

## ADA Subrecipient FAQ Sheet

### What is the Americans with Disabilities Act (ADA) and why is it important?

ADA is a law that protects and prohibits discrimination against individuals with disabilities and ensures equal opportunity and access for individuals with disabilities. CDOT is responsible for complying with this law and ensuring its subrecipients comply with this law and all ADA-related federal regulations.

#### Nondiscrimination

### What are my requirements against discrimination?

A clear statement of organizational policy can help you clarify exactly how you will deliver public transit service in a non-discriminatory manner. These requirements apply to both fixed route systems and rural programs operating other types of public transit service. The U.S. DOT regulations specifically address these points:

- You cannot discriminate against a person with a disability in the provision of transportation service. (Section 37.5(a))
- You cannot, on the basis of disability, deny an individual with a disability the opportunity to use the general transportation system if that person is capable of using that service. (Section 37.5 (b))
- You cannot require that an ambulatory person with a disability use priority seating. (Section 37.5 (c))
- You cannot impose special charges on individuals with disabilities, including those who use a wheelchair. (49 CFR 37.5(d)) \*\*Note that this is not the same as charging an ADA-eligible paratransit fare that is equal to the base fixed route fare times two (see section on ADA Paratransit Service Criteria).
- You cannot require that an individual with a disability be accompanied by an attendant. (Section 37.5(e))
- You cannot refuse service to an individual with disabilities because your insurance coverage or rates are based on the absence of individuals with disabilities. (Section 37.5(g))
- You are NOT required to provide service to an individual with disabilities if that individual engages in violent, seriously disruptive or illegal conduct. However, you cannot deny service to an individual with disabilities because his/her disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience employees or other persons. (Section 37.5 (h))

#### Staff Resources

What are the ADA requirements regarding my agency's capacity to ensure ADA compliance?

All subrecipients that operate a fixed route or demand responsive system shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities (49 CFR 37.173). Training to proficiency means that, once trained, personnel can consistently and reliably operate accessibility features, provide appropriate assistance to individuals with disabilities, and treat riders in a respectful and courteous way.

For example, as Appendix D to 49 CFR 37.173 explains, "A paratransit dispatcher probably must know how to use a TDD and enough about various disabilities to know what sort of vehicle to dispatch. A bus driver must know how to operate lifts and securement devices properly. A mechanic who works on lifts must know how to maintain them. Cross-training, while useful in some instances, is not required, so long as each employee is trained to proficiency in what he or she does with respect to service to individuals with disabilities."

#### Complaints

### What are the ADA requirements regarding complaint procedures?

- All subrecipients are required to have ADA complaint procedures. The complaint process shall designate at least one person to coordinate its efforts to comply with (49 CFR 37.17(a))
- Complaint procedures must also incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by ADA regulations. Pursuant to 49 CFR Parts 27, 38 and 39 the procedures shall meet the following requirements:

(1) The process for filing a complaint, including the name, address, telephone number, and email

address of the employee designated under paragraph (a) of this section, must be sufficiently advertised to the public, such as on the entity's Web site;

(2) The procedures must be accessible to and usable by individuals with disabilities;

(3) The entity must promptly communicate its response to the complaint allegations, including its reasons for the response, to the complainant and must ensure that it has documented its response" (49 CFR 37.17(b)). This requirement is also in § 27.13(b).

- Section 37.17(b)(1) requires transit agencies to sufficiently advertise the process for filing a complaint, so that individuals know where to direct their complaints.
- Per § 37.17(b)(3), a transit agency must promptly communicate its response to the complainant, including the reasons for the response, and document this response for purposes of recordkeeping.

### **Can I combine my ADA complaint procedures with my Title VI procedures?**

FTA notes that agencies can use the same process for accepting and investigating ADA and Title VI complaints. While agencies may find consolidating the processes more efficient, ADA complaints must be categorized distinctly from Title VI complaints in internal and external communications. For example, it is not appropriate to have a "Title VI Complaint FTA C 4710.1 Form" that includes "disability" as one of the bases for filing a complaint; this incorrectly implies that disability is a covered basis under Title VI.

Instead, an agency may elect to have one "Discrimination Complaint Form," or a similarly titled form, that covers both the Title VI and ADA bases and clearly distinguishes the two statutes

### **How long do I have to keep records of ADA-related complaints?**

Each recipient shall keep on file for one year all complaints of noncompliance received. A record of all such complaints, which may be in summary form, shall be kept for five years. Each recipient shall keep such other records and submit to the responsible Departmental official or his/her designee timely, complete, and accurate compliance reports at such times, and in such form, and containing such information as the responsible Department official may prescribe. In the case in which a primary recipient extends Federal financial assistance to any other recipient, the other recipient shall also submit compliance reports to the primary recipient so as to enable the primary recipient to prepare its report" (§ 27.121(b)).

### **What are the potential areas of noncompliance?**

- Bus drivers passing by riders using wheelchairs waiting at a bus stop
- Vehicle operators not announcing stops or identifying routes
- Personnel refusing to allow a rider's service animal in a station or on a vehicle
- ADA paratransit vehicles arriving late

#### Maintenance of Vehicles and Facilities

### **What are the ADA requirements concerning the maintenance of accessibility features?**

Section 37 Subpart G of the U.S. DOT Americans with Disabilities Act regulations describes how carefully you must attend to maintaining the accessibility features of your transit operations. The ADA addresses safety issues only insofar as it describes equipment and maintenance. The following points are highlights of the contents of Section 37, Subpart G:

- *General maintenance of accessibility features:* You must ensure that your vehicles and related transit facilities are maintained in operative condition so that they are usable by individuals with disabilities. You must promptly repair accessibility features if they are damaged or out of order. If an accessibility feature is out of order, you must also take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature. Examples of this are shoveling snow around bus stops and providing a ride in a paratransit or supervisor's vehicle to a fixed route passenger who gets stranded by an inoperative lift.
- *Keep vehicle lifts in operative condition:* You must create and follow a system of regular and frequent maintenance checks of lifts to determine whether the equipment is operative. Your vehicle operators must report any failure of a lift to operate in service as quickly as possible. For example, if you have a spare vehicle, the vehicle with the inoperative lift must be taken out of service before the beginning of the vehicle's next day of service and the lift must be repaired before the vehicle returns to service. If you do not have a spare vehicle available, such that taking the vehicle out of service would reduce the transportation service you are able to provide, you may keep the vehicle with the inoperative lift in service for no more than five days.

- *Lift and securement use:* You are not required to permit wheelchairs to ride in places other than designated securement locations, but you cannot deny transportation to a wheelchair or its user on the grounds that the device cannot be secured or restrained satisfactorily by the vehicle's securement system. You may recommend, but cannot require, that a user of a wheelchair transfer to a vehicle seat. Your personnel must assist individuals with disabilities who need or request assistance with the use of securement systems, ramps and lifts. If this requires the vehicle operator to leave his/her seat they must do so. You must permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle.
- *Training requirements:* Whether you are a public or private entity, if you operate a fixed route or demand responsive system you must ensure that your personnel are trained to proficiency, as appropriate to their duties. They must be able to operate vehicles and equipment safely and properly assist individuals with disabilities using the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities.

### Service requirements

#### **What are the general ADA service requirements as a transit provider?**

- Your vehicle operators and other personnel must make use of the accessibility-related equipment or features required by 49 CFR Part 38.
- Your service information must be available in accessible formats to individuals with disabilities. This means your printed materials must be available, upon request, in accessible formats such as large print format, Braille, or CD. Online information should avoid the use of Flash and should be available in plain text to accommodate screen readers.
- You cannot refuse to permit a passenger who uses a lift to disembark from a vehicle at any designated stop, unless the lift cannot be deployed, the lift will be damaged if it is deployed, or temporary conditions at the stop, not under the control of the transit operator, preclude the safe use of the stop by all passengers.
- You cannot prohibit an individual with a disability from traveling with a respirator or portable oxygen supply provided the devices are properly secured under 49 CFR subtitle B, chapter 1, subchapter C. U.S. DOT Office of Pipeline Safety and Hazardous Materials.
- You must ensure that individuals with disabilities have adequate time to complete boarding or disembarking from the vehicle.
- You must ask that individuals sitting in the priority seating area, or fold-down seats in the wheelchair securement area, relocate if an individual needs to use that priority seating because of a disability or needs to secure a wheelchair.

### Reasonable Modifications

#### **What is a Reasonable Modification?**

- Reasonable modification means that "the nature of an individual's disability cannot preclude a public transportation entity from providing full access to the entity's service unless some exception applies."

#### **What are my responsibilities under ADA to provide reasonable modifications to my services?**

- "Public entities that provide designated public transportation shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to their services, subject to the limitations of 49 CFR 37.169(c)(1)–(3). This requirement applies to the means public entities use to meet their obligations under all provisions of this part" (§ 37.5(i)(3)).

#### **What is my agency's responsibility regarding reasonable modification requests?respond to reasonable modification requests?**

"(1) A public entity providing designated public transportation, in meeting the reasonable modification requirement of 49 CFR 37.5(i)(3) with respect to its fixed route, demand responsive, and complementary paratransit services, shall respond to requests for reasonable modification to policies and practices consistent with this section.

(2) The public entity shall make information about how to contact the public entity to make requests for reasonable modifications readily available to the public through the same means it uses to inform the public about its policies and practices.

(3) This process shall be in operation no later than July 13, 2015” (§ 37.169(a)).

“The process shall provide a means, accessible to and usable by individuals with disabilities, to request a modification in the entity’s policies and practices applicable to its transportation services.

(1) Individuals requesting modifications shall describe what they need in order to use the service.

(2) Individuals requesting modifications are not required to use the term ‘reasonable modification’ when making a request.

(3) Whenever feasible, requests for modifications shall be made and determined in advance, before the transportation provider is expected to provide the modified service, for example, during the paratransit eligibility process, through customer service inquiries, or through the entity’s complaint process.

(4) Where a request for modification cannot practicably be made and determined in advance (e.g., because of a condition or barrier at the destination of a paratransit or fixed route trip of which the individual with a disability was unaware until arriving), operating personnel of the entity shall make a determination of whether the modification should be provided at the time of the request. Operating personnel may consult with the entity’s management before making a determination to grant or deny the request” (§ 37.169(b)).

### Subrecipient/Contractor Oversight

#### **What are my agency’s oversight requirements?**

CDOT’s subrecipients are required to sufficiently monitor their recipient and contractor ADA compliance. FTA does not dictate the specifics of an agency or state’s monitoring efforts. When subrecipients contract with other entities (public or private), these other entities “stand in the shoes” of the subrecipient. 49 CFR 37.23 requires the subrecipient to ensure that the other entity meets the relevant Part 37 requirements. (See Circular 4710.1 Section 1.3.2.) FTA recommends that subrecipients enter into clearly worded and concise contracts with explicit service provision requirements, including minimum performance standards, incentives and penalties, and regular reporting.

Additional considerations regarding oversight include:

- Are the contractor’s service provisions consistent with my agency?
- How is my agency verifying ADA compliance for contractors and subrecipients?
- Are my contractors and subrecipients aware of my agency’s ADA-related policies and service provisions?
- Are my agency’s ADA policies advertised? Fixed

### Route

#### **What other requirements specific to fixed route services should I be aware of?**

If your system has stops that serve more than one bus line the ADA requires that you provide riders with a disability with the means of identifying which bus has arrived or to identify themselves as a person seeking a ride on a particular route. These external route identification announcements can be automated or spoken by the driver.

Just as external announcements can be used to identify the bus line and destination, it is required that internal announcements are made to inform riders of upcoming stops. Announcements should be made in advance of the stop, and they should follow a standard format.

This obligation can be met by requiring bus operators to announce stops or by using an automated stop announcement system on board the vehicle. It is recommended that the disability community and bus drivers be consulted when deciding what stops to announce to ensure the effectiveness of the system.

If your system includes fixed route service, you are required to provide complementary paratransit service to your customers who are unable to use the fixed route system.

### Demand Response

#### **What are the demand specific ADA requirements?**

If your organization runs a general public demand response system, it is not required that you also provide ADA complementary paratransit service; however, you are required to provide equivalent service for your passengers with disabilities (see the Equivalent service standards section below). Your system may operate non-accessible vans and buses as long as you provide equivalent service for people with disabilities in accessible vehicles. Unlike paratransit, you can have capacity constraints when operating general public demand response service as long as those capacity constraints effect all riders, those with and without disabilities, equally.

What are the applicable serve standards?

Service provided to individuals with disabilities should be equivalent to the service provided to other individuals in the following ways (49 CFR 37.105):

- Response time.
- Fares.
- Geographic service area.
- Hours and days of service.
- Restrictions or priorities based on trip purpose.
- Availability of information and reservation capability.
- Any constraints on capacity or service availability.

### Deviated Route

#### **What is the difference between deviated fixed route and demand response?**

To be considered demand responsive rather than fixed route, route deviation services must accept deviation requests from all riders. Deviated fixed route services that limit route deviations only to riders with disabilities are not demand responsive services. These are fixed route services that require complementary paratransit. Some transit agencies operate a mix of route deviation and fixed route services. FTA considers the routes that permit all riders to request deviations as demand responsive.

Routes that do not allow deviations are fixed route, and therefore complementary paratransit is required.

In other words, if your agency provides route deviations only to customers with disabilities, this service is then regarded as complementary paratransit service, and is held to the paratransit service criteria. If your agency with flexible service provides complementary paratransit service for its riders with disabilities, it must implement an eligibility determination (and appeal) process for those who would like to use the service. If the system's service allows all riders to request route deviations, the system is considered demand responsive and must follow the equivalent service requirements when serving riders with disabilities.

#### **What are some common discriminatory practices subrecipients should avoid regarding deviated routes?**

Subrecipients should ensure that deviated fixed route service policies and procedures do not discriminate against individuals with disabilities. Some examples of discriminatory practices include:

- Designating services as route deviation in plans and other documents, but not advertising them as such. To ensure that riders are aware of and able to use the service, FTA requires that transit agencies advertise the availability of route deviations (e.g., including the information on schedules and in other public information).
- Establishing restrictive policies for deviations that would significantly limit the use of the service by individuals with disabilities who are not able to get to and from designated stops and can therefore only use the service by requesting deviations. This would include:
  - Charging excessive surcharges for deviations
  - Establishing overly restrictive areas within which riders can request deviations
  - Limiting deviations to only certain trip purposes
  - Unreasonably capping the number of permitted deviations

### Vehicles

#### **What are the ADA requirements regarding vehicles?**

All vehicles are required to have accessible features and each feature must be fully operational any time the vehicle is in use. This includes the following:

- Mobility aid accessibility – you must ensure that all vehicles have a lift or ramp to allow individuals with a disability, including individuals who use wheelchairs, to safely board, and there must be sufficient clearances to permit a user of a wheelchair or other mobility aid to reach a securement location. Vehicles in excess of 22 feet must have at least two securement locations, and smaller vehicles must have at least one. (49 CFR 38.23)
- You must ensure that doors, steps, and thresholds are slip resistant, and all steps, edges, thresholds, and the boarding edge of the ramp must have a band of contrasting color running the full length of the step or edge. Door height must be a minimum of 68 inches for vehicles in excess of 22 feet and a minimum of 56 inches for smaller vehicles. (49 CFR 38.25)

- You must place priority seating signs at the front of the bus, and your operators must ask other passengers to make those seats available to individuals with disabilities when necessary. You must also place signs at securement locations. (49 CFR 38.27)
- You must ensure that interior handrails and stanchions permit sufficient turning and maneuvering space for wheelchairs and other mobility aids to reach a securement location from the lift or ramp. Handrails or stanchions must also be located at the entrance to the vehicle. (49 CFR 38.29)
- You must install lighting at any stepwell or doorway. (49 CFR 38.31)
- If you have fare boxes, they must be located as far forward as practicable so as not to obstruct traffic in the vestibule. (49 CFR 38.33)
- You must install a public address system in any vehicle in excess of 22 feet that is used in multiple-stop, fixed route service. (49 CFR 38.35)
- You must ensure that stop request controls are located adjacent to the securement location in vehicles in excess of 22 feet that make multiple stops. These controls must be located between 15 inches to 48 inches off the ground, and must be operable with one hand. (49 CFR 38.37)
- Where you display destination or route information on the exterior of the vehicle, each vehicle must have illuminated signs on the front and boarding side of the vehicle. (49 CFR 38.39)

## Facilities

### **What are the general requirements for constructing a facility?**

If you are a public entity and you construct new facilities to be used for providing designated public transportation services, they must be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs (49 CFR 37.41). If you are a public entity and you alter an existing facility or part of an existing facility used for providing designated public transportation services, and that alteration affects or could affect the usability of the facility, you must make the alterations in a way that is readily accessible to and usable by individuals with disabilities (49 CFR 37.43).

## Complementary Paratransit

### **What are the service criteria for providing Complementary Paratransit?**

ADA complementary paratransit service must be comparable to the fixed route service in a number of areas. Paratransit service criteria include the following (Section 37.131):

- Geographic area of service – transit systems that run fixed routes must also provide ADA complementary paratransit service within ¾ mile on either side of the fixed route; this is considered to be the maximum distance a rider would travel to reach a bus or train stop.
- Response time –the paratransit ride may not be provided more than an hour before or after the requested time.
- Fare- the one-way paratransit fare may be no more than twice the full fixed route fare for a similar trip. A rider’s personal care attendant may not be charged a fare. However, at least one additional accompanying individual must be permitted to board and will be required to pay the same fare as the rider (additional companions may accompany the ADA-eligible customer, if space is available).
- Hours and days of service—ADA paratransit service must be provided on the same days and during the same hours as fixed route service.
- Trip purpose—there may be no restrictions or priorities based on trip purpose. Service must be provided regardless of the nature of the trip.

### **When would “Origin-to Destination” service be necessary?**

Pursuant to 49 CFR 37.129, you are required to provide complementary paratransit service that is

“origin-to-destination.” As a transit provider, you can establish whether you will provide door-to-door or curb-to-curb service as your basic mode of paratransit service, but there may be times when you must offer service beyond this base level when required due to a passenger’s disability. FTA, in its

Disability Law Guidance document, gives the following examples of when “origin-to-destination” service might be necessary:

The nature of a particular individual’s disability or adverse weather conditions may prevent him/her from negotiating the distance from the door of his/her home to the curb.

A physical barrier (e.g., sidewalk construction) may prevent a passenger from traveling between the curb and the door of his/her destination point.

Providing this level of service may require more time from the driver than on a base-level service stop, and because of this the FTA has deemed it reasonable that transit providers ask for advance notice from any passenger in need of this assistance when the reason for the additional assistance is known in advance of the trip.

You are permitted to temporarily suspend service to individuals who are repeated no-shows. A no-show does not count, however, if the ride was missed due to circumstances outside of the rider's control. You should consult the DREDF Topic Guide on No-Shows in ADA Paratransit in order to establish what qualifies as a no-show and what situations are qualified to be beyond a rider's control.

## Service Animals

### **What is a Service animal?**

Any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing animal protection or rescue work, pulling a wheelchair, or fetching dropped items.”

You may ask if an animal is a service animal or ask what tasks the animal has been trained to perform, but you cannot require special ID cards for the animal or ask about the person's disability.

### **What is the ADA-related requirement regarding service animals?**

You must allow service animals to accompany individuals with disabilities in vehicles and facilities. [Accessible Formats](#)

### **What constitutes an accessible format?**

Accessible formats (also called alternate formats) are types of auxiliary aids and services provided to ensure communications access for people with impaired vision, speech, or hearing.

### **What are common accessible formats for blind or visually impaired persons?**

- **Websites:** There are ways to format webpages and present text, photos, and graphics in order to make a website accessible to persons with disabilities. Key examples include: providing alternate text to describe images; using primary colors (like red or blue) for layout design and links; avoiding the use of Flash; providing closed captioning for videos; using plain fonts and appropriate sizes; and designing navigation that is easy to follow.
- **Electronic documents:** Blind or visually impaired persons who use computer screen-reading programs can read standard Word documents (the program speaks the monitor display). You will need to edit your materials to describe all photos, maps, and other graphics, as those elements are often not readable. US Department of Veterans Affairs' [Creating Accessible PDFs with Adobe Acrobat Professional](#) guide offers helpful information and step-by-step instructions.
- **Large print:** Font size should be 14-point or larger (usually 18-point) and the font typeface should be simple, like Arial or Helvetica. For some documents the text can be made bigger by simply using the enlarge feature of a photocopier or by revising the document and printing it with the larger font. Alternatively you can order large print formats of your materials from a printing company.
- **Braille:** It is important to offer materials in Braille format for those who need it. You can pay to have documents translated and printed into Braille, or you may consider purchasing a Braille printer, depending on the size of your agency and the needs of your community.
- **Audio recordings:** If requested, you should be able to provide an audio recording of printed information. This means the document is read out loud and recorded, usually onto a CD.
- **Deaf or hearing impaired persons:** TTY relay services consist of a relay operator (or communications assistant) that connects TTY calls with people who communicate by telephone. The operator converts voice-to-text and vice versa, with the text displayed on the user's TTY. TTY relay services are important to make sure deaf or hearing impaired individuals can access information about your services and the paratransit eligibility application process. A TTY is a teletypewriter, or text telephone, that allows a user to type text to another TTY user. TTYs are also known as Telecommunications Devices for the Deaf (TDD).
- **Colorado resource for hearing impaired or speech loss persons:** Relay Colorado is a free public service that enables people with hearing or speech loss who use a teletypewriter (TTY) or other assistive device to communicate with standard telephone users. The conversation is relayed between the two parties by a specially trained Relay Colorado Communications Assistant. Relay Colorado is available 24 hours a day 365 days per year.

## Other considerations

It is important to note that you cannot assume what type of accessible format would be best for a customer with a disability, as explained in Part 37, Appendix D:

“A document does not necessarily need to be made available in the format a requester prefers, but it does have to be made available in a format the person can use. There is no use giving a computer disk to someone who does not have a computer, for instance, or a Braille document to a person who does not read Braille.” (App. D, 49 CFR 37.125)

It is also important to let your customers know that other formats are available and how they can request those formats. For example, the Roaring Fork Transportation Authority (RFTA) in Aspen, Colorado includes the following sentences at the top of the Paratransit page of their website:

“Schedule information is available in large print and audio tape. TTY (Text Telephone) users may call Colorado Relay at 1-800-659-3656. For a large print copy of a schedule call (970) 920-1905 ext. 4971.”

## Resources

What resources are available to my agency regarding ADA-related requirements?

1. Title VI of the Civil Rights Act of 1964 2. 49 CFR part 27, 37, 38, and 39
3. FTA ADA Circular 4710.1
4. National RTAP: <http://nationalrtap.org/adatoolkit/>
5. ADA 101 Webinar: <http://nationalrtap.org/adatoolkit/Resources/ADA-101-Webinar-Q-A>
6. Easter Seals Project Action: Website Accessibility Online Toolkit
7. For more information, see the Federal Communications Commission's [711 for Telecommunications Relay Service](#) on the FCC website. For more information about TTY and TTY Relay Services in general, visit the [National Association of the Deaf website](#).
8. FTA ADA webpage: <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/americans-disabilities-act>
9. CDOT's ADA related website: <https://www.codot.gov/business/civilrights/ada>

For more information regarding CDOT's ADA program please visit <https://www.codot.gov/business/civilrights/ada> or contact Civil Rights Specialist, Eboni Younger-Riehl at 303-757-9072 or [eboni.riehl@state.co.us](mailto:eboni.riehl@state.co.us).