

## CHAPTER 4 - AMERICANS WITH DISABILITIES ACT & SECTION 504 OF THE REHABILITATION ACT NONDISCRIMINATION REQUIREMENTS

### 4.1 OVERVIEW

The Florida Department of Transportation (Department) is the primary recipient of Federal funds, that it then distributes to sub-recipients to fund local project priorities. In the context of the Local Agency Program (LAP) sub-recipients are defined as a Local Agency and the Local Agency's contractors or consultants. In order to receive Federal funds, the Local Agency and their contractors and consultants must comply with Federal and State disability act authorities, including Florida statutes; US Department of Justice (USDOJ), US Department of Transportation (USDOT) and Federal Highway Administration (FHWA) regulations, orders and notices; and the policies and procedures implemented by the Department as outlined in this Chapter. In addition, to maintain LAP Certification, Local Agencies must submit the [Sub-recipient Compliance Assessment Tool \(SCAT\)](#) once every three years or at the request of the Department or the FHWA (see Chapter 2.2.2).

### 4.2 REHABILITATION ACT OF 1973, SECTION 504

[Section 504 of the Rehabilitation Act, as amended \(504\)](#) 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](#).

#### 4.2.1 Section 504 Scope

**Section 504** applies not only to primary recipients like State Transportation Agencies (STAs), but also to any sub-recipients, specifically including but not limited to Local Agencies and their contractors and consultants. Regardless of the entity or the program receiving Federal-aid, all must take steps to prevent discrimination and ensure nondiscrimination in all programs, services and activities. Thus, all programs, services and activities of Local Agencies participating in LAP must comply with nondiscrimination requirements, whether or not the individual programs or activities receive Federal funding.

## 4.3 AMERICANS WITH DISABILITIES ACT OF 1990

The [Americans with Disabilities Act, 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.

### 4.3.1 Title II of the ADA Scope

Title II of the ADA requires that the Department and its Local Agencies 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.

### 4.3.2 Program and Facility Access Plans

State and Local Agencies must have plans for providing accessibility to their programs and facilities by those who are disabled. However, those agencies with 50 or more employees have additional responsibilities under **ADA/504**, as outlined in **Section 4.5**.

## 4.4 ASSURANCES

The Department will ensure that the Local Agency executes and provides an assurance in the form of the [Title VI/Nondiscrimination Agreement](#), per [49 CFR 27.9](#)

### 4.4.1 Scope of Assurances

Essentially, assurances serve two purposes. First, they provide written commitment from the Local Agency 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 Local Agency or its Contractor(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.

### 4.4.2 Contract Insertions

The **Title VI / Nondiscrimination Agreement** contains required contract assertions labeled [Appendices A and E](#). It is important for the Local Agency to ensure that the clauses are included in all LAP contracts and agreements. Appendices A and E are

incorporated into FHWA 1273 and the LAP Terms for Federal-Aid Professional Services Contracts (FDOT Form No. 375-040-84).

## 4.5 IMPLEMENTATION PROCEDURES (ADA and Section 504)

Compliant implementation of ADA and Section 504 in the LAP Program is a cooperative effort by the Department and its Local Agencies. Local Agencies shall:

- A. 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 local agency 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 \(LAP\)](#).
- B. Complete and submit **the Sub-recipient Compliance Assessment Tool (SCAT)** every three years, generally, in conjunction with certification or upon request by the Department or FHWA.
- C. Perform a self-assessment of the accessibility of the programs and services provided by the Local Agency, including pedestrian facilities, in accordance with [28 CFR 35.105](#).
- D. Monitor design and construction for meeting current ADA Standards. Participation in the LAP Program requires the Local Agency to identify the design standards utilized on LAP projects that are in compliance with at least one of the following: [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 \(PROWAG\)](#), the [Department Design Manual](#), and the [Florida Greenbook](#).
- E. Ensure compliance with the [DOJ/DOT Technical Memo](#) regarding alteration versus maintenance activities and the corresponding ADA requirements.
- F. 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/504** compliance in accordance with this agreement. The chief

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

- G. Document any conditions of 'technical infeasibility,' which prohibit the provision of all required accessibility elements or features.
- H. 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 **Americans with Disabilities Act of 1990 or Section 504 of the Rehabilitation Act of 1973**, as amended and related authorities, may file a complaint. **Section 4.6** describes the complaint process in further detail.

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

In addition, Local Agencies with 50 or more employees shall:

- A. Have a complaint process to respond to accessibility complaints. The complaint process can include other discrimination complaint bases such as race, national origin, color, sex, age, religion and family status. **Section 4.6** describes the complaint process in further detail.
- B. Designate an ADA Coordinator and publish their name and contact information. This person must have 'easy' access to the agency chief executive officer due to their role in recording and investigating complaints received by the agency.
- C. 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 or more employees, *without* respect to funding [see **28 CFR 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. The Department, in partnership with FHWA and Florida International University, developed a web based program that enables local agencies to inventory their transportation facilities and will satisfy the requirements of the ADA Transition Plan- the [Safe and Accessible Pedestrian Facilities Inventory Model \(SAPFIM\)](#). Contact the State ADA/504 Coordinator or the State LAP Administrator for additional information.

#### 4.5.2 Department Responsibilities

- A. Review Local Agency SCAT documents to verify Local Agencies have current signed nondiscrimination assurances, a sufficient nondiscrimination plan, policy statement, and complaint procedure.
- B. Provide technical and program assistance to those Local Agencies that are unable to demonstrate substantial compliance through the SCAT process.
- C. Review designs for LAP projects to determine compliance with **ADA Standards**. Ensure the Local Agency is following the **DOJ/DOT Technical Memo** on installing or upgrading curb ramps as part of alterations.
- D. Monitor LAP project construction and/or Local Agency oversight of LAP project construction, to include regular and final inspections, to ensure compliance with **ADA Standards**. Ensure the Local Agency is following the **DOJ/DOT Technical Memo** on installing or upgrading curb ramps as part of alterations.
- E. Provide Local Agencies with assistance and suggestions in cases of technical infeasibility or any other situations in which LAP project compliance cannot be effected.
- F. Cooperate and assist in FHWA investigations of **ADA** complaints filed against Local Agencies, to include docketing complaints, forwarding complaints to the appropriate FHWA authority, and conducting site inspections or remediation verification as requested or required.

## 4.6 DISCRIMINATION COMPLAINTS

Any person who believes that he or she, or any specific class of persons has been subjected to discrimination or retaliation prohibited by the **Americans with Disabilities Act of 1990** or **Section 504 of the Rehabilitation Act of 1973**, as amended and related authorities, may file a complaint. Local Agencies should follow their posted complaint filing/processing procedures, notifying the [FDOT State ADA/504 Coordinator](#) for any complainants involving pedestrian or transportation facilities. However, if at any time a discrimination complaint cannot be satisfactorily resolved by the Local Agency, it should forward the entire complaint and investigative file to the FDOT Statewide ADA/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.

### 4.6.1 Notification to the Florida Department of Transportation

Whenever possible, the Local Agency will notify the FDOT State ADA/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.

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

#### **4.6.2 Limitation on Local Agency Complaint Processing**

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

#### **4.6.3 Employment Discrimination Complainants Excluded**

Employment Discrimination Complaints under *Title I of the ADA* or other equal employment laws are specifically excluded from **Section 4.6** 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 U.S.C. 2000d-3](#)). Contact the FDOT State Title VI Coordinator for additional information.

#### **4.6.4 Interagency Cooperation**

Where ADA/504 discrimination complaints are received by or assigned to the Department

or FHWA, the Local Agency 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.

#### **4.6.6 Complaint Recordkeeping**

The Local Agency ADA/504 Coordinator must maintain a log of all discrimination complaints received, even if unwritten or anonymous. The log should include:

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

#### **4.7 SUB-RECIPIENT COMPLIANCE ASSESSMENT TOOL**

A complete description of the LAP Subrecipient Compliance Assessment Tool (SCAT) and the department's review requirements may be found in [Chapter 3](#).

#### **4.8 SANCTIONS**

In the event the Local Agency 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:

- A. Cancel, terminate, or suspend the LAP Agreement in whole or in part.
- B. Refrain from extending any further assistance to the Local Agency under LAP with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Local Agency.
- C. Take such other action that may be deemed appropriate under the

circumstances, including but not limited to Certification termination, until compliance or remedial action has been accomplished by the Local Agency.

- D. Refer the case to the U.S. Department of Transportation for appropriate legal proceedings.

## 4.9 RESOURCES

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

[Sub-recipient Compliance Assessment Tool \(SCAT\)](#)

[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](#)

[LAP Sub-Recipient Compliance Assessment Tool Computer Based Training \(Course No. BT-15-0009\)](#)

[DOJ/DOT Technical Memo](#)

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

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

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

[Department Design Manual](#)

[Florida Greenbook](#)