **Section 9.6** and should not be provided to the Department unless specifically requested, or if the primary objective of the financial assistance received is to provide employment ([42 USC 2000d-3](#)). Contact the FDOT State Title VI Coordinator for additional information.

### 9.6.4 Interagency Cooperation

Where **ADA/Section 504** discrimination complaints are received by or assigned to the Department or FHWA, the LA must fully cooperate with the ensuing investigation. This includes but is not limited to, adhering to deadlines for production of information; making project or program information available for inspection; cooperating with onsite visits and witness interviews; and engaging in conciliation or resolution conferences, where recommended.



## 9.6.5 Complaint Recordkeeping

The LA ADA/Section 504 Coordinator must maintain a log of all discrimination complaints received, even if unwritten or anonymous. The log includes:

- Names of Complainants, if available.
- Name of LA official or department against which the complaint is filed.
- Basis of complaint (disability).
- Dates of alleged discrimination, when the complaint was received by the LA and when the Department was notified, if applicable.
- A brief explanation of resolution or referral action, along with the date the matter was resolved or referred.

## 9.7 SUB-RECIPIENT COMPLIANCE ASSESSMENT TOOL

A complete description of the LAP **SCAT** and the Department's review requirements may be found in **Chapter 8**.

## 9.8 MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID PROJECTS

As discussed in **Chapter 5.3**, a risk assessment and project specific monitoring plan must be developed prior to the federal award. Federal award date under Department process is considered the Federal Authorization date. **Table 1** contains the minimum **ADA/Section 504** monitoring requirements performed by the Department. Department grant managers may impose additional monitoring requirements for projects based on findings of noncompliance on other projects delivered by the LA in the past, or if current findings of noncompliance occur on active projects.

TABLE 1: Minimum Monitoring Requirements for Federal-Aid Projects		
MONITORING REQUIREMENT	REQUIREMENT DESCRIPTION AND ACTIVITIES	MINIMUM FREQUENCY BASED ON RISK LEVEL
SCAT Review	Central Office and FHWA designees review the LA's Title VI, ADA and Nondiscrimination programs.	All LAs are reviewed triennially or when triggered by an audit
Title VI Assurance execution	The Title VI Assurance must be executed once every three years or when the chief executive officer changes. The Assurance expiration date is displayed in GAP. District program managers monitor dates in GAP and agency staffing changes and trigger a request for a new assurance when	All LAs are reviewed triennially or when triggered by staffing change at the LA.

	due or as needed.	
Design Reviews for minimum standards	Review designs for FAHP projects to determine compliance with ADA Standards. Ensure the LA is following the DOJ/DOT Technical Memo on installing or upgrading curb ramps as part of alterations.	Design plans for each Department funded FAHP project are reviewed for conformance to minimum design standards, including ADA.
Construction Inspections	Oversight of FAHP project construction to include regular and final inspections, to ensure compliance with ADA Standards. Inspection frequencies are established in Chapters 21 and 22.	All FAHP funded construction projects are inspected for conformance with approved design in accordance with CH 21 & 22.

## 9.9 SANCTIONS

In the event the LA fails or refuses to comply with the terms described in this Chapter and the referenced authorities, the Department may take any or all of the following sanctions:

- Cancel, terminate, or suspend the LAP Agreement in whole or in part.
- Refrain from extending any further FAHP assistance to the LA with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the LA.
- Take such other action that may be deemed appropriate under the circumstances, including but not limited to LAP certification termination, until compliance or remedial action has been accomplished by the LA.
- Refer the case to the USDOT for appropriate legal proceedings.

## 9.10 RESOURCES

All resources referenced in this Chapter may also be accessed through the [LAP Website](#).

[GAP SCAT User Guide \(Local Agency Users\)](#)

[GAP SCAT User Guide \(State Employee Users\)](#)

[Appendices A and E](#)

[Nondiscrimination Handbook for Local Agencies](#)

Handbook Attachment A, LAP Nondiscrimination [Authorities and Resources](#)

Handbook Attachment B, [Title VI/Nondiscrimination Assurance](#)

Handbook Attachment C, [Sample Nondiscrimination Policy and Plan for Local Agencies](#)

Handbook Attachment D, [Sample Disadvantaged Business Enterprise \(DBE\) Statement](#)

[Triennial Title VI Program Review Tool for Local Government](#)

[DOJ/DOT Technical Memo](#)

[US Department of Justice ADA Standards \(2010\)](#)

[US Department of Transportation ADA Standards for Transportation Facilities \(2006\)](#)

[Public Rights of Way Accessibility Guidelines \(PROWAG\)](#)

[FDOT Design Manual \(FDM\)](#)

[Florida Greenbook](#)

Local Technical Assistance Program SCAT and ADA training class recordings:

<https://floridaltap.org/localprograms/>