

Appendix C: Federal Highway Administration ADA Transition Plan Process Memo



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION AND ACTION:**
ADA Transition Plan Process

Date: **NOV 17 2015**

From: Irene Rico 
Acting Associate Administrator for
Civil Rights

In Reply Refer To:
HCR-20

To: Division Administrators
Division Civil Rights Specialists

**THIS MEMORANDUM SUPERSEDES THE OFFICE OF CIVIL RIGHTS' (HCR)
NOVEMBER 17, 2014 MEMORANDUM ("INFORMATION AND ACTION:
SUBMISSIONS OF STATE ADA TRANSITION PLANS") IN ITS ENTIRETY.**

Purpose and Background:

The purpose of this memorandum is to describe the process that the Federal Highway Administration (FHWA) has developed to review Americans with Disabilities Act (ADA) transition plans prepared by State Departments of Transportation (DOTs) and to facilitate State DOTs' compliance with the ADA transition plan requirements. In particular, this memorandum:

- 1) Describes the Working Group and Review Team framework within which the FHWA ADA transition plan review process was developed and next steps to achieve ADA transition plan compliance by all State DOTs;
- 2) Identifies the minimum required attributes that need to be included in a State's ADA transition plan;
- 3) Describes the review process FHWA will implement for determining the status of a State's ADA transition plan;
- 4) Explains FHWA's jurisdictional authority to review State DOT ADA transition plans; and
- 5) Describes the connection between a State's Statewide Transportation Improvement Program (STIP) and the transition plan regulatory requirement.

As background, on November 17, 2014, the FHWA's Office of Civil Rights (HCR) issued a memorandum titled "**INFORMATION AND ACTION: Submissions of State ADA Transition Plans.**" That memorandum sought to clarify FHWA's policies and procedures with regard to State DOT ADA transition plan requirements and requested that FHWA Division Offices review their State's transition plan for compliance with regulatory requirements. As State DOTs

submitted their ADA transition plans, HCR began receiving questions from Division Administrators concerning a transition plan's required attributes.

ADA Transition Plan Working Group and Review Team:

With the amount of interest in the topic, the Associate Administrator for the Office of Civil Rights and the Chair of the Division Administrator (DA) Civil Rights Advisory Group agreed that it would be beneficial to create a Working Group to develop guidance on the transition plan attributes that are consistent with regulatory requirements. The Working Group was established in the Summer of 2015 with the following members: Tom Smith, DA West Virginia; James Christian, DA Florida; Joe Werning, DA Nebraska; Karla Petty, DA Arizona; Amy Jackson-Grove, DA Connecticut; Gary Corino, DA Oklahoma; Joseph Daily, DA Wyoming; Jim Esselman, FHWA Office of Chief Counsel; Warren Whitlock, AA Office of Civil Rights; Candace Groudine, HCR; Nichole Mcwhorter, HCR; Connie Yew, HCR; Elizabeth Hilton, Office of Infrastructure; Patrick Gomez, Resource Center (RC).

The effort began with two, all-day face-to-face meetings in July 2015 to discuss in depth, the broad range of challenges faced by States in completing their ADA transition plans, as well as the need to clarify for the States what is required by the regulations to ensure compliance with the ADA. Shortly after those meetings, a smaller, break-out team (referred to as the "ADA transition plan Review Team," hereinafter, "Review Team") was created by the Working Group and charged with the responsibility to identify minimum attributes that FHWA should evaluate in determining the adequacy of a State's ADA transition plan. This team also discussed how to address the large number of transition plans that had already been reviewed and accepted by Divisions. The Review Team consists of the following individuals: Tom Smith, DA West Virginia; Amy Jackson-Grove, DA Connecticut; Jim Esselman, Office of Chief Counsel; Elizabeth Hilton, Office of Infrastructure; Candace Groudine, Office of Civil Rights; and Patrick Gomez, RC. Each team member had also been a member of the larger Working Group.

In August 2015, the "What's Hot Webinar" hosted by the Division Administrators' Council (DAC) included discussion about the ADA Transition Plan Working Group and Review Team and a high level summary of what was emerging from the team's work.

At the September 2015 Fall Business Meeting's DAC Session, HCR provided an update on the efforts from the Working Group and Review Team, and requested feedback from all the Division Administrators.

Minimum Required Attributes:

The Review Team has identified a list of minimum required attributes that need to be included within a State's ADA transition plan. Each of these minimum required attributes corresponds with the minimum transition plan requirements set forth in the U.S. Department of Justice's (DOJ's) ADA Title II regulations at 28 CFR 35.150(d).

The attributes that are required to be included in a State's ADA transition plan consist of the following:

- 1) Identification of the official responsible for implementation of the transition plan (See 28 CFR 35.150(d)(3)(iv));
- 2) An inventory of barriers (i.e., identification of physical obstacles); (See 28 CFR 35.150(d)(3)(i) & 28 CFR 35.150(a));
- 3) A prioritized schedule of when barriers will be eliminated and deficiencies corrected (See 28 CFR 35.150(d)(2) & 28 CFR 25.150(d)(3)(iii)); and
- 4) A description of the methods that will be used to make facilities accessible (See 28 CFR 35.150(d)(3)(ii)).

More details about each attribute is provided in the attached “State DOT Transition Plan Attributes Review Guide” (Review Guide) that was presented during the October 13, 2015 webinar about the review process for Division Administrators and Civil Rights Specialists.

Review Process:

The following is a brief overview of the review process that FHWA will employ, using the Review Guide as a tool, for determining the status of a State’s ADA transition plan:

- After a State DOT submits its ADA transition plan to the State’s FHWA Division Office, the Division’s Civil Rights Specialist will conduct an initial review based on the Review Guide and brief the Division Administrator on his or her assessment.
- If the Division Administrator and Civil Rights Specialist believe the State’s transition plan does not meet the minimum attributes, they should work with the State DOT to address the identified deficiencies.
- When the Division Administrator and the Civil Rights Specialist are satisfied with the condition of the transition plan, the Division Administrator will then submit the transition plan to HCR.
- Upon receipt, HCR will convene the transition plan Review Team to review the plan; and
- The Review Team will meet with the Division Administrator and the Civil Rights Specialist to discuss the plan and provide recommendations, if needed. The Civil Rights Specialist will work with the State DOT to ensure that its plan contains the minimum attributes, to reconcile any recommendations, to finalize the plan, and then forward the plan to HCR for tracking purposes.

For States that previously submitted a transition plan that its FHWA Division Office accepted prior to the issuance of this memorandum, the Review Team will develop a schedule to review those plans in Fiscal Year 2016. If a State needs to make additional efforts to achieve consistency with the minimum attributes, the Review Team will advise the Division Administrator accordingly, but the Review Team does not anticipate changing the accepted status of those plans.

FHWA’s Jurisdictional Authority:

The DOJ is the Federal agency responsible for coordinating the activities of Federal agencies with respect to State and local government compliance with Title II of the ADA. The DOJ,

through its regulations at 28 CFR 35.190, has delegated authority to the U.S. Department of Transportation (DOT) to oversee and implement ADA compliance for all State and local governments that regulate or administer services, programs, or activities relating to transportation. The DOT has further delegated authority to FHWA to oversee and implement ADA compliance for State and local governments for issues affecting transportation in the public right-of-way. In addition, under 49 CFR 27.19, DOT recipients must comply with DOJ's ADA regulations to be considered in compliance with DOT's regulations under Section 504 of the Rehabilitation Act of 1973 (Section 504).

FHWA Division Offices work with State DOTs to ensure that the ADA and Section 504 requirements are incorporated in all program activities for projects within the public rights-of-way. The Section 504 regulations, at 49 CFR 27.11, require FHWA to monitor a State DOT's compliance with the ADA, including DOJ and DOT regulations that address self-evaluation and transition plans.

Requirements for Certifying that the State has an ADA Transition Plan that is Consistent with the Regulations:

At least every four years, States are required to submit an updated State Transportation Improvement Program (STIP) concurrently to the FHWA and the FTA for joint approval. At the time the STIP or STIP amendments are submitted, States are required to certify that the transportation planning process is being carried out in accordance with all applicable requirements of the provisions of the ADA and Section 504. (See 23 CFR 450.218(a)(6),(10)). Therefore, every four years, the State DOTs are certifying that they meet the requirements of the ADA and Section 504, which in the planning process would include transition plans. The Division can use the Federal approval of the STIP as an opportunity to discuss the ADA transition plan's consistency with the minimum transition plan attributes.

Technical Assistance for Division Offices and States:

HCR and the Resource Center will provide the Division Offices and States with any technical assistance or training that is needed to ensure that States are submitting final draft products that meet the minimum required attributes.

A webinar similar to the one conducted on October 13th will be held for the States within the next several weeks. In the meantime, please note that Division Civil Rights Specialists may share the minimum attributes with Local Public Agencies (LPAs) as needed.

If you have any questions, please contact Nichole McWhorter at nichole.mcwhorter@dot.gov or (202) 366-1396.

Attachment

cc: Directors of Field Services

State _____

State DOT Transition Plan Attributes Review Guide:

All Elements posted conspicuously on website, for internal and external use

Transition Plan Attribute	Review Comments
<p>Official responsible for implementation of the TP, i.e., Executive Director, Secretary, Commissioner, Chief Engineer, etc. 28 CFR 35.150(d)(3)(iv)</p>	
<p>Inventory of barriers (identification of physical obstacles) 28 CFR 35.150(d)(3)(i); 28 CFR 35.105 (a) – State demonstrates good faith by identifying intersection information, including curb ramps and other associated accessibility elements, as a starting point and showing movement and commitment toward developing a full inventory.</p> <p>Require an Action Plan to develop an Inventory of sidewalks (slopes, obstructions, protruding objects, changes in levels, etc.), signals (APS), bus stops (bus pads), buildings, parking, rest areas (tourist areas, picnic areas, visitor centers, etc.), mixed use trails, linkages to transit.</p> <p>Best practice - have discussion of jurisdictional issues/responsibilities for sidewalks</p>	
<p>Schedule – Show a strong commitment toward upgrading ADA elements identified in the inventory of barriers in the short term (planned capital improvement projects) and a strong commitment over time toward prioritizing curb ramps at walkways serving entities covered by the ADA. 28 CFR 35.150(d)(2) This would also include prioritization information, planning, and investments directed at eliminating other identified barriers over time. 28 CFR 35.150(d)(3)</p> <p>Best practice - dedicate resources to eliminate identified ADA deficiencies</p>	
<p>Describe in detail the Methods that will be used to make the facilities accessible. 28 CFR 35.150(d)(3)(ii)</p> <p>Best practice – include the Standard that the STA is following (i.e., 2010 ADAAG, 2011 PROWAG)</p>	
Other ADA Requirements	Review Comments
<p>Public Involvement – Description of process to allow public to readily access and submit comments for both self evaluation and transition plan. 28 CFR 35.150(d)(1); 28 CFR 35.105(b)</p> <p>Best practices: a) detailed list of individuals consulted posted conspicuously on website, does not have to be in actual TP, but must be documented and available; b) have both electronic and hard copy notice. 28 CFR 35.105(c)</p>	
<p>ADA policy statement is a requirement of State Agencies, but does not have to be in the TP per se, but it is a good practice and needs to be easily accessible by the public. 28 CFR 35.106</p> <p>Best practice - post conspicuously on website, for internal and external use</p>	
<p>Clear Identification of the ADA Coordinator (dedicated trained staff) with contact information (i.e., name, office address, telephone number, email address, fax number) 28 CFR 35.107(a)</p>	
<p>Clear Complaint/Grievance Process to receive and address complaints/grievances from the public (is a requirement of State Agencies, but does not have to be in the TP per se, but it is a good practice and needs to be easily accessible by the public). 28 CFR 35.107(b)</p>	

REVIEWER _____

DATE _____