

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE CIVIL RIGHTS DIVISION
OF THE U.S. DEPARTMENT OF JUSTICE
&
THE FEDERAL TRANSIT ADMINISTRATION
OF THE U.S. DEPARTMENT OF TRANSPORTATION**

CONCERNING

**IMPLEMENTATION AND ENFORCEMENT OF THE PUBLIC
TRANSPORTATION PROVISIONS OF THE AMERICANS WITH
DISABILITIES ACT
AND SECTION 504 OF THE REHABILITATION ACT OF 1973**

1. Parties and Purpose

The Federal Transit Administration (FTA), an operating administration of the United States Department of Transportation (DOT), and the Civil Rights Division of the United States Department of Justice (DOJ) share enforcement responsibility for the public transportation requirements of the Americans with Disabilities Act (ADA), 42 U.S.C. §§12101 *et seq.*, and section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794. FTA and DOJ enter into this Memorandum of Understanding (MOU) in order to strengthen the respective enforcement efforts of both agencies, to eliminate possible duplication of effort, to streamline the enforcement process, and to ensure coordinated and consistent nationwide enforcement. FTA and DOJ expect this MOU to significantly strengthen enforcement of disability rights for the benefit of persons with disabilities who use public transportation.

2. Current Enforcement Authority

DOT has responsibility for administering the mass transportation provisions of Title II of the ADA, 42 U.S.C. §§12131 *et seq.*, and section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and has issued implementing regulations at 49 C.F.R. Parts 27, 37, and 38. FTA has primary responsibility for administering the provisions of DOT's regulations as they apply to state and local agencies providing public transportation.

DOJ has the responsibility for litigation on the Government's behalf in enforcing the ADA or section 504 either upon referral of a finding of noncompliance by DOT or by intervention in a privately filed lawsuit. 42 U.S.C. § 12133, 29 U.S.C. § 794a. DOJ may also resolve such actions through settlement agreements and consent decrees with public entities providing public transportation to obtain compliance with the ADA.

3. Current Enforcement Procedures

Congress has declared that, as a matter of national policy, individuals with disabilities have the same right as other individuals to use public transportation services and facilities; that special efforts must be made in planning and designing public transportation services and facilities to accommodate individuals with disabilities; and that this policy must be carried out through the FTA financial assistance programs authorized at 49 U.S.C. Chapter 53. FTA's Master Agreement governs the administration of a project supported by Federal financial assistance awarded by FTA and requires recipients of Federal financial assistance to comply with the ADA, section 504 of the Rehabilitation Act, and DOT's implementing regulations.

Pursuant to 49 C.F.R. Part 27, FTA works cooperatively with recipients of DOT/FTA Federal financial assistance to secure compliance with the provisions of the ADA, section 504, and DOT's implementing regulations prohibiting discrimination on the basis of disability. DOT and FTA provide recipients with technical assistance and guidance to foster compliance. 49 C.F.R. § 27.121.

Consistent with 49 C.F.R. § 37.11, FTA will continue to forward to DOJ for appropriate handling complaints concerning public or private entities that provide public transportation but are not recipients of Federal financial assistance.

If FTA, through a compliance review, report, complaint, or any other means, identifies an alleged failure to comply with applicable statutes and regulations, FTA investigates the pertinent practices and policies of the recipient and the circumstances of the alleged noncompliance. 49 C.F.R. § 27.123(c). If this investigation substantiates a failure to comply, FTA notifies the recipient and seeks informal compliance. 49 C.F.R. § 27.123(d). If FTA determines that the matter cannot be resolved through informal means, FTA may take formal action. Formal action may include suspension or termination of Federal financial assistance, refusal to grant or to continue Federal financial assistance, referral of the matter to DOJ for enforcement, or any other steps authorized by law. 49 C.F.R. § 27.125(a).

In order to suspend or terminate Federal financial assistance, (1) FTA must advise the recipient of its failure to comply, (2) FTA must determine that compliance cannot be secured by voluntary means, and (3) the Secretary of Transportation must make an express finding on the record, after opportunity for hearing, that the recipient has failed to comply. 49 C.F.R. § 27.125(b).

In addition to suspending or terminating Federal financial assistance, FTA also has the option of referring the matter to DOJ with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States. 49 C.F.R. § 27.125(a)(1).

DOJ has authority to initiate litigation through either of two vehicles. First, DOJ may initiate litigation on an appropriate referral from DOT/FTA. Once such a referral is made, DOJ may conduct further investigation and legal analysis to determine what enforcement means are appropriate, including litigation. DOJ will then initiate its own efforts to resolve the matter without litigation, before proceeding with a court filing. DOJ may also entertain litigation by intervening into lawsuits already pending in the courts filed by private plaintiffs. In such instances, DOJ also attempts informal resolution prior to filing a complaint in court.

4. Coordination and Cooperation

In order to avoid delay in and duplication of enforcement efforts and possible inconsistencies, FTA and DOJ agree to the following process to streamline and coordinate enforcement efforts.

FIRST, FTA and DOJ agree to meet at the senior management level on a regular basis, but no less than quarterly. In preparation for these meetings, FTA and DOJ will each develop a list identifying (1) those public transit agencies where FTA or DOJ has identified alleged violations of the ADA and (2) those transit agencies with deficient performance records considering on-time performance; trip denials; late trips; missed trips; excessively long rides; and other service deficiencies. FTA and DOJ shall consider the transit agencies identified on these lists and shall jointly determine which are the most appropriate for further investigation by FTA and DOJ to substantiate the alleged violation of federal law.

SECOND, FTA agrees that DOJ shall assist FTA with its investigations. Assistance may include, but is not limited to, investigative resources, legal consultation, and assistance with efforts to resolve cooperatively the alleged violation. FTA shall be the lead agency through any such efforts. DOJ may provide to FTA for its consideration DOJ's views on whether referral to DOJ or other action is appropriate. Once FTA determines that efforts to resolve the alleged violation have failed and that cooperative resolution is not possible, FTA shall move promptly to satisfy the prerequisites for referral to DOJ, or FTA may suspend or terminate, or refuse to grant or to continue Federal financial assistance.

THIRD, once a matter is referred to DOJ, DOJ shall become the lead agency with respect to the conduct of further enforcement action. DOJ shall coordinate with DOT and FTA on application of DOT's and FTA's regulations and approaches to compliance. DOJ shall work together with DOT and FTA to conduct such enforcement actions and any mediation or settlement of such actions, including the development of legal strategy, mediation and settlement positions, and other significant actions.

FOURTH, with regard to DOJ's separate authority to intervene in separately filed private litigation, DOJ shall coordinate with DOT and FTA prior to intervening in any such suit in order to ensure consistent enforcement efforts. Moreover, upon intervention in any such suit, DOJ shall coordinate with DOT and FTA on application of DOT's and FTA's regulations and approaches to compliance. DOJ shall work together with DOT and FTA to conduct such suits and any mediation or settlement of such suits, including the development of legal strategy, mediation and settlement positions, and other significant actions.

FIFTH, at the meetings agreed to under the FIRST paragraph of this section 4, *supra*, FTA and DOJ shall review pending litigation, including represented party communication issues, and also discuss general ADA compliance matters as well as the provision of training and technical assistance to transit agencies and to persons with disabilities.

5. Implementation

a. Effective Date

This MOU shall take effect thirty (30) days after the date of the final signature on this document.

b. Rights and Benefits

This MOU is not intended, and shall not be construed, to diminish or otherwise affect the authority of any signatory agency to carry out its statutory, regulatory, or other official functions; nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies or officers, State agencies or officers carrying out programs authorized under Federal law, or any other person.

c. Amendment and Modification

This MOU may be amended or revised at any time by written agreement of the Parties.

d. Annual Review


The Parties agree to confer on the interpretation and application of the MOU as necessary, and to conduct a mutual annual review of its operation.

e. Period of Agreement/Termination

This MOU shall remain in effect until terminated by either Party.

APPROVED BY:

U.S. DEPARTMENT OF JUSTICE



Bradley J. Schlozman
Acting Assistant Attorney General
Civil Rights Division

7/27/05
Date

U.S. DEPARTMENT OF TRANSPORTATION



Jennifer L. Dorn
Administrator
Federal Transit Administration

07-15-05
Date