

FAA Office of Civil Rights Overview: DBE/ACDBE, Title VI, and ADA



Federal Aviation
Administration

Office Of Civil Rights

ACHIEVING SAFETY
THROUGH DIVERSITY

Presented to: Airport Law Workshop

By: FAA National External Operations
Program Staff

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National External Operations Program Areas of Responsibility

- **Disadvantaged Business Enterprise (DBE) and Airport Concession DBE (ACDBE) Compliance Program**
 - DBE and ACDBE Programs (49 CFR 26 and 23)
- **Airport Nondiscrimination Compliance Program (ANCP)**
 - Title VI, Limited English Proficiency (LEP), and Environmental Justice (EJ) (*49 CFR 21*)
- **Airport Disability Compliance Program (ADCP)**
 - Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (*49 CFR 27 and 28 CFR 35*)

FAA Responsibilities

Tool	Process
Compliance Reviews	<ul style="list-style-type: none">• Review of recipient's civil rights program• Mini-Reviews• Self-Assessments• Enforce statutes, regulations, and executive orders
Complaint Investigations	<ul style="list-style-type: none">• Investigate complaints received• Assist recipients with complaints they receive
Education	<ul style="list-style-type: none">• Technical assistance• Consultations• Webinars• On-site training• Conferences• Other resources (Title VI Tool)

Disadvantaged Business Enterprise (DBE) Program Objectives:

- (a) Ensure nondiscrimination in award and administration of contracts;
- (b) Create level playing field;
- (c) Ensure DOT's DBE program is narrowly tailored;
- (d) Ensure only eligible firms participate as DBEs;
- (e) Help remove barriers to participation of DBEs;
- (f) Promote use of DBEs in all types of contracts;
- (g) Assist firms ability to compete successfully outside DBE program; and
- (h) Provide appropriate flexibility to recipients.

Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Objectives:

- (a) To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
- (b) To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- (c) To ensure that the Department's ACDBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs;
- (e) To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance; and
- (f) To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

DBE and ACDBE Programs

Program Authorities:

- DBE Program: 49 CFR Part 26
- ACDBE Program: 49 CFR Part 23

Airport Recipient Obligations – DBE/ACDBE

Implement each program in good faith

- **DBE** – airports that:
 - receive Airport Improvement Program (AIP) funding, and
 - will award prime contracts the cumulative total value of which exceeds \$250,000 in FAA funds in a Federal fiscal year
- **ACDBE** – only primary airports must have a program, and
 - goals must be submitted if car rental and/or non-car rental concession revenue is more than \$200,000



Airport Recipient Obligations – DBE/ACDBE

(continued)

Must Have Per 49 CFR Parts 23 and 26

DBE	ACDBE
DBE Liaison Officer (DBELO)	Airport Concession DBE Liaison Officer (ACDBELO)
Current program document and current three-year goals if expecting AIP funding.	Current program document and current three-year goals for both car rental and non-car rental
Submitted uniform report annually on December 1 including shortfall analysis, if necessary	Submitted uniform report annually on March 1 including shortfall analysis, if necessary
Documented monitoring program including prompt payment and retainage	Documented monitoring program

Requirements

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs. Airport recipient would use DBE and ACDBE contract goals

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. Airport recipient would not use DBE and ACDBE contract goals

Airport should attempt to secure DBE and ACDBE participation using race-neutral measures prior to setting race-conscious contract goals.

DBE/ACDBE Compliance Program Focus Activities:

- FAA Civil Rights Connect' Program Management System
- ADO Dashboard
- FAA National Civil Rights Training (Dated TBD for FY18 in DC)
- New guidance on Prompt Payment and Car Rental Good Faith Efforts
- USDOT OIG Year Three Audit on New DBEs

DBE/ACDBE Program Resources

Additional Resources:

- FAA: https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/
- USDOT: <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise>

Contact Information

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Title VI of the Civil Rights Act of 1964

“No persons in the United States shall, on the ground of race, color, or national origin*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Financial assistance.”

*49 U.S.C. § 47123 augments the Title VI protected bases to include sex and creed for FAA recipients

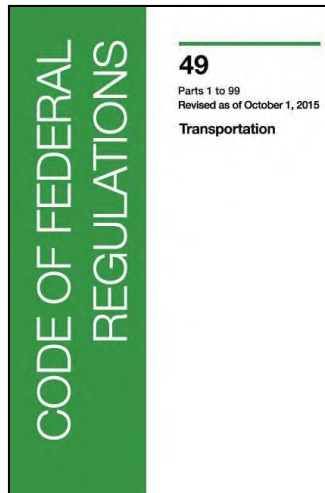
Airport Nondiscrimination Compliance Program

Program Authorities:

Authority	Citation
Title VI of the Civil Rights Act of 1964	42 U.S.C. § 2000d et seq.
DOT Regulations Effectuating Title VI	49 CFR Part 21
Airport and Airway Improvement Act of 1982, Section 520	49 U.S.C. § 47123

49 CFR Part 21

- Effectuates Title VI requirements on DOT recipients
- Prohibits both
 - Disparate treatment and
 - Disparate impact
- Appendix C



“[49 CFR Part 21] applies to any program for which Federal financial assistance is authorized under a law administered by the Department [of Transportation] ...”

49 CFR Part 21

Larger Obligations Under Title VI

Obligation	Authority
Limited English Proficiency (LEP)	Title VI of the Civil Rights Act of 1964 Executive Order 13166 Federal Register 70 FR 74087
Environmental Justice (EJ)	Title VI of the Civil Rights Act of 1964 Executive Order 12898 DOT Order 5610.2a

Airport Recipient Responsibilities

Requirement	What it means
Compliance Reports and Data Collection	Recipients should be maintaining records and collecting data that shows compliance with Title VI
Employment Opportunities at Airport	Equal employment opportunity with airport, tenants
Outreach to the minority business community	Advise the local minority business community of opportunities at the airport

Program Activities

- Developed
 - Three Tools
 - Title VI Elements in the FAA Civil Rights Connect System

The collage consists of three distinct images arranged horizontally. On the left, under the heading 'Title VI', is a classical statue of Lady Justice holding scales. In the center, under the heading 'Limited English Proficiency', is a graphic with the text 'speak your language, please ask us.' followed by translations in Bengali, Somali, Polish, Arabic, Turkish, and Chinese. On the right, under the heading 'Environmental Justice', is a photograph of blue puzzle pieces with the word 'Community' written across them.

Title VI, LEP, EJ Websites

Description	Website Link
49 CFR Part 21	https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr21_main_02.tpl
FAA Order 1400.11 (Appendix 4)	http://www.faa.gov/documentLibrary/media/Order/FAA_1400_11.pdf
FAA Title VI Brochure	http://www.faa.gov/about/office_org/headquarters_offices/acr/com_civ_support/non_disc_pr/media/Title_VI_Brochure.pdf
Lists Information on LEP	http://www.lep.gov
DOT Order 5610.2a on EJ	https://www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/orders/order_56102a/index.cfm
EJSCREEN	https://www.epa.gov/ejscreen

Contact Information

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Airport Disability Compliance Program Purpose

- Ensure airport operators/sponsors meet obligations with regard to non-discrimination for people with disabilities
- Goal is to be the “go to” resource on airport accessibility for people with disabilities

Airport Disability Access Program Authorities

- Section 504 of the Rehabilitation Act (Sec. 504)
- Americans with Disabilities Act (ADA)
- Air Carrier Access Act

Airport Authority Disability Access Obligations

Role	Requirements
State/Local government entity	<ul style="list-style-type: none"> • Subject to Title II (Subtitle A) of the ADA
Recipient of Federal assistance	<ul style="list-style-type: none"> • Subject to Sec. 504
Employer	<ul style="list-style-type: none"> • Subject to Title I of the ADA
Landlord	<ul style="list-style-type: none"> • Ensure tenants meet Title III requirements under the ADA
Transportation provider	<ul style="list-style-type: none"> • Subject to Title II (Subtitle B) of the ADA
Air travel	<ul style="list-style-type: none"> • Subject to Air Carrier Access Act

Title VI/EJ/LEP and ADA/Sec. 504 Airport Obligations

Requirements that must be passed on to contractors, tenants, and licensees

- Leases and contracts must contain a nondiscrimination clause.
- Reverter & Cancellation Clauses.

Complaint Process

- Forward all Title VI complaints to the FAA.
- Keep ADA/Sec. 504 complaints for 1 yr.; summary record for 5 yrs.

Notice

- Conspicuously display nondiscrimination poster.



Title VI/EJ/LEP and ADA/Sec. 504 Airport Obligations (continued)

Nondiscrimination poster:

Unlawful Discrimination

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or disability in public services and employment opportunities. Allegations of discrimination should be promptly reported to the Airport Manager or:

Federal Aviation Administration
Office of Civil Rights, ACR-1
800 Independence Avenue, S.W.
Washington, D.C. 20501

Federal regulations on unlawful discrimination are available for review in the Airport Manager's Office.

Coordinator:
Phone:
Address:

Discriminación ilegal

Se prohíbe a los operadores de aeropuertos y a sus arrendatarios, inquilinos, concesionarios y contratistas discriminar contra cualquier persona por motivo de raza, color, nacionalidad de origen, sexo, creencias religiosas, impedimento físico o discapacidad en lo que respecta a servicios públicos y oportunidades de empleo. Las alegaciones de discriminación deberán ser dirigidas inmediatamente al Administrador del Aeropuerto o a:

Federal Aviation Administration
Office of Civil Rights, ACR-1
800 Independence Avenue, S.W.
Washington, D.C. 20501

Los reglamentos sobre discriminación ilegal están a la disposición de los interesados para su examen en la oficina del Administrador del Aeropuerto.

Coordinador:
Teléfono:
Dirección:



U.S. Department of Transportation
Federal Aviation Administration

10-11108

Title VI/EJ/LEP and ADA/Sec. 504 Airport Obligations (continued)

Additional requirements apply in some cases

- Boarding assistance (28 CFR 27.72)
- Ground transportation (49 CFR 37)
- Maintenance (28 CFR 35.133)

Availability of Part 21 regulations (T-VI)

- (28 CFR 35.133)



Airport Obligations (continued)

Assign an ADA / Sec. 504 Coordinator

Periodic Self-Evaluations

- Procedures should require evaluations at least every 3 years
- Evaluate programs, services, and facilities
- Integrate required improvements into transition plan



Airport Disability Access Obligations

ADA Accessibility Standards (ADAAS)

- 1991 Standards vs. 2010 Standards
- ADAAS Accessible Route Requirements
- Protruding Objects



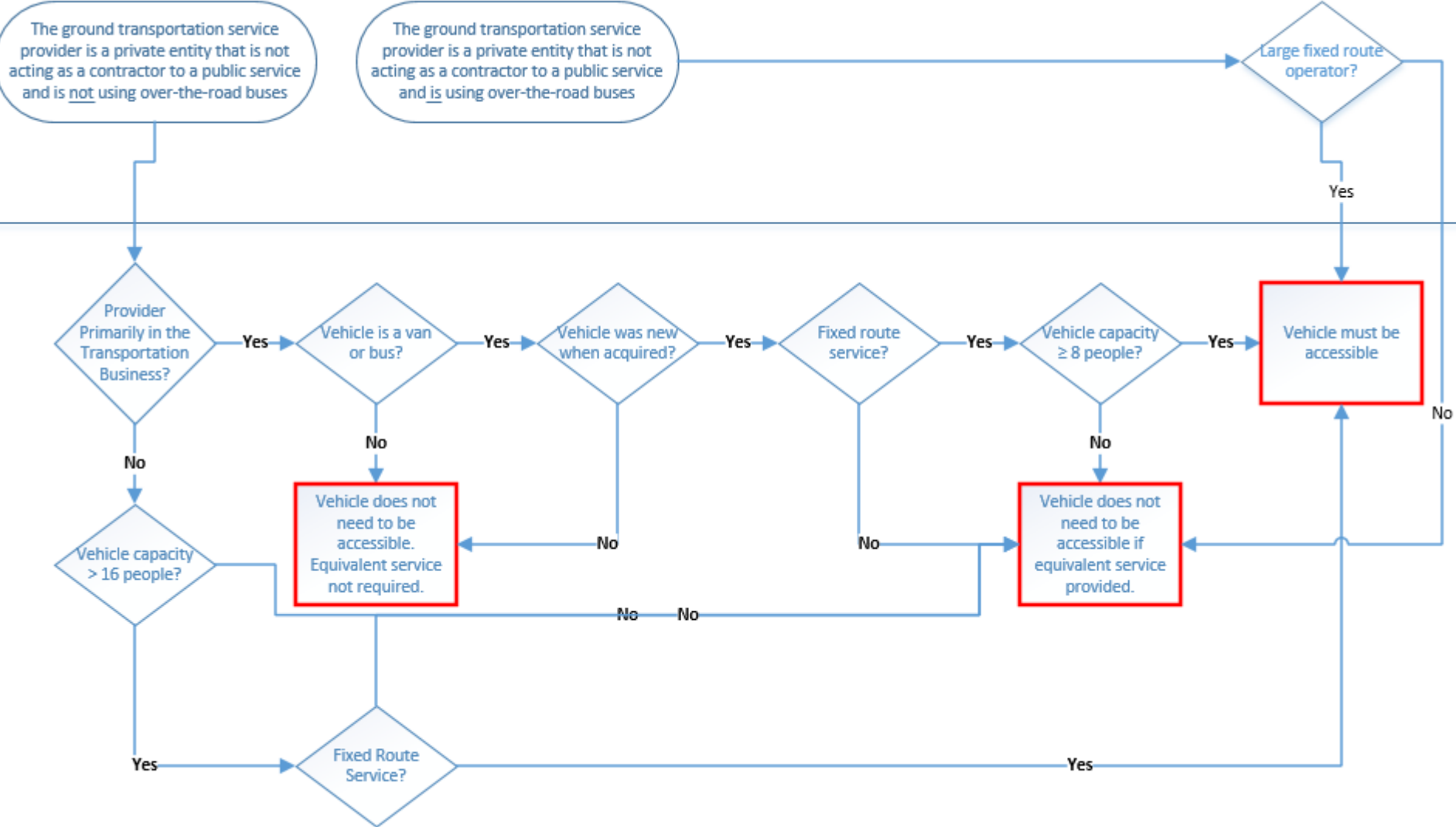
Airport Disability Access Obligations (continued)

Accessible vehicle requirements

- Fixed route or demand responsive
- In or not in business of providing transportation
- Vehicles purchased/leased as new or as used



Airport Disability Access Obligations (continued)



Recent Airport Disability Access Developments

Primary Airports (>10,000 enplanements)

- Post-security service animal relief area
- Closed captioning of audio-visual displays
- Accessible kiosks



Additional Airport Disability Access Resources

Description	Website Link
ADA regulations	www.ecfr.gov for 28 CFR 35 and 36 and 49 CFR 37, 38
Sec. 504 regulations	www.ecfr.gov for 49 CFR 27
Standards for Accessible Design	www.access-board.gov for Buildings & Sites and Transportation
DOJ ADA website	www.ada.gov
FAA Advisory Circulars	www.faa.gov/regulations_policies/advisory_circulars for AC 150/5220-21C, AC 150/5360-12F, and AC 150/5360-14
FTA Guidance	www.transit.dot.gov/ada for ground transportation

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Questions

