

ADA SUB-RECIPIENTS - SHARING THE MONEY AND THE OBLIGATIONS

County Engineer's Association of Maryland - Spring
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TODAY'S OBJECTIVES

- ◉ Discuss County/Municipality ADA Sub-recipient obligations
- ◉ Answer the question: why now?
- ◉ Roll out SHA's ADA Policy and Program Regarding Sub-recipients
- ◉ Discuss how we can assist Counties and Municipalities in fulfilling their obligations

ADA REQUIREMENTS AND SUB-RECIPIENTS

- Who is a Sub-recipient?
 - Entity that receives Federal Funds - either directly or as pass-through

OBLIGATIONS OF THE SUB-RECIPIENT

- ◉ With the exception of oversight, recipient and sub-recipients must meet the same obligations
- ◉ Sub-recipients must develop certain policy/programs for compliance

SPECIFICALLY...

- Adopt a Formal Policy of Non-Discrimination
- Meet Programmatic Requirements - Operate each program, service or activity so that, when viewed in its entirety, is readily accessible and usable by individuals with disabilities
- Make Physical Changes to Facilities constructed/alterd after January 1992 must comply with ADA requirements:
 - DOJ's Title II Reg: 28 C.F.R. 35.150 and 151
 - ADA Standards for Accessible Design 28 C.F.R. pt 36, App A (2010)

WHAT IS REQUIRED?

⦿ Administrative

- ADA Title II Coordinator (15 or more employees)
- Issue a policy statement of non-discrimination
- Affirmatively notify people of their ADA rights
- Provide auxiliary aids and services
- Published Grievance Procedures (15 or more)

⦿ Technical

- Adoption of Compliant Guidance Standards
- Self-Evaluation (ALL public entities)
- Transition Plan (50 or more employees)

COMPLAINTS

⦿ Grievance Procedures

- Adopt and PUBLISH/DISSEMINATE
- Must provide for prompt and equitable resolution of complaints alleging a violation
- Provide specific times for various investigative/appeals steps
- Meet record-keeping requirements

COMPLIANCE STANDARDS

- ADA and ABA Accessibility Guidelines for Buildings and Facilities (2005)
- ADA Standards for Transportation Facilities (2006)
- ADA Standards for Accessible Design (2010)
- Proposed Guidelines for Public Rights-of-Ways (2011)
- SHA's Accessibility Policy & Guidelines for Pedestrian Facilities along State Highways

WHERE YOU STAND

○ Self-evaluation

- Sub-recipient must evaluate current policies and practices
- Identify and correct any that are not consistent with ADA/504
- Documentation must include:
 - list of interested persons consulted;
 - description of areas examined;
 - problems identified; and
 - modifications that resulted.

GETTING TO WHERE YOU NEED TO BE

- ◉ Transition Plan
 - ◉ Identifies physical obstacles that limit accessibility
 - ◉ Describes methods to remediate problem
 - ◉ Specify the schedule for remediation
- ◉ Ability to show measureable progress in remediating deficiencies

ROLE OF STA'S

- ◉ STA's = State Transportation Agency = SHA
- ◉ Mirrors FHWA's role vis-a-vis STAs
- ◉ Monitor for compliance with Title II on projects and programs using federal funds
 - Projects - the obvious
 - Programs
 - sidewalk retrofit, etc.
 - Non-Discrimination

SHA GOT DINGED

- ◉ Put on notice in a recent FHWA Title VI review
- ◉ Our oversight activities were deficient
- ◉ Directed to develop and implement a program to rectify deficiencies. However,
 - Guidance is very general; best practices documents almost non-existent
 - Interpretation varies from FHWA division to division

SHA'S RESPONSE

- Our intentions
 - Incremental approach - announce, educate, assist, and monitor
 - Aimed at avoiding problems and penalties
- Who is Affected?
 - Starting with Counties and Municipalities

SHA'S SUB-RECIPIENT POLICY

Consistent with the Americans with Disabilities Act, the State Highway Administration cannot aid or perpetuate discrimination against an individual with a disability by providing significant assistance to any entity that discriminates on the basis of disability;

Consistent with Sec. 504 of the Rehabilitation Act of 1973, SHA cannot provide financial or other assistance to an entity that discriminates on the basis of disability in providing aid, benefit or service.

Simply put: SHA cannot provide funds to an entity that does not comply with ADA and Section 504.

SHA'S SUB-RECIPIENT PROGRAM

- ◉ Education
- ◉ Oversight
- ◉ Design review
- ◉ Consultation
- ◉ Monitoring

WHAT WE CAN DO TO HELP

- ◉ *SHA's Accessibility Guidelines for Pedestrian Facilities along State Highways*
(Updated June 2010)
- ◉ Training Opportunities
 - Administrative compliance - *under development*
 - Design - currently available
 - Construction - currently available
- ◉ Technical Advice/Consultation
 - Available upon request

WHAT WE MUST DO

- ◉ Self-certification
 - ◉ Design review
 - ◉ Field verification
 - ◉ Monitoring/Oversight
-
- ◉ Refer to FHWA for administrative or civil action = tied to funding

DESIGN REVIEW/VERIFICATION

- ◉ ADA Compliance Plan Reviews at major milestones
- ◉ Review/approval of design waivers
- ◉ Post Construction Field Verifications along State roadways

SELF-CERTIFICATION

- Provide evidence of Self-Evaluation
- Provide evidence of Transition Plan
- Provide evidence of standards, guidelines, policies/procedures to meet ADA requirements
- Maintain complete records of internal reviews and waivers
- Self-certification is at the discretion of the SHA

MONITORING/OVERSIGHT

- ⦿ Periodic and Random
- ⦿ Achieving a Comfort Level
- ⦿ Does not remove FHWA's obligations

NEXT STEPS

- ◉ Letters to Public Works Directors Introducing Policy and Program
- ◉ Survey to determine the status (simple checklist)
- ◉ Training: Policy, Technical, T2 Center, Peer Exchange
- ◉ In future, agency or entity receiving federal funds will be required to acknowledge understanding of requirements and that they will comply with them in Project Documents
- ◉ On state roads, must meet our requirements and ADA

RESOURCES

- ◉ SHA's Website:
<http://www.roads.maryland.gov>
- ◉ Government websites:
<http://www.ada.gov/>; <http://www.access-board.gov/>
- ◉ Lsinger@sha.state.md.us; 410-545-0362
- ◉ Lchoplin@sha.state.md.us; 410-545-8824