



Transportation Update:

Where We've Gone and
What We've Learned



National Council on Disability

May 4, 2015

National Council on Disability
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Transportation Update: Where We've Gone and What We've Learned

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National Council on Disability

An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

Letter of Transmittal

May 4, 2015

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

The National Council on Disability (NCD) is pleased to submit the enclosed report, *Transportation Update: Where We've Gone and What We've Learned*. As we celebrate the 25th anniversary of the Americans with Disabilities Act (ADA), this report updates a 2005 study about the state of our country's surface transportation, explains changes for people with disabilities during the past 10 years, and recommends public policy to address new and persistent problems.

The report is based upon a review of the literature, the current state of the industry, state and local implementation of federal legislation, and information gleaned from outreach to stakeholders, including people with disabilities and other experts. NCD's findings address accessibility-related progress as well as problems associated with fixed route and bus and rail transit (including Amtrak); paratransit; public rights-of-way; enforcement of existing laws; and other issues for all modes of public transit. The report also addresses concerns with rural, coordinated, and privately funded transportation, and commercial driver's license rules. Finally, the report makes recommendations to Congress and the Executive Branch designed to improve federal collaborative efforts and to close gaps in transportation access in ways that benefit people with disabilities and families, including but not limited to the following:

- **Public rights-of-way:** Congress should pass The Safe Streets Act (S2004/HR 2468), which would implement the "complete streets" concept that makes streets and sidewalks accessible for all people, including people with disabilities, using all modes of travel, including pedestrians with and without disabilities and bicycle riders, rather than only considering the needs of automobile drivers and their vehicles
- **Rail transportation:** As it has for Amtrak, Congress should set aside funds specifically for achieving station accessibility on rapid rail (subways) where it

does not yet exist, including platform connectivity, detectable warning installation, elevators, ramps, and full-length platform-level boarding. There should be clear objectives, deadlines, and outcomes analysis to achieve full and timely accessibility.

- **Rural transportation:** Congress should place far greater emphasis than it has to date on funding rural transportation programs. The situation today still shows minimal or non-existent public transit services in most rural areas. Furthermore, compared to the resources allocated to urban areas, those allocated for rural public transportation are significantly inequitable. This creates serious, ongoing barriers to employment, accessible health care, and full participation in society for people with disabilities.
- **Enforcement:** (a) The U.S. Department of Justice (DOJ) and the Federal Motor Carrier Safety Administration (FMCSA) should continue to prioritize, fund, and increase the scope and depth of oversight and enforcement efforts of privately funded transit; (b) the federal agencies that enforce various aspects of the ADA transportation requirements should collectively establish a clear means (e.g., shared website and phone number) for individuals to request and obtain assistance with concerns about local or state noncompliance; and (c) the Department of Transportation (DOT) and DOJ should promulgated guidance on disseminating information about the website, how covered entities (e.g., DOT's Federal Transit Administration, the Federal Railroad Administration, the Federal Highway Administration, and FMCSA) will initiate a public awareness campaign.

NCD appreciates the opportunity to present an independent and nonpartisan assessment of transportation progress as it affects the daily lives of Americans with disabilities—including equal access that most people take for granted. Transportation can be the key to obtaining, retaining, and succeeding in the world of work and socialization by people with disabilities. NCD stands ready to work with you, the Administration, Congress, and other stakeholders to ensure that affordable and accessible transportation is available to all Americans.

Respectfully,

/s/

Jeff Rosen
Chairperson

(The same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate and the Speaker of the House of Representatives.)

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Contents

| | |
|---|-----------|
| Letter of Transmittal..... | 1 |
| National Council on Disability Members and Staff..... | 3 |
| Acknowledgments..... | 4 |
| Executive Summary | 11 |
| Introduction | 19 |
| Chapter 1. Fixed-Route Bus Transit..... | 21 |
| Chapter Overview | 21 |
| Fixed-Route Ridership by People with Disabilities | 22 |
| Equipment Maintenance | 24 |
| <i>Overview</i> | <i>24</i> |
| <i>Regular and Frequent Maintenance Checks.....</i> | <i>26</i> |
| <i>Accessibility Equipment Failure during Pre-Trip Inspection.....</i> | <i>27</i> |
| <i>Failure in Service: Report by Most Immediate Means Available</i> | <i>28</i> |
| <i>Provide Alternative Service</i> | <i>28</i> |
| <i>Post-Trip Inspection and Maintenance of Problem Equipment.....</i> | <i>29</i> |
| <i>False Claims of Broken Lifts and Ramps.....</i> | <i>30</i> |
| <i>Pass-Bys of Riders with Disabilities</i> | <i>30</i> |
| <i>Lifts That Are Difficult to Maintain.....</i> | <i>31</i> |
| <i>Preventive Maintenance</i> | <i>31</i> |
| <i>Progressive Discipline.....</i> | <i>33</i> |
| <i>Complaint Investigation.....</i> | <i>33</i> |
| <i>The Role of the Rider in Equipment Maintenance.....</i> | <i>34</i> |
| Ramp Slope | 34 |
| Bus Boarding Issues | 36 |
| Stop Announcements..... | 38 |
| <i>Orientation Announcements.....</i> | <i>40</i> |
| <i>Consistency in Stop Announcements</i> | <i>40</i> |
| <i>Stop Announcement Lists</i> | <i>41</i> |
| <i>Automated Announcement Systems</i> | <i>42</i> |
| <i>Route Identification Announcements</i> | <i>43</i> |
| <i>Policies and Training</i> | <i>45</i> |
| <i>Monitoring, Progressive Discipline, and Incentives</i> | <i>46</i> |
| <i>Complaint Investigation.....</i> | <i>48</i> |
| <i>The Role of Riders</i> | <i>48</i> |
| Fully Accessible Fixed-Route Systems | 48 |
| Chapter 2. Rail Transit..... | 51 |
| Chapter Overview | 51 |

| | |
|---|-----------|
| Subpart A. Level Boarding | 52 |
| <i>Overview</i> | 52 |
| <i>DOT Final Rule on Boarding Platforms</i> | 54 |
| <i>New Boarding Options</i> | 58 |
| <i>Resistance to Double-Stopping</i> | 60 |
| Subpart B. Amtrak..... | 62 |
| <i>Overview</i> | 62 |
| <i>Amtrak Stations</i> | 63 |
| <i>Amtrak Cars</i> | 66 |
| <i>Amtrak Reservations</i> | 68 |
| <i>Communication Access on Amtrak</i> | 69 |
| <i>Amtrak Thruway Bus Service</i> | 70 |
| <i>Office of Inspector General Report</i> | 70 |
| Chapter 3. ADA Paratransit..... | 73 |
| Chapter Overview | 73 |
| Challenging the Myth of Runaway Growth | 74 |
| Commuter Bus Exception | 76 |
| Eligibility | 77 |
| <i>Ensure Fixed-Route Access</i> | 77 |
| <i>Disability Community Involvement</i> | 79 |
| <i>Don't Reinvent the Wheel</i> | 79 |
| <i>Important Triggers for Eligibility</i> | 80 |
| <i>Conditional Eligibility and Trip-by-Trip Eligibility</i> | 80 |
| <i>Most Limiting Condition</i> | 81 |
| <i>Medical Professionals Who Know the Applicant</i> | 84 |
| <i>Weather-Related Eligibility</i> | 86 |
| <i>No Blanket Denials Based on Type of Disability</i> | 86 |
| <i>People with Variable Conditions</i> | 87 |
| <i>Travel Training and Eligibility</i> | 87 |
| <i>Prior Use of the Fixed-Route System</i> | 88 |
| <i>Safety and Eligibility</i> | 89 |
| <i>Eligibility Determination Process</i> | 89 |
| <i>Discrimination Based on Native Language</i> | 92 |
| Trip Denials..... | 92 |
| Telephone Hold Time | 96 |
| <i>Measuring Telephone Hold Time: Two Basic Methods</i> | 97 |
| <i>"Where's My Ride" Calls</i> | 100 |
| <i>Secondary Holds</i> | 101 |
| <i>No Busy Signals</i> | 102 |
| <i>Avoid Limits on the Number of Trip Requests per Call</i> | 102 |
| <i>Communications Access for Taking Telephone Calls</i> | 103 |
| <i>The Role of Riders in Reducing Telephone Hold Times</i> | 103 |
| Origin-to-Destination Service | 104 |
| <i>Limitations on This Right</i> | 106 |

| | | |
|-------------------|---|------------|
| | <i>Transit Policies and Operational Issues</i> | 106 |
| | <i>When Is Door-to-Door Service Required?</i> | 110 |
| | <i>Public Input in the Planning Process</i> | 113 |
| | <i>Vehicle Operator Training</i> | 113 |
| | <i>Transfers Must Be Attended When Needed by a Rider</i> | 113 |
| | <i>Some Transit Agencies Disregard the Origin-to-Destination Service Requirement</i> | 114 |
| | On-Time Performance..... | 115 |
| | <i>Scheduling Practices for On-Time Performance</i> | 116 |
| | <i>Pickups, Drop-Offs, Will-Calls: Consider All Aspects of On-Time Performance</i> | 119 |
| | <i>Travel Time</i> | 123 |
| | <i>Subscription Service</i> | 124 |
| | <i>Monitoring</i> | 125 |
| | <i>The Role of the Rider in Keeping Service on Time</i> | 126 |
| | No-Show Policies | 127 |
| | <i>Pattern or Practice of Missed Trips by the Rider</i> | 128 |
| | <i>Do Not Count No-Shows That Are Beyond the Control of the Rider</i> | 128 |
| | <i>Proportion of Trips Missed, Rather Than Absolute Number</i> | 130 |
| | <i>Do Not Cancel the Return Trip</i> | 133 |
| | <i>Suspensions</i> | 134 |
| | <i>No-Strand Policies</i> | 137 |
| | <i>Late Cancellations</i> | 137 |
| | <i>The Role of Riders in Reducing No-Shows</i> | 139 |
| | Using Taxis in ADA Paratransit Service | 140 |
| | Equal Respect for ADA Paratransit..... | 140 |
| | Feeder Service..... | 141 |
| | Must a Transit Agency Send a Specific Type of Vehicle? | 144 |
| | Transitions Between Contractors and Service Models..... | 144 |
| | Parents Traveling with Children | 146 |
| | Passengers with Dementia | 148 |
| Chapter 4. | Enforcement | 151 |
| | Chapter Overview | 151 |
| | DOT Guidance | 153 |
| | ADA Compliance Reviews (FTA) | 154 |
| | <i>2012 GAO Report Addressed FTA ADA Compliance Reviews</i> | 155 |
| | <i>The FTA Resumed Posting ADA Compliance Reviews, Some with New Format and Content</i> | 158 |
| | Administrative Complaints (FTA) | 160 |
| | Triennial Reviews, State Management Reviews, Key Station Reviews (FTA) | 161 |
| | FTA ADA Circular | 164 |
| | Over-the-Road Bus Enforcement by DOJ and FMCSA..... | 164 |

| | | |
|-------------------|---|------------|
| | DOJ Independent Enforcement Actions | 165 |
| | <i>Privately Funded Transit</i> | 165 |
| | <i>Publicly Funded Transit</i> | 166 |
| Chapter 5. | Fixed Route Deviation..... | 167 |
| | Chapter Overview | 167 |
| | Deviations Only for Some: Meeting the ADA Paratransit Requirements..... | 167 |
| | Deviations for All: What Level of Service for People with Disabilities?.. | 170 |
| | <i>Urban Density Can Drive Constraints</i> | 170 |
| | <i>Deviations Are Constrained in Many Systems</i> | 171 |
| | <i>How to Measure Performance for People with Disabilities</i> | 172 |
| | Other Implementation Considerations..... | 173 |
| Chapter 6. | Issues for All Modes of Public Transit | 175 |
| | Subpart A. “Common Wheelchair” Section Removed from DOT ADA Regulation..... | 175 |
| | <i>The “Common Wheelchair” Problem</i> | 175 |
| | <i>Removal of the Common Wheelchair Provision and Related Wheelchair Rule Changes</i> | 176 |
| | <i>Enforcement of the New, Stricter Standard</i> | 180 |
| | <i>Lift Capacity Issues</i> | 181 |
| | <i>Best Practices and Questionable Practices</i> | 181 |
| | Subpart B. Reasonable Modifications of Policies, Practices, and Procedures, and Other ADA General Nondiscrimination Requirements..... | 183 |
| | <i>Introduction</i> | 183 |
| | <i>DOT Proposed Regulation to Fix the Problem</i> | 185 |
| | <i>FTA Decisions Requiring Reasonable Modifications of Policies, Practices, and Procedures</i> | 187 |
| | <i>Consequences of Not Requiring Reasonable Modifications of Policy</i> | 188 |
| | Subpart C. Securing Mobility Devices | 189 |
| | <i>Overview</i> | 189 |
| | <i>Common Misinterpretation of Lift and Securement Requirements</i> | 190 |
| | <i>Proposal to Enhance Dimensional Requirements</i> | 192 |
| | <i>Voluntary Standards</i> | 193 |
| | <i>Scooter Securement</i> | 194 |
| | <i>Rear-Facing Securements</i> | 195 |
| | Subpart D. Service Animals | 196 |
| | <i>Overview</i> | 196 |
| | <i>ADA Transportation Rules for Service Animals Did Not Change</i> .. | 196 |
| | <i>Discrimination Persists</i> | 198 |
| | <i>Wheelchair User with Service Animal Using a Lift</i> | 200 |

| | | |
|--------------------|--|------------|
| | Subpart E. Communication Access..... | 201 |
| | Subpart F. Traveling with a Respirator or Portable Oxygen Supply | 204 |
| | Subpart G. Navigating Public Transit with a Cognitive or Intellectual Disability..... | 205 |
| | Subpart H. Navigating Public Transit with Chemical or Electrical Sensitivities | 206 |
| | Subpart I. Transit Staff Trained to Proficiency..... | 208 |
| Chapter 7. | Rural Transportation..... | 209 |
| | Funding Sources for Rural Transportation | 210 |
| | Successful Strategies for Rural Transportation..... | 213 |
| | <i>Voucher Programs</i> | 214 |
| | <i>Volunteers</i> | 215 |
| | <i>Flex Services</i> | 215 |
| | <i>Taxicabs</i> | 215 |
| | <i>Mobility Management</i> | 219 |
| | <i>Coordinated Services</i> | 221 |
| | <i>Car Ownership</i> | 224 |
| | <i>Update on Programs Mentioned in the 2005 NCD Report</i> | 225 |
| | MAP-21 and Rural Transportation | 225 |
| | Conclusion | 227 |
| Chapter 8. | Coordinated Transportation..... | 229 |
| | Toward a Universal Transit System | 230 |
| | Coordination Model in Iowa: A Single Agency Providing Multiple Programs in Eleven Counties..... | 232 |
| | Coordination Model in Maine: Using Medicaid Dollars to Increase Capacity | 232 |
| Chapter 9. | Commercial Driver’s License Rules | 235 |
| Chapter 10. | Public Rights-of-Way | 237 |
| | Chapter Overview | 237 |
| | <i>Two Important Appellate Court Decisions</i> | 237 |
| | <i>Lack of Enforceable Technical Standards</i> | 240 |
| | <i>Other Key Issues</i> | 240 |
| | <i>Enforcement Difficulties and Encouraging Developments</i> | 241 |
| | Complete Streets | 242 |
| | Bus Stops..... | 243 |
| | <i>Why Bus Stop Access Is a Persistent Problem</i> | 244 |
| | <i>Bus Stop Detectability</i> | 246 |
| | <i>Other Improvements in Bus Stop Accessibility</i> | 247 |
| | <i>Resources for Bus Stop Accessibility</i> | 250 |
| | Accessible Pedestrian Signals | 250 |
| | Detectable Warnings..... | 252 |
| | Curb Ramps..... | 253 |
| | <i>Street Resurfacing and Curb Ramps</i> | 254 |

| | | |
|---------------------------------|---|------------|
| | Snow Removal..... | 256 |
| Chapter 11. | Privately Funded Transit | 259 |
| | Subpart A. Taxicabs..... | 259 |
| | <i>Overview</i> | <i>259</i> |
| | <i>ADA Requirements Are Limited</i> | <i>261</i> |
| | <i>Caught in the Act of Discrimination</i> | <i>262</i> |
| | <i>Accessible Taxis.....</i> | <i>263</i> |
| | <i>Uber, SideCar, Lyft, and Similar Transportation Apps.....</i> | <i>278</i> |
| | Subpart B. Intercity Bus Service and Over-the-Road Buses | 292 |
| | <i>Overview</i> | <i>292</i> |
| | <i>Curbside Carriers Disregarded the ADA for Years</i> | <i>293</i> |
| | <i>The 2012 Deadline: DOT Denies Extensions Requested by</i> | |
| | <i>Large Carriers</i> | <i>297</i> |
| | <i>The Interlining Problem and How It Was Addressed</i> | <i>299</i> |
| | <i>“Asking for Notice Is Passé”.....</i> | <i>301</i> |
| | <i>Industry Bemoans Low Ridership and Requests Further Relief....</i> | <i>303</i> |
| | <i>Other Issues and Problems with Intercity Bus Service.....</i> | <i>305</i> |
| Recommendations | | 311 |
| | Overall Recommendations | 311 |
| | Recommendations by Chapter..... | 311 |
| | <i>Chapter 1. Fixed-Route Bus Transit.....</i> | <i>311</i> |
| | <i>Chapter 2. Rail Transit.....</i> | <i>312</i> |
| | <i>Chapter 3. ADA Paratransit.....</i> | <i>315</i> |
| | <i>Chapter 4. Enforcement.....</i> | <i>342</i> |
| | <i>Chapter 5. Fixed Route Deviation.....</i> | <i>343</i> |
| | <i>Chapter 6. Issues for All Modes of Public Transit</i> | <i>346</i> |
| | <i>Chapter 7. Rural Transportation.....</i> | <i>352</i> |
| | <i>Chapter 8. Coordinated Transportation.....</i> | <i>353</i> |
| | <i>Chapter 9. Commercial Driver’s License Rules.....</i> | <i>354</i> |
| | <i>Chapter 10. Public Rights-of-Way.....</i> | <i>354</i> |
| | <i>Chapter 11. Privately Funded Transit.....</i> | <i>358</i> |
| List of Interviews | | 363 |
| Endnotes | | 365 |

Executive Summary

Nearly 10 years ago, the National Council on Disability published *The Current State of Transportation for People with Disabilities in the United States*, a major transportation overview report. That 2005 report received high acclaim and contributed to major developments in the field.

In this related document, *Transportation Update: Where We've Gone and What We've Learned*, NCD explains where the U.S. disability community found itself in 2005 and what has changed since then. This update addresses the achievements and advances that have occurred in the field of transportation for people with disabilities, as well as what has been learned and where problems remain in the United States.

Much has happened in the past 10 years. Many in the transit industry and in government agencies have greater insight into how to improve public transit systems for the disability community. Changed circumstances and advancements in operational knowledge must also be taken into account.

In many ways, the transportation accessibility situation has advanced. More people with disabilities are riding public transit than ever before; new rulemaking has provided pathways forward; and new research has revealed insights that cast doubt on common transit industry beliefs about transportation for people with disabilities that were accepted as truth until quite recently, and often still are.

At the same time, transportation problems persist for people with disabilities, including many obstacles to taking full advantage of all forms of public transit. Rural areas across the country still lag well behind in terms of transportation options, although programs to improve rural transportation are proliferating.

Across the United States, transportation accessibility remains a key challenge, even though we know from research and stakeholder experiences what is needed. The

National Council on Disability remains in the forefront in analyzing our current status and shining a light toward the future.

This report is confined to surface transportation. It does not address transportation by air carriers or passenger vessels, although those are important areas that merit further examination.

Overview of Chapters

The report is divided into 11 topics by chapter—Fixed-Route Bus Transit; Rail Transit; ADA Paratransit; Enforcement; Fixed Route Deviation; Issues for All Modes of Public Transportation; Rural Transportation; Coordinated Transportation; Commercial Driver’s License Rules; Public Rights-of-Way; and Privately Funded Transit. Each chapter presents findings about specific topics and the impacts on the lives of people with disabilities. At the end of the report is a list of overall recommendations addressing selected broad issues, as well as chapter-by-chapter recommendations to Congress, federal agencies, state regulators and local jurisdictions, transit authorities, agencies, providers, and other stakeholders, including the disability community, public works departments, private companies, and transportation designers.

Chapter 1, Fixed-Route Bus Transit, addresses the improvements and remaining challenges for fixed-route bus transit. Promising research shows that ridership by people with disabilities on fixed-route bus and rail systems in the United States has grown far faster than ridership on Americans with Disabilities Act (ADA) paratransit, casting doubt on the common transit industry view to the contrary. Gains and challenges in equipment maintenance include information about best practices, although these practices are often not implemented. Ramp slopes on accessible buses are generally too steep, but the U.S. Access Board might implement policies that require more gradual slopes. Bus boarding issues are still a challenge in some cities; litigation alleges that local bus systems deny boarding to people with disabilities despite having accessible equipment. Gains and challenges in the area of stop announcements

on buses include extensive information about best practices, although these practices are often not implemented. Several examples illustrate what is needed to implement fully accessible fixed-route systems.

Chapter 2, Rail Transit, addresses two key issues: (1) full-length platform-level boarding and (2) impediments to the use of Amtrak. The former—also referred to as “level boarding”—full-length platform level boarding is considered the best approach for people with mobility disabilities to board and disembark from trains. This section focuses on a major set of changes made in 2011 to the U.S. Department of Transportation (DOT) ADA regulation requiring level boarding at certain stations. A subsection on new boarding options explores the development of a second-best alternative: large setback platforms.

Although many people with disabilities use Amtrak successfully, particularly along the northeast corridor, Amtrak has lagged behind (despite the requirements of the ADA) in its stations, train cars, reservations capacity, and in the area of communications access. We also explore a disturbing report from the Amtrak Office of Inspector General.

Chapter 3, ADA Paratransit, addresses many key concerns, including the myth of runaway growth. We explore recent research that casts doubt on the common transit industry view that the graying of America will cause explosive growth in ADA paratransit demand.

A section on commuter bus exception discusses how to determine which forms of transit qualify for the commuter bus exemption to the ADA paratransit requirements.

The section on eligibility provides up-to-date resources; explores conditional and trip-by-trip eligibility; and addresses topics such as assessing an applicant’s most limiting condition, medical professionals who know the applicant, weather-related eligibility, explaining how blanket denials based on type of disability are not allowed, the relationship between eligibility and safety, and the eligibility determination process, including discrimination based on native language.

Trip denials are disallowed by the ADA if they occur in substantial numbers, but they still occur in many transit systems. A discussion of telephone hold time addresses best practices in measuring hold time and a number of related issues, including “where’s my ride” calls, secondary holds, and busy signals. The section on origin-to-destination service describes an important ADA guidance document.

On-time performance is a key issue in ADA paratransit compliance; this section provides examples of on-time performance problems in ADA paratransit systems around the United States and how to prevent them, including information on best practices.

The section on no-show policies explores new findings and provides best practices, including not counting no-shows that are beyond the rider’s control, basing policies on the proportion of missed trips rather than on the absolute number, not canceling the return trip, implementing suspensions properly, no-strand policies, and late cancellations.

Other sections in this chapter explore using taxis in ADA paratransit, respecting ADA paratransit as a legitimate transit mode, ADA paratransit feeder service and important considerations to guide its use, transitions between contractors and service models, parents traveling with children, and passengers with dementia.

Chapter 4, Enforcement, addresses the many ways that federal disability rights protections governing transportation are overseen and enforced by a plethora of agencies. It discusses enforcement challenges and describes where progress has been made. The chapter covers DOT guidance and its role in ADA implementation; ADA compliance reviews of publicly funded transit by the Federal Transit Administration (FTA); ADA administrative complaints investigated by the FTA; triennial reviews, state management reviews, and key station reviews conducted by the FTA; and over-the-road bus enforcement by the Department of Justice (DOJ) and the Federal Motor Carrier Safety Administration (FMCSA).

Chapter 5, Fixed Route Deviation, discusses fixed route deviation service, the various ADA challenges it presents, and how the ADA affects its provision.

Chapter 6, Issues for All Modes of Public Transit, addresses major issues that affect every surface transit mode, including fixed-route, demand-responsive, bus, and train.

The chapter covers the following topics:

- Removal of the “common wheelchair” section from the DOT ADA regulations, including implications of the change and examples of difficulties that remain with some transit agencies.
- Reasonable modifications of policies, practices, procedures, and other nondiscrimination requirements—what it means to modify policy to avoid discrimination, problems that stem from court decisions ruling that the modification of policy provision in the DOJ rule may not apply to publicly funded transit, and efforts by DOT to adopt the provision into its own regulation.
- Securing mobility devices—common misinterpretations of this critical safety issue and its requirements. The chapter also addresses WC-19, a voluntary standard for wheelchairs used in motor vehicles; SAE J2249, a voluntary standard for securement devices (tie-downs); scooter securement; and rear-facing securement.

Chapter 6 also discusses discriminatory practices in the transportation arena against users of service animals and offers technical assistance suggestions for boarding wheelchair users with service animals on a lift vehicle. A section on communications access addresses a variety of practices—some that are encouraged and others that are discouraged—for transit agencies to make their communications more accessible to people with hearing, speech, vision, and cognitive disabilities. Other sections in this chapter address traveling with a respirator or portable oxygen supply; navigating public

transit with a cognitive or intellectual disability or with chemical or electrical sensitivities; and training staff to proficiency.

Chapter 7, Rural Transportation, identifies critical gaps and barriers resulting in minimal or nonexistent transit services in rural and remote areas. This situation creates serious barriers to employment, accessible health care, and full participation in society for people with disabilities; however, MAP-21, the federal reauthorization of DOT surface transportation programs through fiscal year 2014, offered coordination opportunities. This chapter discusses funding sources for rural transportation, as well as successful strategies such as voucher programs, volunteers, flex services, taxicabs, mobility management, coordinated services, and car ownership.

Chapter 8, Coordinated Transportation, addresses the increasing focus on coordinated transportation programs and services to provide transportation to people with disabilities; it includes examples of successful coordination in Oregon, Iowa, and Maine.

Chapter 9, Commercial Driver's License Rules, addresses the problems posed by commercial driver's license rules for hard-of-hearing and deaf people—as well as people with seizure disorders and those with insulin-treated diabetes—in jobs as interstate truck drivers. Several important recent advances have struck down barriers that have existed for years, and even decades, thus increasing employment opportunities.

Chapter 10, Public Rights-of-Way, addresses the critical nature of accessibility to public rights-of-way (PROW)—the network of streets and sidewalks. This chapter describes key court decisions for PROW and explains important issues such as “complete streets”; bus stop access and detectability; accessible pedestrian signals; detectable warnings; curb ramps (including recent gains in the relationship between street resurfacing and curb ramps); and snow removal.

Chapter 11, Privately Funded Transit, addresses two key areas: (1) taxicab service and (2) intercity transit using over-the-road buses. It discusses the importance of transit by taxi and the barriers that prevent people with disabilities from taking full advantage of taxi travel, including accessibility. Topics include the need for incentives, keeping accessible vehicles in use, training, and enforcement. Case studies are presented of accessible taxi service in Chicago, Rhode Island, and New York City. The chapter also addresses new payment technology in taxicabs for people who are blind or have vision impairments. Finally, it covers the problems presented by the burgeoning sector of smartphone transportation applications such as Uber, SideCar, Lyft, and similar services, which have resisted the regulation normally imposed on the taxi sector.

With regard to intercity bus service and over-the-road buses (OTRBs), the chapter describes the gradual implementation of the 1998 DOT ADA regulation changes concerning private transportation that uses OTRBs, the rise of curbside carriers that have disregarded the ADA for many years, and the successful struggle to push for ADA enforcement. This section also addresses a major 2012 deadline for fully accessible bus fleets operated by large carriers; how a problem with interlined service between large and small carriers has been resolved; the phasing out of the period during which large carriers may require advance notice from riders with disabilities; and other OTRB issues and problems, including boarding denials and difficulties in moving seats to create wheelchair spaces.

Recommendations. The report closes with chapter/topic-specific recommendations, as well as these four overall recommendations for consideration and action:

1. All transportation providers must comply with the requirements of the Americans with Disabilities Act (ADA). They should establish policy and conduct training to ensure proper implementation.
2. All federal agencies that enforce any aspect of the ADA transportation requirements should enforce them thoroughly and robustly, and take the

initiative to undertake robust compliance oversight activities, such as compliance reviews, to ensure that the ADA is implemented properly.

3. Congress should undertake oversight activities to ensure compliance with the ADA transportation requirements, as well as proper implementation.
4. Transit agencies and other stakeholders should be encouraged to follow all the best practices identified in this report.

Introduction

This report describes the transportation access changes for people with disabilities, positive and otherwise, that have occurred in the past decade. Key considerations include (1) the impact of new regulations and court decisions that have spurred improvements in surface transportation, and (2) innovations and new technologies that provide opportunities for people with disabilities.

Accounts of achievements in increasing transportation accessibility for Americans with disabilities, and some of the unmet needs, are presented in great detail. This report identifies relevant data and calls attention to best practices, as well as areas that still require significant reform. The research, data analysis, and insights from the disability community promote understanding of how to provide meaningful access to public transit systems that work well for the disability community. Changed circumstances and advancements in operational knowledge signal trends that can create new transportation opportunities in the future. At the same time, problems persist for people with disabilities, who rely heavily on public transportation. Many still face obstacles to taking full advantage of all forms of public transit. Notably, the rural areas of our country lag well behind in terms of transportation options, although the proliferation of programs to improve rural transportation is a positive development.

The overall context for disability transportation issues was expressed in the 2005 NCD report:

This paper analyzes existing transportation systems in the United States with the acknowledgment that these systems are inherently inadequate due to a chronic lack of funding. As the United States focuses its resources on travel by automobile, all other modes are neglected in comparison.¹

This situation continues today, and there is ample reason for concern for the future, as certain parts of the U.S. electorate turn against public services. For example, in April

2014, a state law was passed in the Tennessee Senate that banned new mass transit projects across the state:

The Tennessee Senate has approved a measure that would ban new mass transit projects across the state. The bill was introduced to undermine a proposed rapid bus system in Nashville called the Amp, but would apply statewide.²

Meanwhile, mass transit ridership is at an all-time high. According to the American Public Transportation Association, 10.7 billion trips were taken on U.S. public transportation in 2013, the highest transit ridership in 57 years.³ Is our nation for or against mass transit? The answer will mean a lot for people with disabilities.

Transportation remains a key challenge for the disability community. Effective, accessible public transit can enhance the quality of life for millions of people with and without disabilities in the United States by increasing access to education, employment, and social interaction.

The scope of this update is limited to surface transportation. It does not address transportation by air carriers or passenger vessels, although those are important areas that merit further examination and may become the subject of analysis and recommendations in the future.

CHAPTER 1. Fixed-Route Bus Transit

Chapter Overview

In the years since the 2005 National Council on Disability publication of *The Current State of Transportation for People with Disabilities in the United States*,⁴ (2005 NCD report), some in the disability community have reported significant improvements in fixed-route bus transit. For example, Cliff Perez, Systems Advocate at the Independent Living Center of the Hudson Valley and Chair of the National Council on Independent Living Transportation Committee, stated,

On fixed-route buses, for the most part, transit agencies have been pretty good. They have ramps or lifts, and most have gotten over the issue of yelling out stops. They have signs up for people who are deaf. ... The annunciators, because I'm blind, were a big improvement, and even that's gotten much better.⁵

Michael Muehe, Executive Director of the Cambridge Commission for Persons with Disabilities and Americans with Disabilities Act (ADA) Coordinator of the City of Cambridge, Massachusetts, reflected on both progress and remaining problems when he stated,

In the past five years or so, the MBTA in Boston has come a long way in terms of making the buses accessible. I think now, in terms of rolling stock, virtually all our buses are accessible. Our big ongoing issue is more around operator compliance. For example, the bus driver doesn't always pull up to the curb, close enough to allow people with disabilities to get safely on board, or the driver is not making adequate announcements of bus stops, or not adequately attending to the other accessibility protocols that are in place. ... All the bus drivers have received really thorough training on these issues. They can't cry ignorance any longer. To the MBTA's credit, a couple years ago after there was a big lawsuit and [it] settled, they instituted a pretty robust program of random testing. The MBTA hires anonymous testers to ride the buses and report problems. I think that's achieved a good deal of compliance whereas before we had so many problems.⁶

This chapter first explores the issue of fixed-route ridership by people with disabilities. In terms of the number of riders, how extensively is the fixed-route system used by the disability community? It has been assumed at times in the transit industry that most people with disabilities use ADA paratransit, but promising research shows otherwise.

The chapter then addresses maintenance of accessibility equipment, bus ramp slopes, bus boarding issues, stop announcements, and what else can be done to provide fully accessible fixed-route systems.

Fixed-Route Ridership by People with Disabilities

In terms of the number of riders, how thoroughly does the disability community use the fixed-route system? The Transit Cooperative Research Program (TCRP) Report 163,⁷ *Strategy Guide to Enable and Promote the Use of Fixed-Route Transit by People with Disabilities*, found that, nationally, disability ridership on the fixed-route system compared with ADA paratransit ridership ranges between 1:1 and 5:1 or higher. In other words, between one and, in many cases, five or more times as many people with disabilities are riding the fixed-route system as are riding ADA paratransit. The research also suggests that a great many people with disabilities who are able to use fixed-route transit service appear to be doing so.

Transit agencies track ADA paratransit ridership and include this information in National Transit Database (NTD) reports, although the NTD does not request or contain data about the use of fixed-route transit service by riders with disabilities.

Some transit agencies do track fixed-route ridership by fare type and offer discounts related to disability, such as reduced or no fares. The new research is using this information to understand the current use of fixed-route transit by people with disabilities. Reduced fare data likely undercounts actual use, as some people with disabilities may not be aware of the reduced fares or may choose to pay full fare on fixed-route transit services.

To develop an understanding of the current use of transit services by people with disabilities, information on ADA paratransit ridership and fixed-route reduced fare ridership was collected from seven transit agencies. Agencies were selected from different geographic regions, as well as from large, medium, and small communities.

Data was gathered from the following seven transit agencies:

Ann Arbor Transportation Authority (AATA), Ann Arbor, MI

Chicago Transit Authority (CTA), Chicago, IL

Laketran, Grand River, OH

Massachusetts Bay Transportation Authority (MBTA), Boston, MA

Pace Suburban Bus (Pace), Arlington Heights, IL

Tri-County Metropolitan Transit District (TriMet), Portland, OR

Utah Transit Authority (UTA), Salt Lake City, UT

The definition of disability in the U.S. Department of Transportation (DOT) requirement for half fares during off-peak hours⁸ is broader than that for ADA paratransit eligibility, so it represents ridership by a broader group of people with disabilities.

To determine the relative use of fixed-route transit and ADA paratransit by people with disabilities at each system where data was gathered, the ratio of trips made on each mode was calculated. With the exception of only one of the seven transit agencies in one of the years studied (2009), fixed-route transit ridership for people with disabilities was greater than ADA paratransit ridership for every system in every year in which data was available. The largest systems—Chicago, Boston, Portland, and Salt Lake City—all had ratios close to or greater than 5:1. These four transit systems have urban rail service with frequent headways and late evening service.

The ratio of fixed-route transit ridership to ADA paratransit ridership increased over time in four of the seven systems, indicating that the use of fixed-route transit service by people with disabilities was increasing at a faster rate than their use of ADA paratransit.

The study findings and conclusions include the following:

- Fixed-route transit ridership by people with disabilities in many locations is two to six times higher than ADA paratransit ridership.
- In four of the seven systems studied, fixed-route transit ridership increased faster than ADA paratransit ridership in recent years, which suggests that people with disabilities are traveling more. It also suggests that many people with disabilities who are able to use fixed-route transit service appear to be doing so.
- Use of fixed-route transit services by riders with disabilities appears to be greater in the urban systems studied and lower in smaller city and rural systems. This is likely due to the greater availability of fixed-route transit service in urban areas.
- Both ADA paratransit ridership and fixed-route transit ridership by people with disabilities appear to be increasing. This suggests a general increase in all forms of public transit use by people with disabilities.

Equipment Maintenance

Overview

The Americans with Disabilities Act requires transit agencies to maintain in operative condition those features of facilities and vehicles necessary to make them accessible.⁹ This requirement applies to the full range of accessibility features and equipment, including elevators and escalators in train stations, wheelchair lifts and ramps on buses, accessibility-related signage, vehicle kneeling mechanisms (often called kneelers),

automatic stop announcement annunciators, and wheelchair securement devices on buses and vans (also referred to as tie-downs), as well as fare payment equipment, clear paths of travel, public address systems, proper gaps between platforms and rail cars, and systems to facilitate communications for people with impaired vision or hearing.¹⁰

More than 20 years after the passage of the ADA, many of these requirements are still not always properly implemented. For example, since 2005, the U.S. Department of Justice (DOJ) has pursued ADA compliance in the city of Detroit through full implementation of a DOJ settlement agreement with the city regarding buses with inoperable wheelchair lifts and poor maintenance programs. The original DOJ complaint stated that many people who use wheelchairs waited for long periods until they were able to board a bus with a functioning wheelchair lift and, in some cases, had to seek alternative methods of transportation or abandon their trips.¹¹ (Also see the section on DOJ Independent Enforcement Actions.)

According to *Transit Access Report* in 2012,

A settlement order issued in federal court in 2005 was supposed to remain in effect for three years, [but] attorneys from the Justice Department have gone back for extensions three times. ... The judge ... directed David R. Rishel, a transit consultant serving as independent auditor, to conduct monthly meetings with the parties in the case.

According to court papers, the Justice Department is nudging city transit officials to ensure better compliance by bus drivers with daily checks of accessibility equipment. Mr. Rishel ... has ventured the opinion that securement systems and lifts should be operationally checked “97 to 100 percent” of the time. City officials indicated they were surprised, saying they had not previously been given numerical goals for compliance.

Rishel explained the high compliance goal in a [June 2011] letter [that stated,] “The pre-trip requirement is not just an ADA requirement; it is a legal requirement of the state Department of Transportation. ... The accessibility elements of the pre-trip are about 20 percent of the check, the others being bus safety items like tires, lights, brakes, windshields and windows, safety equipment, etc. It is illegal for a driver to take a bus out of the garage and place it into service without doing these checks.” ...

“There is simply no explanation as to why we have found so many problems with these components on buses, other than the fact that they are not being checked as required,” the auditor said.¹²

Later in 2012, Rishel reported, “No more than half of drivers are conducting the full required pre-trip inspections.”¹³

Rishel found that failure rates for lift buses still averaged between 5 percent and 8 percent. In one month, buses from one garage had a reported failure rate of over 14 percent.¹⁴

The 2005 NCD report¹⁵ explained how maintaining the accessibility equipment on the bus is a critical aspect of an effective bus system. This update report adds a number of best operational practices now known to be necessary to achieve fully accessible bus service.

Equipment maintenance begins with consideration of regular and frequent maintenance checks and the importance of immediately reporting accessibility equipment failure during pre-trip inspection and any failure in service. Next, the provision of alternative service is addressed. The section also considers post-trip inspection and maintenance of problem equipment, false claims of broken lifts and ramps, pass-bys of riders with disabilities, lifts that are difficult to maintain, preventive maintenance, and progressive discipline. Finally, it considers the role of the rider in equipment maintenance.

Compliance with the ADA maintenance requirements entails transit agency efforts in each phase of operation, including design, policy, training, inspection, maintenance, repair, monitoring, complaint investigation, and discipline.¹⁶

Regular and Frequent Maintenance Checks

Transit agencies must establish a system of regular and frequent maintenance checks of bus lifts and ramps. They must be carried out often enough to determine whether the equipment is operative. As illustrated by the DOJ/Detroit lawsuit discussed earlier, these checks are not taking place in some cities.

Daily maintenance checks, often called pre-trip inspections, are a best practice.¹⁷ Lifts and ramps should be tested, as well as other accessibility equipment, such as automatic stop announcement annunciators, public address (PA) systems, wheelchair securement devices, and bus kneeling mechanisms. Inspections should ensure that all necessary securement and restraint system components are on board and functioning. Inspectors should check technology for stop announcements and route identification, stop request activators in the securement areas, and vehicle signage, particularly the lighting for destination signs. (See more about stop announcements in the Stop Announcement section below.)

Another good practice is for drivers to conduct the pre-trip inspections themselves. In some transit agencies, drivers fully cycle lifts and ramps before pulling out at the beginning of their shifts. In addition to providing a check on the working condition of the equipment, pre-trip inspections ensure that drivers are familiar with how to work each piece of equipment. This is particularly important when a bus fleet includes multiple models of lifts, ramps, securement systems, and PA systems.¹⁸ However, if, for example, the logistics of pullouts make it difficult for each driver to conduct a pre-trip inspection, the Federal Transit Administration (FTA) draft ADA circular says that transit agencies may design other procedures for performing regular and frequent checks of lifts. Some transit agencies ensure lift reliability by having maintenance staff perform daily checks.¹⁹

Another good practice is to keep thorough records (e.g., inspection forms) of lift operation checks.²⁰

Accessibility Equipment Failure during Pre-Trip Inspection

If access equipment is not working properly during the pre-trip inspection, the vehicle operator should report it immediately. A repair should be made or the vehicle should be removed from service and a spare bus with working equipment should be assigned. Some transit agencies assign a mechanic to the pullout area during major pullouts to address problems quickly. All access equipment should be fully functional before a bus pulls out.²¹

Failure in Service: Report by Most Immediate Means Available

The ADA requires transit agencies to ensure that vehicle operators report, by the most immediate means available, any failure of a lift or ramp to operate in service. In practice, this means that vehicle operators should immediately radio in to dispatch any lift or ramp failure.²²

Provide Alternative Service

If a vehicle is operating on a fixed route with an inoperative lift or ramp and the headway to the next accessible vehicle on the route exceeds 30 minutes, the ADA requires the transit agency to promptly provide alternative transportation to people with disabilities who are unable to use the vehicle because the lift or ramp does not work. DOT ADA regulation Appendix D, which provides interpretive guidance on the regulation, states that the wait time for alternative transportation must be short—less than 30 minutes—and the vehicle that is dispatched must be accessible.²³

Methods for Providing Alternative Service

Typical methods used for providing alternative service include dispatching a road supervisor or an extraboard driver with an accessible vehicle; contacting the ADA complementary paratransit service provider to arrange for an immediate trip; or contacting a private van service that is under contract to the transit agency to provide immediate alternative service. In practice, this ADA requirement means that as soon as a dispatcher learns of a lift or ramp failure, he or she should check the headway to the next bus with a working lift or ramp and provide the driver with appropriate instructions. If the headway to the next bus is under 30 minutes, the dispatcher should contact that bus and confirm that its lift or ramp is operating.²⁴

Best Practices in Providing Alternative Service

In addition to notifying dispatch, it is a best practice for transit agencies to establish a policy that, when there is an in-service lift or ramp failure, vehicle operators may not leave the pickup location until they receive instructions from dispatch and inform the waiting rider what to expect. This policy should be noted prominently in any public information on accessible buses, so riders know that the procedure has not been followed if the driver pulls away without contacting dispatch and telling the rider what to expect.

One transit agency best practice is for drivers to give cards to riders who cannot be boarded due to lift or ramp failures. The card should note the date, bus number, location, and time, in order to document the failure and discourage vehicle operators from simply saying “The lift doesn’t work” and pulling away. A brochure on how to use accessible buses can include an explanation of this practice so riders know to ask for the card if they encounter a problem.

Another best practice is the use of road supervisor vehicles. Road supervisors resolve bus problems in the field and provide assistance to passengers when the bus driver needs additional support. It is recommended that when transit systems purchase road supervisor vehicles, they obtain wheelchair-accessible ramp-equipped minivans, which can be used to provide alternative service for broken bus lifts and ramps. One advantage to using road supervisor vehicles is that road supervisors use the same dispatch system as the fixed-route buses, whereas paratransit uses a different dispatch. Some transit agencies also use accessible road supervisor vehicles to assist passengers whose power wheelchairs break down while in use on the transit system.²⁵

Post-Trip Inspection and Maintenance of Problem Equipment

Transit agencies should conduct an immediate maintenance check at the end of each bus run or shift of any accessibility equipment that has been reported to fail in service, including lifts and ramps. Records should be maintained of instances in which failures are reported

and no problems are found. If this becomes a pattern for a particular bus, more extensive diagnostics should be run on that lift or ramp. If it is shown to be a pattern for a particular driver, the agency should schedule spot checks of the performance of that driver.²⁶

False Claims of Broken Lifts and Ramps

The 2005 NCD report²⁷ described the problem of bus drivers who allege that lifts are broken to avoid boarding a person with a disability. Whether a lift is broken and the driver does not report it or a driver says a lift is broken when it is not, both are violations of the ADA.²⁸

Transit agencies should implement operational procedures to prevent false claims of broken lifts or ramps, including post-trip inspection and maintenance of problem equipment. Also, they should vigorously and consistently enforce disciplinary policies for drivers who falsely report lift and ramp failures, avoid operating a lift or ramp when requested, or bypass people with disabilities who wish to board.²⁹

Pass-Bys of Riders with Disabilities

As discussed in the 2005 NCD report, sometimes buses simply do not stop for travelers using wheelchairs or other people with disabilities who need the lift or ramp. This practice—referred to as a “drive-by” or “pass-by”—leaves the would-be rider with a disability not knowing whether the lift or ramp is damaged, the securement locations on the bus are already in use, or the driver is simply denying the ride for other reasons, including a reluctance to take the time to allow a passenger with a disability to board. There have also been pass-bys of other people with disabilities, such as people who are blind or have vision impairments.

Intentional bus pass-bys of people who use wheelchairs and other would-be passengers with disabilities are violations of the ADA. If both wheelchair securement areas are occupied, it is a best practice for the driver to stop and let a waiting passenger who uses a wheelchair know the situation.

If there are reports of rider pass-bys, it is strongly recommended that transit agencies implement monitoring programs to ensure that this problem is dealt with promptly. The best ways to monitor for rider pass-bys are secret rider programs or in-service monitoring by persons who will not be easily recognized as system inspectors.³⁰

Lifts That Are Difficult to Maintain

The 2005 NCD report³¹ discussed the fact that frequent lift breakdowns sometimes result from old lift technology that has become difficult to maintain or takes a long time to fix because replacement parts are not readily available. In these cases, transit agencies should consider complete rebuilds or replacements of the lifts. Just as engines and transmissions are sometimes rebuilt or replaced, and other maintenance short of full remanufacture is performed, wheelchair lifts may need to be overhauled or replaced.³²

Lift and ramp maintenance needs vary by manufacturer and model. Certain models are “drop-ins,” while others are integral to the vehicle (often made by the same manufacturer). Bus operators who lack internal vehicle engineering and procurement expertise might disseminate a poorly worded Request for Proposals (RFP) for vehicles, which can result in the purchase of lifts or ramps that are less reliable or more difficult to maintain. According to some vehicle engineers, certain ramp models can be easily removed and replaced in a couple of hours, whereas an integral model may take twice as long to remove. Such differences can affect overall vehicle maintenance and, ultimately, vehicle reliability and accessibility.³³

Preventive Maintenance

Keeping equipment in working order begins with preventive maintenance (PM). Transit agencies should conduct periodic reviews of in-house or contractor compliance with required inspections and PM procedures.

PM checklists do not always specifically identify access equipment as items to be checked. Sometimes this equipment is identified under an “Other” category on the checklist. Using the manufacturer-recommended PM information, transit agencies should develop detailed inspection and maintenance checklists for lifts and other complex pieces of equipment. Mechanics should complete these checklists and attach them to the primary inspection form to verify that all recommended inspections and preventive maintenance have been performed. It is a best practice for transit agencies to specifically list all accessibility-related items on PM checklists, including lifts, ramps, kneeling features, securement systems, passenger restraint systems, public address systems, automated announcement systems, and signage.³⁴ Documentation of lift inspections should be included in each vehicle’s maintenance history.³⁵

Lifts and ramps should be tested with a full load. A lift might appear to work well when cycled without any weight but have problems with weight comparable to that of a passenger using a wheelchair.

It is a best practice for transit agencies to clean and lubricate lift and ramp mechanisms frequently. Particularly after storms and other bad weather, it is recommended that the lift or ramp mechanism be cleaned immediately using a pressure air hose to remove dirt, salt, and other contaminants that can affect long-term operability. While some corrosion and wear is to be expected over time, a regular and thorough lift cleaning program and a design that protects the lift from the weather can greatly improve lift reliability.

Cleaning is part of preventive maintenance. When cleaning the interior of buses, it is important to avoid sweeping or washing dirt and debris into the wheelchair lift mechanism. Accessibility equipment such as securement devices should be periodically cleaned. It is a best practice to keep components of wheelchair securement and passenger restraint systems off the floor. Left on the floor, they are tripping hazards and become dirty. Some transit agencies have added hooks to the vehicle sidewalls or to the bottom of flip-up seats to keep these devices off the floor, which has the added benefit of making them easier to reach for both drivers and riders.³⁶

Progressive Discipline

Progressive discipline is an important aspect of keeping accessibility equipment in good working order. It is important for vehicle operators and other employees to understand that performance is being monitored and that there are consequences for violating established policies. Failure to follow through with monitoring and progressive discipline can send the wrong message about the commitment of the transit agency to ADA compliance.

In particular, transit agencies should follow through vigorously and consistently on disciplinary procedures for drivers who falsely report lift or ramp failures, fail to attempt to operate a lift or ramp when requested, or pass by customers who use wheelchairs or have other disabilities.

Transit systems should seek the support of labor unions and other recognized employee associations for strict discipline in cases of documented violations.³⁷

Complaint Investigation

The thorough investigation of all complaints related to the use of fixed-route accessible service is an important aspect of monitoring and compliance. Transit agencies should ensure that all rider complaints are recorded and investigated. Agencies are required to have procedures to receive, resolve, maintain records of, and report on complaints.³⁸

Transit agencies should provide timely responses to riders with information about the outcome of investigations. Transit systems should use the information obtained from investigations to address any performance issues and to improve service as an integral part of their ADA compliance effort.³⁹

The Role of the Rider in Equipment Maintenance

Riders can help a transit agency maintain accessibility equipment.

Tell the driver to radio in the breakdown. When a rider using a wheelchair or a person with any disability wants to board a bus using the lift or ramp, but the lift or ramp is said to be broken, the rider should tell the driver to radio in the breakdown. Virtually all transit buses have radio capability.

Note the stop location, time, route number, and bus number whenever possible so that the transit agency can fully investigate the problem lift or ramp.

Ask for alternative service. If the next accessible bus is not scheduled to come for more than 30 minutes, the rider should ask for alternative service to reach his or her destination.

Ask others who may have observed the problem whether they are willing to be identified as witnesses if needed, and include their names and phone numbers in any complaints filed with the transit agency or the Federal Transit Administration.

Inform the driver of other accessibility equipment problems, such as broken or missing tie-downs, malfunctioning stop announcement equipment, or inoperable stop request activators in wheelchair securement locations. Record the bus number, date, time, route, location, and details of the problem. Inform the transit agency through the agency customer comment process.⁴⁰

Ramp Slope

Many transit agencies have switched from lift-equipped buses to low-floor ramp-equipped buses to avoid lift reliability problems. Ramps are much easier to maintain in operating condition. Also, in low-floor buses, if the automatic deployment system for the ramp fails, it is a simple matter for the vehicle operator to fold out the ramp manually so

riders can still board despite the mechanical problem. Consequently, ramp buses offer significant advantages.

There are some difficulties, however, with low-floor ramp-equipped buses. The incline can be steep if no curb is available and the ramp must be deployed to the street.⁴¹ The slope can be as steep as 1:4 (that is, one unit rise in four units of length), which is the maximum allowed by the current DOT ADA Accessibility Specifications for Transportation Vehicles.⁴² In many cases, people with disabilities using manual wheelchairs will need driver assistance to board on such a slope. The ADA requires this driver assistance.⁴³

Over the years, 1:4 ramp slopes have proved to be a challenge for many bus riders using wheelchairs. In response, the U.S. Access Board proposed a revision to restrict the maximum allowed ramp slope in new buses to 1:6 when deployed to the street.⁴⁴ However, the Board subsequently reopened the question. According to *Transit Access Report*,

The Access Board is taking another look at bus ramps, in light of problems reported in the field with ramps designed for a 1:6 slope. ...

There are two basic issues:

1. The slope uses up some of the level floor space at the top of the ramp, hindering a wheelchair user from paying the fare and turning into the aisle.
2. The upper end of the ramp remains fixed at 1:6, even though the lower end of the ramp may be flatter when the bus kneels or the ramp is deployed to a curb [referred to by the Access Board as the “grade break” issue].⁴⁵

The Access Board has heard pleas to continue allowing bus ramps with slopes as steep as 1:4,⁴⁶ particularly from the transit industry. However, the Rehabilitation Engineering Research Center (RERC) on Accessible Public Transportation submitted opposing comments. Written by Edward Steinfeld, the RERC comments specifically focused on the potential impact of requiring a ramp with no grade breaks, an idea upon which the

Access Board requested comment. The RERC “is still holding out for ramps even gentler than 1:6, a slope it calls ‘unacceptable and dangerous to wheeled mobility users.’...This would be an overly restrictive requirement and impair accessibility,” Steinfeld wrote, as a two-part ramp with a grade of 1:8 on one section and 1:6 on the other is preferable to a uniform 1:6 grade.

Steinfeld pointed out that the risks to wheelchair users of tipping over backward on the way up or losing one’s balance on the way down are the result of grades steeper than 1:6 rather than the fact that the two sections are at different slopes.

The RERC suggests that the ramp be placed in the middle or rear of the bus to avoid navigation problems around the fare box and the wheel well.⁴⁷

During the same round of new comments on the pending rulemaking, a major bus ramp manufacturer, Lift-U, urged the Board not to revise the 1:6 slope proposal. Lift-U pointed out that, given time, further technical innovation would resolve the initial problems that surfaced in attempts by various companies to meet the proposed 1:6 requirement. Lift-U recommended that the Access Board “take all relevant matters into consideration, including feasibility, before making any further revisions to the proposed 1:6 slope rule.” Lift-U said it “believes that obstacles to bus accessibility will be overcome through innovation.” One of its own new designs, Lift-U said, is a “dual-mode” device that offers both a 1:8 maximum slope when deployed to a six-inch curb and “intelligently transforms to a 1:6 slope when deployed to the roadway.”⁴⁸

Bus Boarding Issues

Bus boarding issues, notwithstanding the ADA requirements, remain unresolved in fixed-route bus service across the country. For example, in February 2013, the Disability Rights Legal Center (DRLC) filed suit against Los Angeles County Metropolitan Transportation Authority (MTA) and the MTA contractor, Veolia Transportation Services,

Inc., alleging disability discrimination against people who use wheelchairs in the provision of fixed-route bus service. According to the DRLC website,

The lawsuit, filed on behalf of Plaintiff Jose Calderon, alleges that the MTA and Veolia consistently fail to comply with long-standing Department of Transportation (DOT) regulations that mandate bus drivers to ask non-disabled individuals to move from designated priority seating areas and wheelchair securement locations so that people requiring such accessibility features may use them. For months [MTA] drivers have refused to comply with the DOT regulations and refused bus services to Calderon on the basis that there was “no room” for him as a wheelchair user.⁴⁹

The complaint filed in this lawsuit also alleges that Calderon tried switching to a different bus line but encountered the same problem. In one instance, the driver checked with other passengers—who said they would move—but then told Calderon there was no room for him and drove off.⁵⁰

Disability advocates are reporting similar problems in Denver. According to *Transit Access Report*, disability rights advocates won a consent decree that was in effect from 2001 until 2006 and thought the issue had been resolved, but it turned up again. Disability advocates have complained that passengers with grocery carts or strollers frequently block wheelchair securement spaces. An extensive complaint was filed on behalf of the Colorado Cross-Disability Coalition (CCDC) on October 11, 2013, in federal district court in Denver, asking for an injunction against the Regional Transportation District (RTD) to comply with the ADA.⁵¹ Related actions include RTD’s January 10, 2014, motion to dismiss CCDC’s demand for injunction relief.

Another of the episodes described in the complaint involved Douglas Howey, identified as a CCDC member who uses a mobility device, in a September 3, 2013, incident. The complaint states that he had waited 50 minutes for a bus that turned out to have a broken lift. When the next bus arrived, the operator told him, “I cannot get room for you.” The complaint reports that there were no other wheelchairs in the securement locations, but they were occupied by a small shopping cart and a stroller.

Mr. Howey asked the bus operator to try to make room for him, explaining that he had just waited on the other bus with a broken lift, in the heat, for nearly an hour. After a short delay, the bus operator allowed [him] to board the bus. The ... shopping cart was blocking the aisle. [He] could not maneuver past the shopping cart to get to the securement area. [He] informed the bus operator [of this]. The bus operator said nothing. The owner of the cart moved it into the opposite securement area.

CCDC charges that the RTD “allows nondisabled individuals with large objects like grocery carts and strollers to occupy the two required wheelchair seating locations” and “does little or nothing” to encourage them to move from the flip-up seats to make room for wheelchair users.⁵²

This lawsuit was subsequently settled in February 2014. The settlement involved a number of policy changes by the transit agency, including these:

- Seats in the securement area cannot be flipped up for anything other than a mobility aid.
- When a passenger with a stroller boards the bus, require the passenger to collapse the stroller prior to boarding.⁵³

Another boarding issue involves who may use the bus lift or ramp. The draft FTA ADA circular states,

If riders ask to use lifts or ramps, drivers must honor such requests and may not ask riders to disclose their disabilities before being allowed to board as standees. The Appendix D section on Lift and Securement Use [of the DOT ADA Regulation] states that these individuals “must also be permitted to use the lift, on request.”⁵⁴

Stop Announcements

The ADA requires transit agencies to announce stops on the bus and the train, and to identify bus and train routes at stops that serve more than one route. The 2005 NCD

report discussed the fact that stop and route identification announcements have great value for many riders with disabilities.⁵⁵ The lack of an effective stop announcement and route identification program can force riders onto ADA paratransit. The report⁵⁶ also described the significant challenge many transit agencies have faced in fully and properly implementing the stop announcement and route identification requirements. People across the country from the disability community have shared their concerns on this key topic.

Alice Ritchhart, Transportation Committee Chair of the American Council of the Blind, stated,

The number one thing we hear from our blind folks is problems around the announcement of stops, so people know where to get off the bus. It's still hit-and-miss at best. You can't count on the driver to announce the stops and a lot of times it seems like the automated equipment isn't working. That's probably the number one thing for those of us who are blind or have low vision.⁵⁷

Jan Campbell, Chair of the Committee on Accessible Transportation for TriMet, the transit agency in the Portland, Oregon, region, said, "A big issue is calling out stops where there are not automated stop announcements."⁵⁸

Christopher G. Bell, Esq., a member of the American Council of the Blind of Minnesota, pointed out,

We have a metropolitan council that runs, among other things, the bus system, and the bus drivers are unionized. Under the contract, they can't be disciplined for not announcing the bus stop. Although many people complain, there's really no effective action that's taken. The supervisor may talk to the driver but no change is no change.⁵⁹

The following sections describe current best practices in orientation announcements, consistency in stop announcements, stop announcement lists, automated announcement systems, automated route identification systems, policies and training, monitoring, progressive discipline, and incentives, as well as the role of riders in stop and route identification announcements.

Orientation Announcements

In addition to the requirements for stop announcements at transfer points, major intersections, and other destination points, the ADA requires the announcement of stops at intervals along a route sufficient to permit people who are blind or have vision impairments and other disabilities to be oriented to their location. If there is no major intersection, destination point, or transfer point where a stop announcement is otherwise required for a significant length of time—for example, for more than five minutes—a stop announcement might be needed for orientation. The disability community should be involved in making these determinations.

Transit agencies sometimes implement the requirements for transfer points, major intersections, and destination points, yet neglect the requirement for orientation announcements. It is also common to underestimate how often such orientation announcements should be made. The frequency of announcements for orientation purposes should be route- and system-specific, and should be planned on a case-by-case basis. More frequent announcements provide better orientation. If there are long stretches of the route without stops (for example, if a portion of the route is on a limited-access roadway, such as a highway), announcements should be made at the last stop before entering and the first stop after leaving that stretch.⁶⁰

Consistency in Stop Announcements

It is a best practice for a transit agency to develop consistency in making stop announcements, so that the information is clear and understandable. For example:

- Naming the street the bus is on and the cross street.
- Giving the street name only (such as Market and Taylor) or including street or avenue (such as Market Street at Taylor Avenue).

- Determining how major landmarks, destinations, and transfer points are described.

Once these decisions are made, they should be implemented consistently throughout the transit system on all transit modes, such as bus, bus rapid transit, and rail. In bus fleets that include vehicles with automated announcements and those with driver announcements, consistency should be maintained.⁶¹

Sherry Repscher, former ADA Compliance Officer for the Utah Transit Authority, underscored the importance of consistency, noting these additional considerations in the development of stop announcements:

- If a transit agency gives time points on a schedule, those stops should always be announced.
- If a bus route must make a detour, which can happen frequently, there should be information in the stop announcements about the detour.⁶²

Stop Announcement Lists

Lists of stop announcements for each route should be prepared that indicate what stops should be announced and detail how each required stop announcement should be made. The lists should be developed with disability community and driver input.

Stop lists may need to be changed over time and should be kept current. Several Federal Transit Administration ADA compliance reviews have found problems with transit agencies keeping stop lists current.

The lists should be readily available to vehicle operators. Drivers may not always be assigned to the same route and are unlikely to memorize the required announcements and specific announcement protocol for every route they drive. This is particularly true

for extraboard drivers—those who are available to cover for regular drivers who are unable to come in.

One good transit agency practice is to provide laminated stop announcement sheets organized by route number in the driver lounge area. A driver can take the list that applies to the route he or she will be driving and then return it at the end of the shift. Another approach is to include stop announcements on the “paddle” or “turn list” (the detailed directions for running the route) that the driver carries on each shift.

Regardless of the specific method used, it is important for vehicle operators to have ready access to detailed stop announcement lists. In some transit agencies, the lists appear only in policies and training materials, yet drivers are expected to bring the correct list with them each day. This practice is insufficient to enable successful stop announcements.⁶³

Automated Announcement Systems

Many transit agencies use automated announcement systems. The U.S. Access Board Notice of Proposed Rulemaking on the ADA Accessibility Guidelines for Buses and Vans, published July 26, 2010, proposed requiring automated stop and route announcement systems on all buses that are more than 6.7 meters (22 feet) long and operate in fixed-route systems run by public entities that operate 100 or more buses in annual maximum service.⁶⁴

Automated systems can help ensure that announcements are made, and made consistently. Even with automated technology, it is very important for transit agencies to ensure that drivers are prepared to make voice announcements if the automated system malfunctions. Automated stop announcement technology is not a panacea and does not alleviate the need for drivers to make announcements. Moreover, because any requested stop must be announced, transit systems need to maintain driver readiness to make announcements at any time.

As described in the 2005 NCD report, although automated stop announcement systems have great value, they have also been subject to a variety of difficulties, including technology that is prone to breakdowns, drivers disabling the technology or using it improperly, the inability of transit agencies to have the system announce as many stops as desired, and problems with volume and timing.⁶⁵ The FTA has addressed some of these difficulties in ADA compliance reviews; a number of FTA ADA compliance reviews have found problems with automated stop announcement systems. Transit agencies should not assume that obtaining automated stop-calling technology will allow them to reduce their efforts to implement the ADA stop announcement requirements.

If a transit agency is using automated stop announcement technology, it must decide how much additional audio content to include. Some transit agencies have included a wide range of additional content, from safety announcements to holiday greetings. In general, unnecessary audio content, such as “Have a nice day” and holiday greetings, should not be included. Audio content that relates to accessibility features needed by passengers with disabilities, such as elevator outages, should be included, as should translations into other languages. Any audio content that is unrelated to stop announcements should not be confused with the ADA-required announcements. For example, all ADA stop announcements could be made in a certain recognizable voice or preceded by a recognizable tone.⁶⁶

Route Identification Announcements

At stops that serve more than one route, the transit agency must provide a way for a person who is blind or has a vision impairment or other disability to know which vehicle to enter or to be identified to the vehicle operator as a person seeking a ride on a particular route. Route identification helps riders who may not be able to recognize the bus route or destination know when the desired bus has arrived. This requirement applies to buses and to all forms of passenger rail.

Route identification is a poorly understood ADA requirement. Many transit agencies have focused attention on onboard stop announcements and have missed the importance of route identification. Some have external route announcements in their formal policies but do not perform route identification with any level of consistency.

External announcements on vehicles is the approach to route identification required by the ADA. Other approaches—such as various devices that enable riders to identify themselves to vehicle operators as wanting to ride on a particular route—have limited usefulness. These devices should be viewed as supplements to a good external announcement policy and program.

Transit agencies should purchase vehicles with external route identification announcement systems.⁶⁷

External route announcement systems can be driver-activated or automated. Some transit agencies have systems that make announcements each time the door is opened. Some are programmed to make repeating (looping) announcements at set intervals so that passengers who may not be close to the door when the initial announcement is made can hear the repeated announcement.

Both the route and the destination should be announced, so a rider with a disability can determine whether he or she is going in the correct direction.

As with automated stop announcements, automated route identification technology is constantly changing. In addition to meeting with potential vendors, it is helpful to check out systems used by peers when considering automated route announcement systems.⁶⁸

If automated route announcement technology is not used, drivers should call out route information after pulling up to stops and opening the door if there are any waiting passengers. The announcement should be loud enough for waiting passengers to hear. An external speaker is helpful to ensure that announcements are audible.

Even with automated route announcement systems, drivers must always be trained and ready to make operator announcements in the event of an equipment failure.⁶⁹

Policies and Training

Transit agencies should have detailed, written policies and procedures that address each of the ADA stop announcement and route identification requirements. Some transit systems do not have comprehensive policies for every regulatory requirement. A lack of written policies can contribute to inconsistent compliance. The policies should be covered thoroughly in employee training.

In addition to conveying ADA requirements and policies, training should stress the importance of making announcements. Vehicle operators are not always aware that announcements are necessary for accessibility and that a lack of announcements can be a serious safety problem for riders with disabilities. For example, disembarking at the wrong stop can be a major problem for a person who is blind or has a vision impairment or cognitive disability, and who has been trained to travel to and from specific stops. Also, a failure to make stop and route announcements leads to increased reliance on paratransit, which may negatively affect both passengers and the transit agency.

Another issue to cover in training is that bus drivers sometimes do not believe they need to make stop announcements if they do not notice any riders with disabilities on the bus, or if they know all the riders and believe that none need announcements. This is a misunderstanding of the ADA requirement. Stop announcements are important for many riders with hidden disabilities, and they are helpful to other riders as well. They should be made for any and all riders as a feature of universal design.

Riders with disabilities should be involved in training. They can put a human face on the importance of stop announcements and can stress the serious safety issues involved. Transit agencies should also train drivers to respond to riders who might complain about

the presence of stop announcements. In addition, a best practice is to place public information cards on buses explaining the purpose and need for stop announcements.

Many training programs for bus drivers include a period during which trainees ride with and learn from experienced driver-trainers. Transit agencies should be sure that the experienced drivers assigned to new vehicle operators are performing their stop announcements correctly. Teaming trainees with drivers who do not make stop announcements correctly or are not committed to following established policies and procedures can undermine training. Driver-trainers should have a documented track record of exemplary performance of stop announcements.⁷⁰

Monitoring, Progressive Discipline, and Incentives

Monitoring

Proactive monitoring and progressive discipline programs are vital to the successful implementation of onboard stop announcement and route identification policies.

Onboard security camera systems are one monitoring aid. Transit agencies that record onboard activity continuously (as opposed to using event-activated camera systems) can use the audio and video recordings to verify that stop and route announcements are being made correctly. This tactic may need to be negotiated with driver unions or other recognized employee associations.

Both internal monitors and road supervisors can conduct monitoring. If a transit agency uses employees for monitoring, it should select people the drivers will not recognize. For example, large transit agencies can use supervisors from one garage to monitor an area where they do not regularly work. Or managers and office staff can monitor while they commute to and from work. Smaller transit agencies may find it more difficult to use in-house employees effectively. Transit agencies of any size should also consider secret rider programs that use regular riders to conduct effective monitoring. Riders can be trained to make and report their observations.

Transit agencies in Washington state have an innovative monitoring program. Developed by the Washington State Transit Insurance Pool (WSTIP), the Guest Rider Program is a best practice in monitoring. Member transit agencies provide seasoned, high-performing road supervisors and vehicle operators to make observations in each other's transit systems. Participating members are observed twice a year. Guest riders are trained to blend in with the ridership and to report their observations of individual vehicle operator performance and the entire transit system. Stop announcements and other aspects of ADA compliance are among the many areas of driver skills and vehicle functions observed by guest riders. For more information, contact the WSTIP Member Services Manager at (360) 586-1800, extension 213.⁷¹

Progressive Discipline

Monitoring should be combined with progressive discipline. Disciplinary policies should be negotiated with labor unions and other recognized employee associations and clearly communicated to drivers. The level of discipline should be on par with that for other safety violations; it can be a safety risk if a rider with a cognitive disability or one who is blind or has a vision impairment disembarks at the wrong stop. Intentionally disabling the automated announcement or PA system equipment (except in cases of malfunction) should be elevated to the highest level of discipline. It is important for vehicle operators and other employees to understand that performance is being monitored and that there are consequences for violating established policies. Failure to follow through with monitoring and progressive discipline can send the wrong message about the commitment of the transit agency to ADA compliance.⁷²

Incentives

Recognition and other incentives should also be considered when drivers achieve high levels of performance. Employee of the month awards, pins and badges, public recognition, and financial incentives can be useful components of an effective stop announcement program.⁷³

Complaint Investigation

Transit agencies should ensure that all complaints related to the use of fixed-route accessible service are recorded and investigated. Agencies are required to have procedures to receive, resolve, maintain records of, and report on complaints.⁷⁴

Transit agencies should provide timely responses to riders with information about the outcome of investigations and should use information obtained from investigations to address any performance issues and improve service as an integral part of their ADA compliance effort.⁷⁵

The Role of Riders

Riders can promote an effective stop announcement and route identification program in the following ways:

- ***Wait in the immediate area of the bus stop***, so drivers will know to stop and announcements will be easier to hear.
- ***Get involved***. Participate with the transit agency to develop stop lists and announcement procedures.
- ***Inform the bus driver and the transit agency*** if stops are not called out or automated announcement technology malfunctions. Record the bus number, date, time, route, location, and nature of the problem. Use the customer comment process to contact the transit agency.⁷⁶

Fully Accessible Fixed-Route Systems

There are many ways transit agencies can and should go beyond the basics to create fixed-route bus systems that are fully accessible to people with disabilities. Some

agencies have implemented exceptional practices that further increase the accessibility of their fixed-route systems.

For example, Terry Parker, former Accessibility Services Manager for Lane Transit District in Eugene, Oregon, described how fixed-route accessibility should go beyond the standard components of “very accessible vehicles, very effective maintenance and stop announcements, very effective rider and driver training, and very accessible bus stops, plus accessible sidewalks and streets so that people with disabilities can use those stops.” Lane Transit District includes these additional accessibility measures:

- All bus stops have square bus stop poles, making the stops detectable by people with visual impairments. These are the only square poles used in the community. (See section on Bus Stops.)
- A transit host and training program provides support for people who can use the fixed-route service only if someone is at the key stations to help them with transfers. The hosts are present at these stations from 8:00 a.m. to 5:00 p.m. every weekday. These riders would be using paratransit if the hosts were not available to assist.

Parker explained:

There’s been enough one-on-one training and a “family” meeting (we call it natural support development) so that someone is responsible for getting the rider to their bus stop. If the person doesn’t show up at the station for their scheduled transfer, then there is a back-up protocol to find them. Riders are trained to stay on a bus if they miss their stop, because each bus will eventually come back to the station. These services make sure people who are vulnerable are supported and feel safe on the fixed-route system.

Further, we contract with a non-profit agency that specializes in working with people who have multiple and severe disabilities. They do the transit training and host program. They have all these contacts with the disability community that I would never have . . . and lastly, there’s something about developing the trust of the community. We make mistakes, but because of

our strong relationships, riders and advocates have not turned to ADA enforcement. We just said “mea culpa” and fixed the problem.⁷⁷

Lane Transit in Eugene has also developed its own specialized securement system for scooters.⁷⁸ (See Securing Mobility Devices in chapter 6.)

Another example of exceptional practices in accessibility can be found in Corpus Christi, Texas, where approximately half of the buses have three securement locations per fixed-route bus rather than the required two. Also, the buses have had state-of-the-art securement systems since 2008. As a result of these and other efforts, lift boarding on the fixed-route transit service increased from 27,475 a year in 2006 to 110,961 in 2012.⁷⁹

People with disabilities have many ideas for new ways transit agencies could improve the accessibility of fixed-route bus systems. For example, Julie Carroll, Senior Attorney Advisor to the National Council on Disability and a person who is blind, pointed out that people who are blind or have vision impairments should be able to call and find out which corner of an intersection the bus stop is on.⁸⁰

Cliff Perez, Systems Advocate at the Independent Living Center of the Hudson Valley and Chair of the National Council on Independent Living Transportation Committee, said,

Specifically regarding fixed-route buses and advertising, they now have wraparound ads where the whole bus becomes an advertisement. My issue isn't that they are advertising, but it makes it difficult for some people to know what the heck bus it is! Is it a public bus; is it some other kind of bus? It makes it difficult for people with visual impairments or learning disabilities. Can't we find a way to solve that problem?⁸¹

Chapter 1 recommendations are listed at the end of the report.

CHAPTER 2. Rail Transit

Chapter Overview

This chapter focuses primarily on two developments since the publication of the 2005 NCD report:⁸² (1) progress toward full-length platform-level boarding on commuter and intercity rail, and (2) Amtrak, both its significant obstacles for people with disabilities and areas where change may be happening.

One rail issue that, unfortunately, has not changed is that some older subway systems—especially in the northeast—still have many inaccessible stations, although this is not universal. The 2005 NCD report explained that this is partially due to the fact that the ADA required access only to key stations. According to disability advocate Christopher S. Hart, U.S. Access Board public member and former director of urban and transit projects at the Institute for Human Centered Design,

We have a tale of three types of metro rail: inaccessible legacy systems, accessible legacy systems, and newer accessible systems. All three types have barriers yet to be addressed. Nearly 25 years after the ADA and 40 years after Section 504 of the Rehabilitation Act, the New York City Metropolitan Transit Authority (NYC MTA) is the poster child for inaccessible legacy systems, with fewer than 100 accessible stations out of approximately 450. And the NYC MTA is not alone: Systems in New Jersey, Philadelphia, and Chicago also have many inaccessible stations. On the other hand, Boston's Massachusetts Bay Transportation Authority (MBTA) has made all but four of its subway stops accessible (three are in design or construction) and has plans to address its remaining inaccessible streetcar and commuter rail stations. Thus, America's oldest subway will be 100 percent accessible before some of the other systems achieve 50 percent accessibility. Congress should (as it has for Amtrak) set aside funds specifically for achieving station accessibility, including platform connectivity, detectable warning installation, elevators, ramps, and level boarding. There should be clear milestones and funding to achieve full accessibility.⁸³

Subpart A. Level Boarding

Overview

One of the most significant policy changes since the publication of the 2005 NCD report⁸⁴ was the 2011 U.S. DOT final rule that changed the ADA regulation regarding full-length platform-level boarding on commuter and intercity rail (Amtrak). This is referred to as “level boarding” or “level-entry boarding.” In level boarding, the height of the platform and the door height of the passenger car are aligned so that a passenger using a wheelchair can seamlessly move from one to the other (usually with the assistance of a bridge plate).⁸⁵

In 2006, DOT proposed⁸⁶ to require level boarding at new commuter and intercity rail stations from a fully accessible high platform, with a ramp or bridge plate if necessary, making it possible for everyone to board any accessible train car. The proposed rule required avoiding, if at all possible, the use of small mini-high platforms to provide disability access to the train on commuter and intercity rail. Portable station-based lifts were also to be avoided, according to the proposed rule.

DOT and the disability community saw small mini-high platforms as a poor form of access in commuter and intercity rail (in contrast to, for example, light rail, where they are not considered as objectionable). Mini-high platforms put a person with a disability out of the general public way, sometimes out in the rain or snow. Even worse, they force a train to move in small increments to align its cars, one by one, with the mini-high platform (also known as “double stopping” or sometimes “re-spotting”). This is a very difficult and time-consuming procedure, which must be done on a permanent basis if mini-high platforms are allowed. The only way to avoid double-stopping would be to confine people with disabilities to one car on the train, and the ADA rightly requires that all cars be accessible. Thus, the use of mini-high platforms would necessitate either the long-term operationally onerous practice of double-stopping or would institutionalize a permanent segregated solution in which, no matter how many accessible cars are

present, people who cannot walk up the steps would be limited to one car on the train. The longer setback platform—a boarding solution developed later—avoids many of the problems of mini-high platforms.⁸⁷ (For more about setback platforms, see the New Boarding Options section below.)

Portable station-based lifts are also to be avoided because of numerous problems associated with their use, including a variety of human errors with staff deployment of the lifts. For example, some people have reported being asked to come to the station an hour earlier than their departure time, while nondisabled passengers were asked to come only 10 minutes in advance.⁸⁸ Others reported that railroad personnel were inflexible in allowing them to change their departure point from the train because of staffing problems in deploying station-based lifts, even though other passengers could easily change their minds.⁸⁹

The National Disability Rights Network also expressed dissatisfaction with portable station-based lifts in its 2013 report on Amtrak titled *All Aboard (Except People with Disabilities) – Amtrak’s 23 Years of ADA Compliance Failure*:

Stations must also provide accessible means of boarding the trains. This can be done by providing raised platforms that allow for level boarding of the train. Most stations have rail platforms at or below the level of the tracks, however, and the floor of an Amtrak railcar is typically either 15" or 48" above the top of the rails. At these stations, Amtrak’s solution is to provide a portable manual lift as the means to achieve boarding. However, there are still some stations that do not provide even this basic means of access.⁹⁰

Before the new DOT regulation, only if the rail system determined (with the concurrence of the Federal Railroad Administration and the Federal Transit Administration) that level-entry boarding was operationally or structurally infeasible could the rail system use an approach other than level boarding, such as mini-high platforms or lifts. Even in such cases, the rail system would be required to ensure that access was provided to each accessible car on the train.⁹¹

One common reason rail operators gave for using mini-high platforms was oversized freight traffic on the same rail lines. Even in such cases, however, other design options were often possible to provide full platform access, such as a passing siding or gauntlet track.⁹²

- A passing siding is a set of tracks offset from the main track where a train can pull off to stop and allow another train to pass on the main track.
- A gauntlet track is an offset track parallel to the main track that allows a train to pass a fixed object, such as a high-level boarding platform. A freight train with a wide load takes the gauntlet track, which is farther from the platform, to avoid scraping the platform.

Thus, high-level accessible platforms, with bridge plates if necessary, were seen as the only proper solution, particularly in new construction. Bridge plates were deemed acceptable, given the wider gaps that are often unavoidable in commuter and intercity rail systems.

DOT Final Rule on Boarding Platforms

In 2011, DOT published a final rule⁹³ that amended the DOT ADA regulations in a number of ways. One of the most significant amendments was to require intercity, commuter, and high-speed passenger railroads to ensure, at new and altered station platforms, that passengers with disabilities could get on and off any accessible car of the train. Passenger railroads are required to provide full-length platform-level boarding at new or altered stations in which no track passing through the station and adjacent to platforms is shared with existing freight rail operations. For new or altered stations in which track passing through the station and adjacent to platforms is shared with existing freight rail operations, passenger railroads will be able to choose among a variety of means to ensure that passengers with disabilities can access each accessible train car that other passengers can board at the station, include car-borne lifts, long setback

platforms, mini-high platforms, and station-based lifts. The Department will review the method proposed by each railroad to ensure that it provides reliable and safe services to people with disabilities in an integrated manner.

Passenger railroads that choose not to provide level-entry boarding at new or altered station platforms must obtain concurrence from the Federal Transit Administration (FTA) or the Federal Railroad Administration (FRA) for the means they choose to meet the performance standard. As part of this process, railroads must show how the means they choose ensures the reliability and safety of integrated service to passengers with disabilities.

Many of the comments opposing level-entry boarding asserted that higher platforms would interfere with actual or potential freight movement.⁹⁴ DOT reported that the FRA reviewed these claims and determined that while there could be some risk to a railroad employee riding on the bottom step of some freight equipment with platforms at the 15-inch level, this risk is normally addressed in the freight railroad operating rules and would be taken into consideration during the review conducted by the FRA for each new or altered platform. Having examined the dimensions of even the overwidth freight cars used to transport loads such as defense cargoes and airplane components, the FRA found that no freight cars would conflict with level-entry boarding platforms at 15 to 17 inches above the top of the rail (ATR).

If a platform being constructed or altered is not adjacent to track used for freight, but the track and platform are used by more than one passenger railroad (e.g., Amtrak and a commuter railroad), the possibility exists that the platform will serve cars with different door heights. In this situation, the level-entry boarding requirement⁹⁵ still applies. Generally, the platform should be level with respect to the system that has the lower boarding height, because it is not safe to make passengers step down (or be lifted down or use ramps to go down) to board a train. For example, if Amtrak operates through a station with cars that are 15 inches ATR and a commuter railroad uses the same platform with cars that are 25 inches ATR, the platform would be level with the Amtrak cars and the commuter railroad would have to provide another means of access. In all

cases in which mixed rail equipment will be used, the rule requires that the railroads involved consult both the FRA and the FTA. As in other cases in which level-entry boarding is not used, the railroad must obtain FTA or FRA approval for the means it wants to use to meet the performance standard.

Regarding the final regulation language that discusses “track passing through stations and adjacent to platforms is shared with existing freight rail operations,” the specific wording is important. Some stations may serve lines that are shared by passenger and freight traffic. Even if freight traffic does not actually go through a particular station (e.g., because it bypasses the station), level-entry boarding is required. There could also be situations in which multiple tracks pass through a station, and freight traffic uses only a center track rather than a track adjacent to a platform. In such cases, the new or altered platform would be required to provide level-entry boarding. It is important to note that this language refers to “existing” freight rail traffic and not to the possibility that freight traffic might use the track in question at some future time. Likewise, if freight trains have not used a track passing through a station for a significant period (e.g., the past 10 years), DOT does not view this as constituting “existing freight rail traffic.”

If a railroad operator wishes to provide access to its rail cars through a means other than level-entry boarding, it must provide an integrated, safe, timely, reliable, and effective means of access for people with disabilities. To help railroads choose the most suitable option, the rule requires a railroad without level-entry boarding that does not want to use car-borne lifts to perform a cost comparison (capital, operating, and life-cycle costs) of car-borne lifts versus the means preferred by the railroad operator. It must also compare the abilities of the two alternatives (i.e., car-borne lifts and the preferred means) to provide service to people with disabilities in an integrated, safe, reliable, and timely manner. In the latter comparisons, railroads are strongly encouraged to consult with interested individuals and groups, and to make the comparison readily available to the public, including people with disabilities.

To ensure that the chosen option works, the railroad must submit to the FRA or the FTA (or both, if applicable) a plan explaining how its preferred method will provide the

required integrated, safe, reliable, timely, and effective means of access for people with disabilities. The plan must explain how boarding equipment (e.g., bridge plates, lifts, ramps, or other appropriate devices) and platforms will be deployed, maintained, and operated, and how personnel will be trained and deployed to ensure that service to people with disabilities is provided in an integrated, safe, timely, effective, and reliable manner. If a plan fails to meet this test in the view of the FTA or the FRA, either agency can reject it or require the railroad to modify it to meet the objectives of this provision.

DOT also provides, in § 37.42(f), for a maximum gap allowable for a platform to be considered “level.” However, this maximum is not intended to be the norm for new or altered platforms. The Department expects transportation providers to minimize platform gaps to the greatest extent possible by building stations on tangent track and using gap-filling technologies, such as movable platform edges, threshold plates, platform end boards, and flexible rubber fingers on the ends of platforms. DOT encourages the use of gap management plans and consultation with the FRA or the FTA for guidance on gap safety issues.

In 2012, DOT noted in a published Q&A that under Section 504, public entities that receive federal funding must provide full-length platform-level boarding for all new and altered platforms adjacent to tracks that the public entities themselves own and control, even if the tracks are shared with freight railroad traffic.⁹⁶

DOT also wrote that “rare or token passage of freight trains” could not be counted as existing operations.⁹⁷ Amtrak indicated that it is guided by the FRA interpretation, advising Congress that this interpretation prompted a reassessment of its long-term plans for rail station ADA compliance. Amtrak stated in a report to Congress on August 7, 2012,

At stations where multiple tracks are available to carry freight—or multiple platforms exist for passenger loading—a platform-by-platform and track-by-track analysis and subsequent negotiation with the host railroad will be conducted to determine the proper approach.

Richard Devylder, former senior advisor for accessible transportation for U.S. DOT,⁹⁸ commenting on the progress signified by this regulation, said, “The other option is mobile lifts. The use of mobile lifts is still an option, but it’s been made clear to the rail industry that it is the last option, and DOT will push back and fight against it as much as we need to.” Commenting on a recent situation in a state in the Great Lakes region, Devylder said, “The FRA administrator, Joe Szabo, is not backing down in his interpretation of this rule. DOT believes that level boarding is the most integrated way for a person to access the train. The industry has not presented much evidence to show differently. A meeting occurred with congressional, state, and city officials, and the conclusion was that there’s going to be level boarding on both sides of the tracks.”

New Boarding Options⁹⁹

The disability community, along with many others, has always held the view that full-length platform-level boarding, with bridge plates or other gap fillers if necessary, is the best method to provide wheelchair access to board a train. Level boarding provides fully integrated, rapid boarding and alighting for all passengers, including wheelchair users and those with other mobility disabilities. Further, level boarding avoids the problems associated with other boarding methods: the double- or multiple-stopping (sometimes called re-spotting) associated with mini-high platforms; numerous problems related to mobile lifts (including their failure to provide full accessibility, staffing problems, and how time-consuming they can be); and the problems with vehicle-based lifts (including the time required to operate them and their potential for breakdown, which increases with the age of the train car and lift).

Where full-length platform-level boarding is not possible or not required, there has been much discussion about what method is second best. It turns out that different solutions may be second best in different situations. Moreover, the evolution of technology is providing new options.

Mini-high platforms are small—some of them a mere six feet by six feet. A better option is larger setback platforms, which are at least 60 feet long and serve more than one door on a train, possibly more than one car. The more doors they reach, the better. This option is not often considered, but it can provide the second-best solution if the full platform will not be raised. Larger setback platforms are not mini-high platforms and should not be mislabeled as such. Setback platforms provide a more integrated solution than mini-high platforms or lifts, because nondisabled passengers are more likely to use them. They can give all passengers the ability to board more than a single car without climbing steps. Some high-tech movable setback platforms are being developed for use with horizontal gaps up to four feet or more.

Where passenger transportation shares track with freight operations (such as on Amtrak and most commuter rail), any fixed high-level platforms, whether they span the full platform or only a portion of it, must be set back far enough to allow the occasional wide freight load. Several options exist that can compensate for the setback and reduce the resulting horizontal gap:

1. Passenger boarding can be provided with a retractable platform edge that can be raised and lowered like a drawbridge. Because wide freight loads are a rare occurrence, the retractable edge can normally be left extended and the resulting small horizontal gap (usually four to six inches) can be bridged with a short ramp or bridge plate. Because of the variety of obstacles to wide freight (e.g., narrow bridges and tunnels, wayside equipment), any wide freight passage is planned and announced far in advance, giving ample time to retract the edge. This option has the advantage of being compatible with full-length platform-level boarding.
2. A recently developed prototype platform can be moved in and out to achieve the same effect as a retractable edge and accommodate large horizontal gaps.

3. A third option is a gauntlet track—an offset track parallel to the main track that allows a train to pass a fixed object, such as a high-level boarding platform. A freight train with a wide load takes the gauntlet track, which is farther from the platform, to avoid scraping the platform. This option has the advantage of being compatible with full-length platform-level boarding.

A setback platform may not always be the cheapest option, but it is a significantly smaller capital investment than raising the entire platform to provide full-length platform-level boarding.

As Gary Talbot, Amtrak’s Program Director for the Americans with Disabilities Act, pointed out, “When full-length platform-level boarding is out of the question for some reason, what’s second best is not one-size-fits-all. Rather, a combination of solutions is much superior to the solution we see at most stations today: station-based mobile lifts. A mix of car-borne lifts and setback platforms makes a lot of sense, and as more setback platforms and full-length level boarding platforms are constructed, the need for car-borne lifts decreases.”¹⁰⁰

Resistance to Double-Stopping

DOT’s resolve to avoid boarding solutions on the train that necessitate double-stopping may be tested, given the practices found in some rail systems. For example, in August 2013, *Transit Access Report* described a commuter rail system serving Southern California with a published policy that provides for re-spotting trains at mini-high platforms “upon passenger request.” It appears, however, that the policy is not advertised to passengers, even though the policy was required by the FTA as a condition of building the mini-high platforms at two stations, one new station recently built and one altered. Available public information suggests that, if anything, it appears that the system “must have a policy of *discouraging* such requests.”¹⁰¹

The Metrolink website makes no mention of a double-stopping option. Wheelchair users are advised only that they “can only be accommodated on ... the passenger car that stops opposite the platform access ramp.” This platform access ramp is the mini-high platform at one end of each low-level platform from which accessible boarding is provided to the train. Standard procedure calls for the cab car to be spotted at the mini-high platform.

However, Metrolink written policy is for conductors to re-spot the train if the cab car is at capacity or a passenger requests the extra move. This is not to say it is ever implemented.¹⁰² “If there are multiple passengers wanting to board or alight at the same stop,” a transit agency report stated, “[the agency’s] experience shows that they will generally all board or alight at the mini-high platform location during the initial spotting of the train. However, if a double or triple stop is required due to passengers requesting to enter a particular car, then a delay would be encountered (7.5 to 11.5 minutes on average for each additional stop, depending on orientation of the train). Because of the rarity of this potential occurrence, operational delays are not attributed to the use of mini-high platforms.”

Because of the 2011 DOT rule, the transit agency was required under ADA regulations to justify its choice of the mini-high platform accessibility option to the Federal Transit Administration before constructing the new station and altering the existing one. The agency confirmed its commitment to the Metrolink policy on double-stopping, and the FTA was mollified.¹⁰³

The policy appears as 9.3.2, Spotting Cab Car at Mini-High Platform, in the rail system “Operational Supplemental Instructions.” It states, “If the Car is at capacity, or upon passenger requests, Conductors shall re-spot the train as necessary.”

Subpart B. Amtrak

Overview

Many people with disabilities successfully use Amtrak, especially in the northeast corridor that includes Boston, New York, Washington, DC, and other East Coast cities, as well as in other parts of the country, including Northern California. However, many significant obstacles remain to such use. One obstacle was described in the previous section on level boarding. Others include access to stations, cars, and reservation services, and communication access issues. These problems occur in a troubling context for Amtrak as a whole, according to a report from Amtrak's own Office of Inspector General. This chapter explores all of these issues.

In October 2013, the National Disability Rights Network (NDRN) published an extensive report titled *All Aboard (Except People with Disabilities) – Amtrak's 23 Years of ADA Compliance Failure*. Curtis L. Decker, Esq., Executive Director of NDRN, introduced the report:

While many transportation providers around the country have shown that it is possible to provide accessible services for people with disabilities, one carrier—the National Railroad Passenger Corporation, or Amtrak—has lagged far behind. People with disabilities who travel on Amtrak have faced numerous barriers to using Amtrak. Some have faced inaccessible trains, others have been unable to purchase tickets to their destinations because the platforms and stations were inaccessible, and some have had to disembark at a station that was not their ultimate destination just so they could get off the train or out of the station. People with disabilities have also been forced to suffer embarrassment, discomfort, and other indignities due to a lack of accessible bathrooms and other facilities and services. ...

Although Amtrak has repeatedly said that they are moving toward accessibility, this report shows that progress has been uneven, spotty, and in some cases non-existent. Most shocking is how blatant and obvious many of the accessibility issues demonstrated in this report are. Does it really take more than 23 years to provide a ramp into a station with only

stairs, provide and properly mark accessible parking, and remodel inaccessible bathrooms and counters to make them accessible?

In July and August 2013, around the 23rd anniversary of the passage of the Americans with Disabilities Act, advocates with the Protection and Advocacy network and allied advocacy groups visited Amtrak stations around the country to assess whether they are accessible for people with disabilities. They found many problems—many stations that are completely inaccessible and many stations where it is clearly difficult for people with disabilities to navigate, even 23 years after passage of the ADA. ...

It is time for Amtrak to stop making excuses and start making its system accessible. People with disabilities have been waiting for too long. ...

These barriers matter. Many people with disabilities, unable to drive, rely on public transportation to get to work, to visit their families, for day-to-day life activities. Rural areas in the United States have been losing access to other modes of public transportation, meaning that people with disabilities must rely more than ever on the services that remain. U.S. carriers cut domestic flights by over 21 percent in small airports between 2007 and 2012, and intercity bus transportation coverage declined from 89 percent in 2005 to 78 percent in 2010. Where Amtrak provides service, it can be a lifeline that allows people with disabilities to live full and active lives, and gives them the freedom to travel. Even in more urban areas, where more options for travel exist, Amtrak provides other ways to commute or more easily travel around the region.

Amtrak, which calls itself “America’s Railroad,” should set an example of full accessibility for people with disabilities. As the nation’s largest passenger rail system, it should be the gold standard for how to best serve people with disabilities, not the bottom of the barrel. ...

This report discusses the history of how Amtrak has failed people with disabilities by failing to effectively use the hundreds of millions of dollars it has received to comply with the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.¹⁰⁴

Amtrak Stations

One very significant issue is access to Amtrak stations. As Richard Devylder, former DOT senior advisor for accessible transportation, stated, Amtrak has been out of

compliance with the ADA since July 2010, by which point Amtrak stations, including platforms, were required to be accessible to people with disabilities. Many stations and platforms are still not accessible. The ADA gave Amtrak 20 years to achieve full station access, but it appeared to do very little for 17 years.¹⁰⁵

Also according to Devylder, “One of the top priorities for Amtrak is probably about a dozen stations that do not have connectivity. You may be able to get on a train from a station and leave, but if you come back, you can’t get to the other side of the tracks where, for example, the bus may be, or where you left your car in a parking lot. This is because there is neither an accessible bridge over, nor an accessible path of travel under, the track, to link the two.”

Amtrak was engaged for almost two years in a legal battle over the accessibility of a rail station with this connectivity problem in Philadelphia, called Paoli Station.¹⁰⁶ There were two main issues in the case, filed in May 2012: the connectivity issue and the lack of level boarding platforms (also see the section on Level Boarding, above). Passengers challenged the use of lifts as an acceptable means of boarding railroad trains, seeking a ruling that lifts do not satisfy the “readily accessible and usable” standard.

In a sign that change at Amtrak may be happening, the Disability Rights Network of Pennsylvania and Amtrak released an announcement of the settlement of the Paoli case in March 2014 titled “Amtrak and Clients of Disability Rights Network Work Together to Improve Accessibility at Paoli Station.”¹⁰⁷ It stated that the agreement would result in the full accessibility of Paoli Station for people with mobility disabilities. Renovations will include the installation of level boarding platforms and an increase in accessible parking, accessible restrooms, and an accessible path of travel to new accessible platforms on both the eastbound and westbound sides of the station.

The 2013 NDRN report also addressed Amtrak stations:

Amtrak’s own Office of Inspector General (OIG) conducted an investigation to assess Amtrak’s noncompliance with the ADA’s

requirement to make all its stations accessible by July 2010. The OIG report noted that “Since 1990 Amtrak has made very limited progress in making its stations ADA-compliant; only 10 percent of served stations required to be compliant were reported as compliant.”

The OIG report notes that “In February 2009, Amtrak reported that 48 stations servicing 34 percent of the FY 2010 ridership were ADA-compliant. Almost 2½ years later, no additional stations have become ADA-compliant, leaving 434 stations that have not yet been deemed ADA-compliant.” The OIG report also noted that while Amtrak had developed a survey assessment to identify the work needed to bring all Amtrak stations into ADA compliance and had completed assessments on 77 of 104 stations to be evaluated in FY 2011, and some design work had been done, no construction contracts had been awarded as of September 30, 2011. The OIG report concludes that “Amtrak’s approach to managing the ADA program lacks clear lines of authority, responsibilities, and accountability.”

... [In the NDRN survey,] some stations were shockingly inaccessible 23 years after the passage of the ADA. In Tuscaloosa, Alabama, Malta, Montana, Longview, Texas, St. Albans, Vermont, and Ashland, Virginia, the station buildings had a step or steps into the station building with no ramps. Restrooms in those stations were completely inaccessible, with no grab bars or other accessible features.

In fact, restrooms remain a considerable problem throughout Amtrak’s system. Of the stations visited by P&A staff that had restrooms, nearly half were found to have barriers to accessibility.¹⁰⁸

Complex Ownership of Stations

An article in the May 28, 2013, issue of *Transit Access Report* described the complex interrelationships among Amtrak, the local transit authority, the state, and the local municipality in terms of who owns the station, platform, and related elements.¹⁰⁹ Amtrak often cites these interrelationships as obstacles to providing access. Disability advocates counter that they are a way for Amtrak to “pass the buck” to other entities.¹¹⁰ The 2013 NDRN report also addressed the issue:

Amtrak has consistently pointed to the fact that they do not have full control over many stations that it serves as a reason for failing to make

their services accessible. Congress recognized this was an issue back when the ADA was passed, which is why Amtrak was given 20 years to come into compliance with the ADA requirements. Congress also created a formula to allow other joint station owners to equitably share in the costs of making the stations accessible, even while Amtrak maintained primary responsibility. Amtrak could have spent the 20 additional years they had to come into compliance with the ADA working with local transit authorities, freight carriers, and state and local entities to address these issues. Instead, Amtrak chose to wait until the 20 years was almost over and then say they had no time to work with others to make the stations accessible.¹¹¹

Amtrak Cars

Another significant Amtrak issue is the accessibility of rail cars. Dennis Cannon, former transportation accessibility specialist for the U.S. Access Board and currently a private consultant,¹¹² said that “the cars are the real issue. They’re really not accessible at all. If you do standing transfers, they’re okay, but they’re practically worthless for anything else. We now know that you can, for example, in fact, design cars that have truly accessible bathrooms.” Cannon noted that rail cars have extremely long lives, so there are many inaccessible cars still in the system.¹¹³

Amtrak sleeper cars are another issue. Jan Campbell, Chair of the Committee on Accessible Transportation for TriMet in Oregon, said that if one travels in an Amtrak sleeper car,

... there’s no way to get out of that room; you just stay in that room the whole trip. You pay the same fare, but you don’t get to use any of the amenities that other passengers use, like happy hours or movies. They do bring the food to you, but I had to eat off my toilet seat because it was such a small room—a sink, a toilet, and bunk beds.¹¹⁴

Regarding the Amtrak sleeper cars, Dennis Cannon added:

There’s an issue about where controls are for the lights, and also regarding the door latches and how they work. You can actually latch the door shut. But I was in one where the interior latch was a hook, and so if I

had hooked it, the conductor could never have gotten in; yet he was coming in the morning to wake me up and also to bring me my food. There has to be a system where they can actually open it from the outside. Yet it has to be latchable, because when it was unlatched, as the train went around corners, the door would slide open and closed, open and closed ...

In 2013, Amtrak was producing new long-distance passenger rail cars, the first units of which were nearing completion, as reported by PR Newswire in an article that referred to disability access improvements:

The new long-distance cars will replace and supplement the existing fleet and allow cars built in the 1940s and 1950s to be retired. The sleeper, diner and baggage/dormitory cars will likely operate on eastern routes ... with the baggage cars used nationwide. The first units are expected to enter revenue service during the summer of 2014. All 130 cars are expected to be delivered by the end of 2015.

Passengers will experience many improvements, including modern interiors with better layouts, better lighting and more efficient air conditioning and heating systems, additional outlets to power personal electronic devices, improved accessibility for passengers with disabilities, and bicycle racks in the baggage cars.¹¹⁵

Disability advocate Christopher S. Hart, U.S. Access Board Public Member and former Director of Urban and Transit Projects at the Institute for Human Centered Design, had the opportunity to look at the modules for the new cars. He reported, "Amtrak and its suppliers made some progress with these modules but they also had glaring missed opportunities obvious to all in a quick visit. The missed opportunities include, in the sleeper module, the height of switches, the locations and number of plugs and other controls, the continued lack of a truly useful table, and the lack of an adequate turning space. In the restroom, the configuration lacked space for a personal care attendant and a clear floor space. It was still missing a powered door and lock, as are standard on European and Japanese trains. Also, it appears that the Federal Railroad Administration lacks the ability to oversee car design, mockup, and construction to ensure accessible cars."¹¹⁶

Amtrak Reservations

Access problems also affect the making of reservations. Cannon explained:

When you go to Union Station in Washington DC, you can't use the kiosk to get your reservation for a cabin—an accessible cabin—because you can't reserve it on the kiosk. The same is true with accessible spaces on the train. You have to go to a desk, to a person, and the reason for that is so people who are not disabled can't take them. And therefore they are not available for somebody who needs them.

So you basically have to go to a person, and then the question is, can you get to the person? In some places, such as Union Station, you can do that; staff are right next to the kiosk at the end of the counter. But there are other places where you would have a very difficult time. There is a station in Florida, for example, that's old, in a little tiny building, and you can't even get into it. You can't get inside to that person to talk to them; you couldn't make an arrangement. If you needed to buy a ticket there, I don't know how you would do it. You would probably buy it online and then show up and hope that the train comes at the right time. And there are a whole bunch of such stations; hundreds all around the country.

And of course, forget the bathroom. Go before you leave.

The Amtrak reservation and ticketing process also has barriers to people who are blind or have visual impairments. As Brad Parmenter, a person who is blind, wrote to the Federal Railroad Administration in June 2014,

In a world where smartphones are outdated in 18 months, I am aghast that even as I type this, the Amtrak site and mobile apps still provide a separate and unequal experience If I identify as having a disability, ... I cannot buy multiple tickets for my family. As a married man with a child, this is particularly offensive and unfair. Some stations are still blocked, and the mobile app simply redirects to <http://www.amtrak.com>.¹¹⁷

This can be contrasted with a recent advancement on website ticketing by another nationwide transit provider, Greyhound. Michelle Uzeta, Esq., brought a lawsuit against Greyhound in affiliation with the Center for Disability Access and reported, "Greyhound's response was an example of how transportation entities should respond to advocacy

from the disability community.” Uzeta said that Greyhound was very willing to come to the table immediately and that the leadership at Greyhound was very helpful in resolving postsettlement issues quickly.¹¹⁸ The case resolved efforts by Kyle Minnis to make an online travel reservation through Greyhound’s website on January 10, 2014. By no later than January 31, 2015, Greyhound Lines, Inc., agreed to modify its online reservation system to ensure that people with mobility impairments who use wheelchairs, scooters, or similar mobility devices will be able to make reservations in a manner that is materially equivalent to that used by nondisabled people, and to train their personnel.¹¹⁹

Communication Access on Amtrak

Richard Devylder explained the serious gaps in communications access that remain on Amtrak trains. “For instance, the public address: there’s no visual format for that information. We call it a failure of dual-mode communication. You need to provide the same communications transmitted to the general public to people who are deaf or hard of hearing, as well as to people who are blind or have low vision. And most of the stations, platforms, and trains fail to do that. But the ADA is specific about dual-mode communication in the stations and on the tracks.”

The NDRN 2013 report also commented on communications access, stating,

For individuals who are deaf, many Amtrak stations that provide audio announcements of train status fail to provide complementary visual notification even when the equipment to do so is available at the station. For individuals who are blind, many station platforms lack detectible warnings at the platform edge and accessible communication such as announcements made over loudspeakers or corresponding braille text on all signs.¹²⁰

Dennis Cannon observed that Amtrak has improved in the area of visual announcements. He pointed out,

I went to Boston [recently] on the Acela, and there were a lot of visual announcements: “Café car is now open,” “Café car is now closed,” as well as upcoming stations. The station announcements seem to have improved since a trip several years ago when the system seemed to have the hiccups: the upcoming station name would appear on the vestibule display, then revert back to the previous station, or nothing.¹²¹

Amtrak Thruway Bus Service

Amtrak also operates an extensive over-the-road bus service. As described on the Amtrak website, “Some routes in the Amtrak system include Thruway services. These include transportation provided by bus, train, ferry, van or taxi through a variety of operators.”¹²²

The 2005 NCD report explained that this aspect of Amtrak service was the subject of ADA-related litigation in which Amtrak agreed to ensure that its Thruway bus service in California would provide safe securement for scooter users as well as wheelchair users.¹²³

The Amtrak website further states that “Amtrak dedicated Thruway bus services are accessible and lift-equipped. Thruway services provided by partners are also accessible but may require up to 48 hours advance notice.” However, Christopher S. Hart, U.S. Access Board Public Member and former Director of Urban and Transit Projects at the Institute for Human Centered Design, however, commented, “Tickets purchased in person at stations that say ‘accessible’ often are a surprise to the driver.”¹²⁴

Office of Inspector General Report

All of this takes place in a troubling context for Amtrak as a whole. In 2009, a report from the Amtrak Office of Inspector General¹²⁵ made urgent and very disturbing recommendations, including these:

The cornerstone of the inspector general function is independence from other departments within the organization. In turn, an essential component of an inspector general's independence is unfettered access to documents and information. In addition, because many inspector general investigations involve suspected wrongdoing within the subject organization, it is especially important to limit to the greatest extent possible the number of personnel aware of and involved in such investigations. ...

Amtrak's current policies have frustrated the goals of unfettered access by the OIG to documents and information, and maintaining strict confidentiality of OIG investigations by demanding that all Amtrak departments, employees, and vendors notify the Law Department of document requests from the OIG. Law Department actions ... are wholly improper ...

The OIG should be empowered to gather documents and information ... without any involvement of, or notification to, the Law Department ... The Board of Directors should issue an Amtrak-wide directive announcing that this practice is no longer to be followed and reaffirming the OIG's right to unfettered access to documents and witnesses.

... Amtrak employees and even vendors' employees have sought to have Law Department attorneys ... present at OIG interviews. This practice is patently improper. In fact, the Office of Legal Counsel of the Department of Justice has provided analogous guidance that a federal agency may not indemnify an employee for legal representation in connection with an Inspector General investigation of possible wrongful conduct. ... [S]erious conflicts can arise when Law Department attorneys or outside counsel purport to simultaneously represent Amtrak and Amtrak employees suspected of wrongdoing. The practice is also impermissible, ... disruptive, and wasteful to permit the Law Department to monitor and actively participate in OIG investigations in any manner. ... It may have, or be perceived as having, a chilling effect on a witness's candid cooperation. Accordingly, the routine participation of Law Department staff or outside counsel retained by Amtrak during OIG interviews should be stopped.

Chapter 2 recommendations are listed at the end of the report.

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CHAPTER 3. ADA Paratransit

Chapter Overview

As reflected in the 2005 NCD report,¹²⁶ transit agencies that provide fixed-route bus and rail service must, under the Americans with Disabilities Act, also provide ADA paratransit to people who are unable to use the fixed-route service due to a disability.¹²⁷

Because the ADA properly emphasizes the fixed-route bus and rail systems across the United States as the preferred mode of public transit for people with disabilities, many studies have focused on moving people with disabilities from ADA paratransit to the fixed-route system.¹²⁸ However, ADA paratransit remains a key transit mode with a very important place in the overall U.S. transportation network, because some people with disabilities are unable, and will remain unable, to use the fixed-route system, regardless of how much it has improved and how successful it is in attracting riders with disabilities. ADA paratransit is a crucial safety net for many people with the most significant disabilities. It should be run properly, but in many cities much remains to be done to reach this goal.¹²⁹

This chapter challenges the myth of runaway growth in future demand for ADA paratransit and discusses the commuter bus exception to providing ADA paratransit. The chapter addresses a number of characteristics of the service, including eligibility, trip denials, telephone hold time, origin-to-destination service, on-time performance (including fallacies in understanding the so-called subscription cap), no-show policies, using taxis in ADA paratransit, and feeder service. The discussion also includes whether transit agencies must deploy particular types of vehicles, transitions between contractors, and the challenges and obstacles for parents traveling with children and for people with dementia using ADA paratransit. Finally, the chapter discusses the incidence in the transit industry of a disregard for ADA paratransit and offers suggestions for addressing this attitude.

Riders in various U.S. cities, and even within the same city, can experience ADA paratransit very differently. For example, Christopher G. Bell, Esq., Member of the American Council of the Blind of Minnesota, said, “I take paratransit. It’s pretty good. I really have no complaints.”¹³⁰

In contrast, ADA paratransit riders in Orlando, Florida, have initiated an ADA enforcement action in response to serious, longtime problems. A pending lawsuit alleges violations of the ADA and Section 504 of the Rehabilitation Act in the provision of paratransit service, including substantial numbers of untimely pickups, excessive trip lengths, and improperly trained drivers dating back to 1992.¹³¹

Challenging the Myth of Runaway Growth

The notion that the graying of America (as the average age of Americans rises) will result in an explosive increase in demand for ADA paratransit is regarded as a virtual truism and rarely challenged. However, the Transit Cooperative Research Program (TCRP) found that while many people anticipate “that increasing numbers of older people will lead to growing demand for ADA paratransit,” TCRP research “did not find any connection between ADA paratransit demand and the size of the older population in a transit area.”¹³²

Several other pieces of research cast considerable doubt on this common industry view. Most interesting are results from two TCRP studies on estimating ADA paratransit demand. TCRP Report 119, published in 2007, found no connection whatsoever between ADA paratransit demand and the size of the older population in a transit area. Several measures of the size of the older population were tested in the analyses for the report, and none of them were statistically significant. Instead, ADA paratransit demand was found to be proportional to the total population of an area after adjusting for differences in fares, poverty rates, and eligibility screening processes.¹³³

TCRP 158, which builds on the research in TCRP 119, tested the effect the models predict for an older population. The test was run with a 10 percent increase in the fraction of the population over age 60 and a 10 percent increase in the proportion of ADA paratransit registrants age 60 and older. Although the total number of registered persons increased by 1.8 percent, the number of ADA paratransit trips per registered person was shown to decrease by 3.9 percent, presumably because older people are statistically less active than the general public as a whole. Thus, the net total of ADA paratransit trips decreased by 2.2 percent.

As explained in TCRP 158,

Trips per person registered for ADA paratransit would decline, which corresponds with the experience of ADA paratransit operators that older people travel less than younger people, while the number of registered people would increase, which corresponds to the fact that older people are more likely to have disabilities than younger people. The drop in trips per registered person is much larger than the increase in registered persons, so a 10% increase in the senior population would create a 2.2% reduction in total ADA paratransit trips.¹³⁴

Additional evidence challenging the idea that paratransit demand will continue to grow includes research which finds that costs and demand for ADA paratransit have flattened or moderated in the past few years. In the San Francisco Bay area, for example, the four largest paratransit programs saw their ADA paratransit operating costs grow by 65 percent between FY 2000 and FY 2010 but by only 10 percent between FY 2005 and FY 2010. ADA paratransit ridership actually decreased by 7 percent between FY 2005 and FY 2010.¹³⁵

Research being conducted for TCRP has found that ADA paratransit ridership has flattened or slightly decreased at six of seven transit agencies analyzed in detail, measured by ridership data from 2009 to 2011.¹³⁶ National ridership data also suggests that the growth in ridership demand may be beginning to slow.¹³⁷

A March 2014 press release from the American Public Transportation Association (APTA) placed this growth in the context of increased growth on *all* modes of public transit, not just ADA paratransit. The APTA release, titled “Record 10.7 Billion Trips Taken on U.S. Public Transportation in 2013—The Highest Transit Ridership in 57 Years,” reported that ridership on general public transportation increased in 2013 by 1.1 percent. By comparison, “demand response (paratransit) ridership increased in 2013 by 0.5 percent”—less than half the rate of increase as that for public transit for the general population as a whole.¹³⁸

Commuter Bus Exception

Transit systems that provide only commuter bus service are exempt from the ADA paratransit requirements.¹³⁹ However, some people in the disability community are not sure whether a public bus or rail service that claims to be a commuter service should be exempt. For example, Cliff Perez, Systems Advocate for the Independent Living Center of the Hudson Valley and Chair of the National Council on Independent Living Transportation Committee, said that some transportation advocates are concerned about what does, in fact, constitute a legitimate exception from ADA paratransit service.¹⁴⁰

In evaluating a service to determine whether it is a commuter bus service, one must consider the definition of “commuter bus service” and its characteristics according to the DOT ADA regulation. These characteristics include the following:

- No attempt to comprehensively cover a service area
- Limited route structure (e.g., linear routes with few turns)
- Limited number of stops
- Routes of extended length, usually between central business district and outlying areas
- Service predominately in one direction during peak times

The following characteristics sometimes also apply:

- Limited purpose of travel, (e.g., designed for work access)
- Coordinated relationship to other modes, (e.g., rail, intercity bus, other service provider)
- Use of multiride tickets, (e.g., service available daily and at a reasonable cost)¹⁴¹

The DOT ADA regulation provides these examples of commuter service:

- Public airport circulator routes
- Connectors to intercity bus or rail
- Dedicated buses to commuter rail

What constitutes a commuter bus system is a case-by-case determination. A general rule of thumb is that commuter service is not designed to provide service to people at transit stops all along a particular corridor but rather between destinations that are distant from one another.¹⁴²

Eligibility

Ensure Fixed-Route Access

For ADA paratransit eligibility assessments to be accurate, fixed-route transit services should be accessible to and usable by people with disabilities. Transit agencies should, at minimum, ensure that—

- Buses and rail cars that are advertised as accessible meet ADA design standards.
- Stations and bus stops that are advertised as accessible meet ADA design standards.
- Lifts, ramps, elevators, and other accessibility features are maintained in good working condition.
- Onboard stop announcements and external route identification announcements are being made properly.
- Employees are trained to proficiency to safely operate accessibility equipment, provide appropriate assistance to riders with disabilities, and serve riders with disabilities in a respectful and courteous manner. (See Transit Staff Trained to Proficiency in chapter 6 for more information.)
- Service to people with disabilities is monitored to ensure that policies and procedures are being followed.

If these minimum requirements are not being met, the eligibility process could inappropriately conclude that ADA paratransit applicants can use fixed-route transit when, in fact, it is not really accessible and usable.¹⁴³

Transit systems will be more successful in encouraging the use of fixed-route services through the eligibility determination process if they make efforts beyond the minimum requirements. For example, if fare incentives are provided, riders with disabilities will be more willing to use fixed-route transit. Also, if the transit system offers reliable public information on accessible services, as well as trip planning and travel training, riders with disabilities will be better able to transition to fixed-route transit.¹⁴⁴

Disability Community Involvement

Disability community involvement is a key factor for success. People with disabilities, disability service organizations, and other stakeholders should be involved in the development and implementation of any changes to the ADA paratransit eligibility process, and in efforts to promote greater use of fixed-route transit. This is particularly important if changes will be made in how ADA paratransit eligibility is determined, if conditions of eligibility will be identified for the first time, or if conditions of eligibility will be used to make determinations of the eligibility of specific trips.¹⁴⁵

Don't Reinvent the Wheel

Transit agencies should take full advantage of the experience and expertise in ADA paratransit eligibility of the Federal Transit Administration (FTA), the Transportation Research Board, the National Transit Institute (NTI), Easter Seals Project ACTION, and nationally recognized ADA paratransit operators, planners, and researchers.

One key resource is the NTI course on comprehensive ADA paratransit eligibility (<http://www.ntionline.com/courses/courseinfo.php?id=8>).

The following additional resources are recommended for understanding and determining ADA paratransit eligibility:¹⁴⁶

- Federal Transit Administration (FTA), *Americans with Disabilities Act (ADA) Paratransit Eligibility Manual*, U.S. Department of Transportation, Washington, DC, September 1993.
- Weiner, R., *TCRP Synthesis 30: ADA Paratransit Eligibility Certification Practices*, Transportation Research Board, Washington, DC, 1998.

- TranSystems Corp., *Determining ADA Paratransit Eligibility: An Approach, Guidance and Training Materials*, Easter Seals Project ACTION, Washington, DC, 2003, http://bussafety.fta.dot.gov/uploads/resource/3102_filename
- Topic Guides on ADA Transportation: *Eligibility for ADA Paratransit*, Disability Rights Education and Defense Fund (DREDF) and TranSystems Corporation, funded by the Federal Transit Administration, Washington, DC, June 2010, <http://dredf.org/ADAtg/index.shtml>

Important Triggers for Eligibility

The 2005 NCD report¹⁴⁷ explained types of ADA paratransit eligibility. Additional important eligibility triggers have been recognized since then, including inaccessible bus routes and bus stops, as well as inadequate stop announcements.¹⁴⁸

Conditional Eligibility and Trip-by-Trip Eligibility

A significant change since the 2005 NCD report¹⁴⁹ has been an increase in the use of conditional eligibility, which means that the rider can be reasonably expected to make some trips on the fixed-route service. Research and national experience suggest that about a third of applicants can take the bus or train sometimes.¹⁵⁰

For example, a person might be able to reach bus stops that are no more than three blocks away if there is a safe, accessible path of travel, but she may require paratransit if distances are farther than three blocks or the path of travel includes obstacles such as steep hills, deep snow, or ice. Another person might have a variable health condition that makes fixed-route use possible on some days but not on others.¹⁵¹

When transit agencies categorize people as conditionally eligible, they must identify all conditions that affect travel to ensure that they do not inappropriately limit rider eligibility. The FTA has found in ADA compliance reviews that some transit providers did

not adequately consider path-of-travel barriers, weather, and other issues when setting conditional eligibility.¹⁵²

For riders who have conditional eligibility, the transit agency may assess or screen whether the circumstances of each trip meet the conditions under which the rider is eligible. This is known as trip-by-trip eligibility (also called simply trip eligibility).

Conditional eligibility and trip-by-trip eligibility form a two-stage process. First, the transit agency assesses the ability of a person to use the fixed-route transit system as part of the eligibility determination process. Once the individual has been deemed eligible under certain conditions, the agency applies the specific conditions to each of the person's trips.

In determining trip eligibility, transit agencies consider environmental and other conditions for every trip request or for every request in certain categories, such as night trips or those taken during winter months. If the streets and barriers along the route of the trip request have not been assessed, the rider is given presumptive eligibility for that route until an environmental assessment has been completed.

A few transit agencies screen most or nearly all requested trips for their conditionally eligible riders; many more screen a certain percentage of trips, focusing on the most frequent trips or on subscription trips. Transit agencies that conduct significant trip-by-trip screening include those in Pittsburgh, Seattle, Spokane, Dayton, Corpus Christi, and Philadelphia.¹⁵³

Most Limiting Condition

Basing ADA paratransit eligibility decisions on the most limiting condition of each applicant is widely considered a best practice. Karen Hoesch, Executive Director of ACCESS Transportation Systems in Pittsburgh, Pennsylvania, and considered a top national expert in ADA paratransit eligibility, gave these examples of this practice:

If I can take the bus 90% of the time, but 10% of the time I have an issue that would qualify me, that is my most limiting condition. If there are stops that are not accessible and I need an accessible stop to board the bus, those bus stops are my most limiting condition. If there is one month of bad weather each year where I live, that month is my most limiting condition ... Similarly, if I can't stand on a moving vehicle, [how] can I use the fixed-route system?¹⁵⁴

The transit agency must consider the potential travel of each applicant throughout its entire service area, not only near the home or workplace, during all seasons. In two ADA compliance reviews and a letter of finding, the FTA made it clear that eligibility cannot be denied simply because an applicant says that, for example, he can get to the bus stop nearest his home or from bus stops to his most frequent destinations. Travel throughout the area under various conditions must be considered.¹⁵⁵

The 2005 NCD report said that secondary conditions that negatively impact a person's functional ability to use the fixed-route service—such as disorientation, fatigue, and difficulties with balance—should be considered,¹⁵⁶ as well as variable conditions such as multiple sclerosis, which may change a person's ability to travel at different times. Eligibility and route assessments should be conducted by staff who are proficient in assessing functional ability to use the fixed-route service and evaluating barriers to travel.¹⁵⁷ (See more in the section below on In-Person Interviews and Functional Assessments.)

The Federal Transit Administration has applied these principles in its oversight activities. A 2010 letter to the Jacksonville Transportation Authority (JTA) from Cheryl L. Hershey, then Director of the FTA Office of Civil Rights, included these points:

JTA's position appears to be that it will not grant full or conditional eligibility to individuals who, through its ADA complementary paratransit eligibility process, are determined to be able to access the bus stop closest to their homes. JTA needs to recognize that the **overall eligibility determination needs to consider the applicant's ability to travel to any origins or destinations within the service area under all possible conditions and must be based on the applicant's most limiting condition, including secondary disabling conditions which may**

make some individuals at least conditionally eligible for paratransit services. Secondary conditions such as disorientation, fatigue, and difficulties with balance which may change the applicant's ability to travel at different times should be considered as part of overall determinations.

To be considered able to travel certain distances, applicants must be able to travel the distance with reasonable effort and in a reasonable period of time. JTA assessors concluded that [name withheld] could walk a maximum reasonable distance of 3/4 of a mile (without indicating their estimate of the time that it would actually take her to travel that distance), based on a distance/endurance assessment in which she may have been asked to ambulate only 1/4 of a mile, which she arguably struggled accomplishing. Based on the information submitted to FTA, JTA assessors may have extrapolated the difference in distance up to 3/4 of a mile without considering the degree to which [the person's] functional ability was likely to decrease and/or the degree to which her level of effort and duress were likely to increase while traversing the greater distance. The assessors noted signs of distress along the entire route. ... It is impossible to tell from JTA's documentation of the assessment the specifics that led JTA assessors to determine that she would be able to ambulate 3/4 of a mile. ...

In addition, not all trips that an applicant might wish to make will begin at home, and the environmental conditions around each fixed-route stop, whether at the trip origin or destination ... (existence of curb cuts, terrain, or accessibility of intersections, for example) are not necessarily identical to those around the stop that is closest to her home. **Denying or limiting an applicant's paratransit eligibility outright for all trips based on proximity to a particular bus stop is unreasonable, as it does not take into account all the obstacles an applicant can expect to encounter when traveling throughout the JTA complementary paratransit service area during the entire term of his or her paratransit eligibility.** ... Even if it were the case that an applicant could travel reasonably and consistently from her home to the nearest bus stop, JTA should not deny or limit her eligibility for paratransit simply because she lives near a bus route and is able to get to it.¹⁵⁸ [emphasis in the original]

Considering all these factors, it is highly likely that barriers exist in most or all communities that would prevent fixed-route travel at some point during the term of eligibility of applicants with significant disabilities. For this reason, people who are blind, those who use wheelchairs, and those who have other significant disabilities will likely

receive at least conditional eligibility in any accurate paratransit eligibility determination process that is consistent with the ADA.¹⁵⁹

Medical Professionals Who Know the Applicant

In many cases, it is very important for ADA paratransit eligibility decisions to carefully consider appropriate information from the applicant's named medical professionals, both when making initial determinations and during the appeal process. Some transit agencies do not adequately consider such information.

For example, in an FTA ADA compliance review of Houston Metro in 2010, reviewers questioned certain eligibility denials in part because information from the applicants' health care providers was not given due consideration or was discounted entirely. Examples included the following:

- In [one] case, the professional indicated that the applicant had incurred a spinal cord injury and indicated poor lower body strength. The applicant appeared for the interview and in-person assessment using a leg brace and a cane. The customer service representative (CSR) [exact title was not given] noted that the applicant indicated he could walk to the intersection nearest his home, observed the applicant walking along the indoor course, and recommended denying eligibility. ... The applicant appealed and participated in an in-person functional assessment at the Memorial Hermann Medical Center. Professionals at the center reported that the applicant could walk only a very short distance and was affected by tremors. Based on the functional assessment conducted in connection with the appeal, the applicant was granted unconditional eligibility.
- Another applicant reported congestive heart failure, asthma, and arthritis. The professional familiar with the applicant confirmed these health conditions and noted a prior stroke as well. The professional said the person could travel

only very limited distances and could not travel in extreme temperatures; these functional limitations are all consistent with these health conditions. The CSR person had the applicant walk along the indoor course and only observed that the person's balance was "not perfect." The applicant was denied eligibility. This applicant also requested an appeal and participated in a functional assessment at Memorial Hermann Medical Center. The Center's report noted that the applicant could walk for only 2 minutes and 30 seconds and that this distance could only be managed with "several breaks." Even with this information, the Appeal Committee voted to uphold the initial denial of eligibility. Following the denial on appeal, the applicant's physician submitted a letter indicating the applicant had Class 3 heart failure. The applicant was then approved for unconditional eligibility.

- In another case, the professional familiar with the applicant indicated cervical lumbar radiculopathy, weak lower extremities, chronic bronchitis, spasticity, and poor lower body strength, coordination, and balance. The professional also indicated that the person used a power wheelchair. The applicant participated in the interview and in-person assessment using a powered scooter. The Metro CSR person observed him traveling along the accessible indoor route. He was denied eligibility. The determination did not appear to consider whether he needed accessible bus stops in order to use the fixed-route system and whether or not his disability prevented him from traveling on an inaccessible path of travel to or from bus stops. Eligibility should have been granted on at least a conditional basis for trips where accessible paths of travel to or from bus stops did not exist or where those bus stops that the applicant needed to use were not accessible.

The reviewers recommended that Houston Metro "consider utilizing professionals who are trained to conduct functional assessments, such as physical or occupational therapists. ... Consider expanding the indoor walk in the lobby to better determine functional abilities and barriers encountered outdoors. In the absence of a complete

functional assessment, Metro staff should consider abilities and limitations indicated by professionals named by applicants. Follow up with applicants and professionals before discounting the information provided by professionals.”¹⁶⁰

Weather-Related Eligibility

Some transit agencies apply seasonal eligibility to certain riders; for example, deeming them eligible from November to April. This may seem easier than implementing conditional eligibility more thoroughly, but since the seasons do not begin and end predictably, it inevitably denies some rides to people who should be eligible for them, and vice versa.¹⁶¹

If seasonal eligibility is used, it is important to set the date range conservatively, so a late snowstorm does not render a seasonally eligible person unable to travel. In a related example, an FTA ADA compliance review found that a transit agency set heat-related seasonal eligibility conditions in an overly restrictive way. Eligibility due to hot weather was granted only from June 15 to September 15, even though extreme hot weather was sometimes experienced before and after these dates.¹⁶²

No Blanket Denials Based on Type of Disability

Some transit agencies appear to have denied eligibility based on blanket decisions about the type of disability of an applicant. For example, some agencies have denied eligibility to most or all riders who use motorized wheelchairs, or to all blind people under certain conditions, rather than conducting case-by-case evaluations. Such practices inevitably lead to violations of the ADA.¹⁶³

Some transit agencies appear to have engaged in blanket denials based on other disabilities. According to Christopher G. Bell, Esq., a member of the American Council of the Blind of Minnesota,

There are also issues I call class denials of people with certain disabilities. For instance, people with intellectual disabilities. The paratransit service has said, “You can walk, so you can get someplace.” Also, people with mental illness[es]—apparently, they don’t think that affects your ability to take transit. But for some people, if the bus they’re on must take a detour, that throws them all off. They were able to process and remember one route, but now they’re thrown off. That’s not really recognized as a problem. The agencies have too simplistic a view of what it means to be unable to use public transportation.¹⁶⁴

People with Variable Conditions

Often, transit agencies can use the eligibility conditions of a rider to determine whether fixed-route service is an option for a particular trip. For example, if a person requires paratransit service if the walking distance to or from bus stops is more than four blocks, the transit agency might be able to examine the locations of bus stops and the origin and destination of the rider, and determine that there is an alternative path of travel or a fixed-route option with bus stops within two or three blocks.

On the other hand, in some cases, only the rider can decide if fixed-route is an option for a particular trip. These include cases in which the functional abilities of a rider are variable; for example, some people with multiple sclerosis and some with psychiatric disabilities that vary from day to day. Such riders may not know until the day of service if they will be able to get to and from, and use, the fixed-route bus or train.¹⁶⁵

Travel Training and Eligibility

If people with disabilities can navigate the transit system only with travel training, that does not change their eligibility until they voluntarily avail themselves of the training and can, in fact, navigate the system. Transit agencies are not allowed to require travel training or to base eligibility decisions on the potential of an applicant to be successfully trained to use fixed-route service. Decisions must be based on applicants’ current abilities to use the bus or train.¹⁶⁶

For people who voluntarily enter travel training, it is a best practice to give them temporary eligibility, because their ability to use the fixed-route service might change in the short term; they might be able to make some fixed-route trips after the training that they could not make beforehand. Temporary eligibility is appropriate in this case just as it is for any applicants whose travel abilities might change in the short term. Before temporary eligibility expires, the applicant should be reassessed to determine whether he or she still needs paratransit. Transit agencies may not force applicants to take travel training and may not condition eligibility on it.¹⁶⁷

Prior Use of the Fixed-Route System

It is not a best practice (and will lead to ADA violations) to establish a policy that applicants are not eligible if they have ever used the fixed-route system. Some transit agencies have posed a question on the application form such as, “Have you ever used fixed-route service?” If the applicant marks “yes,” this answer is used as a reason to deny eligibility. Use of the bus or train under certain conditions does not mean that a person can use the bus or train consistently throughout the service area under all conditions. An accurate assessment might show that this person would be conditionally eligible for ADA paratransit.¹⁶⁸

Especially when ADA paratransit eligibility is an all-or-nothing proposition (i.e., a paratransit service allows only two choices, full-time unconditional eligibility or no eligibility), paratransit riders who could take some trips on the fixed-route service might refrain from doing so out of fear of losing their paratransit eligibility. In some cities, riders have reported that the transit agency has made efforts to deny paratransit to eligible riders who show that they can use the bus or train at any time. As discussed in the 2005 NCD report,¹⁶⁹ these efforts might discourage people from trying the mainline bus or train service. To encourage riders to try using fixed-route service when they can, transit agencies should guarantee that they will not lose their paratransit eligibility. Trip-by-trip eligibility might be the solution for such riders.¹⁷⁰

Safety and Eligibility

Generally, public safety is not a factor in determining ADA paratransit eligibility. For example, a high crime rate in an area does not automatically confer eligibility on people with disabilities in that area. However, riders must possess certain personal safety skills in order to use public transit safely and independently. These skills should be considered in eligibility determinations.¹⁷¹

As the FTA stated in an ADA compliance review,

The review team's analysis of sample determinations raised questions about how personal safety is considered when making ADA paratransit eligibility determinations. Documentation related to one determination indicated that "personal choice and safety were not ADA issues." This position does not distinguish between safety issues that result directly from a person's disability (e.g., poor decision making resulting from a cognitive disability or mental illness) versus general safety concerns (e.g., fear of possible crime) that are not directly related to a disability.¹⁷²

Eligibility Determination Process

Transit Agency Must Provide Service After 21 Days

If the transit agency has not made a determination of eligibility within 21 days after the submission of a completed eligibility application, the applicant must be treated as eligible and provided with service unless and until the transit agency denies the application.¹⁷³

One of the most frequent FTA eligibility-related findings is that transit agencies do not inform applicants that they have a right to service if eligibility decisions take longer than 21 days.¹⁷⁴ It is not a violation of the ADA to take longer than 21 days to make determinations (although it is desirable to complete them before then, so that service is not provided and then potentially taken away). However, it is a violation if the decision takes more than 21 days and service is not provided after that time.¹⁷⁵

Many FTA findings indicate that it is not enough to put this information into a rider's guide or general public information. The FTA has stated repeatedly that it should be included in information sent to applicants with application materials. In one such finding, the FTA indicated that there is an obligation to take affirmative steps to notify riders of this right to service:

[The transit agency]'s Rider's Guide, web site, ADA Eligibility Certification Program Brochure, and eligibility application advise applicants that they may use ADA Complementary Paratransit service if an eligibility determination has not been made within 21 days of [transit agency] receipt of a completed application until a determination has been made. If [the transit agency] has not made an eligibility determination within 21 days after receiving a completed application, [the transit agency] does not affirmatively notify applicants that they are temporarily eligible to use [the paratransit service]. Should applicants inquire as to the status of their application after the 21 days has elapsed, [the transit agency] grants them temporary eligibility. [The transit agency]'s lack of notification to applicants could limit ADA Complementary Paratransit Service to those applicants who do not inquire as to the status of their application after the 21 days have elapsed.¹⁷⁶

In-Person Interviews and Functional Assessments

The application process may include functional evaluation or testing of applicants. Many transit systems now require in-person interviews or functional assessments to determine whether a disability prevents the applicant from using the fixed-route system. The functional assessment usually involves observation as an applicant attempts to perform functional tasks that simulate a fixed-route trip (such as climbing steps, crossing a street, and walking measured courses) as well as cognitive tests and other activities.¹⁷⁷

As the 2005 NCD report pointed out, some disabilities cannot be evaluated by functional assessments, such as seizure disorders, psychiatric disabilities, and variable conditions such as multiple sclerosis.¹⁷⁸

Appropriate professionals should perform functional assessments. For example, the Easter Seals Project ACTION report mentioned above recommends that physical therapists, occupational therapists, or professionals with similar qualifications should conduct physical functional assessments.¹⁷⁹ If assessments are used for people with significant vision loss (legal blindness or greater), the report recommends that orientation and mobility specialists conduct these assessments.¹⁸⁰

Not Overly Burdensome for Applicants

The eligibility determination process may not be overly burdensome for applicants. According to DOT ADA regulation Appendix D:

The [eligibility determination] process may not impose unreasonable administrative burdens on applicants.¹⁸¹

For example, if in-person interviews and assessments are part of the process, and applicants must travel to and from interview assessment sites, only one trip should be involved. The FTA has found that it may be overly burdensome to require applicants to take a second trip to get a required photo ID card.¹⁸²

If Applicant Misses Appeal Deadline, There Is Another Option

The transit agency may require that appeals be filed within 60 days of an eligibility denial.¹⁸³ If an applicant misses this deadline, however, he or she may reapply at any time for eligibility and then, if denied again, may file an appeal.¹⁸⁴

Recertification and Long-Term Eligibility

To eliminate unnecessary inconvenience for riders and to lower the cost of eligibility determination, transit systems that have developed thorough ADA paratransit eligibility determination processes are providing long-term eligibility to unconditionally eligible riders whose functional ability is not expected to change over time.

The FTA acknowledged that the ADA permits periodic recertification of all riders, but pointed out that “waiving recertification for certain customers whose inability to use the fixed-route is unlikely to change can avoid associated costs ... and inconvenience to customers.”¹⁸⁵

Discrimination Based on Native Language

Another significant problem for some people with disabilities is rare but no less important: discrimination based on the native language of the person. Legally, this problem is covered by Title VI of the Civil Rights Act of 1964.¹⁸⁶

For example, a monolingual client of the Asian Pacific Family Center in Los Angeles (who speaks a Chinese language) was scheduled for an ADA paratransit reevaluation appointment and was told she would need to provide her own interpreter. Her therapist offered to provide interpretation over the telephone. An employee and a supervisor with the transit agency told the therapist that the agency can only translate into and from Spanish, and they declined his offer of assisting over the phone, saying it was “too time-consuming.”¹⁸⁷

People who face such situations may elect to file a Title VI complaint with the FTA’s Office of Civil Rights.¹⁸⁸ As always with filing complaints, as much specific information as possible should be provided.

Trip Denials

Denials of requested trips on ADA paratransit is still a problem, according to spokespersons from the disability community. For example, according to Alice Ritchhart, Transportation Committee Chair of the American Council of the Blind,

I would say, yes, trip denials are happening. ... They just say there are no available rides at that time. They aren’t supposed to be able to do that, especially when you’re calling two weeks to a month out, that’s pretty bad.

It does seem to be still happening quite frequently. I've heard that complaint from some folks in Missouri, I know it's an issue here in Georgia, some in Illinois. I would say it's across the country.¹⁸⁹

The practice described by this advocate is at odds with the ADA, which requires next-day service.

The 2005 NCD report explained the importance of a key ruling in a 2003 ADA lawsuit to establish the right to next-day service in ADA paratransit.¹⁹⁰ This case, against the Rochester-Genesee Regional Transportation Authority (RGRTA), stemmed from high rates of trip denials. The court held that the regular denial of trip requests by RGRTA was attributable to its insufficient capacity and deficient booking practices. The court also found that while the transit agency projected increases in paratransit trip demand, it failed to modify its practices or plans to meet this demand.

This important case also established the principle that the ADA requires paratransit service providers to plan to meet 100 percent of the demand for next-day ride requests. The court said that Section 37.131(f) of the DOT ADA regulation recognizes that “even well-laid plans may misfire on occasion and permits the denial of an insubstantial number of trips, so long as those denials were not attributable to the design of the paratransit system.” The court also stated that “the regulations require a provider to rethink its plan and implement changes whenever a pattern of noncompliance develops.”¹⁹¹

In addressing the issue of a denial being within the control of the agency, the court quoted a letter brief filed by the U.S. Department of Justice (DOJ) on behalf of DOT:

[A]n excusable cause [of operational problems] must truly be beyond the control of the transit provider. A transit agency is expected to anticipate recurrent traffic congestion, seasonal variations in weather, and the need to maintain vehicles. . . . Indeed, once a seemingly unforeseen pattern develops, . . . the recurring event becomes foreseeable, and the transit authority can no longer claim the matter is beyond its ability to address.¹⁹²

Transit agencies have suggested other reasons that occasional denials might be truly outside their control, such as a significant power outage affecting telephone service, a major freeway accident, or an unusual weather event.

This key development has had a significant effect on transit agencies, particularly in large cities, reducing their denial rates. But while the improvement has been very important, it has often caused a concomitant problem of increasing other deficiencies, such as on-time performance problems (see more in the section later in this chapter on On-Time Performance).

Trip denials still occur as a result of all these problems, as well as others. For example, FTA officials report that some transit agencies still require trip reservations 24 hours ahead of time. John Day, ADA team leader and Senior Equal Opportunity Specialist, and Dawn Sweet, Equal Opportunity Specialist (both of the FTA Office of Civil Rights) made the following comments in an interview in 2013:

Sweet: What we see a lot are systems that are requiring trip reservations 24 hours ahead of time.

Day: We would say that's a capacity constraint. The DOT ADA regulations specifically require next-day service. As Appendix D to §37.131 illustrates, using an example of a system that operates service between 6 a.m. to midnight with administrative offices open between 9 a.m. and 5 p.m., "[a]ny caller reaching the reservation service during the 9 to 5 period, in this example, could reserve service for any time during the next 6 a.m. to 12 midnight service day. This is the difference between 'next-day scheduling' and a system involving a 24-hour prior reservation requirement, in which a caller would have to reserve a trip at 7 a.m. today if he or she wanted to travel at 7 a.m. tomorrow. The latter approach is not adequate under this [ADA] rule."¹⁹³

(For more about capacity constraints, see the section below on Telephone Hold Time.)

FTA officials have explained that if a transit provider offers a trip that is outside the 60-minute window, it needs to be counted as a trip denial, even if the rider accepts the

trip. If a transit provider can schedule only one leg of a trip but not the return trip, that must be counted as two denials.¹⁹⁴

The FTA has engaged in enforcement actions consistent with this principle; for example, in a 2007 FTA ADA compliance review in Fresno, California, where the transit agency is known as FAX:

At the time of the review, FAX was not properly recording trip denials, resulting in an undercount of denied trips. ... The review team observed a total of 214 trip requests, of which 14 resulted in denials; this resulted in a denial rate of 6.5 percent. However, not all of the observed denials were recorded as such by Handy Ride personnel, such as a rider's acceptance or decline of trip times more than one hour from the requested trip time or when no trip was available. To meet the response time requirements of Section 37.131(b), FAX must revise its policy and count and track as denials any outright inability to serve trip requests, including any trip which it cannot schedule within one hour before or after the eligible rider's desired departure time (even if accepted by the rider). If only one leg of a round trip can be reserved and the rider declines the trip, it must be tracked as two denials. ... FAX must direct contractor(s) to retrain reservation agents to record trip denials and establish a procedure for reviewing reservation practices to ensure these denials are counted as denials.¹⁹⁵

DOT's 2011 amendments to its ADA regulation addressed the counting of trip denials, codifying the interpretation described above. The preamble to the regulation explains,

The Department believes that when a denied or missed trip makes a subsequent requested trip impossible, two opportunities to travel have been lost from the point of view of the passenger. In the context of a statute and regulation intended to protect the opportunities of passengers with disabilities to use transportation systems in a nondiscriminatory way, that is the point of view that most matters. To count denials otherwise would understate the performance deficit of the operator.¹⁹⁶

A review of ADA paratransit service in the Savannah, Georgia, area also found an undercount of denied trips. In December 2009, contractors for the FTA Office of Civil Rights conducted a review of Teleride, the ADA paratransit service operated by

Chatham Area Transit (CAT). According to *Transit Access Report*, the review team encountered the following practices:

- “Turndowns” — meaning trip requests for which the reservationist did not offer any trip, but not including trip offers more than 60 minutes from the requested time.
- “Standbys” — meaning trip requests for which no trip is available, but the caller was told one might become available as Teleride worked on the schedule.

Reviewers said that in both cases, these should have been counted as denials, which are not permitted under the prevailing interpretation of the Department of Transportation’s ADA regulations. The reviewers even said that they consider standbys to be “a type of waiting list,” which is expressly forbidden by the regulations.¹⁹⁷

Telephone Hold Time

The Americans with Disabilities Act does not permit transit agencies to have any capacity constraints in ADA paratransit.¹⁹⁸ Capacity constraints are defined as any operational patterns or practices that significantly limit the availability of service to people who are eligible for ADA paratransit.

Some of the prohibited capacity constraints are specifically listed in the DOT ADA regulation, such as substantial numbers of significantly untimely pickups, substantial numbers of trip denials or missed trips, and substantial numbers of trips with excessive lengths. However, any operational practices that significantly limit the availability of the service are also capacity constraints and are illegal. One important example is when riders must wait on the telephone for an unduly long time to arrange rides.

The 2005 NCD report noted that long telephone holds were a widespread problem.¹⁹⁹ Because of staff shortages or telephone capacity in some transit systems, many callers

experience long telephone hold times. The FTA has stated that a transit agency “must design and implement its system to ... achieve minimal telephone wait times.”²⁰⁰

Related problems included situations in which callers hear a telephone network message that “all circuits are busy” or they are put on hold and subsequently disconnected.²⁰¹

Measuring Telephone Hold Time: Two Basic Methods

Best Method: Maximum Allowable Hold Times

Two basic methods are used to measure and monitor ADA paratransit telephone hold times: maximum allowable hold times and hourly average hold times. The best way is to establish standards for the maximum allowable hold time, measure the hold time for each caller, and compare the times to the established standards. Some transit agencies do not have the technology necessary to measure hold times using this approach. In that situation only, the agency will have to measure the hourly average of its hold times.²⁰² (See Another Method: Hourly Average of Hold Times below.)

Measuring hold times by the maximum allowable time is superior to measuring the hourly average because it is more straightforward, simpler to calculate, and more transparent. Measuring by maximums is the method the FTA recommends in compliance reviews, as it enables transit agencies to accurately identify instances of long individual hold times.²⁰³

A good practice using the maximum allowable hold time method would be to establish a standard that 95 percent of calls should be answered within three minutes, and 99 percent of calls should be answered within five minutes.²⁰⁴

Here is an example of how a transit agency might apply the standard of measuring by maximum allowable hold times. Telephone reports typically list how many calls are received each day, each week, and each month, as well as what percentage of the calls are answered within specified time increments (for example, 60 seconds, 120 seconds,

180 seconds, and so forth). The reports should list the percentage of calls answered by one-minute increments up to six or seven minutes. If there were 10,000 calls last month, how many were answered within three minutes? It should be at least 95 percent, or 9,500 calls. How many were answered within five minutes? It should be at least 99 percent, or 9,900 calls.²⁰⁵

Every call group should be subject to this standard, but each call group should be analyzed separately. For example, reservation calls should be measured separately from “where’s my ride” calls.

Another Method: Hourly Average of Hold Times

If transit agencies do not have the technology to measure maximum allowable hold times, they may have to use a less preferred method: measuring the hourly average hold time.

Average hold time should be calculated *for each hour of the day* when calls are taken from riders on that telephone line. Averages need to be hourly, at most—it is not useful to average hold times over an entire day or over any other period longer than an hour. Measuring averages over longer periods of time (such as daily, weekly, or monthly) allows significantly longer hold times to be obscured or masked. Thus, hourly averaging is necessary for transparency, to determine hold times during various parts of the day. Some transit agencies use an even shorter time period—averaging by the half hour—which is a best practice if averaging must be used at all.

A good practice for hourly averaging would be to establish a standard that 95 percent of the hourly periods should have an average hold time of no more than one minute, and 99 percent of the hourly periods should have an average hold time of no more than two minutes.

Here is an example of how a transit agency might apply this standard. An average hold time should be calculated for each hour when calls are taken from riders on that

particular line. For example, suppose that between 9:00 a.m. and 10:00 a.m. on a particular day, the average is 45 seconds. If the telephone line is open for 10 hours a day, 31 days in that month, $10 \text{ hours} \times 31 \text{ days} = 310$ hourly averages. At least 95 percent of those hourly averages should be no more than one minute. 95 percent of $310 = 295$, so at least 295 of the hourly averages should be one minute or less. At least 99 percent of the hourly averages (307 of the 310) should be two minutes or less.²⁰⁶

Every call group should be subject to this standard, but each call group should be analyzed separately. In other words, reservation calls should be measured separately from “where’s my ride” calls.

If a transit agency measures hold times only by averaging, it might be helpful to also conduct random sampling of maximum hold times. Make test calls during the hours with the longest average hold times and record the actual time on hold. This can provide more accurate information about the hold times being experienced by callers.²⁰⁷

It should be noted that the FTA rejected the averaging method in a 2007 compliance review of the Fresno, California, ADA paratransit program for the transit agency known as FAX and the paratransit provider known as Handy Ride. According to *Transit Access Report*,

On another issue—telephone hold times—reviewers said a monthly average “can mask individual call times and periods of poor performance” during particular times of the day or days of the week.

“To meet the requirements of Section 37.131(f) to operate Handy Ride service without any operational pattern or practice that significantly limits the availability of service,” FTA said, “the maximum allowable hold time standard must be set to avoid significantly long hold times.”²⁰⁸

In a letter from Linda C. Ford, Director of the FTA Office of Civil Rights, to Kenneth P. Hamm, the transportation director in Fresno, dated July 12, 2013, she wrote:

There are four other primary areas where we continue to have concerns. The first is that FAX's performance standard for telephone hold times continues to rely on averages as a performance measure, which we have noted, on several occasions, is not an appropriate standard as it tends to mask the specific periods of poor performance that would constitute capacity constraints. We also indicated that if FAX could provide a clear methodology for why averages are a valid statistical method for determining telephone performance while ensuring the ability to identify capacity constraints, we would consider that explanation; however, no such rationale was included in the corrective action plan or associated documents.²⁰⁹

It is possible that averaging was rejected because FAX never clarified that the averaging was hourly—and perhaps it was not. Averaging over a longer period than hourly (such as daily) would, as the FTA letter explained, mask periods of poor performance by averaging them with periods of better performance.

“Where’s My Ride” Calls

Telephone hold times for calls to dispatch (also called “where’s my ride,” “late ride,” “ride check,” and “ride status”) are just as important as reservation hold times, if not more so. These hold times should be limited to, at most, the same standards as reservation calls.

It is a best practice for these calls to have the shortest hold times. Riders making these calls cannot wait for lengthy periods while they are attempting to obtain updates on pickup information. Callers may have no control over when to make the call; they may be calling from a telephone in the doctor’s office or a similarly inconvenient situation. They are often at risk of missing the vehicle by making the call. Thus, another reason to keep these hold times to a minimum is to avoid the possibility that riders will be considered no-shows because they are inside a building on hold.²¹⁰

On May 15, 2009, the American Public Transportation Association, a national trade association for bus, paratransit, and rail transit agencies, published a draft

recommended practice for public comment addressing “where’s my ride” calls. The APTA draft described best practices in customer service.

Passengers who call the “where’s my ride?” line deserve professional, courteous and honest information provided in a patient manner. Accurate details of a vehicle’s estimated time of arrival provided with empathy set the tone for a good customer service experience. Passengers want their calls answered quickly. Upon answering, an agent should give his or her name and department and ask, “How can I be of assistance?” An apology should be readily offered when appropriate.

Callers want to know the most recent known location of the vehicle, the number of other stops before the caller will be picked up, the estimated time of arrival, the vehicle number, and any other identifying information, such as vehicle type and any identifying name on the vehicle. They do not want to be placated with a stock answer such as, “It will be 10 minutes” or “Your driver is around the corner.” It is preferable to give an updated estimated time of arrival and to confirm the exact location where the passenger will be waiting. Agents should then ensure that the information is received by the driver.

The agent should obtain a contact number, if available. If a delay will require rescheduling or conditions are uncertain, the agent should tell the passenger how much time will be required to resolve the problem and give him or her the option to call back at a specified time, to wait on hold, or to be called back. Agents should ensure that follow-up calls are made. ... Agents should apologize for the inconvenience and, when appropriate, offer a free ride coupon for the inconvenience. If applicable, an agent should reassure a caller that he or she will not be penalized with a “no-show” and update the passenger’s record.

Rapid resolution of “where’s my ride?” calls is a priority. Speed of resolution is measured by total call time, since the calls often involve either the use of personal cell phone minutes or tying up a business phone in a reception area.²¹¹

Secondary Holds

A secondary hold occurs when a call is answered then placed on hold. Secondary holds should be minimized as much as possible.

If there are any secondary holds during “where’s my ride” calls, a staff person should check with the caller frequently—at least once every minute—to let him or her know that the question is still being addressed, because callers are often waiting for a vehicle or calling from an inconvenient situation.

A best practice for minimizing secondary holds is to provide an adequate number of dispatchers to handle these calls.²¹² Sometimes, there are enough reservationists to take the initial calls, but a smaller number of dispatchers must then handle the transferred calls from reservationists. It is important to avoid creating a bottleneck in the system by having too few dispatchers to adequately handle all the calls directed to them.

For additional operational methods to reduce secondary holds, see the Disability Rights Education and Defense Fund/TranSystems Corporation’s *Topics Guides on ADA Transportation*.²¹³

No Busy Signals

There should be no busy signals.²¹⁴ The FTA has stated that a transit agency “must design and implement its system to avoid busy signals and achieve minimal telephone wait times.”²¹⁵ To avoid busy signals, transit agencies should have adequate incoming call capacity to handle the highest expected call volumes throughout the operating day.

For additional operational methods to ensure that there are no busy signals, see the Disability Rights Education and Defense Fund/TranSystems Corporation’s *Topics Guides on ADA Transportation*.²¹⁶

Avoid Limits on the Number of Trip Requests per Call

Some transit agencies have placed limits on the number of trips a caller may arrange during a single telephone call, but these limits can increase hold times because of the

need for additional customer calls, according to an FTA ADA compliance review.²¹⁷ Such policies also pose added burdens on riders. For these reasons, it is not a best practice. While it might seem to be a good way to limit the time a call taker must spend with each caller, it appears to have consequences that outweigh any benefit.²¹⁸

Communications Access for Taking Telephone Calls

It is important for call takers to understand how to provide equal communication accessibility to people with speech impairments who are placing voice calls and to people with speech and hearing impairments who place their calls on a TTY or through a TTY relay service.

Telecommunications equipment should be maintained in working order. Staff should be trained to use both TTYs and the relay service, both of which lengthen calls. Also, staff need to understand that riders who use communications devices may be difficult to hear on a speakerphone.

Some transit agencies have developed best practices for aiding callers with speech impairments. For example, separate files listing the frequently taken trips of each rider can make it possible for callers to say a single word, and call takers can confirm where they are going. Or call takers can go down the frequently taken trips list. It is easier to ask yes/no questions than to ask the caller to spell the destination. Staff should be trained in all these telephone techniques.²¹⁹ (For more information, see Communication Access in chapter 6.)

The Role of Riders in Reducing Telephone Hold Times

Riders can help a transit agency reduce telephone hold times.

Call during off-peak times. Callers might know when call volumes are highest and hold times are longest. Sometimes this occurs when the reservation service first opens

in the morning or during the last hour of the day, when riders call to make last-minute trip requests. Riders can help by calling during less busy times, when possible.

Check on rides only when they are actually late. If the service has an on-time window (also called a “pickup window” or “be ready time”)—that is, a period of time during which vehicles are considered to be arriving on time—it is helpful to wait until the entire period has passed before calling to check on a ride. For example, a system might have a pickup window that starts at the scheduled pickup time and goes until 30 minutes after the scheduled time (a 0/+30 window). The vehicle is not late until after this period. Calling during the pickup window, when the pickup is not yet late, increases the burden on dispatchers and can cause longer hold times for other riders whose vehicles may be truly late.

Origin-to-Destination Service

The Americans with Disabilities Act classifies complementary paratransit service as origin-to-destination service. The ADA allows transit agencies to establish whether, or in what circumstances, they will provide door-to-door or curb-to-curb service. In door-to-door service, the vehicle operator offers assistance from the rider’s door to the vehicle and comparable assistance at the destination. In curb-to-curb service, assistance is not provided until the rider reaches the curb. In either case, the driver is required to help riders enter and exit the vehicle.²²⁰

The original Department of Transportation ADA regulation, promulgated in 1991, introduced the requirement for origin-to-destination service [49 C.F.R. § 37.129(a) and 49 C.F.R. Part 37, App. D, § 37.129]. On September 1, 2005, DOT released formal disability law guidance on the subject.²²¹ This guidance explains that the DOT interpretation of its ADA regulation requires transit agencies that adopt a policy of curb-to-curb service as the standard service mode must provide additional assistance to riders who need it on the basis of disability.²²²

This guidance, which is available at http://www.fta.dot.gov/12325_3891.html, states,

The Department's ADA regulation, 49 CFR §37.129(a), provides that, with the exception of certain situations in which on-call bus service or feeder paratransit service is appropriate, "complementary paratransit service for ADA paratransit eligible persons shall be origin-to-destination service." This term was deliberately chosen ... to emphasize the obligation of transit providers to ensure that eligible passengers are actually able to use paratransit service to get from their point of origin to their point of destination.

[It complies with the ADA] for a transit provider to establish either door-to-door or curb-to-curb service as [its] basic mode of ... service. Where the local planning process establishes curb-to-curb service as the basic paratransit service mode, however, provision should still be made to ensure that the service available to each passenger actually gets the passenger from his or her point of origin to his or her destination point. To meet this origin-to-destination requirement, service may need to be provided to some individuals, or at some locations, in a way that goes beyond curb-to-curb service.

For instance, the nature of a particular individual's disability or adverse weather conditions may prevent him or her from negotiating the distance from the door of his or 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 or her destination point. In these and similar situations, to ensure that service is actually provided "from the user's point of origin to his or her destination point," the service provider may need to offer assistance beyond the curb, even though the basic service mode for the transit provider remains curb-to-curb.

The guidance concludes:

Under the ADA rule, it is not appropriate for a paratransit provider to establish an inflexible policy that refuses to provide service ... beyond the curb in all circumstances. On an individual, case-by-case basis, paratransit providers are obliged to provide an enhancement to service when it is needed and appropriate to meet the origin-to-destination service requirement. We recognize that making individual, case-by-[case] judgments may require additional effort, but this effort is necessary to ensure that the origin-to-destination requirement is met.

Limitations on This Right

In the origin-to-destination guidance, DOT made it clear that this is not an unlimited right. The guidance also states,

Transit providers are not required to take actions ... that would fundamentally alter the nature of the service or create undue burdens. In this respect, the Department interprets the scope of transit providers' origin-to-destination service obligation analogously to the general obligations of public entities under the ADA to provide program accessibility. For example, ... [d]rivers would not have to provide services that exceed "door-to-door" service (e.g., go beyond the doorway into a building to assist a passenger). Nor would drivers, for lengthy periods of time, have to leave their vehicles unattended or lose the ability to keep their vehicles under visual observation. ... These activities would come under the heading of "fundamental alteration"²²³ or "undue burden."²²⁴

Transit Policies and Operational Issues

In meeting this ADA requirement, transit agencies should make two key decisions:²²⁵

1. Whether to provide door-to-door service as their standard service mode for all trips or only when needed by the rider.
2. Regardless of their decision on the first question, what policies to establish regarding how to provide the required door-to-door service, considering many factors including safety and the need for vehicle operators to maintain effective control over the vehicle.

Decision #1: Whether to Provide Door-to-Door Service for All Trips

The DOT guidance on origin-to-destination service permits a transit agency to establish a basic curb-to-curb policy and make exceptions to that policy for people whose disabilities necessitate additional service, or to provide door-to-door service for all trips.²²⁶

Providing door-to-door service only on an as-needed basis adds to the operational complexity of paratransit operations. The need for assistance beyond the vehicle must be determined and accurately recorded during the trip booking process, then accurately transmitted to drivers. Inconsistencies in providing assistance can contribute to missed connections and missed trips. As one General Manager stated:

Prior to adopting universal door-to-door service, our system provided service to the door upon the passenger's request. ... We discovered that having the service be variable (some passengers got door-to-door, others got curb-to-curb) caused significant reliability problems. Passengers would wait at the door because this is where they were dropped off, [but] the driver who was picking up the passenger would be waiting at the curb because he/she was not aware that the passenger had been taken to the door by the first operator; or the driver understood that the passenger would be waiting at a different door. Even in our relatively small system, we discovered that communication between our ... operators and our dispatchers to share specialized passenger information was difficult and resulted in numerous missed trips and no-shows. ... By having consistent service standards, we can more effectively train and inform our operators to deliver reliable service.²²⁷

Research conducted in 2004 (before the DOT origin-to-destination guidance was released) showed that approximately 50 percent of transit agencies provided door-to-door service, so the number is likely to be higher today.²²⁸ The vast majority of drivers in curb-to-curb systems say they provide door-to-door assistance when it is needed, as part of customer service and also for practical reasons. As the 2005 NCD report pointed out, general effectiveness is not increased if drivers must wait until a rider notices that the vehicle has arrived or watch someone struggle rather than assist the person.²²⁹

Thus, a full-time door-to-door policy can be both customer-friendly and operationally efficient. It can actually reduce travel times, because the driver can locate the rider sooner, help the rider enter the vehicle more quickly, and avoid missing the rider, which can cause significant scheduling problems if a vehicle must return to pick the person up. Door-to-door service can have a positive impact on on-time performance.

Decision #2: Local Policies to Implement Door-to-Door Service

Whether or not transit agencies choose to provide door-to-door service as their standard mode for all rides or only as needed, they should still establish local policies regarding how to carry out the door-to-door service they do provide under the DOT guidance on origin-to-destination service.

Local Policies Vary

Most door-to-door policies do not allow the vehicle operator to go into the dwelling or otherwise go out of sight of the vehicle, or to lose effective control over the vehicle, particularly if there are other riders on board. The most common ways to define “losing effective control over the vehicle” are losing sight of the vehicle or traveling more than a certain distance from the vehicle. A distance of 150 feet is typical; for example, that is the policy of MetroAccess in Washington, DC.²³⁰

There is a great deal of variation among transit agencies, however. For example, one agency reported that, according to its policy, “Drivers are ... instructed to not go through any door (although they can open public doors and announce their presence).”²³¹ The MetroAccess policy states, “At public entrances, drivers may open the first exterior door to announce their arrival (and if the entrance has a second door nearby that leads to a waiting area, drivers may open the second door to announce their arrival).”²³² By contrast, in one small California city, vehicle operators will go upstairs to an upper-floor office to let a rider know they are there.²³³

If transit agencies are concerned that riders who remain on the vehicle will put the vehicle into motion, they are encouraged to investigate ways vehicles can be secured if the driver leaves for short periods. For example, DART First State (Delaware) paratransit buses can be safely secured in this circumstance. Another possible variation for transit systems is to establish a policy that drivers must keep vehicles in sight if there are other riders on board. If there are no other riders and the driver can secure the vehicle, the line of sight is not necessary.²³⁴

As one ADA paratransit Executive Director reported:

Our providers do not have strict policies of keeping visual sight of the vehicle—that really is not possible in an urban area—they don't get too far away—but they might have to go around a corner or into the lobby of a building to announce their arrival. We have found there is more risk in leaving someone at the curb than in leaving the sight line of the vehicle for a minute.²³⁵

Even for transit providers with clear policies, situations that lie outside the policy often can be accommodated informally with riders. For example, if parking is unavailable, riders sometimes arrange for a nearby location where the van can reach the curb or exit from the street.

Local door-to-door policies often include other limitations based on the transit agency policy about what actions drivers can safely perform. The most common is “will assist riders who use manual wheelchairs up or down one step or curb.” Some systems allow two steps, although rarely more.

Identifying Passengers

One paratransit rider who is blind reported an incident as she waited at length for a ride at a busy street: a kind passer-by told her that her van was parked right in front of her. The driver said he got there early and had just been waiting; however, he had not spoken to her.²³⁶

The driver should have gotten out of the vehicle and asked if anyone was waiting for paratransit. Thorough policies for identifying passengers and helping passengers identify vehicles are important for riders with vision and cognitive disabilities as well as other disabilities, and in situations including inclement weather and low light that make it difficult to identify waiting vehicles. Reasonable assistance is sometimes needed to make the connection between vehicle operator and passenger, in addition to providing physical assistance.²³⁷

Operational Judgment Needed

All these provisions should be incorporated into formal local policy and included in vehicle operator training. But even with thorough training, vehicle operators will need to exercise some operational judgment on the street. This is comparable to many other jobs, from security to school teaching, in which situations arise that could not be predicted. Training should provide as much basic understanding as possible, including when to call for backup from a dispatcher or superintendent.²³⁸

When Is Door-to-Door Service Required?

The following questions present additional examples that illustrate how to apply the DOT origin-to-destination service guidance.²³⁹

A. Steps—Rider Using Wheelchair

Must a paratransit vehicle operator help a wheelchair user down a flight of steps?

A flight of steps presents too great a risk of harm (direct threat), and vehicle operators are generally not required to assist. Many transit agencies will provide assistance up or down one step or curb, and a few will provide assistance up or down two or, in rare cases, more steps. For example, the Massachusetts Bay Transit Authority (MBTA) in Boston will help riders who use manual wheelchairs over one curb or step.²⁴⁰ Similarly, New York City Transit will help riders up or down the curb or one step.²⁴¹ These are good customer service policies.

B. Steps—Ambulatory Rider with Mobility Disability

If a rider walks with limited mobility, must a paratransit vehicle operator help him or her up and down steps?

Yes. Assistance up and down the steps of the vehicle, as well as steps going to and from the vehicle, would be reasonable assistance for someone who needs it due to a disability, assuming other safety policies (such as maintaining effective continuing control of the vehicle) are not compromised.

C. Clear Path of Travel

A customer has requested door-to-door service, but his accessible entrance is blocked by debris, tree branches, a garbage can, and toys. Can the transit agency require the customer or his family to provide a clear path of travel?

The vehicle operator is not required to do extensive work to clear a path of travel, which would be a fundamental alteration of ADA paratransit service. However, a more easily performed action, such as moving one or two objects out of the path of a wheelchair user, would be required.

D. Doors and Ramps

Does the origin-to-destination guidance require opening a door for a rider, such as at the dialysis unit? Must a vehicle operator push a manual wheelchair user up a ramp, even if the ramp complies with the ADA?

Yes. The DOT origin-to-destination guidance requires both of these actions if the rider needs them. Opening the first exterior door to a dialysis unit or other public waiting space is required if needed by the rider. However, pushing a person up an excessively steep slope that presents too great a risk of harm (direct threat) is not required.

E. Carrying Packages

Does the DOT guidance on origin-to-destination service require a driver to carry groceries and other packages?

Many transit agencies will provide assistance carrying a limited amount of groceries and other packages, if these services are permitted on the fixed-route service and if the rider needs assistance due to his or her disability. However, the need for assistance with packages is not, in and of itself, a basis for ADA paratransit eligibility.

For example, Karen Hoesch, Executive Director of ACCESS Transportation Systems and the featured speaker in an Easter Seals PROJECT ACTION distance learning session on March 18, 2010, on the subject of “Determining ADA Paratransit Eligibility: An Approach, Guidance and Training Materials,” stated that her own system’s policy was to provide a reasonable level of assistance for “a reasonable number of bags.” Hoesch gave the example that a couple of grocery bags is “generally within the realm of reasonableness.”²⁴²

F. Snow

Does the origin-to-destination service guidance require pushing someone through snow?

Yes. This is the kind of action that was contemplated by the guidance when it discussed adverse weather conditions.²⁴³ Some situations—such as deep snow or very icy conditions—may constitute a fundamental alteration or direct threat, so assistance is not required. But in many other circumstances—such as one or two inches of snow—the operator can reasonably help the person reach the vehicle. A vehicle operator is not required to shovel a driveway or walkway.

G. Doorbell

Must the vehicle operator ring at the apartment door?

Yes. Going to the outside door of a building is required. Knocking or ringing the doorbell at the outside building door can be part of required door-to-door service, particularly if it is needed to communicate to the rider that the vehicle has arrived.

H. Two Staff Persons

If needed door-to-door service requires two transit agency staff persons to come on the vehicle, rather than one vehicle operator, is that required?

No. This would be a fundamental alteration of ADA paratransit service and is not required.

Public Input in the Planning Process

Any revision of a transit agency's rider assistance policies should include full public input. Rider assistance is a key element of ADA paratransit service design, and the public should be consulted on the details of the proposed policy changes.²⁴⁴

Vehicle Operator Training

Regardless of whether assistance is the norm or is provided on an as-needed basis, drivers should be trained on transit agency policies and on how to provide assistance properly to and from the vehicle to riders with various types of disabilities.²⁴⁵

Transfers Must Be Attended When Needed by a Rider

In an ADA compliance review, the FTA found that transit agencies may not establish policies that require riders who cannot navigate the transit system to undergo unattended paratransit transfers between vehicles. The FTA thus reinforced the principle that, when a vehicle drops a rider off at a transfer point, the vehicle may not depart if the person cannot be left unattended; it must wait. In this compliance review, the FTA called for attended (direct vehicle-to-vehicle) transfers for riders who cannot be left unattended.

The finding stated,

For paratransit trips that require a vehicle transfer, [the transit agency]’s policy allows a passenger to “be dropped off and left unattended for up to 1 hour at a transfer point. ... The drivers operate according to a schedule and cannot wait with clients for the next vehicle to arrive ...” This policy requires, de facto, that individuals who cannot be left unattended due to their disability must travel with attendants. This does not meet the DOT ADA regulatory criteria in § 37.5(e), which do not allow systems to require that individuals travel with attendants. It also does not meet the intent of § 37.123(e)(1), which does not consider a transit service to be accessible to individuals with disabilities if these individuals cannot use the service independently. It also does not meet § 37.129(a), which requires that service be “origin-to-destination.”²⁴⁶

Some Transit Agencies Disregard the Origin-to-Destination Service Requirement

Some transit agencies appear to disregard the DOT origin-to-destination service requirement. For example, the Utah Transit Authority Paratransit Rider’s Guide states,

Paratransit is a curb-to-curb service. Do not expect extra assistance beyond the curb, as the driver cannot leave the bus or riders unattended due to safety and security concerns. Unless you are deemed eligible in advance for additional individual assistance, drivers will only assist you as you enter and exit the vehicle. Drivers also operate the wheelchair ramp or lift and will assist you with the securement of wheelchairs and mobility aids, and with seatbelts.

If you need assistance getting to the curbside or from the vehicle to your destination, please arrange to have someone other than the driver assist you, as the driver needs to depart immediately after arriving at your destination.²⁴⁷

Deborah Mair, Executive Director of the Utah Independent Living Center in Salt Lake City, and Andy Curry, Director of Roads to Independence, an independent living center in northern Utah, concur that Utah Transit Authority (UTA) will not provide door-to-door service without extensive advocacy, even for people who need it due to a disability or

during bad weather. Riders who are strong advocates will insist that the driver must call a particular person at UTA who will give them the okay to assist the rider.²⁴⁸

On-Time Performance

Poor on-time performance remains the most significant and pervasive problem experienced by riders of ADA paratransit. Richard Devylder, former Senior Advisor for Accessible Transportation for U.S. DOT, reported that he has continued to hear from the disability community about significant on-time performance problems in ADA paratransit across the country.²⁴⁹

Alice Ritchhart, Transportation Committee Chair of the American Council of the Blind stated,

Regarding ADA paratransit, we hear the same complaints that all people with disabilities have: problems with pickups, the time, how long it takes, and missed trips.²⁵⁰

And according to Tracee Garner, Outreach Coordinator of the Loudoun (Virginia) ENDependence Center,

For us in the rural area, [paratransit doesn't] have the rides you need at the times you need them. You have to either go way early or way late. For example, if I had a noon appointment, I would probably have to take a 10:00 appointment on paratransit, then take a 10-minute ride and wait for nearly two hours.²⁵¹

Many factors contribute to on-time performance. This section will address scheduling practices, pickups, drop-offs, will-calls, travel time, and other important factors.

Scheduling Practices for On-Time Performance

Using the One-Hour Negotiation Window Correctly

The ADA allows a transit agency to negotiate pickup times with an eligible rider, but the transit agency may not require him or her to schedule a trip more than one hour before or after the desired departure time. This is called the “negotiation window” and is the first of several types of windows used in ADA paratransit.

It is important for transit agencies to consider the overall travel needs of riders when negotiating pickup times. For example, if a rider indicates that she needs a ride home from work, gets off work at 5:00 p.m. and requests a 5:15 p.m. pickup, the appropriate one-hour window would be from 5:15 p.m. to 6:15 p.m. It is not consistent with the DOT ADA regulation to offer only pickup times that would require her to leave work early. Similarly, if a rider indicates that he needs to be at work by 9:00 a.m., it would not be correct to offer a pickup time that would require him to arrive at work late.²⁵²

The FTA has addressed the importance of using the one-hour window correctly. For example, in an ADA compliance review, the FTA stated,

The *ADA Paratransit Handbook*, developed by FTA to provide guidance to transit systems in designing ADA complementary paratransit services, indicates that “suggesting a 4 p.m. pickup knowing that the person works until 5 p.m. would not be in keeping with the concept of comparable service.” Similarly, offering a 9 a.m. pickup if a person requests an 8 a.m. ride to get to work by 9 a.m. would not be in keeping with the concept of comparable service.²⁵³

The one-hour window should be applied as follows:

- When there is a *latest arrival time* (for example, a doctor appointment), the window should be used on the early side to ensure that the rider gets to the appointment on time.

- When there is an *earliest departure time* on a return trip (for example, a time when the rider gets off work and so cannot leave before then), the window should be from that time to one hour after.²⁵⁴

Scheduling to the Appointment or Desired Arrival Time

The FTA has found repeatedly in ADA compliance reviews that a needed arrival or appointment time must be taken into account by transit agencies in scheduling the ride.²⁵⁵ The FTA also stated that this is important for trips “with an appointment time, such as trips to work, school, medical appointments, recreational events, etc.”²⁵⁶ For example, in an ADA compliance review, the FTA stated,

[The transit agency] procedure of applying a full two-hour scheduling window to requested pickup times and not allowing riders to schedule trips based on appointment/desired arrival times or departure times from an appointment appears to make responsive scheduling of trips very difficult. Scheduling trips in a manner that is unresponsive to customers’ needs could be discouraging some riders from using the service and could be considered a practice that limits the use of the service.²⁵⁷

The best way to ensure that riders arrive at their appointments on time is to book and schedule trips based on the stated appointment or desired arrival time. Most software scheduling programs accommodate this by allowing the user to enter an appointment time, indicating that this is the latest time that the drop-off can be made, and then letting the system generate a pickup time that is appropriate for the trip distance.²⁵⁸

The Importance of a True Negotiation of Trip Times

While the DOT ADA regulation allows paratransit trips to be scheduled within an hour of the requested time, it also states that trip times must be negotiated with riders. The FTA has questioned whether it is consistent with the ADA for a transit agency to offer only one pickup time, even if it is within an hour of the requested time, because such an offer is not a negotiation. For example, the FTA pointed out in one ADA compliance review that “in most cases, only one pickup time is generated and offered to callers [by the

transit agency] for each trip requested.” The FTA recommended that the transit agency procedures should “address appropriate negotiation of trip times that respond to stated rider needs.”²⁵⁹

Negotiated Time Versus Scheduled Time

Sometimes there is a difference between the negotiated time given to the rider on the telephone and the scheduled time according to the transit agency, which may have made changes without notice to the rider. Changes sometimes occur because the paratransit service is using a computerized system that changes the time to make the printed driver schedule conform to certain parameters. For example, the negotiated time may be 7:15 a.m., but the vehicle operator is told 7:30. If the rider is not informed about this relatively small change, he (expecting a 30-minute pickup window [-15/+15]) goes outside to wait for the vehicle at 7:00 and, at 7:30, assumes the vehicle is not coming and goes back inside. Meanwhile, the vehicle operator expects that this pickup is on time between 7:15 and 7:45. When the vehicle arrives at 7:35, the driver records the rider as a no-show when, in fact, he was present according to the information he was given.²⁶⁰

For these reasons, the FTA has made many determinations that the negotiated time given to the rider needs to be protected in the system.²⁶¹ The transit agency must notify the rider of any changes to ensure that all parties—the transit system, the vehicle operator, and the rider—are informed.²⁶² If transit agencies wish to make changes to any original negotiated times so that trips fit better on final schedules, riders should be called and new times negotiated. If a rider cannot be reached to renegotiate a new pickup time, the original time should not be changed. Per the ADA negotiation window, any changes may not be more than one hour from the rider-requested time.²⁶³

The FTA reinforced these points in its response to an ADA complaint against the Winston Salem Transit Authority (WSTA) in North Carolina in an FTA letter of finding issued July 30, 2013. The FTA Office of Civil Rights became involved after learning that paratransit riders were not being told of changes in scheduled pickup times. “What is

not clear from the information provided by WSTA,” the Office of Civil Rights stated, “is whether or not the passenger is actually aware of the scheduled pickup time around which the ... pickup window revolves. The [WSTA] letter provides an example of a passenger requesting a pickup time of 7:30 a.m. where the reservationists are able to schedule a 7:15 a.m. pickup time. Providing a trip at 7:15 in response to request for a 7:30 trip is within the negotiation window permitted under ADA regulations; however, if the passenger is not aware of the scheduled pickup time—i.e., the 7:15 pickup time has not been negotiated as required—the result would be a pickup window that begins 15 minutes earlier than the passenger expects, which could result in the vehicle arriving and departing before the passenger is ready to board.”

The FTA letter, written by ADA team leader John Day, said, “It appears that WSTA is not providing paratransit passengers with adequate information concerning their agreed-upon pickup times. ... Unilaterally changing a trip time without negotiating pickup times with WSTA riders is in violation of Section 37.131 of the DOT ADA regulations.” Day added that WSTA would be instructed to take “corrective action.”²⁶⁴

Pickups, Drop-Offs, Will-Calls: Consider All Aspects of On-Time Performance

Providing timely paratransit service is more than ensuring that pickups are on time. It also means delivering riders to their destinations in a timely manner. And poor performance is not just being late but also includes very early pickups or drop-offs.²⁶⁵

The Pickup Window

It is current practice in the paratransit industry to view an on-time pickup as a vehicle arrival within an on-time window established by the transit agency (alternatively termed the “pickup window” or “be ready time”). This is the next important window in ADA paratransit. The pickup window distinguishes between an on-time pickup and a late or

early one; it also defines the period during which the rider is expected to be ready and waiting for the vehicle to arrive. Riders need to be ready throughout the pickup window.

Large transit agencies frequently use 20 to 30 minutes as their on-time pickup window; 30 minutes or less is standard in the industry.²⁶⁶ The FTA letter of finding to the Winston Salem Transit Authority in North Carolina quoted above notes that pickup windows are “usually 30 minutes.”²⁶⁷ The FTA has found 60 minutes to be too long.²⁶⁸

Avoid Very Early and Late Pickups

The pickup must occur during the window, not earlier or later, to be considered on time. In some locations, vehicles frequently arrive well before the announced pickup window, and if passengers are not ready, they are given a no-show. This practice is not consistent with the ADA. If a passenger rejects such a ride, the transit agency should consider it a missed trip unless the vehicle waits until the prearranged pickup window or until another vehicle returns for the rider during the window. It is a best practice, if the vehicle arrives early, for the driver to park around the corner so riders do not feel pressured to leave early.

Early pickups—before the pickup window—impose very real difficulties on many riders. One difficulty is that riders have no way of knowing when to be ready. Also, although some riders may not mind leaving early for certain trips (such as shopping), other trips (including medical and work trips) are time-specific. In addition, early departures to some destinations may result in drop-offs earlier than riders should arrive and may even be dangerous, such as arriving at work on cold winter days long before the building is open.²⁶⁹

The FTA has expressed concern in ADA compliance reviews that transit agencies have too many early pickups and that some transit agencies appear to be pressuring riders to accept pickups before the pickup window, sometimes even considerably before.²⁷⁰ For example, one review stated, “It is not acceptable to pressure customers into accepting early pickups when they are not prepared or do not wish to board.” Another review

recommended that “[the transit agency] should instruct its carriers that drivers are not to request passengers to board the ... vehicle before the beginning of the pick-up window.”

The Five-Minute Wait Time

Typically, transit agencies establish a five-minute wait time to designate a clear limit on how long the vehicle will wait for the rider at pickup.

Where transit agencies have adopted a five-minute wait time, the FTA has determined that the five minutes may not begin until the start of the pickup window.²⁷¹ If a vehicle arrives early, the driver should wait until the window plus five minutes. Dispatchers should consider this before approving any no-shows. (See more about such policies in the section below on No-Shows.)

On-Time Drop-Offs and the Drop-Off Window

For many trips, an on-time drop-off is as important as, or more important than, an on-time pickup. The FTA has been clear that timely drop-offs are an important part of on-time performance. A 2003 letter from the FTA Office of Civil Rights stated,

Just as substantial numbers of untimely pickups limit the utility and, therefore, availability of service to people with disabilities, so do a substantial number of untimely arrivals. For many passenger trips, the timeliness of the drop-off is more critical to the utility of the service than the timeliness of the pickup. Such trips are those with an appointment time, such as trips to work, school, medical appointments, recreational events, etc. Substantial numbers of significantly late arrivals for appointments can limit the utility of the service to customers and would constitute a capacity constraint.²⁷²

A number of other FTA ADA compliance reviews found problematic patterns of late arrivals.²⁷³

In a similar vein, drop-offs at a destination should not be earlier than a half hour.²⁷⁴ Transit agencies should also establish a window for timely drop-offs (the “drop-off window”).²⁷⁵ The window should not exceed “from thirty minutes before the appointment time to the appointment time (-30/0).”²⁷⁶

How the drop-off window should interact with other operational procedures by transit agencies was discussed in a 2010 Easter Seals Project ACTION teleconference. Russell Thatcher and Tom Procopio of TranSystems Corporation addressed ADA paratransit scheduling, and Thatcher stated,

Your drop-off on-time parameter would read something like ... “drop-offs are on time if [riders are] not dropped off after the appointment time and no earlier than ... 30 minutes before the appointment time.”

That particular parameter would then be used with your travel time parameters to allow your scheduling software to decide how far in advance to move the pickup for the appointment to ensure that the drop-off takes place within that window.²⁷⁷

Too often, discussions of on-time performance have disregarded boarding and disembarking time, which can be slowed down by dealing with wheelchair securements and other factors. A particularly important point addressing this problem was made in a draft FTA ADA circular:

Some transit agencies schedule drop-offs no later than five minutes before appointment times to allow riders time to get from vehicles to appointments.²⁷⁸

To apply this important approach, if a medical appointment or job interview is at 2:00 p.m., the vehicle should reach the destination by 1:55 at the latest.

The draft FTA ADA circular added an additional important point about on-time drop-offs:

When considering drop-off times, it can be important to ensure that drop-offs do not occur before a facility opens. For example, if a medical office

building does not open its doors until 8 a.m., a policy might restrict drop-offs at this location to “no earlier than” 8 a.m.²⁷⁹

Will-Calls

Will-calls are typically return trips without a specific scheduled time; instead, the riders call in when they are ready to return.

Will-calls can provide significant rider benefits for a limited number of trips, when the rider cannot predict the return time. In some medical situations, will-calls are vital, and it is a good practice for a transit agency to make them available. However, they are workable only if limited in number, particularly during peak operating times, when a large number of will-calls can overburden a system and make it difficult to deliver service on time.

Will-calls are not required by the ADA, but if a transit agency allows them, it is a good practice to establish a window for will-call trip pickups (also called the “will-call response time”) so riders know how long they may need to wait if they book a will-call. A typical and reasonable policy would be no more than 60 minutes (0/+60).

Travel Time

An issue closely related to paratransit timeliness is trip length, also called travel time or ride time. In some locations, riders and advocates report very long travel times and frequently ask how long is too long. The approach increasingly used in the transit industry, which is consistent with FTA determinations in several ADA compliance reviews and letters of finding,²⁸⁰ is to compare travel time with that on the fixed-route bus or train system. If a paratransit ride takes much longer than the same ride on the fixed-route system, that may be too long. For example, if the total fixed-route time is 60 minutes (including the time on each end of the ride to go to and from the bus or train stops, and to wait for the bus or train), a paratransit trip that is more than 15 or 20 minutes longer might be considered excessive. A substantial number of such trips

would be an illegal capacity constraint under the ADA. Transit agencies should monitor trip length and regularly evaluate travel times.

Subscription Service

Misinterpretation of the 50 Percent Cap

Understanding the ADA regulation regarding subscription trips (that is, repeat trips to and from the same locations at the same times) and carefully managing and scheduling such trips can improve on-time performance as well as service productivity and efficiency.

As the 2005 NCD report explained, many transit agencies have misinterpreted the DOT ADA regulation as capping subscription service at 50 percent of paratransit capacity, regardless of the circumstances.²⁸¹ The cap applies only when there is no nonsubscription capacity; that is, when there are capacity constraints.²⁸² The “subscription ‘cap’ ... only applies if your system is experiencing capacity constraints and you’re denying next-day trips. ... If you aren’t denying next-day trips, you can provide any level of service on subscription that you want, provided that you can still meet all your requests for next-day service.”²⁸³

Thus, many transit agencies have unnecessarily limited subscription service. An increase in such service can improve on-time performance and service productivity, as well as providing significant benefits to riders.²⁸⁴

Subscription Service Is Not a Premium Service

The FTA’s draft ADA circular makes the point that subscription trips are considered to be ADA paratransit trips:

FTA notes that subscription trips are still considered [ADA] complementary paratransit trips. Even if transit agencies choose to reserve and schedule certain trips in this way, trips reserved and scheduled on a subscription

basis remain subject to the regulatory requirements (e.g., agencies must ensure trip lengths are comparable to the fixed-route and pickups are timely).²⁸⁵

Thus, it would be inappropriate for transit agencies to classify subscription trips as a premium service that is not subject to the ADA paratransit service criteria.

Monitoring

Careful, thorough monitoring of paratransit is critical, particularly when the service is contracted out to other providers. Monitoring should go well beyond reliance on contractor reports; effective monitoring is often accomplished by stationing transit employees onsite in sufficient numbers to monitor contractor operations. Transit agencies should set standards for on-time pickups and drop-offs, and for what is too early and too late. They should monitor service for compliance with these standards, both on paper and by actually spot-checking pickup and arrival times at destinations.

Transit agencies should measure and respond when documentation and data indicate that their service does not meet their standards. They should be aware that on-time performance is more than just a percentage, such as 90 percent or 95 percent. ADA compliance is also about operating policies and practices that cause late or very early trips.

Monitoring should include not only establishing a percentage rate for on-time performance but also tracking other practices related to on-time performance and other ADA-related requirements.

The following are recommended resources for more information on monitoring:

- Federal Transit Administration, Americans with Disabilities Act Circular C 4710.1, Amendment 1, Draft Chapters for Public Comment. The “On-Time Performance Monitoring” section, pp. 8–13, is among the many helpful

sections. February 2014. http://www.fta.dot.gov/documents/Proposed_ADA_Circular_Amendment_1.pdf

- “Innovative Practices in Paratransit Services,” Easter Seals Project ACTION, April 2002, pp. 17–21, “Service Monitoring.”
- Federal Transit Administration ADA Compliance Review Final Reports. http://www.fta.dot.gov/civilrights/12875_3899.html
- Topic Guides on ADA Transportation, Disability Rights Education and Defense Fund (DREDF) and TranSystems Corporation, funded by the Federal Transit Administration, Washington, DC, published June 2010. <http://www.dredf.org/ADAatg/>
- “Strategy Guide to Enable and Promote the Use of Fixed-Route Transit by People with Disabilities,” TCRP Report 163, TranSystems et al., Transportation Research Board, Washington, DC, 2013. <http://www.trb.org/Main/Blurbs/170626.aspx>

The Role of the Rider in Keeping Service on Time

Good on-time performance in ADA paratransit requires actions by riders as well as transit agencies.

- ***Cancel:*** A rider should call to cancel as soon as possible if he or she will not be taking a trip.
- ***Pickup window:*** Riders should be aware that most ADA paratransit systems use a pickup window of up to 30 minutes, depending on the agency. The ride is not required to come at a particular time but rather is allowed to come at any time during the pickup window. Riders should confirm the pickup window when they make their reservations.

- **Be ready:** Riders should be ready to leave throughout the pickup window. Delays in boarding can throw off the rest of the schedule and cause all subsequent pickups and drop-offs to be late.
- **Shared ride:** Riders should be aware that, in many cities, paratransit is generally a shared-ride experience. When a ride is shared, the vehicle will not necessarily take a direct route to one person's destination.

No-Show Policies

The 2005 NCD report²⁸⁶ explained that the DOT ADA regulation allows transit agencies to suspend, for a reasonable period, the provision of paratransit service to riders who establish a pattern or practice of missing scheduled trips, also known as no-shows.²⁸⁷ In permitting no-show service suspensions, the DOT ADA regulation acknowledges that paratransit riders who repeatedly fail to appear for their prearranged rides can have a detrimental effect on operational efficiency, cost, and the quality of the service for other riders. Yet people with disabilities experience the same kinds of unexpected schedule changes as everyone else, and some people with disabilities have variable conditions that change from day to day. For these reasons, the plans of ADA paratransit riders sometimes change. The challenge of no-show policies is to balance these needs.

As the 2005 NCD report also explained, it is advisable to identify and focus on the real abusers and establish a policy that is customer-friendly and respectful of the average rider.²⁸⁸ Sending letters to riders about their no-shows that suggest the riders are irresponsible or costly to the transit agency is likely to trigger a negative public response and is not recommended.

Transit agencies should emphasize working with riders in a positive way to reduce no-shows, as well as implementing the warnings and suspensions allowed by the ADA. Approaches that work with riders to address the root causes of no-shows and incorporate incentives tend to be the most effective.²⁸⁹

Pattern or Practice of Missed Trips by the Rider

The 2005 NCD report discussed important principles about how the ADA allows transit agencies to impose service suspensions based on passenger no-shows.²⁹⁰ Appendix D of the DOT ADA regulation, which provides interpretive guidance on the regulation, states,

It is very important to note that sanctions could be imposed only for a “pattern or practice” of missed trips. A pattern or practice involves intentional, repeated, or regular actions, not isolated, accidental, or singular incidents. Moreover, only actions within the control of the individual count as part of a pattern or practice. Missed trips due to operator error are not attributable to the individual passenger for this purpose. If the vehicle arrives substantially after the scheduled pickup time, and the passenger has given up on the vehicle and taken a taxi or gone down the street to talk to a neighbor, that is not a missed trip attributable to the passenger. If the vehicle does not arrive at all, or is sent to the wrong address, or to the wrong entrance to a building, that is not a missed trip attributable to the passenger. There may be other circumstances beyond the individual’s control (e.g., a sudden turn for the worse in a variable condition, a sudden family emergency) that make it impracticable for the individual to travel at the scheduled time and also for the individual to notify the entity in time to cancel the trip before the vehicle comes. Such circumstances also would not form part of a sanctionable pattern or practice.²⁹¹

Do Not Count No-Shows That Are Beyond the Control of the Rider

The 2005 NCD report²⁹² explained that the ADA does not allow transit agencies to base a suspension of service on any trips missed by a rider for reasons beyond his or her control,²⁹³ including trips missed due to transit agency error or lateness. Those trips may not be a basis for determining that a pattern or practice of missing scheduled trips exists. Yet riders are not always informed of their right to contest particular no-shows and transit agency missed trips. In some cases, riders with disabilities express the concern that they are penalized despite their best efforts to contact the transit agency to establish that particular no-shows or transit agency missed trips were beyond their control.

What Is Beyond the Rider's Control?

Since the publication of the 2005 NCD report,²⁹⁴ it has become clear that many circumstances may be beyond the rider's control, including but not limited to these:

- Family emergency arose.
- Illness precluded the rider from calling to cancel.
- Personal attendant or another party did not arrive on time to assist the rider.
- Rider was inside calling to check the ride status and was on hold for an extended time.
- Rider's appointment ran long and did not provide an opportunity to cancel in a timely way.
- Another party canceled the rider's appointment.
- Rider's mobility aid failed.
- Rider experienced a sudden turn for the worse in a variable condition.
- Adverse weather affected the rider's travel plans and prevented the rider from canceling in a timely way.

Transit agency errors, which may not be counted as rider no-shows, include but are not limited to the following:

- Vehicle arrived after the pickup window.
- Vehicle arrived before the pickup window, and the rider was not ready to go.

- Vehicle never arrived.
- Vehicle went to the wrong location.
- Driver did not follow correct procedures to locate the rider.
- Rider canceled in a timely way but the cancellation was not recorded correctly or was not transmitted to the driver in time.

Transit agencies should provide a telephone number for riders to inform the transit agency that particular no-shows were beyond their control. In large systems, this telephone number should be different from the regular reservation line. In general, the calls should go to the staff who are tracking and tabulating no-shows and preparing no-show suspension letters.²⁹⁵

Proportion of Trips Missed, Rather Than Absolute Number

Many Policies Are Too Restrictive

In 2005, the Transportation Research Board published a study called *Practices in No-Show and Late Cancellation Policies for ADA Paratransit*. The survey of transit properties showed that, at that time, the most common policy was that riders could be suspended if they had three no-shows in 30 days.²⁹⁶ However, as explained in the 2005 NCD report, the FTA has stated that three no-shows do not necessarily constitute a pattern of rider abuse of the paratransit service, particularly for frequent riders.²⁹⁷ Thus, using this stringent standard to suspend service would unfairly deny some riders their right to paratransit eligibility.²⁹⁸

Transit agencies with no-show policies that penalize riders after three no-shows in 30 days should reconsider their policies in light of the FTA statement that this may not constitute a sufficient showing of pattern or practice of no-shows to justify a suspension of service for regular riders.

FTA ADA compliance reviews have found that certain transit agency policies “may be an overly restrictive interpretation of the DOT ADA regulations.” This includes policies in which—

- Any combination of three no-shows or late cancellations in one month could result in a suspension.
- Eight no-shows in 12 months could result in a suspension.
- Three no-shows in 90 days (or in a calendar quarter) could result in a suspension.
- Six no-shows in a calendar year could result in a suspension.²⁹⁹

Consider the Frequency of Trips Missed

The 2003 letter from the director of the FTA Office of Civil Rights quoted above addressed another important consideration, which was first explained in Appendix D: No-show suspensions may be imposed only when the rider’s record involves intentional, repeated, or regular actions rather than isolated, accidental, or single incidents. Three no-shows in a month for a regular rider who uses the service to get to and from work each day, as well as for other trips, is very different from three no-shows by a rider who schedules only five trips a month. Frequency of use or proportion of trips missed should be considered in determining a pattern or practice.

The FTA has repeatedly found in ADA compliance reviews that no-show suspension policies should not be based solely on a set number of no-shows per month. Rather, the frequency of a person’s rides in relationship to the frequency of his or her no-shows should be considered to determine whether a true pattern or practice exists.³⁰⁰

An appropriate policy considering the proportion of trips was adopted in Ann Arbor, Michigan. As reported in *Transit Access Report* in 2010,

The transit authority in Ann Arbor, Michigan, has implemented a no-show policy for its paratransit service that takes percentage of no-shows into account. This is the type of policy that has been encouraged [by] the Federal Transit Administration in various reviews of compliance with the Americans With Disabilities Act. ...

Transit Access Report quotes a letter from John R. Day, then acting ADA team leader in the FTA Office of Civil Rights, to a rider who had submitted a complaint. Day wrote, “The new missed trip policy includes, among other changes, consideration of the frequency of a rider’s no-shows in proportion to that rider’s overall use, rather than a strict numerical threshold for defining excessive missed trips.”

Transit Access Report continued,

Day’s letter, saying the FTA was “taking no further action,” appears to suggest at least tacit approval by the FTA of the new policy.³⁰¹

Pattern or Practice Means Both Substantial Number and Above Average Frequency

In determining what frequency of no-shows constitutes a pattern or practice of abuse, transit systems should also consider the overall no-show rate for *all* riders and adjust upward, so as not to penalize riders with average no-show records. If the overall no-show rate is 5 percent, for example, a rider who no-shows only 5 percent of her scheduled trips should not be considered an abuser of the service, because this is the average. In this case, a no-show rate of 15 percent could be considered abuse.

The number of no-shows should be considered in addition to frequency. A person who schedules one round-trip in a month and no-shows both ends of that trip would have no-showed 100 percent of his scheduled trips, but this does not constitute a pattern or practice. It is not clear whether scheduling only two round-trips and no-showing both is a pattern or practice. A minimum number, such as five no-shows in a month, would seem to be a more appropriate. When this minimum number is exceeded, that could trigger a review of the rider’s no-show frequency.³⁰²

Do Not Cancel the Return Trip

The FTA has made the policy interpretation that if a rider misses a scheduled outbound trip, transit agencies may not automatically cancel the return trip.³⁰³ Each leg of a trip must be treated separately. Without an indication from the rider that the return trip is not needed, it should remain on the schedule.

The FTA determination is based on the impact on riders when a return trip is automatically canceled. For example, if a vehicle operator had an incorrect rider address on the outbound trip and the trip was missed but the rider reached her destination another way, she might still need a way to get home. Canceling the return trip could strand her.³⁰⁴

The FTA has made this finding several times. In 2013, *Transit Access Report* gave the example that “if an ADA paratransit rider in Houston no-shows for one trip, the rider has to let Houston Metro know if a subsequent scheduled trip that day is still needed. The transit agency was chastised for this policy in a compliance review conducted for the Federal Transit Administration Office of Civil Rights. ... The compliance review said procedures must be revised ‘so that subsequent trips for the day are not automatically canceled or put on hold if a rider misses one trip.’”³⁰⁵

In a later 2013 ADA complaint investigation,

... the FTA Office of Civil Rights dealt with a complaint by an ADA paratransit rider against Montachusett Regional Transit Authority (MART) in Fitchburg, Mass. Among other issues in the complaint ... the rider said a return trip was automatically canceled following a disputed “no-show” one day in June 2013. ... The FTA responded, in an August 23, 2013 letter, that after receiving the rider’s complaint and reviewing FTA policy, MART said it will no longer automatically cancel return rides for riders who are marked as no-shows for the initial trip.³⁰⁶

Suspensions

Alerting the Rider of No-Shows

It is a good practice for transit agencies to alert riders about no-shows on their record as they occur. If transit systems do not alert riders along the way, they should at least bring the no-shows to the rider's attention before proposing a suspension. Notifying the rider after each no-show is preferred for many reasons, including that it is not reasonable to expect riders to remember the specific circumstances of each day of the past several weeks or even months.

Whether the transit agency informs riders about no-shows as they occur or only after some have been recorded, any rider notification should restate the agency policy and inform riders that they can contact the agency if they think any of the no-shows were not under their control or were charged in error.³⁰⁷

Notification Before Suspensions

Before any suspension of service due to no-shows, the transit agency must notify the individual rider in writing, specifically citing the full reason for the proposed suspension and its length, including the exact no-show dates, times, pickup locations, and destinations on which the proposed suspension is based and using accessible formats when necessary.

The notification must include information about the appeal process, including how to file an appeal. It should also include a statement that the suspension may not be based on any no-shows beyond the rider's control nor on any trip missed due to transit agency error or lateness, even if the transit agency has notified the rider of no-shows as they occurred. The statement should include how to contact the transit agency about no-shows beyond their control. This procedure helps prevent going to a full appeal. If the rider contests one or more no-shows and the transit agency agrees, there may be no need for an appeal.³⁰⁸

The FTA has made the finding that time is needed for the filing of an appeal before suspensions become effective, recommending that a transit agency should allow at least 15 days between receipt of a notice of a proposed suspension of service and the proposed date on which the suspension becomes effective.³⁰⁹

Length of Suspensions

It is important that any suspension of service be limited to the reasonable period of time envisioned in the DOT ADA regulation. As an FTA representative explained,

We are, in most cases, looking for a suspension on a progressive system so that the first offense ... should probably only be for a couple of days, maybe a week. Thereafter, the second time ... you could allow for a more severe punishment, say twice as long as the first suspension, and so on ... with the goal ultimately of not denying the person service but of correcting the behavioral problem or the lack of attention problem that is leading to disruption to your service. In summary, we are looking for suspensions of days, maybe weeks, not suspensions, typically, of months and especially of years.³¹⁰

Financial Penalties—Optional Only

Some transit agencies allow riders to pay a fine or other financial penalty instead of receiving a no-show service suspension. However, the ADA permits a financial penalty only as an option instead of a suspension. A fine or financial penalty may not be mandatory and may not be charged in addition to a suspension.³¹¹

Moreover, the ADA does not allow a transit agency to charge any fee or financial penalty (whether optional or mandatory) because of a *single* no-show, nor for any number of no-shows short of a suspension. This includes fares for trips not taken for any reason by a rider or a rider's companion. Requiring payment of fares for trips not taken is disallowed by the ADA. A financial penalty is legal only as an alternative to a suspension, not as a punitive measure for one or more no-shows.³¹²

The FTA made a similar finding in 2012, when the Office of Civil Rights (OCR) rejected mandatory fines for no-shows by ADA riders. Monica McCallum, chief of the FTA OCR Regional Operations Division, in a July 9, 2012 letter, conveyed the OCR position to the Capital Area Transit Authority, the Lansing, Michigan, transit agency. McCallum wrote,

FTA has consistently found mandatory financial penalties to be impermissible under the ADA. The U.S. Department of Transportation's regulations only address a pattern or practice of customer no-shows in terms of a suspension of service. Transit agencies may not impose a mandatory punishment that is outside the framework of the regulations.³¹³

Appeal Process for No-Show Suspensions

The ADA guarantees that a rider may file a local appeal of a transit agency decision to suspend the provision of paratransit service due to a pattern of missing scheduled trips. If a rider requests an appeal, paratransit service must continue to be provided until the appeal is heard and decided. According to Appendix D of the DOT ADA regulation:

We would emphasize that, prior to a finding against the individual after this due process procedure, the individual must continue to receive service. The entity cannot suspend service while the matter is pending.³¹⁴

The local appeal process must include an opportunity to be heard and to present information and arguments. Moreover, according to Appendix D, "If there is a hearing, and the individual needs paratransit service to attend the hearing, the [transit agency] must provide it."³¹⁵

The decision on an appeal must be made by a person or panel of people uninvolved with the initial decision to suspend service. The DOT ADA regulation requires a separation of authority between those making the initial determination to suspend service and those making the decision on an appeal. For example, neither a subordinate nor a supervisor of the person who made the initial decision should hear appeals.³¹⁶

Written notification of the result must be provided, with detailed, specific reasons stated.³¹⁷

No-Strand Policies

Many transit agencies have a no-strand policy stating that if the ADA paratransit system takes a rider to a destination, the rider will not be left stranded there, even if the rider no-shows for the scheduled return ride. It is a good practice to establish and implement such a policy. Return service is provided as soon as possible, but without a guaranteed on-time window.³¹⁸

Late Cancellations

As the 2005 NCD report explained,³¹⁹ some transit agencies have defined a category of late cancellations that can contribute to a rider's no-show suspension. Some have even extended the definition of a late cancellation to be any time after 5:00 p.m. the previous day, or earlier. One transit agency required riders to cancel at least 24 hours in advance or be penalized.

The FTA has found repeatedly in ADA compliance reviews and letters of finding that such penalties may only be used if the late cancellation is the functional equivalent of a no-show. The FTA findings state that the DOT ADA regulation permits service suspension only for rider no-shows and not for late cancellations. They explain that in order to count toward a no-show suspension, the effects of a late cancellation must be operationally equivalent to a no-show in terms of the negative impact on service. The FTA does not consider cancellations after the close of business on the day before the service day, or even several hours ahead of the pickup time, to be the functional equivalent of a customer no-show.³²⁰

The FTA has found it acceptable to consider a late cancellation as one made less than one to two hours before the scheduled trip. For example, the FTA suggested that “a ...

reasonable threshold might be two hours before the scheduled pickup time.”³²¹ Some transit agencies use a one-hour cancellation policy; they do not consider a cancellation late until after one hour before the trip, which is also a good practice.³²²

Extending the definition of a late cancellation much longer than two hours before the scheduled pickup—for example, to several hours ahead of the pickup—does not appear to satisfy the FTA threshold that a late cancellation that penalizes the rider must be the functional equivalent of a no-show. For example, the FTA Office of Civil Rights challenged transit agency penalties for cancellations of ADA paratransit trips in Tulsa, Oklahoma. The issue involved Tulsa Transit, which published the following definitions in connection with its Lift program, the paratransit service operated under the ADA, as quoted in *Transit Access Report* in 2013:

Same-Day Cancellations: Trips that are canceled between 4:30 p.m. the day prior to the trip and up to two (2) hours before the scheduled pickup time.

Late Cancellations: trips that are not canceled at least two (2) hours before the scheduled pickup time.³²³

Tulsa Transit published the following penalty scheme:

For every three (3) Same-Day Cancellations, a rider will be charged one (1) No-Show. Customers will be charged one (1) No-Show for every Late Cancellation (including cancellations at the door).³²⁴

Although the penalties are reduced for cancellations more than two hours before the scheduled pickup, the Office of Civil Rights did not find *any* penalties acceptable that far ahead. However, the OCR did not object to penalties for avoidable cancellations within two hours of the scheduled pickup.

An FTA letter to Tulsa Transit stated,

The [Department of Transportation] ADA regulations do not expressly permit any penalty for late cancellations. ... As an allowance to the industry, however, FTA has permitted transit agencies to count late cancellations in the same manner as a no-show but only when the late cancellations have the same effect on the system as a no-show. Tulsa Transit's policy of penalizing riders who cancel scheduled trips after 4:30 p.m. the day prior to the trip is not consistent with our expectation.

In most cases, a transit provider should be able to absorb the capacity of a trip canceled one or two hours before the scheduled pickup. An hour or two is typically sufficient notice for a transit provider to redirect the vehicle without any negative operational consequences.³²⁵

The Role of Riders in Reducing No-Shows

Reducing no-shows in ADA paratransit requires action by riders as well as transit agencies.³²⁶

- When calling to book a trip, confirm the beginning and end of the pickup window and the amount of time the vehicle will wait.
- Call to cancel, as soon as possible, if you will not be taking a scheduled trip.
- Be ready for vehicles during the full on-time pickup window.
- Provide detailed pickup instructions (e.g., side or rear door) for large facilities, for pickup locations that may be difficult for drivers to find, and for locations where a needed pickup is not at the main entrance.
- Provide all telephone numbers, including at each destination, and confirm that they have been correctly recorded by the reservation agent.
- Subscription riders should call to inform the transit agency of any changes in plans, such as a vacation or other absence. Telling a driver is not sufficient.

Using Taxis in ADA Paratransit Service

In many cities, so-called nondedicated vehicles, usually contracted taxis, are used in ADA paratransit service. While taxis on contract can have many benefits in ADA paratransit—including cost-efficiency, rapid deployment, and the ability to make same-day changes—certain problems are associated with taxi use. The vehicles, their drivers, and the service they provide can be difficult to monitor. It may be more difficult to implement uniform, rigorous driver training. Other facets of service that are standard with dedicated ADA paratransit vehicle fleets and their drivers (such as drug and alcohol checks and vehicle maintenance) may be difficult to do in contracted taxi service. Service quality problems can result.

Contracting with taxis to supplement a dedicated vehicle fleet in ADA paratransit works best if the taxis are equipped with technology that allows the ADA paratransit service provider to monitor their location and communicate directly with them, rather than relying on the taxi company dispatch. Also, the transit agency should use a taxi company that employs the drivers rather than companies whose drivers are independent operators who lease their cabs from the company. If drivers are independent, the taxi company has little control over them, so contractual provisions with the taxi company would not yield much control over the drivers. With these controls in place, the use of taxis in ADA paratransit can provide all the benefits associated with nondedicated vehicles while significantly reducing the disadvantages.³²⁷

Equal Respect for ADA Paratransit

Victor Burke, former Executive Vice President and Chief Operating Officer of Dallas Area Rapid Transit (DART), described in 2007 how he and his colleagues effected changes within DART and with the American Public Transportation Association to raise the level of respect for paratransit:

Paratransit at DART is on an equal footing with every other mode we have. That's not how it used to be. When I first came to DART, paratransit

was a section, not a division, under Operations. They didn't have much status within the organization. It was called HandiRide. What does that even mean? We made it a self-sustaining, self-supporting department called Paratransit Services, headed up by a vice president, not just a manager. After all the shock and disbelief that caused, people started to say, wow, they really mean business. We found that all eyes were on it. It changed people's perspective. We feel that every dime we spend on it is a worthy cause. People sometimes don't want to change. But now, if you look at everything that comes out of DART, you see that paratransit vehicle somewhere! Now it's a natural thing for us.

And if you look at any APTA [American Public Transportation Association] correspondence, there is the vice chair of bus and paratransit! You see national recognition of paratransit as a full mode. It is the fashionable thing to do! Don't make it a hiccup when you say paratransit; it's a viable mode just like any other mode. And it's the "Bus and Paratransit Conference." People don't give it any thought anymore—it's become natural.³²⁸

Feeder Service

Some transit agencies have implemented feeder service as part of their ADA paratransit service. In some cases, it is provided at the request of a rider; in other cases, it is the only form of ADA paratransit service the agency makes available to particular riders for particular trips.

Paratransit-to-fixed-route feeder services can facilitate greater use of mainline public transit. Riders who are not able to get to fixed-route transit stops or stations can be given rides to nearby stops to enable them to complete trips on the fixed-route system. However, feeder service can be very problematic for riders without thorough planning.

National research suggests that feeder service typically applies to less than 5 percent of all paratransit rides and is often only 1 percent to 2 percent of all rides.³²⁹ Significant cost savings typically do not result from the implementation of feeder service, but it can be cost-effective for the longest trips in the system.

The following are important considerations if feeder service is used in ADA paratransit as an alternative to direct origin-to-destination service:³³⁰

- Feeder service is an operational choice that transit agencies may consider for specific trips. Feeder service is not a type of eligibility. Applicants for ADA paratransit eligibility should not be determined “feeder-only” eligible. This would mean that the only service options provided to these riders would be complementary paratransit feeder service at both ends of a fixed-route transit trip. This is operationally infeasible and would result in unreasonable total travel times for many trips.

- A good practice is for transit agencies to evaluate individual riders and trip requests to determine whether feeder service is appropriate. Important considerations in evaluating riders and trips include the following:
 - **Functional abilities of the rider:** Riders must have the functional ability to independently complete the fixed-route portion of the trip, including transfers. (Also see Transfers Must Be Attended When Needed by Rider above.)

 - **The total length of the trip:** Providing feeder service for short trips can result in total travel times that would become a capacity constraint. Feeder trips are typically not considered for trips shorter than five to seven miles.

 - **Proximity of the fixed-route alighting stop to the destination:** To avoid having to provide complementary paratransit connections at both ends, one end of the trip should be near the fixed-route stop and accessible for riders. Typically, feeder service is only arranged if riders are able to get to the fixed-route service independently at one end (commonly the destination). Because it is so operationally difficult, “double feeder” is typically unrealistic except for very long trips, such as those over 15 to 20 miles.

 - **The headways of the fixed-route transit service:** Attempting feeder service to a route that runs infrequently could become a problem if the connection is not made on time.

- **Fares:** Charging fares for both the paratransit and the fixed-route portions of trips will make feeder an unattractive option for riders. Since paratransit is really being provided to enable use of fixed-route transit, it is recommended that the paratransit fare be waived and a fare collected only for the fixed-route portion of the trip. In Pittsburgh, where feeder service is used and only the fixed-route transit fare is charged, the service has come to be known as the “free van to the bus service.”
- **Amenities at the transfer point:** If riders might have to wait at the stop, it might be important that the stop have a bench or shelter. Access to a telephone (or staff who can make a call) could also be important if there is a connection issue and the rider needs to contact the complementary paratransit dispatch center.
- **Special scheduling of feeder trips:** To avoid excessively long travel times, a good practice is to consider shorter on-time windows for feeder trips. For example, the drop-off window might be shortened to 5 or 10 minutes rather than 30 minutes, so riders do not have long wait times at stops for connection to the fixed-route transit service. In some transit agencies, schedulers manually adjust the schedules for feeder trips to shorten the connections.
- **Guaranteed ride:** A good practice is to provide a direct trip as a backup when connections are missed.
- **Total travel time:** The total travel time for the trip should be considered before feeder service is used as an alternative to direct origin-to-destination service. The total travel time for both the feeder and fixed-route transit portions of the trip should be comparable to the travel time for the same trip made without feeder on the fixed-route system.³³¹

Must a Transit Agency Send a Specific Type of Vehicle?

Other than in the obvious case that an ADA paratransit program must send a wheelchair-accessible vehicle for a person who uses a wheelchair or similar mobility device, the Federal Transit Administration has, on a number of occasions, declined to require transit agencies to send the type of vehicle a rider requests.³³²

However, an FTA letter of finding from August 2008 that did not require this as a reasonable modification of policy (due to an FTA ruling that it was a fundamental alteration) also stated, “If some vehicles in [the transit agency’s] fleet were not accessible, it would be more feasible to accommodate your request for a specific type of vehicle, since having inaccessible vehicles would require a reservation system that allowed certain types of vehicles to be designated for certain classes of passengers.”³³³

In other words, a system with both accessible and nonaccessible vehicles must *already* send only wheelchair-accessible vehicles to pick up wheelchair users and thus must have the operational capacity to designate which type of vehicle is assigned to pick up which rider. This appears to suggest that it is not always necessarily assumed by the FTA to be a fundamental alteration, depending on the specific system and its configuration.

Some ADA disability advocates have argued that an ADA paratransit provider must send a specific type of vehicle (assuming that doing so is not a fundamental alteration of the service) if the person with a disability requires it rather than just preferring it.³³⁴

Transitions Between Contractors and Service Models

When transit agencies make major changes in ADA paratransit service—such as shifting from one service model to another or from one private contractor to another—service disruptions can be very significant and can persist. For example, Dallas Area Rapid Transit, long known for dedication and success at improving its ADA paratransit service and candor about acknowledging problems, changed both its contractor and its

service model on October 1, 2012, and experienced significant, persistent disruptions. As the *Dallas Morning News* reported on November 17, 2012,

Complaints about Dallas Area Rapid Transit's recently revamped paratransit service remain as loud as ever, weeks after the agency acknowledged [that its ADA paratransit service] wasn't up to par.

And while DART officials are confident they're finally on the road to solving things, many passengers who attended a DART paratransit meeting Saturday in Dallas expressed frustration that the kinds of problems plaguing the operation are largely unchanged.

Rides aren't on time or don't show up. Vehicles aren't always the best fit for the riders using them. And there are long waits on the phone lines, which get only longer if rides are delayed or if the vehicles are unsuitable. ...

DART officials have been open in apologizing and acknowledging the agency's missteps ever since its new paratransit contractor, Dallas-based MV Transportation, took over the service Oct. 1 from Veolia Transportation.

...

"We're still dealing with the fallout from what didn't go right on Oct. 1," Doug Douglas, DART's vice president of mobility management, said in an interview before Saturday's meeting.

The paratransit service's on-time performance rate for the week starting Nov. 5 was 79 percent. That's an improvement from the 73 percent on-time rate during the disastrous first week of service in October, but it's well below the goal of having 95 percent of rides on time.

Phone calls on the reservation line during the week of Nov. 5 were answered within 3 minutes about 94 percent of the time and within 5 minutes 98 percent of the time. But on the "where's my ride?" line, the 3-minute threshold was met only 64 percent of the time and the 5-minute barrier, 80 percent.

But DART and MV Transportation officials said they've finally made some breakthroughs on the 2,700 rides provided each day.

...

[Hiring back more of the local management team from the prior contractor, Veolia] helped boost on-time performance last week to nearly 90 percent, even though delays on the phone lines remained a mixed bag. ... DART officials said the steady performance gave them hope that service would be top notch by the end of the year.

Parents Traveling with Children

Parents traveling with children on ADA paratransit face a number of persistent challenges. Richard Weiner, principal at Nelson\Nygaard Consulting Associates, has been involved in two major projects on the subject—one for the National Institute on Disability and Rehabilitation Research with the organization Through the Looking Glass, and the other setting up a pilot project with Access Services, the ADA paratransit provider in Los Angeles County. Weiner described these challenges.³³⁵

1. *Policies limiting the number of companions* for people who have more than one child. While there is usually space, that cannot be relied upon.

It should be noted that the DOT ADA regulation requires that not only must one companion be allowed to ride with the eligible rider, as well as a personal attendant if one is needed (who is not counted as the one companion), transit agencies must also carry the *additional* companions of an eligible rider if space is available.³³⁶

2. *ADA paratransit policies requiring a certain time gap between trip requests*; for example, that two trips may not be requested less than 45 minutes apart. The purpose of such policies is to allow time to meet the on-time performance requirements of the ADA, but parents taking what are known as chain trips—for example, dropping a child off at school and then going to work—often cannot wait the needed time to get another pickup.
3. *The cost of multiple fares*. If traveling with more than one child, the fares can become prohibitively expensive.

4. *Finding vendors willing to provide this service.* Weiner says agencies have encountered vendor reluctance to try something new.
5. *The fact that parents often need to sit in close proximity to their children,* which may be difficult to guarantee on ADA paratransit.
6. *Driver assistance with car seats and packages.* Riders without manual dexterity are dependent on the driver to carry the car seat for them and to secure it. In addition, the parent may be unable to carry the car seat to the destination.

The ADA already addresses at least one of these problems: difficulties related to car seats. A 2003 Federal Transit Administration letter of finding to the Maryland Transit Administration (MTA) analyzed the question, “What level of assistance, if any, is required of MTA operators when an eligible paratransit rider, riding with her child as her companion, needs assistance to properly secure the child safety seat that is required by Maryland State law?” The rider in question has cerebral palsy, uses a wheelchair, and had ridden the Baltimore MTA paratransit system between 1994 and 1999 using a child stroller connected to her wheelchair, with a child in a car seat in the stroller. The FTA letter of finding explored some state law issues and concluded that, based on several ADA protections, the driver must help secure the child safety seat, including handling the child if necessary. The letter also stated that this requirement is present notwithstanding any previous or existing contractual provisions or policies by MTA, because MTA may not agree to do something contrary “to the force and effect of the Federal law.”³³⁷ In some cities, local nonprofits will help transit agencies obtain car seats, perhaps putting one in every van.

At the Alameda County Mobility Workshop at the Ed Roberts Campus in Berkeley, California, in 2012, Karen Hoesch, a guest speaker and Executive Director of ACCESS Transportation in Pittsburgh, Pennsylvania, described what could be considered best practices on the car seat issue. She stated that her program has established a car seat loaner project through the children’s hospital and the county health department, which

have lending libraries of car seats. She addressed concerns from transit agencies about liability and about the logistics of car seats. Regarding liability, she stated that the way to deal with potential liability is to have sound policies and stick to them. Her program has never experienced assistance by drivers as a liability issue; most liability problems are from trips and falls on van steps. She also said that a transit agency might be opening itself up to greater liability by leaving the person on the sidewalk. Regarding the logistics of parents leaving their own car seats on the vehicle, she stated that on the community circulator vehicles in her program, car seats are permanently installed. While they are not perfectly suited to every child, they meet the requirements of Pennsylvania law. She added that ACCESS does not have many parents traveling with children on ADA paratransit, so if a rider brings a car seat, he or she is allowed to leave it on the vehicle and ACCESS makes sure that the same vehicle picks the rider up later that day.³³⁸

Weiner sees a need for premium service (service that goes beyond the minimum requirements of the ADA) that allows same-day changes without trip-purpose restrictions for child-related emergencies, such as when a child becomes ill. Even flexible taxi service may have insufficiently trained staff to provide this kind of service. A premium service could be established with longer driver wait times for dropping off children and special training for reservationists, dispatchers, and drivers.

Passengers with Dementia

The 2005 NCD report addressed some of the ADA paratransit issues faced by passengers with dementia and their families.³³⁹ Today, NCD can present a fuller picture of best practices in this area.

During the eligibility determination process, transit agencies should identify riders who cannot be left unattended, clarifying this with the applicant, caregiver, or guardian. If it is agreed that the rider needs to be met at destinations, the system should make the limits of the service clear to the guardian or caregiver. The caregiver needs to know that

drivers will not leave a rider at a destination unattended, but if no one is there to meet the rider, he or she might be taken to a safe location or kept on the vehicle until someone is contacted (or some other solution that the stakeholders agree on). The system should make sure that information such as “should not be left unattended” is in the notes on the driver manifest.

If problems arise—such as a person having to be kept on the vehicle or taken to a safe location—the situation should be documented and discussed with the caregiver or guardian. If the problem continues, the caregiver or guardian should be made aware that, if a solution cannot be developed, the system may need to either refuse service or condition service on the person being accompanied, which is a better practice. If the problem continues, service can be conditioned or refused. Again, the best solution would be to condition service on the rider being accompanied, rather than refusing service.³⁴⁰

Chapter 3 recommendations are listed at the end of the report.

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CHAPTER 4. Enforcement

Chapter Overview

Federal civil rights requirements governing transportation for people with disabilities are enforced in a variety of ways by a number of different agencies. The effectiveness of enforcement efforts varies greatly, judging by the level of agency activities and the thoroughness of those activities, by government reviews of those efforts, and by the views of spokespersons from the disability community. The effectiveness of enforcement appears to range from very effective on some matters to completely ineffective on others.

The reason so many agencies are involved is that some types of public transportation are provided by government entities, such as transit agencies, for which enforcement is generally provided by the U.S. Department of Transportation (DOT), while other types are provided by private entities, such as taxicabs and tour companies, for which enforcement is generally provided by the U.S. Department of Justice (DOJ). However, one agency within DOT has enforcement authority over certain private providers, and DOJ engages in enforcement activities of public transit agencies.

Within DOT, several “modal administrations” or “modes” have civil rights enforcement authority over various types of transportation providers. Activities by transit agencies—including buses, ADA paratransit, and passenger trains other than Amtrak—are enforced by the Federal Transit Administration (FTA). Amtrak’s activities are enforced by the Federal Railroad Administration (FRA). Requirements related to public rights-of-way are enforced by the Federal Highway Administration (FHWA). Another DOT modal administration, the Federal Motor Carrier Safety Administration (FMCSA), has enforcement authority over private transportation providers that use over-the-road buses, because it licenses interstate bus carriers and interstate trucking companies.

FMCSA administers this authority in coordination with the Department of Justice. All these agencies are discussed in this chapter.

DOJ enforces privately funded transit, including intercity bus carriers such as Greyhound and other over-the-road bus service providers, as well as taxicabs and airport shuttles, including those provided by hotels. DOJ also engages in some enforcement activities over publicly funded transit agencies, because a provision in the 2010 changes to the DOJ ADA regulation allowed DOJ to retain and investigate individual complaints filed by members of the public, rather than sending them to other federal agencies.

Partly due to the variety of enforcing agencies and partly because information about how to obtain action by enforcers is not widely understood, people with disabilities in communities across the country often do not know where to turn to deal with noncompliant or discriminatory transportation conditions. Sometimes well-meaning staff at transportation providers want to do the right thing but do not know where to turn, or they encounter obstacles to making their agencies comply with the law. As Tracee Garner, outreach coordinator of the Loudoun (Virginia) ENDependence Center stated,

I think that a lot of groups don't even know what the rules are, so they can't follow them. I can't prove this, but I think someone at one of the agencies in Loudoun was let go because they were trying to follow the ADA and get help from a nonprofit that knows a lot about following the letter of the law for transportation. They were in touch with someone at that nonprofit, and the next week they were gone. The person was trying to find out, "Well, what's the rule? What are we supposed to do?" and the next week they were back to being a bus driver, whereas before, they had been in the office working on accessibility. And that happened to one person before this person. They don't fire you, because that would be against the law, but they just move you to another position. Then they get a new person who is green and just goes along. Then that person tries to implement change and the same thing happens. There is no policing. There is no enforcement. I think they don't know what the law is and I think it's hard to follow the law when you don't know what it is.³⁴¹

People in the disability community face other obstacles on the road to effective enforcement. As Jan Campbell, Chair of the Committee on Accessible Transportation for TriMet in the Portland, Oregon, region pointed out,

For the ADA, enforcement is really difficult. I don't think the requirements are being enforced. It takes somebody very, very, very, very smart to prevail with a complaint. If you're a person with a disability, and you have a grievance and want to work it internally, there is so much to take into account. We just got [our transit agency] recently on poundage. [It] was saying that anyone with a combined weight of 800 pounds couldn't use the lift. I went to a conference and learned that isn't correct. I wouldn't have known if I hadn't gone to the conference. For a regular rider, it's very difficult to know your rights and all the rules. If you go to the agency, they just say, "Oh, no, we're in compliance." It's very hard to beat the larger systems and make the changes.³⁴²

Information regarding enforcement related to public rights-of-way under the Federal Highway Administration can be found in chapter 10 (Public Rights-of-Way). Information regarding enforcement related to Amtrak under the Federal Railroad Administration can be found in chapter 2 (Rail Transit). The disability community has experienced considerable gaps and frustrations with these areas of enforcement.

DOT Guidance

On September 1, 2005, DOT released four new documents providing guidance on interpreting the DOT ADA regulation. Key among them are "Origin-to-Destination Service" and "Paratransit Requirements for §5311-Funded Fixed-Route Service Operated by Private Entities."³⁴³ This guidance explains DOT's interpretation of the regulation and signals the Department's enforcement posture. (For more on the origin-to-destination service guidance, see chapter 3 on ADA Paratransit.)

Not long after the guidance was released, an FTA official said that the administration would enforce it, including guidance related to federal paratransit rules. According to *Transit Access Report*,

The official, Cheryl L. Hershey, said in a conference call for transit providers and other listeners on November 9, 2005, that the new guidance would be applied in compliance reviews and complaint investigations. ...

[The guidance was] said to have come down from the Office of the Secretary of Transportation. Hershey referred to the material in the documents as “formal guidance.” ...

Hershey stated, “The Secretary’s office, through the Disability Law Coordinating Council, has put these out as formal guidance. That formal guidance is an interpretation of what [U.S. DOT’s legally binding] regulations mean. As a result, when we, the agency, go out to visit you on a compliance review, or when we do a complaint investigation, what standard are we going to apply? We’re going to apply what the Secretary’s office tells us those regulations ... mean.”³⁴⁴

ADA Compliance Reviews (FTA)

As reflected in the 2005 NCD report, the FTA Office of Civil Rights began to conduct ADA compliance reviews in 1998 (they were sometimes referred to as “assessments” during the earlier years). The FTA conducted approximately six per year; after each one, the FTA required quarterly monitoring of transit agency progress in correcting deficiencies.³⁴⁵ The FTA still conducts compliance reviews, and most are posted on the FTA ADA website, with one list for fixed-route operations and one for ADA paratransit. The final reports can be found at http://www.fta.dot.gov/civilrights/12875_3899.html, or go to <http://www.fta.dot.gov/ada> and select ADA Compliance/ADA Compliance Review Final Reports.³⁴⁶

This commendable program has led to positive results, and the 2005 NCD report gave examples of local disability community spokespeople describing improvements, sometimes significant ones, in the wake of the reviews. Many of the reviewed agencies have implemented service improvements since their reviews.³⁴⁷

Until the past few years, the FTA ADA website that posts new compliance reviews showed relatively consistent progress, but that has changed. The most recently posted ADA paratransit review for several years (until approximately February 2014) was

conducted in South Bend, Indiana. The final report was dated April 2011, showing a gap of several years. Before that, the last posted ADA paratransit review was for San Diego, California, with a final report date of June 2009. For fixed-route system reviews, the latest posted as of February 2014, from Los Angeles, California, shows a final review date of September 2010.³⁴⁸

2012 GAO Report Addressed FTA ADA Compliance Reviews

The U.S. Government Accountability Office (GAO) recommended the posting of compliance reviews by the FTA Office of Civil Rights. In 2012, the GAO conducted a review of ADA paratransit services and FTA compliance review of these services. The title of the November 15, 2012, GAO report was *Demand Has Increased, but Little Is Known About Compliance*.³⁴⁹

Among the GAO findings and conclusions:

Little is known about the extent of transit agencies' compliance with the Americans with Disabilities Act (ADA) paratransit service requirements. ... According to FTA officials, all finalized ADA paratransit compliance review reports are to be available on FTA's website, but GAO identified nine final review reports—conducted from 2004 to 2010—that have not been posted to FTA's website.

The Secretary of Transportation should direct the FTA Administrator to (1) document and make publicly available a formal approach for selecting transit agencies for ADA paratransit compliance reviews, (2) post the backlog of ADA's compliance-review final reports and establish a process for the timely posting of future reports, and (3) provide guidance to transit agencies on how to accurately complete existing ADA paratransit data fields in the NTD [National Transit Database]. The Department of Transportation neither agreed nor disagreed with the recommendations and provided clarifying comments, which GAO incorporated.

The GAO report confirmed the importance of FTA ADA compliance reviews. For example, the GAO researchers report being told by transit agencies and industry groups

“that they look to these compliance reviews as a form of guidance on FTA’s interpretation of ADA requirements.” *Transit Access Report* added:

Yet literally years are known to pass before many of the reviews are publicly posted. The report said that as of Sept. 5, 2012, nine final ADA compliance review reports had not been put up on the Web site. ... The researchers said they analyzed 15 final reports from January 2005 through April 2011 and found that all of them “had findings of noncompliance or recommendations related to ADA paratransit service.” ... With regard to posting the final reports, GAO said FTA officials acknowledged that the lag in making them available “is a problem area that they are actively working to address.”³⁵⁰

A few months later, the FTA responded to the GAO report and made this point:

GAO Recommendation 2: “Post the backlog of ADA compliance review final reports on ADA’s website and establish processes for the timely posting of future compliance review reports.”

DOT/FTA Response: “Concur. FTA has a long-established process of making ADA compliance reviews available on its website. The vast majority of these reviews have been posed in a timely manner; however, a small number of reports include material provided by the transit agency that cannot readily be made Section 508 compliant. As a result, a small number of reviews have not been posted while FTA evaluated whether there is a potential technical solution for making these few reports 508 compliant. FTA intends to make these reports available, to the maximum extent practicable, by Oct. 31, 2013. FTA will emphasize to transit agencies the importance of providing Section 508 compliant materials when responding to ADA Compliance Reviews.”

Transit Access Report commented,

“Section 508” is an amendment to the Rehabilitation Act requiring federal agencies to make electronic information accessible to users with disabilities. ...

The GAO report observed that the FTA Office of Civil Rights, which conducts the ADA paratransit compliance reviews, has not posted any final reports of compliance reviews recently. The reports traditionally have been posted in Microsoft Word, an inherently [largely] accessible format.

The compliance reviews do not ordinarily include images. Nor has the civil rights office historically included material provided by transit agencies in the versions made available online. The reports—in Word, minus appendices—have nonetheless been posted.³⁵¹

While disability advocates agreed with this recommendation, they were also concerned about the content of the compliance reviews. They believe it is important that the FTA not relax the rigor and thoroughness that has characterized this enforcement program in past years. For example, Richard Devylder, former senior advisor for accessible transportation for U.S. DOT, known for bringing together the concerns of the disability community and representing them at DOT, echoed a concern about whether the slower posting of compliance reviews reflected a weaker enforcement posture by the FTA. He stated, “FTA should maintain and strengthen its oversight efforts, not cut them back.” Other disability advocates expressed similar concerns, including Christopher S. Hart, U.S. Access Board public member and former director of urban and transit projects, Institute for Human Centered Design, and Cliff Perez, systems advocate for the Independent Living Center of the Hudson Valley and chair of the National Council on Independent Living Transportation Committee.³⁵²

However, some observers in the disability community did not agree with another GAO recommendation, that the FTA should develop a formal approach for selecting transit agencies for FTA ADA compliance reviews, particularly given limited FTA resources in civil rights oversight. The Office of Civil Rights already likely knows what the hotspots are and has a fairly accurate list of systems in need of review. If FTA OCR staff receive a number of complaints out of City X, City X goes on the list. Moreover, these disability community observers believe there should be respect for the FTA’s expertise regarding where oversight funds should be spent.³⁵³

The FTA Resumed Posting ADA Compliance Reviews, Some with New Format and Content

In March 2014, marking a significant change, additional ADA compliance reviews began to appear on the FTA website, reflecting reviews completed in 2011 and 2012 in 11 cities.³⁵⁴ Additional reviews have been posted since then.³⁵⁵ The 2014 postings, covering reviews completed in 2011 and 2012, likely addressed the backlog noted by GAO.

The additional posted reviews have allowed interested outside parties to see the changes the FTA has made in the compliance review program, at least to the extent that these changes appear in the posted final reports. For example, according to Toby Olson, executive secretary of the Washington State Governor's Committee on Disability Issues and Employment, the latest two ADA paratransit compliance reviews posted as of August 12, 2014—one conducted in Columbia, South Carolina (Central Midlands Regional Transit Authority, or CMRTA),³⁵⁶ and one conducted in Minneapolis and St. Paul, Minnesota (Metropolitan Council, or Met Council)³⁵⁷—showed a major change in format as well as content. Olson lamented that the concerns of advocates may be justified, in that the FTA's earlier level of rigor and thoroughness of analysis did not appear in the newest reviews. He regarded this as a setback in the form of a weaker enforcement posture by the FTA. Olson added that these issues had been brought to the attention of the FTA.³⁵⁸

One difference in content that Olson observed was the lack of FTA contact with the disability community. Previous compliance reviews always had sections summarizing those contacts and including what the FTA heard from the disability community in each subject area.

Olson reported that another significant difference is that the new format is lighter on background information, data, and analysis on the part of the reviewers. He said that previous compliance review reports were very helpful in identifying transit agency

operational practices in detail and that some of the benefits of the older, in-depth reviews appear to be lost in the new approach.³⁵⁹

As one example, he pointed to section 5.8 in the South Carolina review regarding Reasonable Policies for Proposed Service Suspensions for Missing Scheduled Trips and the Right to Appeal³⁶⁰ (i.e., ADA paratransit no-shows). The final paragraphs stated that reviewers examined nine no-shows, and two were found not to have enough documentation to be coded as no-shows. Yet, no background was provided regarding how reviewers reached this determination. Did drivers not call ADA paratransit dispatch to obtain authorization and simply marked riders as no-shows? Or did drivers arrive too early or too late, or not wait the full five minutes that policy generally requires? Or did dispatchers receive calls from drivers but not adequately check to make sure that the vehicles were at the right location at the right time? Perhaps most important, what were the reviewers' firsthand observations about what dispatchers were doing? All such information, generally available in previous compliance review final reports, has been absent in the new format; at least, so far. In the past, such background has been a key to determining exactly where deficiencies lie and ensuring that these problems are corrected before the FTA closes out its findings with the transit agency.³⁶¹

Olson concluded that the FTA should return to its time-honored earlier approach, in which reviewers' detailed observations and in-depth analysis of transit agencies' ADA operations were reflected in the final reports, providing transparency and serving as a model for other transit agencies that wish to learn how to change their own operational practices. Olson also thought the FTA would have stronger grounds with its previous approach to compliance reviews for ensuring that transit agencies are truly making operational changes before reviews are closed.

Finally, after lauding how the FTA ADA compliance review program has, over time, developed the state of the art in public transportation for people with disabilities, Olson questioned how, using the new approach, FTA findings can continue to add to the store of knowledge without including detailed operational data and in-depth analysis about how to make specific changes at the local level. He expressed the hope that the FTA

has that background data and analysis somewhere but said it is unfortunate that the new compliance reviews do not share it with the public.³⁶²

Administrative Complaints (FTA)

The Federal Transit Administration Office of Civil Rights has conducted an active program of investigating administrative complaints submitted by people with disabilities who believe they have encountered noncompliant or discriminatory conditions in public transit. FTA letters of finding, issued in response to these complaints, are quoted throughout this report.

Individuals may file ADA administrative complaints with the FTA Office of Civil Rights.³⁶³ As always with filing complaints, as much specific information as possible should be provided.

The FTA website contains many of the letters of finding—those from 2005 through 2012—by subject.³⁶⁴ The Transit Cooperative Research Program gathered many of the earlier letters of finding in TCRP Legal Research Digest 23. In the TCRP compendium, the letters are listed by subject, by federal region, and alphabetically by the name of the transit agency.³⁶⁵

The FTA has clarified that its enforcement priority in administrative complaints is overarching systemic issues rather than isolated service problems. In an Easter Seals Project ACTION program, FTA spokespersons stated,

Our enforcement priority is on repeated and not one-time isolated breakdowns. For late pickups, for example, section 37.131 of the [DOT ADA] regulations prohibit transit agencies from limiting paratransit service to customers through a pattern or practice, or a substantial number, of untimely pickups. We frequently get complaints of one or two late pickups, and unfortunately we can't act on them. While these situations can cause considerable inconvenience, they wouldn't rise to the level of a pattern or practice. So we recommend to riders contemplating filing a complaint that they maintain a log of trip requests for at least 30 days—more if they ride the service infrequently—that records the dates and times for the

requested and actual pickup times. An investigator would need these details to determine whether they were experiencing a pattern or practice of untimely pickups. We would want similar logs of allegations pertaining to lengthy trips, trip denials, et cetera. For any complaint, documentation and details are key.³⁶⁶

In addition to FTA oversight and enforcement efforts over public transit, via compliance reviews and administrative complaints, the Department of Justice has conducted enforcement actions related to privately funded transit. (See the section below on DOJ Independent Transportation Enforcement.)

Triennial Reviews, State Management Reviews, Key Station Reviews (FTA)

In a 2013 interview, John Day, ADA team leader and Senior Equal Opportunity Specialist, and Dawn Sweet, Equal Opportunity Specialist, both of the Federal Transit Administration Office of Civil Rights, described additional types of ADA oversight activities by the FTA.

What about triennial reviews, the reviews the FTA performs of every transit agency every three years?

To an increasing degree over the past several years, the Office of Program Management (which does the triennial reviews and the state management reviews) and the Office of Civil Rights have coordinated in capturing ADA information in the triennial reviews. We've got over 500 grantees, and they're all assessed every three years. It's potentially a way to get a better idea of what all the systems are doing.

What are state management reviews?

They are like the triennial reviews, except they review state departments of transportation rather than transit agencies.

Is the FTA Office of Civil Rights still reviewing key stations and other rail stations?

That's ongoing. We review key stations, we review new stations, and we review stations that have been improved or altered, because all of those are required to be accessible under the ADA regulations. In the case of key stations, there are still a few that have deadlines that haven't expired yet. It's mostly, "Have they done the work correctly?" If we've assessed it before and there were findings that they said they fixed, we'll go back and say, "Okay, is it really fixed?" We'll go in and make sure that it was built according to the ADA requirements that were in place at the time it was built, which changed in 2006 when DOT adopted the revised ADA Accessibility Guidelines. We'll look for elements including the accessible route, the detectable warnings, the signage, and the fare machines. These reviews are not something that we've posted, but they're public documents.³⁶⁷

There is ample evidence of increased FTA ADA oversight through triennial reviews. For example, in 2012, *Transit Access Report* addressed an ADA paratransit compliance problem by Capital Area Transit Authority (CATA) in Lansing, Michigan:

The Federal Transit Administration has advised a transit agency that "mandatory financial penalties" cannot be imposed on riders for missing ADA paratransit trips. At the same time, the FTA indicated it does not object to the use of "optional fines" as an alternative to suspension of the rider's service.

The issue came up in the triennial review of Capital Area Transit Authority in Lansing, Michigan [in 2012]. CATA was gigged for fining violators of its policy on "no-shows." ...

Monica McCallum, chief of the FTA Regional Operations Division, conveyed the position of the civil rights office to CATA in a letter ...

"FTA has consistently found mandatory financial penalties to be impermissible under the ADA," McCallum wrote. "The U.S. Department of Transportation's regulations only address a pattern or practice of customer no-shows in terms of a suspension of service. Transit agencies may not impose a mandatory punishment that is outside the framework of the regulations." McCallum went on to say that some transit agencies "allow riders to pay a fine instead of being suspended," indicating that FTA does not object to such a practice.³⁶⁸

In late 2013, the FTA addressed gaps in ADA compliance through triennial reviews of two other transit agencies:

- St. Louis Metro was advised to consider the frequency of a rider's trips before issuing a no-show suspension, rather than using a strict numerical threshold. Metro was advised to provide better procedural protections to riders who are facing such suspensions. The final report on Metro's triennial review stated that, by "March 2014, Metro must submit to the FTA regional civil rights officer a revised no-show policy to only suspend riders who have established a pattern or practice of missing scheduled trips. Metro must also submit evidence that their appeals process is consistent with 49 CFR 37.125(g). The process must substantiate how Metro ensures [that] no-shows that are not under the rider's control are not counted against the rider."³⁶⁹
- The FTA focused attention on the Port Authority Transit Corporation (PATCO) regarding elevator and escalator maintenance on a rail transit line between Philadelphia and points in southern New Jersey (although no problems appeared to be mentioned for stations in New Jersey). The FTA also expressed concern about an "apparent lack of accommodation" through failure to offer shuttle service to passengers with disabilities who might otherwise become stranded by elevator outages. The FTA pointed out that §37.161(b) of the DOT ADA regulations requires "reasonable steps to accommodate individuals with disabilities" (by, for example, providing shuttle bus service) if an "accessibility feature" (such as an elevator or escalator) is out of service. The FTA required PATCO to make monthly reports, beginning in early 2014, on the availability of elevators and escalators at stations on the PATCO Speedline. The triennial report said that PATCO monthly reports should be submitted "until DRPA/PATCO achieves its goals of 97 percent and 90 percent for its elevators and escalators, respectively, for three consecutive months."³⁷⁰

FTA ADA Circular

Another FTA activity is the release of portions of the proposed FTA ADA circular, a document for FTA grantees that explains transit agency responsibilities under the ADA. Approximately half of the chapters have become available for public comment at the time of this writing. The proposed circular, a recommended resource, integrates the requirements of the DOT ADA regulations, FTA enforcement findings, good operational practices, and new examples to explain the principles of the ADA transportation requirements.³⁷¹

Over-the-Road Bus Enforcement by DOJ and FMCSA

Over-the-road buses are high-floor buses with baggage compartments underneath. They are used by a variety of carriers, usually private companies, particularly those providing intercity transit. Tour bus companies also use over-the-road buses.

For the past several years, the Federal Motor Carrier Safety Administration, a modal administration of the Department of Transportation, has conducted an active program of ADA enforcement efforts, taking action against many private over-the-road bus companies on the basis of ADA violations. FMCSA works closely with the Department of Justice Disability Rights Section, since DOJ has enforcement authority over private transportation under the ADA. Working jointly, FMCSA and DOJ have undertaken enforcement actions resulting in 12 settlement agreements and 10 letters of resolution regarding various companies, including these:

- Tornado Bus Company (2010) regarding vehicle access, employee training, and wheelchair lift maintenance.³⁷²
- Omnibus Express (Autobuses Ejecutivos) (2011) regarding vehicle access.³⁷³

- Jet Set Line (2012) regarding accessible service and operations, employee training, and failing to file required annual reports.³⁷⁴
- VIP Jet Tours Corp./Pegasus Transportation (2012) regarding accessible service and operations, employee training, and lift maintenance.³⁷⁵

DOJ Independent Enforcement Actions

The DOJ Disability Rights Section has also conducted independent ADA transportation enforcement actions. This activity appears to have grown more robust in the wake of a change in the 2010 DOJ ADA regulation that allows DOJ to keep and investigate ADA complaints it receives, at its own discretion, rather than referring them to another designated federal agency. This new DOJ ADA provision states,

When the Department receives a complaint directed to the Attorney General alleging a violation of this part that may fall within the jurisdiction of a designated agency or another Federal agency that may have jurisdiction under section 504, the Department may exercise its discretion to retain the complaint for investigation under this part.³⁷⁶

In addition to its teamwork with FMCSA, DOJ conducted the following enforcement actions independently:

Privately Funded Transit

- Megabus (2011) regarding vehicle access, online reservation services, and denial of appropriate carriage to a wheelchair user. This person was forced to transfer out of his wheelchair rather than being secured using his wheelchair as he wished and as is required of the company by the ADA.³⁷⁷
- DeCamp Bus Lines (2013) regarding DeCamp requiring advance notice when that was no longer legal.³⁷⁸

- SuperShuttle (2013) regarding the SuperShuttle requirement that a passenger with a service animal take a separate van with her companions.³⁷⁹

Publicly Funded Transit

- JATRAN (Jackson, Mississippi, Public Transportation System) (2010) regarding wheelchair lift maintenance, employee training, and many aspects of meeting the required level of service to passengers of Handilift, the JATRAN ADA paratransit service.³⁸⁰
- City of Detroit (2005) regarding buses with inoperable wheelchair lifts and poor maintenance programs.³⁸¹ (See more about this lawsuit in the section on Equipment Maintenance.)

Chapter 4 recommendations are listed at the end of the report.

CHAPTER 5. Fixed Route Deviation

Chapter Overview

The 2005 NCD report addressed fixed route deviation services, describing them as vehicles that deviate from an established route to pick up or drop off passengers at or closer to their origin or destination, as long as it is within a designated service area. In some cases, such service constitutes the entire transit service for a small city, low-density suburban area, or rural area.³⁸²

In some systems, any rider can request deviations. In other systems, deviation requests are accepted only from certain riders, such as people with disabilities. Systems that accept requests from all riders are considered to be “demand-responsive” services by DOT, and ADA paratransit is not required as a complement to these services. But if deviation requests are accepted only from certain riders, such as riders with disabilities, DOT considers the service to be fixed-route, and ADA paratransit is required.³⁸³

Deviations Only for Some: Meeting the ADA Paratransit Requirements

Some transit systems have attempted to fill the ADA paratransit requirement with only the deviations from fixed-route deviation service. Such a service often has gaps, so it does not meet all the requirements for ADA paratransit, and it may fall short of being a proper fixed-route service as well.³⁸⁴

For example, the FTA challenged the use of route deviation to comply with paratransit obligations under the Americans with Disabilities Act in El Dorado County, California, a semi-rural jurisdiction east of Sacramento where buses on five local routes will deviate up to three quarters of a mile to pick up or drop off passengers with disabilities. According to *Transit Access Report* in October 2013, “El Dorado Transit reportedly consider[ed] this service to meet the ‘spirit and intent’ of the ADA,” but the FTA

contended, “in effect, that route deviation cannot be used to provide a fixed route’s own ... ADA [paratransit] service. Which implies that a separate vehicle is needed for ADA [paratransit] passengers.”

Linda Ford, then acting director of the FTA Office of Civil Rights (she was later named Director), wrote a letter to El Dorado Transit in August 2013, advising Mindy Jackson, Executive Director, that “it is unclear how fixed-route and paratransit service can be provided using the same vehicle, simultaneously meeting the paratransit service requirements while also providing reliable, on-time service to fixed-route passengers.” The letter further stated,

For example, the description for Dial-A-Ride service ... lists operating hours of 7:30 a.m. to 5:00 p.m., while [a chart of fixed-route services] includes routes that begin as early as 6:25 a.m. and end as late as 8:00 p.m. Under 49 CFR 37.131(e), complementary paratransit service must be available throughout the same hours and days as the fixed-route service. It also states that Dial-A-Ride service is provided on a “first-come, first-served” basis, suggesting capacity constraints that would be prohibited for paratransit under Section 37.131(f). Finally, it describes a fare structure that consists of a base fare plus a \$0.50 charge for crossing each of up to 12 zones. Under Section 37.131(c), paratransit fares are limited to not more than twice the regular fixed-route fare.

The description of complementary paratransit ... is similarly problematic. The service is described as “curb-to-curb” service provided “to and from the closest bus stop,” for which reservations are required 24 hours in advance. This is inconsistent with 49 CFR 37.129(a), which requires service to be provided on an origin-to-destination basis; Section 37.131(a)(1), which requires the paratransit service area to include all origins and destinations within a 3/4-mile radius of a fixed-route; and Section 37.131(b), which requires service to be provided on a next-day basis (i.e., a trip to be taken at any time during tomorrow’s service hours can be reserved at any time during business hours today).

It is particularly difficult to determine how El Dorado Transit’s route deviation service ... provides service in compliance with the required paratransit criteria. In addition to the requirement that deviations be reserved 24 hours in advance (not next-day, as discussed above), it is unclear how fixed-route and paratransit service can be provided using the same vehicle, simultaneously meeting the paratransit service

requirements while also providing reliable, on-time service to fixed-route passengers.³⁸⁵

Toby Olson, Executive Secretary of the Washington State Governor's Committee on Disability Issues and Employment, praised the FTA for firmly expressing concerns with the limitations in El Dorado Transit services for people with disabilities. He pointed out that, according to his reading of the letter, El Dorado was not trying to claim that the service is demand-responsive. The agency acknowledged that, because it deviates for only some riders, it is a fixed-route service, and ADA complementary paratransit is required. The agency said that between the deviations and the local dial-a-ride service, it met the ADA paratransit requirements. The FTA named areas where the dial-a-ride system did not, or might not, meet the ADA paratransit requirements: fare, hours of service, service area, next-day service, lack of origin-to-destination service, and the suggestion of ride limits and, thus, possible capacity constraints.³⁸⁶

Olson pointed out other aspects of required ADA paratransit service that might be challenging to meet using only the typical fixed route deviation service model:

- Providing attended transfers for those individuals whose disabilities necessitate it, when the vehicles aren't on a fixed time schedule.
- Providing unconstrained deviations; that is, not limiting the number of deviations.
- Serving individuals who cannot navigate the system, such as a person with an intellectual disability that is significant enough that she doesn't know where to get off the vehicle.
- Establishing an accurate eligibility assessment process.³⁸⁷

Olson also made the point that having route deviation and then expanding existing dial-a-ride service to meet the ADA paratransit requirements is better than adding a separate

ADA paratransit service. If transit systems deviate specifically for people with disabilities and ADA paratransit must be provided, it is probably necessary to supplement the deviations with some paratransit service, but the deviations can certainly be part of meeting the required level of service. The transit agency must ensure that the combination of deviations and expanded dial-a-ride service meets the ADA paratransit requirements. The FTA letter seemed to suggest that El Dorado Transit must, instead, provide a completely separate ADA paratransit system. That approach is more segregated and could lead transit agencies away from offering both deviations and an expanded dial-a-ride service. They could simply deviate for all riders, becoming demand-responsive services without the onus of having to meet the ADA paratransit requirements, thus disadvantaging riders with disabilities in a potentially far more significant way.³⁸⁸

Deviations for All: What Level of Service for People with Disabilities?

When a fixed route deviation service will deviate for all riders as opposed to a limited group, such as riders with disabilities, it is considered a demand-responsive service and is not subject to the ADA complementary paratransit requirements. How to ensure that such a system provides reliable, unconstrained service to people with disabilities is a challenging issue.

Urban Density Can Drive Constraints

The 2005 NCD report observed that whether it is possible to provide equivalent service to people with disabilities on a route deviation service depends largely on the locale. If the area is rural and the service will cover long distances with a low population density, so that vehicles have to stop only every mile or so, making enough deviations to meet all requests will be operationally feasible because there is sufficient recovery time. However, in a suburban or small city setting, it would be more difficult to operate in a way that provides equivalent service to people with disabilities.³⁸⁹

The NCD report also observed that most route deviation systems must constrain their capacity to remain viable, either explicitly—usually by limiting deviations to a first-come, first-served basis (that is, after a certain number of deviation requests, the system will not accept additional ones)—or less overtly, for example, by not advertising. Nonetheless, a first-come, first-served route deviation service does not provide an equal service. Nondisabled people whose requests for deviation are not accepted can walk to the bus stop, but people with disabilities who cannot get to or from the bus stop and who do not or cannot call soon enough are completely without transportation.³⁹⁰

Toby Olson pointed out that if a fixed-route service cannot provide unconstrained deviations without an unsustainable impact on its schedule, fixed route deviation is not the right mode of transit service for that community. Rather, the community might need an ordinary fixed-route service with a dependable schedule, complemented by ADA paratransit. This is why fixed route deviation is most appropriate for low-density (rural) areas. The more densely populated an area, the less well a fixed route deviation service will work, because providing unconstrained deviations will have too great an impact on the schedule.³⁹¹

Deviations Are Constrained in Many Systems

It is common to find fixed route deviation systems that impose limits on deviations; a simple Internet search for “route deviation” reveals many. As a rural example, in Casper, Wyoming, the website for the route deviation service states, “*When time allows*, The Bus can deviate from its fixed route and stop at another location within a two-block radius of the bus route/stop”³⁹² [emphasis added]. It is not known whether this system meets the demand for deviations from riders with disabilities.

At least one urban system, Utah Transit Authority (UTA), which includes Salt Lake City, has turned a number of its bus routes into “flex routes,” a form of fixed route deviation. Its website shows that many of its route names include the term “FLEX,” which indicates this status.³⁹³ As one of many examples, UTA Route F94, the Sandy Flex, includes a

hospital and a senior center as destinations, suggesting that the route runs through some higher density areas. Specifically, this route includes—

9400 S 2000 E Park & Ride

Alta View Hospital

Sandy Senior Center

Historic Sandy Station

As with every UTA FLEX route, the F94 schedule states, “These scheduled deviation requests are taken on a first-come, first-served basis and the bus may deviate *up to two times* each trip ...”³⁹⁴ [emphasis added]. Again, it is not known whether UTA meets the demand for deviations by people with disabilities, but the higher an area’s population density, the more challenging it becomes to meet that demand without imposing limitations.

Olson added that when a fixed route deviation service has a pattern or practice of failing to meet the demand for deviations from people with disabilities, the limitations that are imposed on deviations to control the problem constitute capacity constraints solely for people who must have deviations to use the service (i.e., people with disabilities) and therefore are a form of discrimination. In this situation, a fixed route deviation system is being used in an area in which the population density is too high for it. Such locations should have a fixed-route service with ADA complementary paratransit.³⁹⁵

How to Measure Performance for People with Disabilities

What ADA standard should be used to measure service to people with disabilities provided by route deviation systems that are considered demand-responsive because they accept deviation requests from anyone? “The responsibility to answer this question

lies, not only with transit agencies, but also with DOT and FTA, which should look closely at this type of service,” Olson stated.

Should it be the equivalency standard? If so, should it be applied specifically to deviations or to the system in its entirety? Olson suggested another possible approach:

Route deviation is, at its base, a fixed-route service. The ADA and the DOT ADA regulation found that fixed-route transit, without a comprehensive accommodation for individuals with disabilities who cannot use the fixed-route system due to their disabilities, is inherently discriminatory. They required ADA paratransit as the necessary accommodation.

DOT and FTA should consider requiring fixed-route deviation service policies to be consistent with the requirements for ADA paratransit, which was DOT’s view of what defined a comparable service for people with disabilities who can’t use the fixed-route system due to their disabilities.³⁹⁶

Another part of the DOT ADA regulation is also relevant, according to Olson: the general provision disallowing discrimination in the provision of transportation service.³⁹⁷

Do all fixed-route deviation services meet that nondiscrimination standard? Which deviation policies would be considered discriminatory?

These questions do not have clear answers. DOT and the FTA should reexamine this issue to ensure that fixed route deviation services that are classified as demand-responsive provide people with disabilities with adequate, reliable, and appropriate service that does not discriminate against them.³⁹⁸

Other Implementation Considerations

Other important implementation considerations for fixed route deviation service include these:

- For the service to be effective, all riders need to know that deviations are possible. Information about the availability of deviations and how to request them should be included in route schedules and other public information.

- Riders who are boarding at designated stops need to be informed that vehicles might go off-route and that arrival times at designated stops might vary. Such communication can help manage rider expectations and avoid misunderstandings if vehicles run slightly off schedule.
- It is helpful if the staff designated to handle and schedule deviation requests has some experience with demand-responsive operations. For this reason, some transit agencies use paratransit operations staff rather than fixed-route transit dispatchers to take and schedule route deviation requests.³⁹⁹

Fixed-route deviation services should also consider stop announcements. There should be an announcement when the vehicle is going off route for a deviation, and announcements should continue when the vehicle returns to the fixed-route.⁴⁰⁰ (See more about stop announcements in chapter 1 on Fixed-Route Bus Transit.)

Chapter 5 recommendations are listed at the end of the report.

CHAPTER 6. Issues for All Modes of Public Transit

Subpart A. “Common Wheelchair” Section Removed from DOT ADA Regulation

The “Common Wheelchair” Problem

The 2005 NCD report described how the Department of Transportation ADA regulation originally stated that transit agencies were only required to serve people using so-called common wheelchairs, described as “a three- or four-wheeled mobility device that, when occupied, does not exceed 600 pounds or 30 inches in width by 48 inches in length, measured 2 inches above the ground.”⁴⁰¹ The 2005 NCD report explained that, at the time the ADA regulations were developed in 1991, this “wheelchair envelope” encompassed more mobility devices than had previously been accommodated on many of the common bus lifts of that day.⁴⁰² In the intervening years, however—as wheelchairs, scooters, and similar devices became more varied, and as the body sizes of Americans continued to increase—escalating numbers of people with disabilities were no longer accommodated by the ADA definition. The transit industry called these people’s devices “oversized wheelchairs.” Although the unaccommodated group numbered relatively few at the outset, it has included more disabled people every year. There was a significant need to revisit this standard.

In a 2006 notice of proposed rulemaking, DOT asked about the use of wheelchairs and other devices that did not fit the common wheelchair definition.⁴⁰³ Comments from the disability community described several aspects of this problem. One aspect was that users of devices that truly did not fit within the common wheelchair limits were denied transportation, even when the vehicle could accommodate them. A second aspect was labeled “questionable exclusions.” Anecdotal evidence suggested that some transit agencies, in an effort to cut costs on ADA paratransit, had refused to serve people because they said their mobility devices did not fit within the common wheelchair limits,

even in cases in which DOT would likely have viewed the device as perfectly acceptable. For example,

- A woman used a wheelchair that was capable of reclining. She never reclined the chair when using the lift or ramp to enter or exit the vehicle. During the ride, she would recline to relieve her severe chronic back pain. She had done this for years; there was always adequate space on the agency vehicles, even on shared rides. But one day she was told that she would no longer be provided with ADA paratransit because, in the reclining position, her wheelchair exceeded the common wheelchair length limit.
- A man had a fused knee and used one elevated footrest to support his leg. In this position, the wheelchair exceeded the length limit of the common wheelchair description. He was denied transportation by the transit agency, although he had ridden with an elevated footrest without incident for some time.
- A man used a wheelchair that could recline, although he never put it into a reclining position. During his ADA paratransit eligibility assessment, the transit agency required him to recline the chair and then measured it. Because it exceeded the common wheelchair envelope in this position, he was denied eligibility.⁴⁰⁴

Removal of the Common Wheelchair Provision and Related Wheelchair Rule Changes

In 2011, DOT published a final rule that amended the Americans with Disabilities Act regulations in a number of ways.⁴⁰⁵ In a dramatic change, DOT completely deleted the provisions concerning the common wheelchair. The amended regulation states,

§ 37.165 Lift and securement use.

(b) Except as provided in this section, individuals using wheelchairs shall be transported in the entity's vehicles or other conveyances.

(1) With respect to wheelchair/occupant combinations that are larger or heavier than those to which the design standards for vehicles and equipment of 49 CFR part 38 refer, the entity must carry the wheelchair and occupant if the lift and vehicle can accommodate the wheelchair and occupant. The entity may decline to carry a wheelchair/occupant if the combined weight exceeds that of the lift specifications or if carriage of the wheelchair is demonstrated to be inconsistent with legitimate safety requirements.⁴⁰⁶

These new provisions require transit agencies to carry any wheelchair and occupant that a vehicle lift can accommodate as long as there is space for the wheelchair on the vehicle. However, a transportation provider is not required to carry a wheelchair if the lift or vehicle is unable to accommodate the wheelchair and its user consistent with legitimate safety requirements. DOT warned transit agencies that—

... transportation providers should be aware that to be a legitimate safety requirement, any limitation must be based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities or their mobility devices. The transportation provider bears the burden of proof of demonstrating that any limitation on the accommodation of a wheelchair is based a legitimate safety requirement.⁴⁰⁷

The later FTA draft ADA circular provided additional, important information:

DOT's October 19, 2011, Final Rule amending the regulations specifically states that legitimate safety requirements "[include] such circumstances as a wheelchair of such size that it would block an aisle, or would be too large to fully enter a railcar, would block the vestibule, or would interfere with the safe evacuation of passengers in an emergency." Other factors are not legitimate safety requirements under the DOT ADA regulations. For example, legitimate safety requirements do not apply to securement; a transit provider cannot impose a limitation on the transportation of wheelchairs and other mobility aids based on the inability of the securement system to secure the device to the satisfaction of the transportation provider.⁴⁰⁸

(For more information, see Securement of Mobility Devices, below.)

The draft ADA circular further stated,

To help comply with the requirements in § 37.165(b)(1), FTA encourages transit agencies to maintain inventories of detailed design specifications and dimensions of lifts, ramps and securement areas for all vehicles. Transit agencies can then use the capacity specifications to determine the maximum sizes and weights of wheelchairs they can accommodate on all vehicles. FTA also encourages transit agencies to provide information about the maximum sizes and weights of occupied wheelchairs their vehicles can safely accommodate so that riders can consider any system limitations when purchasing wheelchairs or deciding to use the service.⁴⁰⁹

DOT changed the phrase “three- or four-wheeled devices” to “three- or more-wheeled devices.” In the new regulation section, called Mobility Device Size and Type, DOT explained,

This change recognized that, in recent years, devices that otherwise resemble traditional wheelchairs may have additional wheels (e.g., two guide wheels in addition to the normal four wheels, for a total of six). The Department believes that devices of this kind should not be excluded from the definition of “wheelchair” solely on the basis of a larger number of wheels.⁴¹⁰

DOT also stated, regarding nontraditional powered mobility devices that are not wheelchairs or scooters, including but not limited to Segways,

With respect to Segways or other nontraditional powered devices that do not fit the definition of “wheelchair,” [the DOT] position has been influenced by the approach taken by the DOJ in its recently issued ADA rules. DOJ has created the category of “other power-driven mobility devices” (OPMDs). DOJ does not require OPMDs necessarily to be accommodated in every instance in which a wheelchair must be accommodated, but provides that entities must allow such devices unless the entity demonstrates that allowing the device would be inconsistent with legitimate safety requirements. Legitimate safety requirements must be based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities or about the devices they use for mobility purposes. We believe that language based on the DOJ approach is a good

way of addressing the issues discussed by the Department in its September 2005 guidance and in comments to the docket for this rulemaking. Consequently, we are [following] the DOJ approach.⁴¹¹

In a 2013 interview with Federal Transit Administration Office of Civil Rights officials John Day, ADA team leader and Senior Equal Opportunity Specialist, and Dawn Sweet, Equal Opportunity Specialist, they discussed this significant change:

(Dawn Sweet) There's no longer any such thing as a common wheelchair, and the reason the department took that issue on had to do with a couple of things. The whole common wheelchair concept was developed to give vehicle and equipment manufacturers a set of parameters around which to design things such as the lift and the ramp; to make sure they have adequate clearance inside the bus; to get from the door to the securement location; and so forth. And what it turned into over time was something that the transit systems were trying to use to regulate your wheelchair.

(John Day) ... which DOT certainly doesn't have the authority to do and DOJ doesn't have the authority to do. Neither of our regulations had the authority to do that, so it wasn't proper to say, "We're not going to serve you if your wheelchair doesn't meet this regulation." That's backwards and inside out. We also saw that it was being applied arbitrarily. We would find systems that had vehicles and equipment with a larger capacity than the minimum but were still denying service because, as they would tell wheelchair users, "Your wheelchair doesn't meet the definition, the regulatory definition, of a common wheelchair, and therefore we don't have to take you."

And so that provision was removed to instead say, if it fits, you're on. That's pretty much all there is to it. There's nothing that says that a transit agency has to acquire vehicles that exceed the design standards that are in Part 38 for lifts, ramps, buses, vans, and rail cars; those haven't changed. The minimum design load of the lift is still 600 pounds; nothing says you have to buy anything with any more capacity than that. The difference is, if you do, you can't turn around and then say, "You can't ride if you're more than 600 pounds anyway."

(Interviewer) *Do you hear about instances where something happened to obstruct service because the wheelchair was too heavy or because it was too wide or long?*

(Dawn Sweet) Well, we hear about lifts being broken.

(John Day) Or damaged.

(Dawn Sweet) Or damaged once in a while, but I think the inclination whenever there's a wheelchair user on a lift and it stops is to blame the wheelchair user.

(John Day) That's always our first question: "How can you be sure it was this person's 'oversize/overweight' mobility device and not a maintenance issue or something to do with the lift itself?" We hear, anecdotally, that some of the interlocks that NHTSA [the National Highway Traffic Safety Administration] requires on lifts can be touchy, and if by "breaking the lift" somebody means, "it triggered an interlock and the lift wouldn't move anymore," that may or may not have had anything to do with the passenger and his or her wheelchair, and more to do with the quality of the lift, its components, or its maintenance.

(Dawn Sweet) Or its settings.⁴¹²

Enforcement of the New, Stricter Standard

The FTA appears to be making good on its intention to enforce this DOT ADA regulation change. According to *Transit Access Report*, the FTA demonstrated how it applied the rule to a specific situation: the reported denial of service to a bus rider in Laramie, Wyoming. The rider filed a complaint with the FTA against the Albany County Transportation Authority and received the following response:

In September 2012, you were informed ... that your wheelchair was "too heavy for the lift" and that you could no longer be transported, despite riding the route without incident in the past. You were then provided service on a different type of vehicle for a short period, until you were again informed that you could not be transported, this time because your wheelchair was approximately an inch too wide. ...

Please be advised that in October 2011, DOT revised the ADA regulatory requirements regarding the accommodation of wheelchairs. Under 49 CFR Part 37, transit operators must carry a wheelchair and occupant if the lift and vehicle can physically accommodate them. At a minimum, transit vehicles must have lifts that can accommodate an occupied wheelchair weighing 600 pounds and devices that are 30 inches wide and 48 inches long. ... If a lift has the minimum design load of 600 pounds required by the regulations,

there is no obligation for an agency to transport a heavier occupied device. However, if the vehicle lift has a design load of 800 pounds, the agency would need to transport an 800-pound wheelchair/passenger combination, but not a combination exceeding 800 pounds. Similarly, as long as your wheelchair fits on the lift, it must be accommodated. ...

While we understand your issue has been resolved, if you have difficulty accessing transit in the future due to the size or weight of your wheelchair, we encourage you to contact us promptly with details and we will follow up with the transit provider as appropriate.⁴¹³

Lift Capacity Issues

In considering the impact of the removal of the common wheelchair provision, the question arises of the lift capacity of most buses and vans. How many additional wheelchair users will the change affect, considering vehicles in current use in public transit across the United States?

Karen Hoesch, Executive Director of ACCESS Transportation Systems in Pittsburgh, Pennsylvania, and widely considered a top national expert on ADA paratransit, reported the following real-world information:

We completed the inventory of all the lift-equipped vehicles in our fleet—they range in age from 11 years to brand new, and are different makes and models. There are a total of 198.

100% of them have a lift capacity of 800 lbs.

Only 4 of the 198 have a lift platform size smaller than 33 inches by 50 inches, and 45% are 35 inches by 53 inches. Doubt anyone would have a more diverse fleet than we have, or many vehicles that are older.⁴¹⁴

Best Practices and Questionable Practices

The Santa Clara Valley Transportation Authority (VTA) and its coordinated transportation brokerage for providing ADA paratransit—managed by Outreach and Escort Service, Inc.

(OUTREACH) in San Jose, California—provides an example of best practices in this area. When a person becomes eligible for ADA paratransit, a van comes to take his or her picture and weigh the wheelchair or scooter. If the mobility device is large, OUTREACH uses this information to ensure that it always sends a vehicle that will accommodate the device. Katie Heatley, president/CEO of OUTREACH, pointed out that the cutaway vehicles used by her agency can carry 1,100 pounds.⁴¹⁵

Andy Curry, Director of Roads to Independence, an independent living center in northern Utah, described a practice of great concern to him, the clients of his center, and the community of people with mobility impairments who use ADA paratransit in the Salt Lake City region and the broad region of northern Utah served by Utah Transit Authority. When UTA conducts an ADA paratransit eligibility assessment of someone using a mobility device, such as a wheelchair or scooter, it weighs and measures the device and places a sticker on the mobility device if it does not exceed the old “common wheelchair” weight and dimensions (despite the fact that those dimensions no longer have any meaning in federal law). UTA refuses to allow people ride ADA paratransit, even if they are eligible, if they are using a wheelchair that has no such sticker.

Curry described how, for example, a client was denied a paratransit ride because the wheelchair had a motor for the tilt feature that made it an inch or two longer, so it no longer fit into the “one wheelchair square” marked on the floor of the agency van, even though this wheelchair has never posed a problem fitting on ADA paratransit vehicles or obstructing space for other riders.

To get a wheelchair weighed, measured, and stickered, its user must travel to a particular location in Salt Lake City. Curry commented,

We are up in Ogden, and at that distance, it might take a whole day to do this. Once you're there, UTA makes you wait until people who are going through their full eligibility process are finished, even though it would only take you a few minutes to weigh and measure your chair, because you are already ADA paratransit-eligible. UTA has refused to establish another location for weighing and measuring wheelchairs in Ogden, so already

eligible riders who acquire a new wheelchair may need to take a full day off work to accomplish this burdensome task.

One of my staff had to get her new wheelchair restickered, despite the fact that the new chair was almost exactly identical to her old one. She submitted a complaint to FTA in May or June of 2013, but the FTA response is unclear because of the individual's unfortunate sudden death last July.⁴¹⁶

This is from the *Utah Transit Authority Paratransit Rider's Guide*:

What If My (Wheelchair/Scooter) Breaks Down, Can I Use Another One?

If your wheelchair or scooter that has an approved UTA sticker on it breaks down, you must contact UTA Paratransit services to get temporary approval before your next ride if you are going to use another mobility device that does not have a UTA sticker on it. Contact the Mobility Center (see phone number on back page) for information.⁴¹⁷

Subpart B. Reasonable Modifications of Policies, Practices, and Procedures, and Other ADA General Nondiscrimination Requirements

Introduction

The 2005 NCD report extensively described a transportation dilemma created by several adverse court decisions regarding the general nondiscrimination requirements of the ADA and their relationship to transportation.⁴¹⁸

The scheme of coverage envisioned by the framers of the ADA regulations was that the Department of Transportation would be responsible for spelling out the specific transportation requirements of the ADA, but the Department of Justice would detail the more general nondiscrimination requirements that apply to all areas of American life, not only to transportation (e.g., hotels, stores, government buildings, and services).

The biggest problem, and the one that has received the most attention, is the requirement for any entity covered by the ADA—whether a government program, a private business,

or a transportation provider—to make reasonable modifications of policies, practices, and procedures when necessary in order to avoid discrimination on the basis of disability, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.⁴¹⁹ The 2005 NCD report gave these examples of what this requirement could mean in the transportation context:

- If there is a no-eating policy on the subway train, the transit agency must allow a modification of the policy in the case of an individual with diabetes who needs to eat on a particular schedule.
- On the bus, if there is a policy that bus drivers may not touch bus fare money, the policy must be modified in the case of an individual with a disability who is unable to physically deposit the fare into the fare box and requests assistance from the driver to help deposit the money.⁴²⁰

Here is another example:

- On the bus, if there is a policy that bus drivers may stop only at designated bus stops, there may occasionally be a barrier at a bus stop (e.g., construction, snowdrifts) that blocks use by passengers with disabilities. In such a case, when it would not be unduly burdensome or dangerous, it would be appropriate for the bus to move a short distance from the stop to pick up a passenger using a wheelchair at a place where the passenger could readily board.

The reasonable modification requirement appears in the Department of Justice ADA regulation but was always intended to cover all public transportation activities, whether publicly or privately funded. However, several court decisions have stated that the provision does not apply, particularly to ADA paratransit.⁴²¹

This result is at odds with the strong preponderance of legal authority which states that transit agencies are still required to comply with the DOJ regulation. This legal authority

was discussed in the 2005 NCD report⁴²² and includes the DOT regulation under Section 504 of the Rehabilitation Act of 1973,⁴²³ another court decision interpreting the ADA,⁴²⁴ the views of DOJ as expressed in a “friend of the court” brief,⁴²⁵ and a number of Federal Transit Administration findings, described below.

The Department of Transportation, disability advocates, and many other observers have disagreed with these decisions. For example, as early as 2005, Bob Ashby, former DOT deputy assistant general counsel for regulations and enforcement, who oversaw all DOT rulemaking under disability rights laws for many years until his retirement in 2012, took the public position that the *Melton* case was incorrectly decided.⁴²⁶

Compounding the problem, as the 2005 NCD report explained, is the fact that transit agencies are often unaware of their obligations under the DOJ ADA regulations, because they are familiar only with the transportation-specific rules in the DOT ADA regulation.⁴²⁷

DOT Proposed Regulation to Fix the Problem

On February 27, 2006, in response to the *Melton* decision, DOT issued a notice of proposed rulemaking, proposing to amend its ADA regulation to add a provision requiring ADA transportation providers to make reasonable modifications to policies, practices, and procedures when necessary to avoid discrimination on the basis of disability.

DOT proposed to adopt the provision into its own regulation in order to clarify that publicly funded transit agencies must comply with this requirement.

DOT noted that the requirement is not absolute; if modifying the policy or practice would result in an undue burden or fundamental alteration of transit agency services, the modification need not be made. The head of the agency would be required to make a written determination to that effect. The agency would still be required to make an alternative modification of policy, practice, or procedure that would not result in an undue burden, fundamental alteration, or direct threat.

The disability community strongly supported the DOT proposal, while the transit industry strongly opposed it. These two contrasting viewpoints are expressed in the following statements made in 2010, one from a transit agency and the other by DOT, both published in *Transit Access Report*.⁴²⁸

Access Services, the transit agency that provides ADA paratransit services in Los Angeles County, has been one of the most outspoken opponents of the DOT proposal. A 2010 Access Services comment on the proposed rule stated,

The rule is ... unnecessary because transit agencies do make best efforts to provide modifications requested by their riders. It is essential, however, for the good and safety of all passengers, as well as to contain the costs of this service, which was intended to be a limited service for a limited group of people, that these decisions remain within the discretion of the accountable parties, the transit operators. There is still no public data indicating that there is a problem needing correction. A few complaints or lawsuits, given the number of paratransit trips given each year (83 million in 2006 and surely more today) and the billions of bus and subway rides annually, suggests overwhelmingly that riders' needs ... are being met. ... It is inexplicable why DOT would promulgate a regulation on this subject at all, and especially one that imposes a burdensome and vague administrative process to determine whether an individual's request is "reasonable" and to document compliance.

DOT's viewpoint is clear: The Department included the same provision in its ADA rules for passenger vessels:⁴²⁹

"Reasonable modifications" is a central idea of disability law, occurring in many applications of Section 504 of the Rehabilitation Act.

A similar provision was adopted in a rulemaking concerning the Air Carrier Access Act, and it has caused no problems of which we are aware. Department of Justice ADA rules have long included the concept. While the Department's surface transportation ADA rule (49 CFR part 37) does not presently include this language, the Department, in a pending rulemaking concerning Part 37, has proposed to add it. The Department believes it is appropriate for a [passenger vessel operator] to modify policies so that accessible service is actually made available to passengers, absent a [fundamental] alteration. Commenters were unable to provide any examples of how doing so would be inimical to passenger vessel operations or safety.

A final rule by DOT on this matter (initially expected in October 2014) was issued on March 13, 2015 and clarifies that public transportation providers are required to make reasonable modifications to their policies, practices and procedures to avoid discrimination and ensure programs and services are accessible to individuals with disabilities. DOT Secretary Anthony Foxx said: "Ensuring equal access to public transportation enables individuals with disabilities to have access to jobs, school, medical care and a better quality of life...Making reasonable modifications to transit services helps bring everyone on the path to access the ladders of opportunities that all Americans strive for."⁴³⁰

FTA Decisions Requiring Reasonable Modifications of Policies, Practices, and Procedures

On a number of occasions both before and since the DOT proposed rule, the Federal Transit Administration issued findings indicating that transit agencies should make reasonable modifications of policies, practices, and procedures, based on the requirement to do so in the DOJ ADA regulation:

- **Dec. 23, 2002:** The FTA Office of Civil Rights (OCR) told the Central Florida Regional Transportation Authority that the DOJ's reasonable modification rule may require asking a front-seat paratransit passenger to give way to a rider with claustrophobia.
- **March 12, 2003:** The OCR advised the Jacksonville Transportation Authority that the DOJ rule may require it to ask a front-seat passenger in a paratransit van to move for a rider who experiences significant back pain when sitting in the rear.
- **Dec. 31, 2003:** The OCR told the Maryland Transit Administration that the DOJ rule may apply to a situation in which a paratransit passenger needs help from the driver to secure a child in a child safety seat.

- **Nov. 8, 2005:** The OCR ordered Santa Cruz (CA) Metro to provide the reasonable modification requested by a disabled woman who said she needed to ride in paratransit vans facing sideways.
- **March 26, 2006:** Indicating that the decision on side-facing securement is actually up to the transit agency, the chief counsel of the FTA called on Santa Cruz Metro to make the decision in light of the DOJ's "reasonable modification" rule.
- **Oct. 15, 2007:** The OCR explicitly stated that the DOJ rule applies to transit agencies, although it allowed Bay Area Rapid Transit (BART) to prohibit a disabled person from wearing in-line skates on trains.
- **Aug. 14, 2008:** Although explicitly stating that the DOJ rule applies to transit agencies, the FTA Office of Civil Rights reversed its Nov. 8, 2005, ruling and upheld Santa Cruz Metro's decision to deny side-facing securement.⁴³¹

Consequences of Not Requiring Reasonable Modifications of Policy

Indicating the dire consequences that may occur if reasonable modifications of a policy, such as door-to-door assistance in ADA paratransit, are not required, the American Council of the Blind (ACB) submitted the following example to the docket in the DOT 2006 rulemaking:

Opponents of the DOT proposed rule, including the American Public Transportation Association, have claimed in their comments that imposing a "reasonable modification" requirement, which might compel curbside-to-curbside paratransit agencies to provide door-to-door service under certain circumstances, would create serious safety problems. ACB contends, however, that actual experience with door-to-door service demonstrates that it is far safer for disabled passengers than curbside-to-curbside service is. For example, in St. Paul, Minnesota, several winters ago, a quadriplegic woman using a wheelchair died because her paratransit driver failed to accompany her to the front door at her destination. Instead, the driver left her at curbside and drove away.

Before she reached the door to enter the building, her wheelchair slid on the ice and tipped over. The woman froze to death because no one was available to assist her.

Subpart C. Securing Mobility Devices

Overview

As the 2005 NCD report explained, the use of tie-downs (“securement devices”) to secure mobility devices on public transit vehicles is a critical safety issue for transportation providers and for many people with disabilities.⁴³² Failure to secure and improper securement are still major causes of wheelchair accidents.⁴³³ Poor mobility device securement remains a significant problem, although the issue has been the focus of important developments since the 2005 NCD report was researched.

The disability community has real concerns about wheelchair securement on vehicles. Tracee Garner, Outreach Coordinator for the Loudoun (Virginia) ENDependence Center expressed some of these concerns:

Once you’re on the bus, I think that some of the people that load you, they aren’t properly aware of how to load a person who uses a wheelchair. They’re not very accommodating. They might ask if you need assistance to be locked in. Some people don’t like to be strapped in, so the drivers leave it up to you. Some drivers don’t know where the straps go, and it’s hard for the person in the wheelchair because you can’t see the back of you to tell the driver where to tie your wheelchair down. You can’t tell if you’re strapped in securely. Some new wheelchairs have built-in tie-downs that are clear, but older wheelchairs don’t have that.⁴³⁴

The 2005 NCD report addressed securement problems on buses and other vehicles, claims of difficulty of securing certain mobility devices, resolving securement problems, and so-called oversized” wheelchairs.⁴³⁵ (See the earlier section on Common Wheelchairs.) This section addresses common misinterpretations of the ADA securement requirements, voluntary standards related to wheelchair securement, the

current proposal by the U.S. Access Board to enhance the dimensional requirements for wheelchair securement areas, and issues related to scooter securement and rear-facing securement locations.

Common Misinterpretation of Lift and Securement Requirements

Federal Transit Administration ADA compliance reviews show that transit agency staff sometimes fall short of carrying out the ADA regulatory requirements for mobility device use of lifts and securement. Some common problems are discussed below.

One finding from FTA ADA compliance reviews is that vehicle operators are not always aware of the requirement to allow ambulatory people with disabilities to ride on the lift as standees. This is key for people who do not use wheelchairs but cannot (or cannot without difficulty) enter the bus via the stairs. Driver interviews conducted as part of the FTA ADA compliance reviews have documented a lack of understanding of this regulatory requirement.⁴³⁶

Some drivers are not aware that they must help riders on and off lifts and up and down ramps as needed. FTA ADA compliance review observations indicate that some drivers appear to think that they simply need to operate the lift/ramp and that it is the rider's responsibility to get on and off the lift or up and down the ramp.⁴³⁷

FTA ADA compliance review observations also indicate that some drivers inappropriately rely on the passenger restraint system (the lap belt and shoulder strap) to provide securement of the passenger's wheelchair to the vehicle. This is a dangerous practice. In an accident, the full force of the wheelchair would be applied to the rider if only a lap belt or shoulder strap were being used. The securement system should be separate from the passenger restraint system. This practice is also dangerous because passenger restraint systems are typically not "positive locking." That is, unless there is a sudden force on the lap belt or shoulder strap, the belt and strap do not resist movement.⁴³⁸ In one compliance review, tapes from an onboard camera showed a rider

who used a scooter falling over as the bus went around a corner, because only a lap belt and shoulder strap were being used. Because the person fell over relatively slowly, the belts extended and never locked.

The draft FTA ADA circular also makes this clear:

Seatbelts must never be used without first ensuring that the passenger's wheelchair is properly secured. The use of seatbelts and shoulder harnesses in lieu of a device that secures the wheelchair itself is prohibited under § 38.23(d)(7).⁴³⁹

There is also some confusion about the regulatory allowance for systems to establish policies that allow riders to travel unsecured. It has been noted in some FTA ADA compliance review interviews that this allowance has been interpreted to mean that the transit agency does not have to use securement devices. Transit agencies should be sure that their drivers understand the regulatory requirement: In systems that require securement, the requirement should be made clear to all operators (drivers); in systems that permit some riders to choose to travel unsecured, the transit agency should ensure—via training, monitoring, and progressive discipline—that drivers understand that they are still required to secure other riders and certainly to secure wheelchairs if riders request it.⁴⁴⁰

The draft FTA ADA circular points out,

[Transit] agencies can require riders in complementary paratransit vehicles to use lap and shoulder belts. That being said, ... a transit agency's securement policy should allow for a rider to present documentation demonstrating that using seatbelts and shoulder belts would pose a health hazard and allow that rider to travel without lap and shoulder belts.⁴⁴¹

The circular also notes,

The definition of wheelchair does not require specific elements or equipment such as front rigging (footplates or leg rests), wheel locks or

brakes, push handles, or positioning belts or harnesses. Transit agencies may not require passengers' wheelchairs to be equipped with specific features such as these as a condition of transportation and may not deny service on the basis that the condition of a passenger's mobility device be regarded as "good" according to some standard.⁴⁴²

(See more about securement in the earlier section on Removal of the Common Wheelchair Provision.)

Proposal to Enhance Dimensional Requirements

The U.S. Access Board has proposed to enhance the required dimensions for wheelchair spaces on vehicles such as buses. Rules proposed in 2010 would—

- Require additional maneuvering clearance to the basic 30 × 48 inch wheelchair space when this space is confined to a certain degree; either 31 × 48 inches (for spaces entered from the front or back) or 30 × 54 inches (for spaces entered from the side).
- Add the requirement that paths connecting wheelchair spaces to doorways be at least 34 inches wide.⁴⁴³

(For information about the significant change in the DOT ADA regulation to remove the provision about common wheelchairs, Common Wheelchair Section Removed from DOT ADA Regulation, above.)

At least one transit agency has chosen to acquire vehicles with three securement areas rather than the required two. According to research published in 2014, the Corpus Christi Regional Transportation Authority (CCRTA) has purchased only buses with three securement areas, as well as state-of-the-art securement systems, since 2008. As a result of these and other efforts, lift boarding on CCRTA's fixed-route transit service increased from 27,475 in 2006 to 110,961 in 2012.⁴⁴⁴ (Also see chapter 1 on Fixed-Route Bus Transit.)

Voluntary Standards

Certain precautions are deemed critical to avoid or prevent safety and securement issues for all riders. Where no across-the-board standards exist (to address the needs of people who use mobility devices), the public transit industry has established voluntary standards that apply to motor vehicles for wheelchair users' safety and securement.

Voluntary Standard for Wheelchairs in Motor Vehicles

Because there were no safety standards for wheelchairs used as seating in a bus or van, the Subcommittee on Wheelchairs and Transportation—under the auspices of the American National Standards Institute, the Rehabilitation Engineering and Assistive Technology Society of North America, and the International Standardization Organization—developed a voluntary industry standard commonly known as WC-19. WC-19 addresses issues of wheelchair design and performance related to the use of a wheelchair as seating in a bus or van. The purpose of WC-19 is to improve the safety and security of wheelchair users during normal transportation and in the event of a vehicle crash. For these reasons, WC-19-compliant wheelchairs (transit wheelchairs) are equipped with an array of features such as anchor points for securing the wheelchair to the frame of the bus or van and an attachment point for occupant restraints to protect the safety of the wheelchair user.

An increasing number of wheelchair models, both manual and power, incorporate WC-19 specifications as an optional, extra-cost feature. The Rehabilitation Engineering Research Center (RERC) on Wheelchair Transportation Safety listed approximately 200 models of wheelchairs crash-tested according to the standard as of April 2013.⁴⁴⁵

However, too many wheelchairs are still purchased without these features. Putting WC-19-compliant wheelchairs into widespread use will require the education of people with disabilities, health care practitioners, and mobility device vendors, as well as

acceptance by health care funders/insurance agencies, and perhaps government regulation.⁴⁴⁶

Information about WC-19 is available at—

- Vehicle Safety for People Who Use Wheelchairs, University of Michigan Transportation Research Institute, <http://www.travelsafer.org>
- The WC19 Information Resource: Crash-Tested Wheelchairs & Seating Systems, Rehabilitation Engineering Research Center (RERC) on Wheelchair Transportation Safety, <http://www.ercwts.org/WC19.html>

Voluntary Standard for Tie-Downs

In addition to some technical requirements in Access Board guidelines, there is an industry standard for wheelchair securement devices: Society of Automotive Engineers (SAE) J2249, Wheelchair Tie-downs and Occupant Restraints for Use in Motor Vehicles—Design and Performance Requirements.

Like WC-19, SAE J2249 is voluntary. However, vehicle and tie-down manufacturers have taken a great deal more care to adhere to this standard, due to the nature of the intended purpose of vehicle-mounted tie-downs: It would be difficult to escape product liability if it were not met and a problem occurred, because they are always used as safety devices.⁴⁴⁷

Scooter Securement

The securement of scooters on vehicles is required. Transit agencies have sometimes complained about the perceived difficulty of securing scooters, but there are methods for doing so. One is to hook two belts to each other around the base of the seat post, and two more around the steering post (tiller) at the bottom, over the platform where the rider puts his or her feet. The securements must be tightened.

As with wheelchairs, vehicle operators sometimes forgo mobility aid securement and only use a lap belt and shoulder strap. The details given start of this section on Common Misinterpretation of Lift and Securement Requirements (paragraph 5, p. 218) illustrate relevant issues.

The transit agency in Eugene, Oregon, has developed its own specialized scooter securement system.⁴⁴⁸

Rear-Facing Securements

Transit agencies in Canada and Europe are more likely to use rear-facing securements than agencies in the United States. Rear-facing securements allow the wheelchair users to station themselves in a securement station facing the rear of the bus, with the back of the wheelchair against a padded backrest. According to research by Katherine Hunter-Zaworski and Joseph R. Zaworski,

Passive wheelchair securement such as the rear-facing approach used in some countries is attractive to providers of mass transit because it requires no operator assistance and it is fast. The results of this project, however, demonstrate the importance of proper implementation. During normal driving conditions, users of manual wheelchairs and three-wheel scooters must expect some normal movement of their wheelchairs. The securement stations in buses using rear-facing securement must be equipped with handrails, stanchions, or armrests in addition to the necessary backrest so that users can assist in preventing the incidental movement of their wheelchairs.

In the event that extreme maneuvering is required, such as swerving to avoid an accident or making an emergency stop, catastrophic motion (tipping over) of an occupied wheelchair may result if the rear-facing securement station does not provide support on both sides as well as the front. If containment on three sides of the station is provided, it can be reasonably expected that a wheelchair will move but stay upright and not be seriously damaged during extreme maneuvering.

The results of this project make it clear that rear-facing securement of wheelchairs, a fast and independent approach that has important advantages for BRT [bus rapid transit], can be successful. More work

needs to be done to identify the best ways to minimize incidental movement and prevent catastrophic movement for all types of wheelchairs, but there are no inherent barriers to successful implementation of this approach.⁴⁴⁹

Some riders do not like these securement areas because they prevent them from seeing where the vehicle is going. Other riders, particularly on bus rapid transit, prefer rear-facing securements because there is no need for driver assistance to secure the wheelchair.⁴⁵⁰

Subpart D. Service Animals

Overview

Despite the clear rules in the ADA about service animals, discrimination persists against people who use them in transportation and in other contexts. This section on service animals addresses current rules, the persistence of continued discriminatory incidents, and proper procedures for boarding a wheelchair user with a service animal on a vehicle with a lift.

ADA Transportation Rules for Service Animals Did Not Change

The Department of Transportation posted a technical assistance note on its website in 2011 clarifying the fact that there has been no change in ADA regulations for service animals and mobility devices. DOT explained,

Please be advised that the U.S. Department of Transportation has issued no changes to its ADA regulations, which cover transportation provided by both the private and public sector.

The cause of any confusion has been a Final Rule issued several months ago by the U.S. Department of *Justice* (DOJ), which made a number of changes to their ADA regulations that went into effect on March 15, 2011.⁴⁵¹

The DOJ ADA regulation update that was issued in 2010 and became effective in March 2011 largely limited ADA coverage of service animals to dogs, with an exception related to using miniature horses. These DOJ changes affect many facilities, such as restaurants, hotels, city and state parks, and government buildings. However, DOT has not made this change. The DOT ADA requirements on service animals, still in effect, cover transportation provided by both public and private entities, including buses, trains, taxis, and ADA paratransit vehicles.

The draft FTA ADA circular restated some aspects of the DOT service animal rules with added detail:

Service animals must be “individually trained.” This training can be by an organization or by an individual, including the individual with a disability. Transit agencies do not need to transport animals that have not been individually trained. If an animal’s only function were to provide emotional support or comfort for the rider, that animal would not fall under the regulatory training-based definition of a service animal. Simply providing comfort is something that [an] animal does passively, by its nature or through the perception of the owner. However, the ADA does not prohibit a transit agency from choosing to [go beyond the ADA rule by accommodating] pets and comfort animals, which would be a local decision.⁴⁵²

The draft circular further stated, regarding the number of service animals a passenger may bring,

Transit agencies cannot impose limits on the number of service animals that accompany riders on a single trip. Different service animals may provide different services to riders during trips or at riders’ destinations.⁴⁵³

The circular also stated, regarding a service animal’s decorum,

Transit agencies can require service animals to remain under riders’ control and can require that service animals pose no direct threats to the safety or health of drivers or other riders or create a seriously disruptive atmosphere. For example, a rider with a service dog is responsible for ensuring that the dog does not snap or lunge at the driver or other riders.

Conversely, a dog that barks occasionally would not likely pose a direct threat or be seriously disruptive.⁴⁵⁴

Discrimination Persists

There are many well-documented examples of the persistence of discrimination by operators of public transportation vehicles, both publicly and privately owned and operated, against people with a variety of types of disabilities who use service animals.

For example, in 2010, the Equal Rights Center (ERC) in Washington, DC, and two other organizations published a report titled *No Dogs Allowed—Discrimination by DC Taxicabs Against People Who Use Service Dogs*. The report stated,

After receiving complaints from ERC members ... who are blind or use service dogs and have experienced refusals of service by DC taxicabs, the ERC launched an investigation into taxi discrimination against individuals who use service dogs. ... The ERC conducted 30 tests in the District ... Each test included two individual “testers,” one with a service dog and one without, who stood on the same side of a District street and attempted to hail a cab. **In 60% of these tests, the blind tester with a service dog was subjected to at least one form of discriminatory treatment.**

The results of this investigation demonstrate both the taxicab industry’s lack of knowledge of their legal obligations to serve individuals with service dogs and the need for more rigid enforcement of these laws. Many of the tools needed to address this discrimination are already in place with the DC Human Rights Act and DC Municipal Regulations.⁴⁵⁵

In a 2013 example, the U.S. Department of Justice announced a settlement with SuperShuttle over a similar issue. According to the DOJ press release,

The Justice Department announced today that it has reached a settlement with SuperShuttle, a shared-ride transportation company based in Arizona, to resolve a complaint that it discriminated against a blind person who uses a service animal. Specifically, the Justice Department determined that SuperShuttle violated the Americans with Disabilities Act (ADA) by forcing a blind person who uses a service animal and her party

to ride in a separate van and charging them a higher rate than other individuals who are allowed to share a van and pay a reduced fare. ...

Under the terms of the settlement agreement, SuperShuttle will adopt a revised service animal non-discrimination policy; train all employees, franchisees and independent contractors on the requirements of the ADA; and pay \$1,000 in damages to the complainant.⁴⁵⁶

In 2013, New York City Transit announced a settlement with a person with a psychiatric disability who uses a psychiatric service animal. According to *Transit Access Report*,

A \$150,000 settlement is reported in a psychiatric service animal case in New York City.

The case involved a transit rider with a history of depression and posttraumatic stress disorder, as well as loss of hearing in one ear, who said she travels with a large dog to alert her to dangerous sounds and help keep her from “disassociating on the street.” Over a period of time, she used dogs of three different breeds. ... Despite repeated complaints she made to transit supervisors, the rider claimed she continued to be challenged by bus operators in violation of her rights under the Americans With Disabilities Act.

The case ... was in federal court in Brooklyn, New York, for more than nine years. ...

Although the transit authority had developed a policy stating that identification is not required for service animals, [the rider] complained [that] it was not followed. Even when she produced an ID card that the transit authority had given her for the dog, she was still given a hard time, she said. The Federal Transit Administration interprets the ADA to mean that a person with a disability cannot be required to show verification that an animal is a service animal. ...

Judge Townes acknowledged new rules put out by the Department of Justice in 2010, expressly recognizing psychiatric service animals as service animals covered by the ADA. Like other service animals, a psychiatric service animal must be trained to perform some task to distinguish it from an emotional support animal.

DOJ said a dog would qualify as a psychiatric service animal if, for example, it “senses that a person is about to have a psychiatric episode

and it is trained to respond, by nudging, barking, or removing the individual to a safe location until the episode subsides.”⁴⁵⁷

Wheelchair User with Service Animal Using a Lift

There has been much discussion and some confusion over proper techniques for boarding a wheelchair user who is traveling with a service animal onto a lift-equipped vehicle. The following are not legal requirements but technical assistance suggestions from several knowledgeable sources.

Service dog schools say not to leave the dog unattended on the street or loose without someone or something holding the leash; some animals are well enough trained to be off leash, but that is rare. For example, when boarding, the dog is boarded first by handing the leash to the driver (who may need to come down the steps to get the leash), then the driver deploys the lift and boards the person, turning the leash back to the passenger as part of the securement process.

When deboarding, the reverse happens: The rider is taken down on the lift, then the dog is brought down the stairs and the leash handed over (not sent down the steps with the leash flapping). Some say it is fine to temporarily tether the animal to a pole on the bus during the boarding/deboarding process. It is always important to ask the rider, who knows his or her service animal best.

Some people think it is dangerous to board both rider and service animal together on the lift, unless the animal is on the person's lap, because there are so many moving parts and so many things that can get caught in such a small space, including tails, toes, noses, leashes, and harnesses.

In ADA paratransit, it is an aspect of origin-to-destination service for the driver to hold a leash for someone traveling with a service animal. (See more in the Origin-to-Destination Service section above.) In fixed-route service, it may be a part of required driver assistance. Often, drivers resist holding the leash, so in practical terms, riders

often must decide whether to leave the animal waiting curbside while they board then calling to the animal to come up the steps, or leave the animal unattended on the vehicle while the driver goes back to help the passenger board. Some animals become stressed when they are passed off to strangers. Ultimately, the customer must decide what level of risk to take in boarding the animal. Bringing it along on the lift may be less risky than leaving it unattended, either on or off the vehicle. Transit agencies may establish a policy but should be ready to modify it on a case-by-case basis.

A best practice is for transit agencies to offer a practice session while the bus is not in revenue service (sometimes called a “nonrevenue service practice session”) to work out how best to board and alight with a service animal. It can almost always be worked out satisfactorily for everyone involved with a little free practice for both the rider and the transit agency, to reassure them both about the solution. Another opportunity to work through this issue is when someone comes in for ADA paratransit eligibility certification.⁴⁵⁸

Subpart E. Communication Access

The Federal Transit Administration (FTA) draft ADA circular stated,

Transit agencies must “make available to individuals with disabilities adequate information concerning transportation services.” This obligation includes making “adequate communications capacity available, through accessible formats and technology, to enable users to obtain information and schedule service” (§ 37.167(f)). This includes schedules, routes and fares as well as information about service rules and temporary changes. Whenever possible, FTA encourages transit agencies to employ information systems such as those that report the next bus/train arrival and to provide this information in both audio and visual formats.⁴⁵⁹

The circular further stated,

Transit agencies must offer accessible alternatives to voice telephone communications. This could include using (and having appropriate

personnel trained to use) the national 711 relay service or other relay services available through states or telecommunications companies.⁴⁶⁰

In a workshop titled “Reviewing ADA Paratransit Policies: Are You In Compliance?,” Karen Hoesch, Executive Director of ACCESS Transportation Systems in Pittsburgh, Pennsylvania, and a top national expert on ADA paratransit, offered a number of important do’s and don’ts for transit agencies to make their communications more accessible to people with hearing, speech, vision, and cognitive disabilities.⁴⁶¹ Many of these actions are specific regulatory requirements; others are best practices that will bring a transit agency closer to ADA compliance.

People with visual impairments should have an equivalent response time for information. It is not equivalent if people who are blind receive their requested information in two weeks while everyone else receives it in a day or two.

All public information should state where to request alternative formats, and such formats should be readily available. Any type of intake process should allow people to determine whether they need an alternative format, and which type.

If a transit agency has user guides, an audiocassette and digital audio version should be available. Ensure that a competent reader has made the recording. He or she need not use a great deal of inflection; the reader should simply read clearly.

It is important to provide large-print materials. Fourteen point type is the minimum size, but larger is better, up to 24 point. Some people may want 14 or 16 point, while others may need a larger size. It only takes a few minutes to reformat a handout on the computer in a different font size. Sans serif fonts are easier to read (serifs are the little hooks at the ends of letters in some typefaces).

E-mail, MS Word, or text documents should be offered, as well as audiocassette and digital audio files.

Braille has become less often requested over time, but some people who are blind still use braille, especially for documents that need to be consulted regularly. Braille copies should be readily available. If bus schedules are requested in braille, riders usually want the portions that apply to them, so if a braille schedule is requested, it is best to find out which routes and stops are needed.

Written material should use black and white for contrast; color should add meaning. Glossy paper creates glare and is not accessible for some people with low vision. Attractive brochures with glossy paper can be used if an alternative form is available.

Printed columns are usually right-justified, but they can be harder to read for people with low vision.

Print material should be developed with accessibility for people with cognitive disabilities in mind. Simple writing and sentence structure does not mean the handouts are “dumbed down.” User guides should emphasize clear language.

Website accessibility is a requirement; focus on compliance with the Section 508 and W3C standards. Keep in mind that people who are blind or have vision impairments and who are navigating the website using screen reader programs must skip the graphic elements if they are not made accessible. The affected community should review the website before it is made public.

Staff should understand that various speaking devices used by people with speech disabilities may take additional time. Staff should not assume that a person is finished when he or she is only partly through a sentence. People with speech impairments frequently report that they are regularly hung up on when they have not finished speaking. Staff should be trained to be patient and to ask questions with yes/no answers.

Deaf people need sign language interpreters in certain situations. Any public meeting or in-person contact should be advertised as “interpreter available,” at least upon request.

A public hearing should have interpreters regardless of advance request. Sign language interpreters come in many types; most typical is an American Sign Language (ASL) interpreter. Sometimes an interpreter for deaf-blind people is needed. A request for a particular type of interpreter should be honored.

In addition, people who are deaf or have hearing impairments as well as other disabilities may need another accommodation: Communication Access Realtime Translation (also known as real-time captioning or CART). CART converts words to a text format on a screen. It is a professional service that can be delivered on location or remotely. The National Court Reporters Association describes CART services as “the instant translation of the spoken word into English text using a stenotype machine, notebook computer and realtime software.” The text produced by the CART service can be displayed on a person’s computer monitor, projected onto a screen, combined with a video presentation to appear as captions, or made available using other transmission and display systems.⁴⁶² A slight delay may occur because of the captioner’s need to hear and enter the words and the computer’s processing time.⁴⁶³

Films and DVDs should be open-captioned. Many people with hearing loss need the captioning, and it will benefit others as well.

Make sure the teletypewriter (TTY) or relay service phone is prominently displayed. The hold time for a TTY call should not be any longer than for any other phone call. If the general public can call a toll-free number but a TTY user cannot, that is not equivalence. TTY service must be available the same days and hours as all other phone service.

(For more information on communications access in ADA paratransit operations, see Communications Access for Taking Telephone Calls in chapter 3.)

Subpart F. Traveling with a Respirator or Portable Oxygen Supply

The FTA draft ADA circular clarified the rights of people with disabilities to travel with a respirator or portable oxygen supply on public transit, stating,

Transit agencies cannot “prohibit an individual with a disability from traveling with a respirator or portable oxygen supply, consistent with applicable DOT rules on transportation of hazardous materials” (§ 37.167(h)). As discussed in the Appendix D section on Other Service Requirements [of the DOT ADA regulation], under the DOT hazardous materials rules (49 CFR Subtitle B, Chapter 1, Subchapter C), a passenger may bring a portable medical oxygen supply on board a vehicle. Since the hazardous materials rules permit this, transit agencies cannot prohibit it.⁴⁶⁴

The “DOT Guidance for the Safe Transportation of Medical Oxygen for Personal Use on Buses and Trains”⁴⁶⁵ recommends measures for bus and rail operators to take when transporting medical oxygen cylinders (i.e., tanks) in the passenger compartment. The commonly used portable oxygen concentrators, however, are not considered hazardous materials, and do not require the same level of special handling as compressed oxygen cylinders. Transit agencies, therefore, cannot require riders to secure such concentrators in a particular space on the vehicle (e.g., behind forward-facing seats) and must allow riders to use the concentrators as needed on the vehicle.⁴⁶⁶

Subpart G. Navigating Public Transit with a Cognitive or Intellectual Disability

Navigating a public transit system with a cognitive or intellectual disability is challenging. Ken Shiotani, Senior Staff Attorney at the National Disability Rights Network, says, “You are in a strange place, and may have limited communication abilities; it can be a daunting proposition. How accommodating is the transportation system? Is there assistance? There may be no one to ask, except for strangers.”⁴⁶⁷

What can make transit systems more accessible for people with intellectual and other cognitive disabilities? Shiotani continued,

Transportation is important for community integration—being able to go to the store, a job, or a school, and being able to handle independent transactions—these are things people can learn to do but may need assistance with, as well as simple guidance cues. For example, on some public transit systems, each line has a color and a number; such additional cues can make way finding easier.

Unfortunately, we do not see this consistently, nor is it easy to do with bus systems. Usually there's a route name and letter or number, but those may be difficult to read, and it's just text, so that's not providing additional cues for someone with cognitive limitations.

Once you're actually on a transit mode, announcements can help someone know where to get off. Visual signs can be helpful. Getting information in multiple modes—for example, both audibly and visually, such as seeing and hearing a stop announcement with the stop sign—may be helpful, so people are oriented as to when their destination is coming up. Color cues, repeated visually and audibly, can be helpful. Announcements with an artificial voice can “sound funny” and throw someone off. When announcements are made or recorded by people, unusual accents or lack of clarity can also be barriers.

Training is another critical aspect to enable people to be independent, to go to work and school, and live independently. Being trained for specific trips and going on those trips over and over again can be the difference between independence and institutionalization.⁴⁶⁸

Subpart H. Navigating Public Transit with Chemical or Electrical Sensitivities

Navigating a public transit system with chemical or electrical sensitivities is very challenging, according to Mary Lamielle, executive director of the National Center for Environmental Health Strategies.⁴⁶⁹ People disabled by environmental barriers experience debilitating reactions from very low-level exposures to chemicals or electromagnetic fields. Poor indoor environmental quality (IEQ) in public transit vehicles, restrooms, and public transit buildings can be hazardous to people with these disabilities. Improving IEQ should improve access to public transit.⁴⁷⁰

A few important steps can make public transit—including city buses, paratransit vehicles, cabs, trains, and over-the-road buses—more accessible for this disability group:

- The use of nontoxic, fragrance-free cleaning and maintenance products and practices.

- The removal of all scents and fragrance-emitting devices, and prohibition of the use of air fresheners, deodorizers, and disinfectants in public transit vehicles, restrooms, and public transit buildings and facilities. Ventilation will help cleanse indoor air. Fragrance-free hand soaps and fragrance-free, alcohol-based hand sanitizers that do not have additional ingredients should be used.
- Conventional pesticides should be avoided in favor of safer, less toxic alternatives.
- The least toxic materials for public transit vehicles and for construction and remodeling of transit buildings should be selected. Avoid carpeting and stain proofing, and minimize plastics.
- Smoking should be banned on all public transit vehicles, in bus shelters, in public transit buildings, and within 25 feet of all entrances.
- Public transit vehicles should avoid unnecessary idling.⁴⁷¹

Susan Molloy, a long-time advocate for people with chemical and electrical sensitivities, noted that common features in the built environment can cause significant disability for people with electrical sensitivities. These include vehicle GPS and radio features, overhead power lines, cell phones, parking lot rechargers, fluorescent lighting, flashing lights, and V2V technology between vehicles.⁴⁷²

Even if all environmental barriers to the use of public transit were removed, people with chemical and electrical sensitivities would still need the cooperation of public transit employees, as well as that of the general public, to use public transportation.

Employees should be encouraged to avoid smoking and to refrain from the use of fragrances and scented personal care products. Fellow passengers should be encouraged to accommodate people who are disabled by their inability to tolerate exposure to chemicals by limiting their use of fragrances and scented personal care

products, and by avoiding problematic activities while in transit, such as applying scented hand lotions, hairspray, and nail polish.⁴⁷³

Lamielle recommended as an excellent resource the U.S. Access Board's 2006 report on the Indoor Environmental Quality Project (<http://www.access-board.gov/research/completed-research/indoor-environmental-quality>), particularly the Operations and Maintenance section (<http://www.access-board.gov/research/completed-research/indoor-environmental-quality/operations-and-maintenance>).⁴⁷⁴

Subpart I. Transit Staff Trained to Proficiency

The FTA draft ADA circular explains what it means for the staff of transit agencies to be trained to proficiency:

Transit agencies must “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” (§ 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. A good practice is to include testing and demonstrations to gauge employee knowledge and abilities in training programs.⁴⁷⁵

Chapter 6 recommendations are listed at the end of the report.

CHAPTER 7. Rural Transportation

As described in the 2005 NCD report, lack of public transportation is one of the most serious, persistent problems reported by people with disabilities who live in rural America today.⁴⁷⁶ Some 40 years after the Urban Mass Transportation Act and 23 years after the Americans with Disabilities Act, minimal or nonexistent transit services in most rural areas still create serious, ongoing barriers to employment, accessible health care, and full participation in society for people with disabilities.

According to Christopher G. Bell, Esq., member of the American Council of the Blind of Minnesota, “There is totally inadequate public transportation in rural [areas]. There’s an ongoing failure to pursue the needs of our rural brothers and sisters, who include people with disabilities.”⁴⁷⁷

Tim Sheehan, Executive Director of the Center for Independent Living of Western Wisconsin, explained, “One of the current issues is the lack of a common definition of ‘transit’ throughout the transportation system. Rural transportation (where it is available) is generally defined as specialized transportation.” This deficiency creates eligibility silos that in turn lead to competition for the limited amount of funding for individual programs. Numerous restrictions are imposed on rural providers: limited trip purposes, limited hours of service, client-only transportation, and duplicative services, to name a few. Also, the cost of transportation in rural areas is generally higher due to the longer distances traveled.

Why is rural transportation so important? Census data shows that nearly 30 percent of Americans live in rural or nonmetropolitan areas.⁴⁷⁸ The 2010 census found that the rural share of the U.S. population had dropped to 16 percent from 21 percent in 2000, but the figure is much larger when population of cities under 50,000 (the minimum size for a metropolitan area) is counted. Using that parameter, 28.8 percent of Americans live in rural areas or small cities. In 34 states, more than 28 percent of the people live in

rural areas or nonmetropolitan towns; in 15 states, such places account for more than half the population. By this measure, the most rural state is Vermont, with 82.6 percent of its population living in rural areas or small towns.

Compared to the resources allocated to urban areas, those allocated for rural public transportation are significantly inequitable. Statistically, 25 percent of the U.S. population lives in rural areas, but only 6 percent of federal transit funding is allocated to serve them. Many rural communities (1,200 counties with a total population of 37 million) have no public transit at all.⁴⁷⁹

However, with the provisions in the law known as MAP-21 (Moving Ahead for Progress in the 21st Century, the federal reauthorization of the U.S. DOT surface transportation programs through fiscal year 2014),⁴⁸⁰ rural transportation advocates believe that creativity and the coordination of local and regional resources can help achieve the goal of completely integrated, rather than separate or segregated, regional transit service for people with disabilities in rural America. Advocates also believe that these coordinated activities should be measurable to ensure that people can go where they need to, safely and in the most efficient manner.

Funding Sources for Rural Transportation

The previous reauthorization—the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)⁴⁸¹—defined four basic funding streams: §5310,⁴⁸² §5311,⁴⁸³ §5316,⁴⁸⁴ and §5317.⁴⁸⁵ These sections complement one another.

Transportation for Elderly Persons and People with Disabilities (§5310) is a formula-funded program provided to each state to help private nonprofit groups meet the transportation needs of elderly and disabled people where transportation services are unavailable, insufficient, or inappropriate. Section 5310 funds are distributed among the states by a formula based on the number of elderly people and people with disabilities

in each state according to the latest U.S. census data. SAFETEA-LU required recipients to have a locally developed and coordinated public transit/human services transportation plan.

Since the resources available to the §5310 program are limited, they are allocated on the basis of relative need. Federal statute⁴⁸⁶ specifies three aspects of need for the §5310 transportation grant program; need is said to exist when transportation is unavailable, insufficient, or inappropriate.⁴⁸⁷

It is important to understand the nuances of “unavailable, insufficient, or inappropriate” when considering transportation that is accessible to people with disabilities and elderly people. The Urban Mass Transportation Act of 1970⁴⁸⁸ clearly stated that elderly people and people with disabilities have the same right to use public transportation as any other citizens and that a special effort should be made in the planning and design of facilities and services to ensure effective use. Most people think of accessible transportation as buses, vans, or trains with special lifts that allow people using wheelchairs or other mobility devices to board. However, accessible transportation includes systems, services, vehicles, routes, stops, programs, and all other aspects of transportation; it should meet or exceed the minimum requirements set forth in the Americans with Disabilities Act.

As the Federal Transit Administration underscored, “Unlike many other inter-jurisdictional assistance programs of the federal government, existing and potential mass transit needs are not distributed evenly across the states, but instead tend to be much more concentrated. Any movement toward allocating federal transit formula funds on a basis unrelated to need would run counter to the purpose of the program.”⁴⁸⁹

Who determines need, and what criteria are used? How does this guide the planning process? Is the need defined by the internal operations of human service agencies or by community needs assessment with an emphasis on community participation? Even when the perspective is more individually focused, is that perspective on a person’s whole life or just on his or her role as a service agency client?

There are no universal definitions or criteria for the §5310 primary program rationale: when public transportation is unavailable, insufficient, or inappropriate. This creates ambiguity: What is the operational meaning of these terms?⁴⁹⁰

Unavailable public transportation is easiest to operationalize: There is no public transportation. In some states, particularly those with large unserved rural areas, §5310 funds might provide the backbone for a general rural transportation system that is planned, designed, and carried out to meet the special needs of elderly people and people with disabilities. The ADA, meanwhile, can provide relief in areas where transportation is available for others but not for people with disabilities.

The term *insufficient* is relative and implies that there are not enough available resources to meet existing needs. This leads to questions of how one defines transportation needs, and who defines them. Some states and local jurisdictions reference or make use of/rely on surveys of transportation needs.

The hardest term to operationalize is *inappropriate*. When do people with special needs require separate services rather than universally designed or better developed mass market services? Should riders with diagnostic labels (e.g., intellectual disability), age, or other characteristics be excluded and existing transportation be considered inappropriate? Sometimes the term “inappropriate” seems to be applied to the person rather than to the transportation services.

The second funding section is Formula Grants for Other than Urbanized Areas (§5311), a rural program that is formula-based and provides funding to states with the purpose of supporting public transportation in rural areas with populations under 50,000. The goal is to enhance access to health care, shopping, education, employment, public services, and recreation in nonurbanized areas. The program is also designed to encourage and facilitate the most efficient use of all transportation funds through the coordination of programs and services. This section includes the Rural Transit Assistance program and the Tribal Transit program.

The Job Access and Reverse Commute (JARC) program (§5316) was established to address the unique transportation challenges faced by welfare recipients and those with low incomes as they seek to obtain and maintain employment. The New Freedom program (§5317) was established to provide additional tools to remove barriers facing people with disabilities who are seeking integration into the workforce and full participation in society. The program is designed to expand the available transportation options beyond the requirements of the ADA.

An often overlooked section of SAFETEA-LU is the Public Transportation on Indian Reservations program.⁴⁹¹ The Federal Transit Administration provides direct funding to federally recognized tribes to support tribal public transportation in rural areas.

Significant changes in the MAP-21 law included the end of both the JARC (§5316) and New Freedom (§5317) programs; however, both survived the last reauthorization as eligible activities.⁴⁹² JARC-type activities will be eligible under Sections 5311 (rural) and 5307 (urban). New Freedom-type projects will be allowed under Section 5310 (seniors and people with disabilities).

Successful Strategies for Rural Transportation

For transportation to be effective in rural areas, the system cannot apply a one-size-fits-all mentality. Transportation services in rural areas take planning, creativity, and ingenuity. Low population and long distances can make traditional fixed-route and paratransit services too expensive or ineffective.

Strategies might include voucher programs, volunteers, flex services, taxicabs, mobility management, coordinated services, car ownership, or a combination of these services.

There are numerous examples of successful programs across the country. Most programs use a combination of strategies. This report will focus on seven successful programs: Independent Living Center, Alaska; North Country Independent Living, Wisconsin; APRIL/NCIL/Easter Seals Project ACTION Mobility Managers Independent

Living Coaches; Linx Cooperative; Center for Independent Living of Western Wisconsin; Living Independence Network Corporation, Idaho; and Good News Mountaineer Garage, West Virginia. The following is a discussion of these programs, with an update on those that were mentioned in the 2005 NCD report.

Voucher Programs

Voucher programs⁴⁹³ use tickets or coupons that eligible riders give to participating transportation providers in exchange for rides. In general, voucher programs target those with the greatest need for transportation who cannot use existing transportation services for one or more reasons; for example, people who cannot operate private vehicles because they have disabilities or they do not own vehicles. Other programs focus on people who cannot afford to use existing taxi services, who live in areas where those services are not available, or who live outside the fixed-route bus service area.

A voucher system has three distinct parts: (1) the riders who use public and private transportation services at a fully or partially subsidized rate pay for those rides with the vouchers; (2) the transportation providers who agree to accept the vouchers or coupons as payment for the trip submit the vouchers to the sponsoring agency for reimbursement based on previously negotiated arrangements; and (3) the community supports the subsidized cost of the voucher through a local agency or agencies. The agencies determine customer eligibility for the voucher, provide the vouchers to the customer, and reimburse the transportation providers for trips.

A voucher program helps customers afford access to essential services and destinations. They may ride free or pay only a small co-payment for the trip.

The rider becomes more involved in the process if he or she also chooses the provider. Providers can be family members, friends, or neighbors. Being able to rely on voucher-supported services means additional independence for a rider who previously had to depend on the good will of family members and friends for personal transportation.

A voucher system allows customers to choose transportation services that match their needs: the type of vehicle, the time and day of travel (including weekends), and the type of service (e.g., door-to-door). Public transportation providers also benefit, because participation in a voucher program allows them to expand their ridership. Taxis and human service transportation providers can increase their contract revenue, while family members, friends, and neighbors can receive reimbursement for trips they might have been funding out of their own pockets. All stakeholders benefit.

Volunteers

Volunteer driver programs can fill gaps in existing transportation services, especially in rural areas where public transportation, taxis, and human service vehicles may not be available. Volunteer drivers are worth their weight in gold. Cultivating a cadre of dedicated volunteers for a voucher program will strengthen the program and support its continuity.

Flex Services

Traditional fixed-route transportation systems generally operate along specified, inflexible routes. ADA complementary paratransit provides some flexibility but might still be bound to a service area or a schedule. In rural areas with low population and long distances, these traditional services can be very expensive or completely ineffective. Flex services seek to find a compromise. These services may include route deviation services to requested stops as well as extended or flexible hours of service. (Also see chapter 5 on Fixed Route Deviation Service.)

Taxicabs

In rural areas where taxi service exists, taxicabs may be used to augment traditional public transit service, to extend the days and hours of service, or to offer a service mode that is less expensive for some trips. Transit systems typically use one of two

approaches to arrange service with a taxi company: The service can be contracted as a part of an integrated paratransit system or as a supplemental service that is arranged by the rider and subsidized by the transit system.⁴⁹⁴

The Independent Living Center (ILC) provides independent living services on the Kenai Peninsula in Alaska and has been operating a voucher program with community area taxi companies since 1997. This program is part of an original voucher project of the Association of Programs for Rural Independent Living (APRIL). ILC started its first voucher program in the Soldotna/Kenai area, which has an approximate population of 25,000. When the program began, transportation options for people with disabilities were generally not affordable, accessible, or available. Taxis were available but were not affordable or accessible. Specific transportation for elders and individuals with disabilities was limited in its availability.

In 1997, ILC began working with the local cab company and the Department of Transportation to eliminate barriers to transportation for elders and people with disabilities. ILC obtained an accessible minivan with \$5310 funds and leased it to the cab company which, in turn, operated, maintained, fueled, and insured it. At the same time, ILC received a small grant to subsidize cab rides for people with disabilities and people over the age of 60. Eligible riders purchased a limited number of vouchers a month for a fraction of the fare. This program yields benefits for all involved. It works with private businesses (cab companies) that are familiar with the transportation business. Cab companies are demand-responsive transportation providers that offer door-to-door service and operate 24 hours a day, seven days a week, offering availability superior to that offered by most public transit systems. The rider contributes toward the ride, and the state DOT extends the effectiveness of its funds. The ILC benefits, as it garners a customer base that might not ordinarily come through its doors. It is able to provide other independent living services to consumers who initially came in for transportation assistance.

Over the years, the program has changed. The same cab company operates five accessible vans, which it purchased as part of its 20-plus vehicle fleet. The cab

company contracts with the newly formed Transportation Brokerage, a Medicaid and Medicaid waiver transportation provider, and with the ILC voucher program. In the last three years, the cab company had annual revenue of over \$87,000 through the ILC voucher program. The funding sources for vouchers include §5310 and Alaska Mental Health Trust dollars that are channeled through Alaska DOT for transportation use.

ILC replicated the program in the Homer area, which has an approximate population of 8,000, and a similar program was established in Seward in 2010. Each program is tailored to fit the community, the consumers' needs, and the local cab companies, but they have common elements. The local ILC office is responsible for establishing the eligibility of the riders, selling vouchers and tracking their use, reimbursing the cab companies for redeemed vouchers, and for all grant writing and reporting requirements. ILC earns three dollars for each ride given. This is a way to address the "no operating expenses" requirement of most DOT funding.

In FY 2012, the ILC voucher program provided 6,275 one-way rides for 115 people in the Homer area. In the Kenai/Soldotna area, 178 people received 7,320 one-way rides. In Seward, 55 people received 3,090 rides.

Homer is the site of another innovative project. One Kenai Peninsula transit provider is donating an accessible minivan to a local cab company for use in its fleet. The cab company will be responsible for all operations, maintenance, and insurance of the vehicle.

In addition, local human service agencies are coordinating and pooling their purchase of rides through Central Area Rural Transit System, a publicly funded transit provider. The DOT/FTA and the Alaska Mental Health Trust Authority are primary funding sources. These pooled purchases leverage public transportation funds that can be used by the general public for a voucher system. This program was in the design phase for nearly two years and was introduced in 2013. It will use cab companies to take the place of public transit in rural Alaska. Solicitation of grant applicants began in 2013 through the

human service transportation coordinated by the Anchorage Metropolitan Area Transportation Solutions.⁴⁹⁵

Vouchers and volunteer drivers also have been successful in northwest Wisconsin. North Country Independent Living serves a 9,000-square-mile, eight-county region in northwestern Wisconsin with an average population density of 13 people per square mile. Public transit services are available in only a few communities, leaving most of the nearly 150,000 people in the area to look for other solutions. The people with disabilities in the region and anyone who does not own or drive a car face significant transportation barriers.

To help overcome these barriers, North Country has initiated both a voucher and a volunteer driver program. Beginning in 2007 with a pilot program, the North Country voucher program has provided more than 30,000 trips for more than 160 consumers with disabilities. These consumers have been able to travel a total of more than 750,000 miles. In 2011, North Country began its collaboration with its neighboring center, the Center for Independent Living of Western Wisconsin, to provide the managed care organization (MCO) of the area with an effective volunteer driver program that would serve MCO members in 11 northwestern Wisconsin counties. By the end of 2012, this program had already provided more than 20,000 trips.

More important than the numbers, though, is the story behind each one of these trips. For the riders, both the volunteer driver and voucher programs can make the difference between going out and staying home, between isolation and the chance to be part of the community.

One story is that of a young woman who used the name Millie for the purposes of this report. She experienced a traumatic brain injury nearly a decade ago. After years of hard work in rehabilitation, she is now pursuing her employment goal by gaining needed education at a community college. The school is more than 20 miles from her house. Thanks to a volunteer driver, Millie travels to class and returns home three days a week.

Another consumer who used the name Jean used vouchers to pay someone to drive her to work at a nursing home so she could complete the unpaid internship that was required for her certificate as a community nursing assistant. With this experience, Jean later got a job at the same facility. Now, not only does she have a job, but she is also providing her own transportation.

Bill's story concerns receiving needed specialized medical care far from home. In fact, medical care is the reason behind most of the trips that consumers need, often to medical centers far from their homes. Bill needs dialysis three times a week at a medical center 45 miles away. On dialysis days, a North Country volunteer driver picks him up at 5:30 a.m., takes him to dialysis and has him home again by 1:00 p.m. Not only are these trips saving the MCO the cost of a nursing home placement but, perhaps more important, Bill can live where he chooses, in his lifelong home in the north woods of Wisconsin.

Mobility Management

Mobility management refers to the consideration and coordination of all modes of transportation to meet the needs of users. In this practice, communities rely on a variety of transportation sources to move rural and small town residents from Point A to Point B as safely and efficiently as possible. This people-oriented approach takes into account a rider's age, income level, and accessibility needs to determine the best transportation option. Effective mobility management ensures that residents are familiar with available resources and that communities coordinate transit programs effectively.

Mobility management programs seek to expand accessible transportation services and to connect these services to people in the community who require them. Person-centered mobility management focuses on the interests and community connections preferred by the person who is interested in the various transportation options. The key to accessible transportation is ensuring that people with disabilities can live spontaneous lives, connected to community-based activities including health care,

recreation, leisure, civic engagement, education, and employment. Mobility management has many facets, and it is unique to each community.

In 2010, Easter Seals Project ACTION initiated a grant program in partnership with the Association of Programs for Rural Independent Living and the National Council on Independent Living (NCIL) to create mobility management/independent living coaches.⁴⁹⁶ The coaches are people with disabilities from centers for independent living who educate and train mobility managers to work closely with disability organizations in their respective communities. The primary goal of this program is to connect with the independent living movement and to have greater involvement and feedback from people with disabilities in person-directed mobility management.

Part of a mobility manager's duty is to form connections and develop relationships with local agencies, governing bodies, and transportation providers. This is critical to determine what transportation is available, where it overlaps, and how it can be coordinated among agencies for the highest efficiencies in transporting people. Such coordination occurred among Idaho, Montana, and Wyoming when several organizations from these states and the Wyoming mobility manager worked together to create a new transportation option through Yellowstone National Park.⁴⁹⁷

A previously closed bus system now operates inside the park and provides tours to park exhibits. Members of the Linx Cooperative entered into an agreement with the National Park Service to open the roads within the park to public transportation and to coordinate services among outside providers to link the gateway communities of the park. A key aspect of this agreement is that the transit lines provide a different type of service than the tour buses. Now these transit bus lines are able to serve Yellowstone and Grand Teton National Parks as well as Bozeman, Montana, on the north; Jackson, Wyoming, on the south; Cody, Wyoming, on the east; and Idaho Falls, Idaho, and West Yellowstone, Montana, on the west. Opening this thoroughway has reduced trips that typically take six to eight hours (to go around the park) to four hours, allowing quicker access to health care and other services.

The independent living coach serving this region said,

I work with Linx, a transportation cooperative of the Yellowstone Business Partnership. The goal of this program is to increase transportation opportunities for all individuals within Western Wyoming, Southern Montana and Eastern Idaho. This group is made up of transportation providers, businesses, nonprofit groups, and other interested parties. I chose to work with Linx because it involves mobility managers at the decision-making level. Linx offers the opportunity to advocate and provide training for transportation-related issues that are important to an independent living center and to those who have the ability to expand services. I have been very impressed with the willingness of these providers to comply with—and exceed—ADA requirements and to treat individuals with disabilities as they would any other passenger.⁴⁹⁸

Coordinated Services

Although the lack of transportation options in rural America is a persistent problem, several programs are using creativity and coordination to provide services to people with disabilities and those with low incomes. The Center for Independent Living for Western Wisconsin (CILWW) is one example.⁴⁹⁹ The CILWW effort to increase transit options in rural Wisconsin has two critical components: regional coordination and provision of transportation to rural communities with few or no transit resources.

The center employs a certified regional mobility manager who also serves as the transportation program coordinator. The center staffs a seven-county transportation coordinating committee that knits together the required locally developed human-service-coordinated transportation plans into a more region-based approach.

The regional coordinating committee is composed of public and private stakeholders; it meets quarterly in rotating locations within the region. The combination of the regional approach to coordination and providing transportation to those without access to it has resulted in a robust and growing program. In 2011, the program provided more than 12,000 rides; recently, it surpassed a million miles of service to a diverse population of people with disabilities. The center uses more than 140 volunteer drivers to serve the

majority of those who use the program. The program is funded through a combination of New Freedom, Section 5317, and mobility management project funds, as well as monies received for delivering transit services. The rest of the funding is local match fee-for-service funds, rider reimbursements, agreements (cash and in-kind) from county partners, contracts, and the in-kind value of the drivers' time.

Those who access the program (people with disabilities of all ages) do so for a variety of reasons, including medical, social, recreational, and employment-based trips. Since 2008, a third of those requesting transportation services have sought to access educational training, employment, or employment-related programs.

As a result of its success in meeting the unmet needs of the rural counties, the center has also engaged in a number of contracts with county human services and Aging and Disability Resource Centers (ADRCs) to coordinate and provide a portion of the transportation for those eligible under state and federal programs. Additionally, the transportation programs of the ADRCs have garnered contracts to provide transportation to consumers of two regional managed care organizations.

As the result of a recent collaboration with another private nonprofit center for independent living, the program now coordinates and provides transportation to residents in an 18-county area of western and northwestern Wisconsin. A growing segment of those served are veterans without transportation to regional Veterans Administration centers. The program currently serves more than 130 veterans each week.

Finally, recognition of the growing demand for transportation options for rural Wisconsin residents with disabilities has led to an unprecedented and successful collaboration. In partnership with the city of Eau Claire Public Transit, the center was awarded the first two rounds of the federal Veterans Transportation Community Living Initiative grant for two years. This public-private collaborative was the only program funded in Wisconsin.

However, the success or impact of any program must be measured by how it affects the lives of individuals. The story of a user who lost his vision in midlife in 2009 summarizes

what the program aims to achieve. “I had always been very independent and self-sufficient. I now had to figure out how to cope with all the changes in my life,” this user said, when asked to comment on how the rural transportation program at the CILWW had affected him. “In 2010 and 2011,” he said, “I stayed home most of the year because I didn’t want to burden people for a ride.”

After a referral and consultation on how the program operates and what it could offer him, the man decided to venture out in the community once more. “I decided I was ready to take on the world and needed to be out in the world.” He uses the program frequently for his needs and to accompany his 12-year-old son on trips. “Because of the transportation program, I have been able to attend my medical appointments, get my own groceries, and take my son on outings. He was so happy one day when we could go to the Mongolian Barbecue for lunch and then to a movie.” He concluded by saying, “I appreciate greatly the gift of independence this program has given me.”

Another coordinated services program is conducted by Living Independence Network Corporation (LINC),⁵⁰⁰ a center for independent living with offices in Boise, Caldwell, and Twin Falls, Idaho. The LINC transportation program⁵⁰¹ is an example of cooperation and coordination among human service agencies, public and private transportation providers, riders, and federal, state, and local funding sources. The transportation program is funded by a combination of §5310, §5316, §5317, and Older Americans Act funds through the local Area Agency on Aging.

The LINC transportation program is a user-side subsidy service that allows people whose disability prevents them from driving to defray the cost of public and private transportation. Participants receive a discount card to be used when they ride with the public transportation provider or private providers such as taxis. The providers then bill LINC for the discounted dollar amount, which averages less than half of the regular fee.

By the end of 2012, 1,325 people had used the program; 809 of the participants were 60 years of age or over, and 698 people used the program specifically for employment. Using creativity and working with existing resources, the program provides a significant

link between people with disabilities and seniors in rural America and their communities and employment opportunities.

An example of the program run by LINC is that of a young girl with Down syndrome who was seeking transportation options. After graduating from high school, she became very active in the community. Her mother was her sole source of transportation but was not able to fulfill all the girl's transportation needs, and she was fearful of losing her newfound independence. Working with the LINC staff, she now uses the public bus system to travel during the day and her discount card to use the taxi for activities after hours.

(For more information on coordinated services, see chapter 8 on Coordinated Transportation.)

Car Ownership

Access to available transportation is crucial for economic independence. Economic independence is a significant aspect of personal independence, and car ownership can be the solution to many transportation challenges.

Good News Mountaineer Garage⁵⁰² is a West Virginia nonprofit organization that takes donated cars, repairs them, and gives them to families in need of transportation to travel to work or training. The vehicles are matched to the needs of the recipients, who are provided with a warranty and training in how to care for the car. The families are required to have insurance and a budget for maintenance.

Organized by a group of concerned citizens, the Good News Mountaineer Garage opened its doors in 2001; since then, it has helped more than 1,700 families in West Virginia meet their transportation needs. In 2009, the garage entered an agreement with the West Virginia Department of Rehabilitation Services, which helps people with disabilities establish and reach vocational goals, to provide vehicles to referred clients. So far, 90 vehicles have been provided to people with disabilities who previously lacked transportation.

Update on Programs Mentioned in the 2005 NCD Report

One of the programs mentioned in the 2005 NCD report⁵⁰³ was the Association of Programs for Rural Independent Living Traveler's Cheque Program, a highly successful transportation project. The goal of this project was to demonstrate the effectiveness of a voucher model to provide employment-related transportation for people with disabilities who lived in rural areas. It was established in 10 cities across the nation to provide rides to 588 people with various types of disabilities. The cities were located in Alaska, Georgia, Illinois, Kansas, Massachusetts, Minnesota, Montana, New Mexico, Pennsylvania, and Utah. (The site in Alaska is still operating the voucher program described earlier in the section on taxicabs.) The programs provided rides for 668 people with disabilities that resulted in 149 full-time and 121 part-time jobs obtained by participants.⁵⁰⁴

The Arkansas CADET (Career Alternatives for Delta Area Transportation) project⁵⁰⁵ was another successful rural transportation project. In August 2001, the CADET project began providing transportation vouchers to people with disabilities preparing for, looking for, and going to and from work. In 2003, the project expanded its services to include taking children to daycare, easing a heavy burden on some participants. The project provided 33,850 job-related rides and traveled 1,060,558 miles.

MAP-21 and Rural Transportation

While Moving Ahead for Progress in the 21st Century (MAP-21) represented a significant shift in transit policy for rural communities, the legislation only authorized funding for two years and will need to be reauthorized by the current Congress, which may or may not alter the MAP-21 framework. The short authorization timeline of the bill (24 months) and flat funding create challenges for rural providers. Several features of the bill that were intended to improve access to transportation in rural communities are described in the following paragraphs. At this time, it is still open for debate whether

these initiatives were ultimately successful or whether the current reauthorization of MAP-21 will allow them to continue.

Equitable funding: Any and all federal investments in public transit services in MAP-21 must be accountable and accessible to all users, regardless of program or area of the country.

Rural transportation planning: Every state must develop a formalized planning process for rural transportation that includes provisions for people with disabilities, and state and local planning committees must include rural people with disabilities. Currently, 38 percent of the counties in the United States have no rural transit, and less than 10 percent of federal spending is allocated to public transportation in rural areas.⁵⁰⁶ The law anticipated that these planning organizations would have a more formal role in setting regional priorities and overseeing the locally developed coordinated plan, as well as the responsibility of including urban, small urban, and rural formula transit providers into a more robust coordinated plan. These organizations⁵⁰⁷ should be established throughout each state, with the goal of implementing rural transit systems in all counties.

Coordination: The transportation components of all federal disability-related legislation across agencies should be coordinated to be consistent with and to complement MAP-21 transportation programs. Links should be created among transportation systems and municipalities to overcome artificial barriers such as transportation that stops at a county line or unnecessary service duplication. The principle of human service transportation coordination as a part of the public transit system should be emphasized.

Before the passage of the ADA, social service agencies provided a significant portion of non-fixed-route transportation services available to people with disabilities in the United States.⁵⁰⁸ Transportation was not earmarked as a separate funding stream in the budgets of many agencies; for these agencies to bring clients in for services, they often had little choice but to become involved in the transportation business. However, transportation was not viewed as a primary goal in the mission of social service

agencies, so many were more than willing to shift this responsibility to the federally mandated ADA paratransit programs, which met the transportation needs of agency clients to some extent. The requirement in MAP-21 to widen the scope of development of a coordinated transportation plan to include both human service providers and traditional transit formula grant providers created an opportunity to address some of the disparities in transit availability.⁵⁰⁹

Conclusion

Today, 45 years after the Urban Mass Transportation Assistance Act of 1970⁵¹⁰ and 25 years after enactment of the ADA, minimal or nonexistent transit services in rural areas still create serious barriers to employment, accessible health care, and full participation in society for people with disabilities.

It is time to move past us-versus-them scenarios. It is crucial to consolidate the silo approach and give transportation providers the flexibility they need to serve the entire community, beyond its individual segments. This country must systematically encourage and fund innovative private and public sector models that can address unavailable and insufficient rural transportation, such as the models described in this report. The nation must also allocate program funds to support innovative tribal transportation programs that are coordinated with other public transit and community transportation services.

As Dale Marsico, Executive Director of the Community Transportation Association of America, stated in *Twenty Years Later: Rural Transit Is Thriving, Demand Is Growing, More Resources Needed* by Scott Bogren, “America’s most innovative, efficient and flexible transportation providers are those serving rural areas. They are the transportation solution for the next century.”⁵¹¹

Chapter 7 recommendations are listed at the end of the report.

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CHAPTER 8. Coordinated Transportation

The 2005 NCD report described the increasing focus on the need for coordinated transportation programs and services.⁵¹² It explained the 2004 Executive Order on Human Service Transportation Coordination and the United We Ride initiative, and provided examples of successful transportation coordination in Montana and Wisconsin.

Activities to increase transportation coordination have continued since that time. Also, researchers studying the coordination of transportation services have concluded that coordination can result in both improved mobility and increased efficiency. The Transit Cooperative Research Program made these points in TCRP Report 105, *Strategies to Increase Coordination of Transportation Services for the Transportation Disadvantaged*.

The writers observed,

Often the aim of coordination is increased efficiency and a lower cost per passenger trip for participating agencies. In some cases, coordination has been shown to result in significant reductions in cost per vehicle hour or passenger trip, which may lead to lower transportation expenditures. A Medicaid agency, for example, that pays a very high cost per trip when purchasing service on its own may be able to reduce its overall transportation expense by purchasing service from a coordinated system, particularly one that takes full advantage of existing fixed-route transit services. For many participants, however, increased coordination may lead to benefits other than cost savings. For human services agencies or transit providers that may be serving only a portion of the demand for their transportation services or whose unit costs are already relatively low, coordination is likely to enable them to serve more customers or offer a higher level or quality of service for the same expenditure.⁵¹³

The ensuing years have given rise to numerous successful examples of coordinated transportation, many of which involve the disability community in a significant way. Several examples follow.⁵¹⁴

Toward a Universal Transit System

The network of transportation services available in the three-county area around Portland, Oregon, is perhaps one of the most important models of coordinated transportation in the country. Julie Wilcke, former Mobility Manager for Ride Connection and today, its Chief Operating Officer, explained that TriMet,⁵¹⁵ the fixed-route transit authority, supports all types of transportation providers in the region, including a variety of community-based and neighborhood service providers. Riders receive service from community organizations (often in their own neighborhoods) coordinated through Ride Connection. Ride Connection provides service through 30 or more service providers as well as providing service directly in two areas. Among the providers are nonprofits as diverse as the American Red Cross and the Edwards Center, which provides transportation to people with developmental disabilities. TriMet supports the work of these small programs, rather than replacing them with costly ADA service.

Wilcke pointed out that “these groups know their clients and areas better than we would.” Owing in part to volunteer drivers, cost per ride is a little over \$12, rather than \$26 for an ADA paratransit ride. Close collaboration among all these organizations “develops solutions that go beyond the ADA and leverages more dollars to expand capacity in our region. We have a centralized information/referral to look for what is the best mode for each trip for a customer.” As an example, Wilcke described a frail person who cannot wait during a 30-minute ADA pickup window or cope with a shared group trip. “So we will arrange a volunteer driver to pick him up, wait for him, and take him right home,” she said. In another case, someone needed to go to the grocery store, but her neighbor would no longer take her. Wilcke said, “We taught her how to take the bus, and then a shuttle picks her up to take her home because she can’t carry all the groceries on the bus.” Wilcke pointed out that, although her organization does have dedicated state dollars for special needs transportation, those dollars go through the transit agency, which believes in what Ride Connection does and supports it financially. “They are coming from the transit side, thinking about masses of people. We are

coming from the human service side, thinking about how each person can get their ride. We are able to work together towards independent mobility for all.”

David Raphael of Community Mobility Solutions, who has been at the forefront of transportation coordination efforts at the state and federal levels, said,

TriMet may be part of a progressive movement that is rethinking what is public transportation. They’re expanding their definition of public transit services. TriMet is doing what community-based nonprofits used to do—they send someone out to popular destinations (such as adult day centers or sheltered workshops) and see vehicles from multiple agencies arriving. They realize they could give their costly ADA trips to community-based providers, thus embracing a whole continuum of services and providers. They’re also looking at the use of a centralized one-stop call center that would serve customers and providers all over the metro area, including large contract providers and community providers alike.

For example, I was a volunteer driver for a neighborhood paratransit agency called Portland Impact (now Impact NW) that does specialized transportation trips, grocery and medical, for seniors and people with disabilities. Portland Impact works with Ride Connection and Ride Connection works for TriMet.

There’s beginning to be a recognition that all these services are part of the same public transit system. People can use multiple services for different needs. So for grocery shopping, they’ll use Portland Impact, but to play bingo or go to a senior center or dialysis appointment, they may call TriMet Lift (the ADA paratransit service). People are beginning to negotiate the system and realize the benefits of the family of services.

So on one level, it’s unfortunate that ADA paratransit was seen as a separate add-on service for a designated clientele. They could have made everything flexible. They could have flexed up their routes, and targeted isolated people with disabilities who are stranded, using neighborhood shuttles and flexible service—with nondisabled people riding the same vehicles as people with disabilities. That’s what it could look like everywhere.

Coordination Model in Iowa: A Single Agency Providing Multiple Programs in Eleven Counties

Ottumwa Transit Authority (OTA) in Ottumwa, Iowa, is a small, urban fixed-route system in which the 11 counties around Ottumwa, covering 5,500 square miles, came together to coordinate most of their transportation programs. The multiple programs and funding streams have included Area Agencies on Aging, Head Start, Medicaid, Job Access and Reverse Commute, ADA paratransit, school districts, and contracts with particular businesses and towns. Riders make one call using a toll-free number. OTA staff pointed out,

We often get calls from adult children who live outside the hometown, saying, “My mom is in failing health but still in her home. What can you do to help us?” We get many such calls because we have such a high population of senior citizens. In very little communities, the population is steadily declining. The young people are leaving, and it leaves a huge void in taking care of the senior citizens that remain. The hidden value is that, for families decentralized around the U.S., we provide a support mechanism that helps these senior citizens continue in the lifestyle they prefer, living independently in their own homes. And we’ve given the older people’s children the reassurance that we’re there and that we provide a very dependable, reasonably priced service for their family.⁵¹⁶

Coordination Model in Maine: Using Medicaid Dollars to Increase Capacity

In 2005, Jon McNulty was Executive Director of the Regional Transportation Program (RTP) based in Portland, Maine, which was the ADA paratransit provider for several fixed-route bus systems in the Portland area. Under the RTP Medicaid program, people could come in once a month to obtain a free pass to use on one of the bus systems, so long as they had at least three appointments that included medical or psychiatric services. “We buy the passes and distribute them,” McNulty explained. “The fixed-route systems send us a bill; we pay them and bill the Medicaid program. It’s great for the clients, because if they meet the qualifications, they have free transportation. The two

systems cover about anywhere you could possibly go in our geographic area. It gets people off the paratransit and onto the fixed-route system, and the fixed-route system's ridership goes up. The state wins because it saves a lot of money, reimbursing us only the cost of half what a paratransit ride would be. It's a great example of everyone working together: the fixed-route systems, the Medicaid program, the clients, and us."

McNulty pointed out another important aspect of his agency: use of a large volunteer corps. "Many of our ADA riders are transported by volunteers, not all on buses or vans," he said. "And particularly outside the city in rural areas, where people fall outside the ADA service area and locations are difficult to serve by bus or van, we carry a large number of people with disabilities by using volunteers. The volunteer system in Maine is very extensive. If it didn't exist, our whole paratransit industry would collapse."⁵¹⁷

According to an earlier Transportation Research Board report, state actions were recognized as promising at least ten years ago. State level legislation requiring coordination and specifically defining processes for achieving coordination had been enacted by 2004 in Arizona, California, Florida, Iowa, Kansas, Maine, North Carolina, and Vermont.⁵¹⁸

(For information on coordinated transportation in a rural context, see chapter 7 on Rural Transportation.)

Chapter 8 recommendations are listed at the end of the report.

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CHAPTER 9. Commercial Driver's License Rules

One of the most significant transportation issues for deaf and hearing-impaired people is the rules regarding commercial driver's licenses, which have effectively imposed a virtual ban on the employment of hard-of-hearing and deaf people as interstate truck drivers. Groups of people with other disabilities are also affected, including people with epilepsy or a history of seizures and those with insulin-treated diabetes.

On February 1, 2013, the National Association of the Deaf released an announcement that "DOT Recognizes Deaf and Hard of Hearing Truck Drivers!"

In a historic victory for deaf and hard of hearing truckers, the United States Department of Transportation (DOT) announced today, after decades of prohibition, that deaf drivers can operate commercial motor vehicles such as large trucks. Today, the DOT granted 40 applications filed by the National Association of the Deaf (NAD) seeking exemption from the hearing standard that has barred deaf drivers from obtaining commercial driver's licenses (CDLs). In announcing this historic decision, the DOT cited research demonstrating that deaf drivers are as safe as hearing drivers.⁵¹⁹

According to Howard Rosenblum, Chief Executive Officer of the National Association of the Deaf,

Since the development of commercial driver's licenses (CDLs) by the U.S. Department of Transportation, the DOT has required a "whisper test" wherein applicants seeking to obtain the CDL must hear a whisper in their better ear from five feet away. This part of the physical exam given to every applicant seeking a CDL has prevented many deaf and hard of hearing people from becoming truck drivers. The DOT now requires that a CDL applicant pass either the whisper test or an audiological test. Some deaf people have been able to obtain intrastate CDLs from their states, as a few states grant such CDLs without the hearing test, but this kind of CDL only allows the driver to drive within the state and not across the country. Most states, however, follow the U.S. DOT and require a hearing test based on the federal requirements.

The National Association of the Deaf has pushed the U.S. Department of Transportation (DOT) for years to do away with the hearing requirements, as it has been proven that deaf drivers are just as safe as drivers who can hear, if not safer. The NAD submitted petitions to repeal the rule as well as to waive the hearing requirement for CDL applicants who are deaf or hard of hearing until the rule is repealed. To date, the U.S. DOT agreed to waive approximately 70 deaf and hard of hearing CDL applicants from the hearing requirement, and these 70 applicants now have CDLs for the first time in the entire history of the DOT!

The U.S. DOT has informed the NAD that the rule that requires a hearing test will be subject to a rulemaking review within a year, and we are hopeful that the rule will be completely repealed at that time.⁵²⁰

There have also been advances for the other groups of drivers with disabilities, including those with epilepsy or a history of seizures and those with insulin-treated diabetes. In January 2013, a DOT notice exempted a group of drivers with epilepsy or a history of seizures, and some 2,500 drivers with insulin-treated diabetes are operating in interstate commerce under a federal diabetes exemption. All these developments have provided a sense of momentum and hope for disability rights organizations that “antiquated DOT rules” barring these drivers may yield to better, more inclusive policies.⁵²¹

Chapter 9 recommendations are listed at the end of the report.

CHAPTER 10. **Public Rights-of-Way**

Chapter Overview

The public rights-of-way (PROW) is “essentially, a network of common space that is reserved for community mobility, not just for cars but also for pedestrians, cyclists, and transit.”⁵²² Public rights-of-way include sidewalks and streets, and key PROW issues for people with disabilities include bus stops, accessible pedestrian signals, detectable warnings, curb ramps, and snow removal. PROW obstacles are particularly isolating because they render people with disabilities unable to connect to forms of transportation such as buses and trains. Lack of access to the public rights-of-way across the United States has been a significant obstacle to the full integration of people with disabilities into all aspects of society.

The ADA requires, in essence, that in new construction, a “high degree of convenient access” be provided. When aspects of the public rights-of-way are altered (defined as a change that affects usability), the altered area and a path to travel to it must be accessible to the “maximum extent feasible.” This requirement refers to the occasional case where the nature of the existing facility makes it virtually impossible to comply fully with accessibility standards, but the maximum physical accessibility that is feasible must be provided. “It puts the onus on the provider to squeeze out the most accessibility they can from the situation at hand.”⁵²³ In existing facilities that are not otherwise being altered, public entities such as cities, counties, and states must provide “program access” by making their systems of sidewalks, bus stops, and other aspects of the public rights-of-way accessible “when viewed in their entirety.”⁵²⁴

Two Important Appellate Court Decisions

Two important appellate court decisions under the ADA emphasize the responsibilities of cities, counties, and states to provide access to public rights-of-way.

The first, in 1993, was *Kinney v. Yerusalim*,⁵²⁵ in which the U.S. Court of Appeals for the Third Circuit ruled that the ADA requires cities to install curb ramps when they resurface streets. This lawsuit was brought against the city of Philadelphia by a group of people with mobility impairments. (See more about this case in the Street Resurfacing and Curb Ramps section below).

The second important appellate court decision, *Barden v. Sacramento*⁵²⁶ in 2003, set a precedent requiring cities and other public entities to make all public sidewalks accessible to people with mobility and vision disabilities. The court ruled that public entities must address barriers such as missing or unsafe curb ramps throughout the public sidewalk system, as well as barriers that block access along the length of the sidewalks. The settlement approved by the court provided that for up to 30 years, the city of Sacramento will allocate 20 percent of its annual transportation fund to make the pedestrian rights-of-way of the city accessible to people with vision or mobility disabilities. This work will include installation of compliant curb ramps at intersections and removal of barriers that obstruct the sidewalk, including narrow pathways, abrupt changes in level, excessive cross slopes, and overhanging obstructions, as well as improvements in crosswalk access.⁵²⁷

Several similar lawsuits have been filed. For example, a lawsuit was filed on July 30, 2014, in federal court by disability rights advocates and Sheppard Mullin Richter & Hampton LLP on behalf of the Center for Independence of the Disabled in New York, alleging that New York City violates federal disability civil rights laws by failing to make its sidewalks and pedestrian routes accessible to people who use wheelchairs or are blind.⁵²⁸ The press release stated,

As we enter the 25th year of the Americans with Disabilities Act this week, more than 400,000 New Yorkers with ambulatory disabilities and more than 200,000 people with vision disabilities continue to be excluded from the pedestrian culture that is so critical to community life in New York City, because nearly all of the City's sidewalks and pedestrian routes are dangerous and difficult for people with disabilities. Dangers include corners at pedestrian crossings without curb ramps for wheelchair users or corners with hazardous curb ramps that are broken or too steep, which

often end up forcing persons using wheelchairs to modify travel plans, avoid whole areas with inaccessible streetscapes, or roll over curb ramps with barriers that threaten to topple a wheelchair. The majority of curb ramps in the City also have no required detectable warnings or contrasting features that signal to blind and low-vision pedestrians that they are about to leave the sidewalk and enter the path of vehicle traffic. ...

For nearly three decades, the City has ignored its obligations to provide curb ramps and accessible pedestrian routes whenever it resurfaces City streets or alters its streets and sidewalks. The City has also failed to make timely improvements to its existing sidewalks so that wheelchair users and the blind can safely travel ...

For wheelchair users like Dustin Jones, each of the 4–5 trips he takes to lower Manhattan every week are rife with danger. Mr. Jones commented, “Barriers at curb ramps have left me stuck in the street where I have had to rely on the kindness of strangers to help me up on the sidewalk. Poorly placed curb ramps have forced me right into the path of vehicle traffic where I fear for my safety. ...” Myrna Driffin, a Chelsea resident and grandmother of 15 who is totally blind, said, “I don’t feel safe walking downtown. Just last week I ended up in the middle of the street before I knew I was off the curb. Cars were honking at me. It was really scary. I am a smart lady and I have been blind almost my whole adult life, but New York City streets are so poorly marked that this happens regularly.”⁵²⁹

Two similar lawsuits have been filed in California regarding cities’ responsibility for sidewalk and curb ramp access. One, against the city of Los Angeles, focuses on the failure of sidewalks and curb ramps to provide access for people with mobility impairments under accessibility standards of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.⁵³⁰ In 2013, Presiding Judge Consuelo B. Marshall in the Central District of California held that recipients of federal financial assistance cannot claim an undue burden defense under Section 504 of the Rehabilitation Act, even with respect to existing facilities. The court relied on the lack of undue burden language in either Section 504 or the implementing regulations.⁵³¹

The other case was filed on June 4, 2014, by the Disability Rights Legal Center (DRLC), Disability Rights Advocates, and Goldstein, Borgen, Dardarian, and Ho.⁵³² This class action lawsuit alleges that the city of Long Beach, California, is in violation of the ADA by discriminating against residents and visitors with mobility impairments. The lawsuit

seeks to compel the city to ensure that all people with mobility disabilities are able to safely travel on the city's sidewalks. The DRLC's then Executive Director, Paula Pearlman, stated,

This litigation will require the city to make changes to its sidewalks that it should have made decades ago. It's a shame that residents must litigate to ensure everyone has access to the fundamental civil rights to travel freely and safely. We're confident this case will bring justice for the mobility-disabled community in Long Beach.⁵³³

Lack of Enforceable Technical Standards

A significant challenge to accessible public rights of way across the United States has been the lack of enforceable technical standards. The nation moved a significant step forward in 2011 when the U.S. Access Board published Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way.⁵³⁴

Other Key Issues

Alice Ritchhart, Transportation Committee Chair for the American Council of the Blind, pointed out,

Inaccessible public rights-of-way is why a lot of blind people use paratransit. If you have to cross a busy street to get to a bus stop, it's an issue, especially when there are no audio crossing signals. Some cities are getting much better about putting them in, but it's a constant battle. And a lot of cities provide curb cuts, but don't put down [detectable] warnings so that blind people know when we're stepping out into the street. People don't feel safe traveling because there are no [detectable] warnings or audio pedestrian signals.⁵³⁵

Christopher G. Bell, Esq., member, American Council of the Blind of Minnesota, described his experience as an advocate:

I have found that when I've tried to deal with transportation issues within my state, I have to talk to public engineers. Generally, they have absolutely no idea about disability issues. They really don't understand, for example, why they must install curb cuts. There are several curb cuts in [the urban area where I live], where right at the top of the curb cut, there is a pole or a tree. My view is, somebody didn't get it. It could be that they first put the curb cut in, and some utility company put the pole in later, but it's just stupid. It's probably unintentional, but they're real barriers for people who use wheelchairs.⁵³⁶

Enforcement Difficulties and Encouraging Developments

The ADA enforcement agency for public rights-of-way is the Federal Highway Administration (FHWA), part of the U.S. Department of Transportation. Bell opined that the "FHWA is so close to state and local transportation agencies that there's absolutely no enforcement from the FHWA." Bell described his dealings with FHWA officials after filing ADA complaints in 2007 and 2009.

On behalf of the American Council of the Blind of Minnesota and the Minnesota Consortium for Citizens with Disabilities, I filed two complaints with the FHWA under Section 504 and the ADA against the state Department of Transportation as well as each of the seven counties in [my] metropolitan area. The first complaint primarily focused upon their failure to properly install and maintain accessible pedestrian signals and their failure to provide a transition plan as required by the ADA. The second complaint related generally to their failure to adequately comply with the accessibility requirements of the ADA in all aspects, including curb ramps, access to pedestrian bridges, and so forth. I received two responses from FHWA headquarters. They are worthless.

I have also discussed with two highly placed state Department of Transportation officials the problems that I was having with the FHWA division [in my locale]. Both individuals told me that the FHWA was "in bed with" local transportation departments. I also had several conversations with a woman who was then counsel to the FHWA. She took the position that the FHWA lacked the authority to order any government entity to install accessible pedestrian signals. There is no basis for this legal conclusion.

The bad news is that I have no idea whether any of the items complained of have been rectified. Even if accessibility changes have been correctly

made, we cannot really say without knowing more that these positive changes were the result of the complaint, rather than the required transition plan being carried out. Speaking of transition plans, I'll bet these local agencies have still not finalized their transition plans.⁵³⁷

But there are also encouraging developments. For example, the town of Cary, North Carolina, uses its control of local development to improve its pedestrian infrastructure for a more walkable community. This improves access to fixed-route transit for people with disabilities. Among other specifications, the town's land development ordinance specifies requirements for sidewalks in residential and nonresidential areas and addresses standards for public transit access and transit amenities at shopping centers and other similar land uses. Regarding transit access at shopping centers, this ordinance requires that bus stops are to be located "within close proximity" to one of the shopping center main entrances, minimizing walking distances for transit users. Additionally, the town's public transit staff is specifically included during the review process for new development and redevelopment.⁵³⁸ (See other examples of positive actions toward accessible public rights-of-way in the following sections.)

Complete Streets

"Complete streets," according to Dennis Cannon, former transportation accessibility specialist for the U.S. Access Board and currently a private consultant, is a concept that says—

... we need to make streets that work for everybody, not just vehicles. So the highway department builds a road and, as is often the case, sidewalks and pedestrian facilities such as curb ramps are an afterthought. Often, they're not even put in when the streets are put in.

Complete streets says that a street, when you build it, ought to be accessible, ought to be made for vehicles, of course, but it also ought to be good for pedestrians, for transit, and for bicyclists. So when you build the street, you ought to automatically put sidewalks on both sides of the street, and those sidewalks ought to meet ADA requirements for clear width, and so forth. There ought to be improved bus stops with shelters, and the street needs to meet the needs of all the potential users: the

vehicles, the pedestrians, the bicyclists, and the transit. If you are looking out for all of those things at one time, you ought not to design it just for moving cars. So, you may not want to have it as high-speed as you might otherwise, because there are people crossing. There are many ways of making sure things get built properly.

Jurisdictions' historically poor records on complete streets are changing these days, sometimes dramatically. Mostly now, they don't forget to put in curb ramps, and most of them put in detectable warnings and so forth, but they don't always pay attention to things like the width and the clear space. So, it's getting better in some places.⁵³⁹

Cannon explained that there have been varying levels of success in including provisions promoting complete street concepts in U.S. Department of Transportation reauthorizations. In the most recent reauthorization, however, what used to be called transportation enhancements were essentially eliminated. He said, "There's big opposition in the Congress, essentially saying that the funding for transit ought to be spent for vehicles only, because it comes from the gas tax; it's a user tax, and so you ought to be giving it strictly to the users. So now you have this whole mess, where jurisdictions must pull the money out of their road budget."

Richard Devylder, former Senior Advisor for accessible transportation for U.S. DOT, added, "Many of us at DOT were very disappointed with what came out of the last congressional authorization regarding complete streets."⁵⁴⁰

Cannon concluded, "And there was a bill introduced by Senator Tom Harkin called the Complete Streets Act, which would have mandated complete streets, but it's stalled. Yet at the same time, there are now many local complete streets policies all over the country."

Bus Stops

The inaccessibility of bus stops is one of the most persistent, significant transportation problems faced by people with disabilities in the United States. Typical of the concerns

expressed by many people with disabilities, Tracee Garner, Outreach Coordinator of Loudoun (Virginia) ENDependence Center stated,

At most of the stops, bus shelters are inaccessible and they don't have any real pathways for people to wait. Some of them aren't shelters at all. They're just a sign and a patchy grass area, uncovered. In extreme heat or snow or rain, people can't wait outside. ... This would actually alleviate the paratransit system, if the shelters were accessible because people would be able to stay and wait and could take the fixed-route system. ... Some people can't stand for long periods of time. ... Even pavement or blacktop to the shelter to get in and making sure the shelters have enough room inside [would help]. Some shelters are very small—if a person with a wheelchair went in, there wouldn't be room for anyone else.⁵⁴¹

A Federal Transit Administration ADA compliance review in Pueblo, Colorado, corroborated these concerns, stating,

Some of the bus stops that had bus stop pads and shelters and/or benches did not appear to meet the ADA Accessibility Guidelines (ADAAG) guidelines for an accessible bus stop. Other stops, which were created since the passage of the ADA and the issuance of the DOT ADA regulations and the ADAAG guidelines, were sited in areas that did not provide a level, stable boarding area of at least 60 by 96 inches.⁵⁴²

Inaccessible bus stops can also cause mechanical problems when buses attempt to deploy wheelchair lifts. The lifts sometimes fail in service due to the uneven bus stop ground surface. Modern lifts have multiple safety sensors, and unless the lift is deployed evenly to the ground, the lift may not work; the endgates do not deploy unless the sensors signal that the platform is at ground level.⁵⁴³

Why Bus Stop Access Is a Persistent Problem

Experts report that there is a material basis for these persistent problems. According to Lois Thibault, former Coordinator of Research for the U.S. Access Board,

Bus stops are a difficult issue because they are very often placed by a transit authority that doesn't exercise any other authority over

improvements at the bus stop, which may be provided by a jurisdiction. There has to be some coordination between the two agencies. That doesn't always occur.⁵⁴⁴

Dennis Cannon explained some of the problems leading to the difficult state of affairs in bus stop accessibility:

The vast majority of all bus stops are actually on the street or the sidewalk, not on property controlled by the transit provider.

Another issue with bus stops is that transit agencies do not necessarily have unlimited choice as to where to put them. There are lots of rules and regulations. Sometimes there are businesses that do not want bus stops in front of their facilities and you have to fight with them to get them there.

Then, there are bus stops that are on the near side of the cross street, and other bus stops on the far side. At a near-side stop, the driver pulls the front of the bus in to the curb; that is okay for a front door lift or ramp, but not for a rear door lift or ramp, because the rear door is probably out and away from the curb. The far-side stop allows the driver to get the rear end of a bus in. Which is best depends on what kinds of buses are in your system; whether they have front door or rear door access. Also, putting bus stops in the middle of the block is often a choice the transit agency or city engineers would like to make, just because it reduces traffic congestion at intersections, but if you do that, you have effectively created a mid-block crossing because, while you take the bus in one direction in the morning to go to work, when you come back, you are on the other side of the street. So if you put a bus stop in the middle of the block, you have to consider the fact that you have essentially created a mid-block crossing, even though you didn't intend it to be there. Every time you have a crossing, people with disabilities are even more vulnerable than anybody else, especially if you are blind and there is no accessible pedestrian signal.

The real trick in all of this is for the transit agencies and the city Public Works Departments to coordinate their activities. This takes more than just occasionally attending a meeting; they really need to get together and coordinate this process together.⁵⁴⁵

Richard Devylder concurred:

From my perspective, the biggest problem with public rights of way and sidewalk access and bus stops being located where they are actually accessible so that you can get to those bus stops is there's really nothing that's requiring communication between the transit authorities who are deciding where the bus stops are and the public works people who are responsible for the streets and the sidewalks.⁵⁴⁶

Bus Stop Detectability

People who are blind or have vision impairments face a significant challenge in finding the exact bus stop location. When bus stops are not detectable, or are otherwise inaccessible to people who are blind or have vision disabilities, that is a sufficient basis for a finding of ADA paratransit eligibility.⁵⁴⁷ However, that solution is inadequate for the many blind people who prefer to take the bus, as well as an unnecessary addition to the costs of ADA paratransit.

As Alice Ritchhart, Transportation Committee Chair of the American Council of the Blind, pointed out,

For blind people, it's hard for us to know where the bus stop is. Sometimes it's funny because some of the bus drivers are real picky. They might pass you right by if you aren't exactly at the bus stop. They won't stop if you're a few feet away and won't slow down to see if you are waiting for the bus. Which is why a lot of blind people then opt to take paratransit. I'm not sure how you make bus stops so that blind people know where they're at.⁵⁴⁸

Some locales have developed methods for doing so. For example, some transit agencies in Oregon and Washington, and in Houston, Texas, have unique bus stop pole designs. Eugene, Oregon, bus stops have square poles, and no other poles in Eugene are allowed to have this shape, so they can be readily identified by people who are blind or have vision impairments, if these riders know the general bus stop location.⁵⁴⁹

StarMetro in Tallahassee, Florida, has undertaken significant efforts over the past three years to upgrade its system infrastructure, including accessibility improvements, some of which are designed to make bus stops more detectable to people who are blind or have visual impairments. StarMetro worked with its local disability community and a number of state and federal government and disability-related agencies to develop these improvements.

One result is that StarMetro has installed octagonal poles at bus stops throughout the system. Brian S. Waterman, city of Tallahassee transit planning manager, told *Transit Access Report* that the octagonal design of the poles is intended as a distinctive feature by which riders with vision disabilities can recognize the location as a bus stop. In addition, StarMetro is putting braille markings on bus stop poles in a special vertical configuration for which the agency went to some lengths to gain approval from the local disability community and federal agencies. Waterman reported that he has heard of octagonal poles being used in two other locales—Broward County, Florida, and Honolulu, Hawaii.

StarMetro consulted with the U.S. Access Board and received an approving response from Marsha Mazz, the board's director of technical and information services. Mazz's email concluded, "I really applaud Tallahassee's StarMetro program for being responsive to the blind community."⁵⁵⁰

Other strategies that can be used to help riders who are blind or have vision disabilities find the bus stop include tactile signage with braille or raised lettering, tactile sidewalk surfaces at the boarding location, and remote infrared audible signage system technology (Talking Signs®).⁵⁵¹

Other Improvements in Bus Stop Accessibility

In certain communities around the country, agencies have made targeted efforts to significantly improve bus stop access, using various funding sources.

For example, Tri-County Metropolitan Transportation District of Oregon (TriMet) in the Portland, Oregon, metropolitan area conducted a case study along a transit corridor in suburban Portland concerning the potential effects of improving access to bus stops and other parts of the right-of-way. The TV Highway Capital Project was initiated in 2009 in partnership with the Oregon Department of Transportation. The project upgraded 17 bus stops along Oregon Highway 8 (also known as TV Highway) between Beaverton and Forest Grove. The corridor is served by a frequent bus route, which is TriMet's eighth-most-ridden bus route, with almost 50,000 rides per week. Grant funds paid for a majority of these improvements, totaling \$400,000 in construction costs and \$112,000 in shelter amenity costs. The project goal was to make TV Highway safer and easier to travel for pedestrians and bus riders. Transit stops and pedestrian facilities were improved by fixing incomplete, damaged sidewalks and adding new sidewalk sections, as well as installing nine new bus shelters and adding concrete pads at bus stops for better access.

Preliminary results showed a 215 percent increase in lift boardings from 2009 to 2011, after the stop and sidewalk improvements were made. Average weekday ridership on the fixed route increased at a number of bus stops, with many stops showing significant increases in lift deployment. In comparison, ADA paratransit ridership numbers decreased, especially among riders in the conditional and temporary eligibility categories.⁵⁵²

Some transit agencies have taken it upon themselves to use their own capital funds to make improvements to bus stop areas, even though it is not within their jurisdiction. As Dennis Cannon explained,

They may need permission from the city and the public works and so forth, but Maryland Transit Administration (MTA), for example, began the process of putting in, in some cases, their "basic" bus stop, which is a concrete pad. Other locations got the "enhanced" bus stop with shelter, benches, lights, and so forth. Maryland MTA had a fairly high paratransit cost per trip: about \$77 per trip with all of the administrative costs. They showed that if one person who currently uses paratransit for work (10 trips per week) can now use the fixed-route bus, MTA will make back the cost

of the basic bus stop improvements in about four months, and the costs of the enhanced stop in about eighteen months. And the paratransit cost is an ongoing obligation that they will save year after year. If they can get more than one person onto the fixed-route system who was previously using paratransit, they can recoup that cost sooner.⁵⁵³

In Montgomery County, Maryland, bus stop and related improvements are tracked through a robust and creative database developed as a wiki—a Web application that allows designated users to add, modify, and delete content in a collaborative way. Called a “geo-wiki” by the county, this site has streamlined the county process of updating the bus stop database, coordinating improvements (e.g., with the bus shelter franchisee), generating and tracking work orders for improvements (e.g., with the construction contractor), surveying stops, and monitoring stop improvement activities.

As of the end of calendar year 2012, the improvements were about 70 percent completed. They cost \$7.4 million, with an average cost per improved stop of \$2,931. The geo-wiki summarized the improvements through the end of 2012 with construction of—

- 1,583 ADA-compliant bus stops
- 2,230 ADA-compliant bus stop pads
- 72,414.5 feet (13.7 miles) of sidewalk linking stops to adjacent sidewalks and pathways
- 735 intersections with ramps installed⁵⁵⁴

Intercity Transit in Olympia, Washington, a municipal corporation, also has focused on bus stop access improvements. The transit staff actively participates in the local land-use review and development permitting process, and requests sidewalk and ADA-accessible bus stops as part of this process. The agency has developed and published bus stop specification guidelines that address stop spacing, accessibility, stop and

shelter design, and engineering guidelines. The guidelines are posted online and are provided to jurisdictions in the Intercity service area and to land developers. Additionally, Intercity has made stop improvements in response to requests from riders and, at times, improvements or stop relocations in response to a request from the agency travel trainer.⁵⁵⁵

Resources for Bus Stop Accessibility

Among the resources available for improving bus stop accessibility, an important one is the *Toolkit for the Assessment of Bus Stop Accessibility and Safety*, published by Easter Seals Project ACTION. The toolkit is primarily targeted toward staff at transit agencies and at public works departments who are responsible for bus stop design and placement. The toolkit is intended to be a resource to enhance the accessibility of bus stops and a source of assistance in the development of a strategic plan to achieve system-wide accessibility. People in the disability community will also find material they can use to advocate for accessibility improvements and barrier removal.⁵⁵⁶

Another kind of resource can be local. Community involvement has been useful in some communities in identifying and prioritizing bus stops for access improvement as well as sidewalk access improvements. Cary, North Carolina, for example, has a popular annual sidewalk request program, with citizens' requests contributing to prioritization for sidewalk improvement funding, along with proximity to transit, which is another factor in funding decisions.⁵⁵⁷

Accessible Pedestrian Signals

Accessible pedestrian signals (APSSs) are critical accessibility features for pedestrians who are blind or have vision disabilities. They not only provide visible Walk and Don't Walk information, they also provide an audible prompt that the walk sign is on and a vibro-tactile signal that vibrates when the pedestrian walk is activated.⁵⁵⁸

The disability community has expressed a great deal of concern about the lack of APSs. Christopher G. Bell, Esq., a member of the American Council of the Blind of Minnesota, explained,

There are very few accessible pedestrian signals installed around the country. That, to me, is a denial of access. Most people see the green light, and know now it's time to walk, and us blind folks don't. The irony is that we put in signs for sighted people to see when they need to walk, assuming they won't know when it's safe, but for blind people it's, "Oh, you'll figure it out." This is a big issue for blind folks.

Angela Van Etten, Coordinator of the Treasure Coast Services Coalition for Independent Living Options in Florida and former President of Little People of America, made this comment about her locale in the southeast:

Another big issue is the intersections in [our] county. There are only three intersections with an audible signal for people who are blind. There are some visually impaired people who are very mobile who could use the fixed-route bus service, but it's too dangerous to cross the street because there's no audible traffic signal. These are very busy four-lane streets. After some serious advocacy from a very capable woman who is blind, there are now three. So there's still a long way to go.⁵⁵⁹

Some communities have responded to the problem. For example, the Maryland State Highway Administration adopted a policy that whenever it adds or replaces pedestrian signals (traffic signals that include Walk and Don't Walk information), it will make them accessible.⁵⁶⁰

In 2007, the San Francisco Municipal Transportation Agency and the California Council of the Blind reached a landmark settlement agreement on the issue through structured negotiations.⁵⁶¹ As of 2010, the city had exceeded the obligations of the 2007 agreement and installed accessible pedestrian signals at 116 intersections. More than a thousand devices were installed at these 116 intersections, and San Francisco had plans—with federal stimulus funds—to install APSs at additional intersections.⁵⁶²

West Virginia controls all its traffic signals at the state level, and it has a statewide plan for installing accessible pedestrian signals.⁵⁶³

Commenting on APS implementation issues, Dennis Cannon pointed out in 2007,

These signals are somewhat expensive at this point, but if there were a mandate to put them into the boxes as standard operating procedure, the cost would come down enormously. Think about the old days when you used to buy telecaption decoders for televisions that were about \$300. But when it was added to the television as an integral part of the tuner, it became part of the chip and cost about \$8.

It is happening more and more frequently. Provisions for pedestrian signals have now been included in the Manual on Uniform Traffic Control Devices (MUTCD), which is the bible for traffic engineers. Every state is required to either adopt the MUTCD or a standard that is significantly identical to it. So every state, essentially, has these provisions. But they don't include a scoping requirement, so it is not required to put them in. But the technical provisions are there—such as where you place the buttons, how loud they are, and so forth—which makes it easy for traffic engineers to use. They don't need to guess anymore as to how to implement APS.⁵⁶⁴

Detectable Warnings

Detectable warnings are another key feature in the public rights-of-way for people who are blind or have vision impairments. Christopher G. Bell, Esq., pointed out, “As a blind person, I think they're absolutely essential so that we don't think we're crossing a driveway [when] we're actually entering a street [and about] to get hit by a car. We have about three or four million blind people [in the United States], and we're talking about life or death here.”⁵⁶⁵

The U.S. Access Board notice of proposed rulemaking addressed specific locations in the public rights-of-way for locating detectable warnings. The proposed guidelines stated that detectable warnings should be required at these locations: perpendicular curb ramps, parallel curb ramps, blended transitions, pedestrian refuge islands,

pedestrian at-grade rail crossings, boarding platforms for buses and rail vehicles, and boarding and alighting areas at sidewalk or street-level transit stops for rail vehicles.⁵⁶⁶

Curb Ramps

Curb ramps are another critical feature in the public rights-of-way. The U.S. Department of Justice ADA regulation includes a specific provision requiring access to curb ramps, but the disability community has seen minimal implementation of curb ramps in many parts of the country.

Lois Thibault, former Coordinator of Research for the Access Board, pointed out that “the need is outlined in Title II of the ADA, to develop a curb ramp transition plan and to implement it. So, local jurisdictions must identify the work that needs to be done and schedule that work. ... Also, any time a roadway or a sidewalk is newly placed or changed, it needs to have ... curb ramps.”⁵⁶⁷

Richard Devylder, former Senior Advisor for Accessible Transportation for U.S. DOT, commented on enforcement of the ADA with respect to curb ramps, the responsibility for which begins with the Federal Highway Administration, a part of U.S. DOT. When a person files an ADA complaint about the failure of a city to implement curb ramps, it goes to FHWA. Devylder stated,

I think the issue is [that] enforcement mostly happens at the DOJ level. In terms of who’s got the stick on this, part of it is FHWA, which must work to—well, how many times do you warn a municipal government that they’re out of compliance [before] referring it to the Department of Justice for enforcement? And this isn’t Justice’s fault. I would say the DOT hasn’t done a great job overall of informing Justice of these issues. ... We’re not close to being where I would like us to be.⁵⁶⁸

Street Resurfacing and Curb Ramps

One of the key ADA court decisions affecting public rights of way was *Kinney v. Yerusalim*,⁵⁶⁹ in which the U.S. Court of Appeals for the Third Circuit ruled that the ADA requires cities to install curb ramps when they resurface streets.

In 2010, observing the failure to enforce what the 1994 *Kinney* decision confirmed as an ADA requirement, Tom Perez, then the Assistant Attorney General for Civil Rights at the U.S. Department of Justice, wrote a letter to Victor M. Mendez, Administrator of the Federal Highway Administration of the U.S. Department of Transportation. He said,

We wish to bring to your attention a conflict between the longstanding Department of Justice (Department) policy with respect to the application of the requirements of 28 C.F.R. § 35.151(e), which requires the provision of curb ramps when roads are being altered, and recent guidance provided by the Federal Highway Administration (FHWA). We are seeking your assistance in resolving this conflict. ... It has been the Department's longstanding position that street resurfacing is considered an alteration that triggers ADA requirements for curb ramps. ...

The Department recently became aware that FHWA takes the position that road resurfacing projects that involve asphalt overlays of no more than 1.5 inches qualify as normal maintenance, and therefore do not constitute alterations. The Department is deeply concerned that the FHWA's position on asphalt overlays of less than 1.5 inches directly conflicts with the Department's legal interpretations of title II [of the ADA]. There have been several instances recently in which localities have challenged the Department's title II enforcement efforts with respect to curb ramps, arguing that, because of FHWA policy in this regard, they do not have to install curb ramps, so long as they are not installing more than 1.5 inches of new road surface.

We would like to meet with you as soon as possible to discuss mechanisms for restoring consistency between the Department's interpretation of its title II regulation and the FHWA's application of this regulation in its investigations of title II complaints as well as in the technical assistance it provides to state transportation agencies. ...

We also request that, in the future, the FHWA consult with the Department before publicly announcing policy provisions intended to have general application.⁵⁷⁰

Lois Thibault said that, due to the Federal Highway Administration interpretation, “Everyone just puts in resurfacing that is less than 1.5 inches thick.”⁵⁷¹

Presumably as a result of subsequent communications between the Department of Justice and the Federal Highway Administration, on June 22, 2013, FHWA posted a document titled “Department of Justice/Department of Transportation Joint Technical Assistance on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways Are Altered Through Resurfacing.”⁵⁷²

This joint DOT/FHWA guidance states,

Without curb ramps, sidewalk travel in urban areas can be dangerous, difficult, or even impossible for people who use wheelchairs, scooters, and other mobility devices. Curb ramps allow people with mobility disabilities to gain access to the sidewalks and to pass through center islands in streets. Otherwise, these individuals are forced to travel in streets and roadways and are put in danger or are prevented from reaching their destination; some people with disabilities may simply choose not to take this risk and will not venture out of their homes or communities.⁵⁷³

The document lays out stricter and more technically nuanced requirements than the previous policy of FHWA, stating the conditions under which curb ramps are required during street resurfacing projects:

When is resurfacing considered to be an alteration?

Resurfacing is an alteration that triggers the requirement to add curb ramps if it involves work on a street or roadway spanning from one intersection to another, and includes overlays of additional material to the road surface, with or without milling. Examples include, but are not limited to the following treatments or their equivalents: addition of a new layer of asphalt, reconstruction, concrete pavement rehabilitation and reconstruction, open-graded surface course, micro-surfacing and thin lift overlays, cape seals, and in-place asphalt recycling.

What kinds of treatments constitute maintenance rather than an alteration?

Treatments that serve solely to seal and protect the road surface, improve friction, and control splash and spray are considered to be maintenance because they do not significantly affect the public's access to or usability of the road. Some examples of the types of treatments that would normally be considered maintenance are painting or striping lanes, crack filling and sealing, surface sealing, chip seals, slurry seals, fog seals, scrub sealing, joint crack seals, joint repairs, dowel bar retrofit, spot high-friction treatments, diamond grinding, and pavement patching. In some cases, the combination of several maintenance treatments occurring at or near the same time may qualify as an alteration and would trigger the obligation to provide curb ramps.⁵⁷⁴

FHWA has undertaken subsequent activities to implement the guidance, including three internal webinars for FHWA division offices and at least two webinars for members of the public to explain which street resurfacing projects must be accompanied by implementation and improvement of curb ramps.⁵⁷⁵ Because of wide interest among state and local public works departments, FHWA scheduled additional sessions of this webinar.

Snow Removal

The failure of communities to remove snow that piles on pedestrian areas of the public right-of-way is another significant obstacle to accessibility for many people with disabilities.

The Americans with Disabilities Act covers snow removal as an aspect of the requirement titled Maintenance of Accessible Features.⁵⁷⁶ This requirement is addressed by an FHWA document titled "Questions and Answers about ADA/Section 504" under the heading Maintenance:

31. What obligation does a public agency have regarding snow removal in its walkways?

A public agency must maintain its walkways in an accessible condition, with only isolated or temporary interruptions in accessibility. 28 CFR §35.133. Part of this maintenance obligation includes reasonable snow removal efforts. (9-12-06)

32. *What day-to-day maintenance is a public agency responsible for under the ADA?*

As part of maintenance operations, public agencies' standards and practices must ensure that the day-to-day operations keep the path of travel on pedestrian facilities open and usable for people with disabilities, throughout the year. This includes snow removal, as noted above, as well as debris removal, maintenance of accessible pedestrian walkways in work zones, and correction of other disruptions. ADAAG 4.1.1(4). Identified accessibility needs should be noted and incorporated into the transition plan. (9-12-06)⁵⁷⁷

Another authority, the New Hampshire Supreme Court, ruled in favor of a man with a disability in a case he brought against his town regarding snow removal.⁵⁷⁸ As the *Concord Monitor* wrote in June 2009,

Bill Tinker likes to ride his scooter around downtown Tilton. The Northfield man has respiratory, circulatory, and orthopedic problems that make walking or driving difficult. But he still likes to get out to the post office, the grocery store, and other local shops.

Now, he will be able to ride downtown all year long. This week, the New Hampshire Supreme Court settled a longstanding dispute between Tinker and Tilton about whether the town is required to clear snow from its sidewalks to allow him and others with disabilities access. In short, the court said it is.

"Disabled people have been stomped on long enough," Tinker, 63, said yesterday, adding that he 'cheered' when he heard about the court's decision.

Molly McPartlin, the lawyer who represented the town, said that Tilton will comply with the court's ruling and "make reasonable efforts with regard to snow removal."

... Tinker, represented by James Fox of the Disability Rights Center, argued that the federal Americans with Disabilities Act required the

municipality to accommodate disabled residents who could not safely travel on an icy sidewalk or the shoulder of a busy state highway. The law says that public entities must “give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities,” including transportation.⁵⁷⁹

Chapter 10 recommendations are listed at the end of the report.

CHAPTER 11. **Privately Funded Transit**

Subpart A. Taxicabs

Overview

The 2005 NCD report addressed the importance of taxicabs as a significant form of transportation,⁵⁸⁰ heavily used and urgently needed by people with disabilities. Many disabled people who cannot drive or who cannot afford their own cars make extensive use of taxis. Some advantages of taxis are that they are generally available 24 hours a day and usually do not need to be scheduled far in advance. Service is direct, without detours to serve other passengers, as is often the case with ADA paratransit service.

Yet taxi service can present problems for people with disabilities. Those who use service animals, particularly people with visual impairments, encounter a variety of issues. In some cities, people with various disabilities—wheelchair users, users of crutches, and blind people, among others—are often passed up by taxicabs. And the lack of wheelchair-accessible taxi service is one of the most important transportation issues for people with disabilities in the United States. There have been many developments in accessible taxis since the 2005 NCD report, both advances and obstacles.

This chapter also addresses Uber and other transportation smartphone applications (apps) that have come to be seen in recent years as a substitute for taxi service.

People with disabilities have much to say about problems with taxicab service. According to Christopher G. Bell, Esq., of the American Council of the Blind of Minnesota,

As so many blind people have experienced, if you arrive at the airport, you go up to get into the taxi line and drivers will zip right by because they don't want a passenger with a dog. It's illegal, but how do you prove it? You're blind; you can't read the taxi number or the firm name.⁵⁸¹

Tracee Garner, Outreach Coordinator at the Loudoun (Virginia) ENDependence Center, has had mixed experiences in various locales:

A lot of people have terrible experiences if [they] call a cab in Loudoun, including a lot of elderly people using taxicabs. The drivers intimidate them into paying [a] higher rate. If the elderly person protests, the driver bullies them.

If they don't have a license to do business in Loudoun, and they get into an accident, they flee. They'll first get out and act like they are going to cooperate and then get back in the cab and run off. There have been several incidents when taxi cab drivers have fled the scene because they don't have a proper license.

But the cabs in Fairfax County and DC, and in parts of Maryland, are doing really well. They have accessible cabs. You can get them within the hour, and if you see them on the street, you can flag them, if you are able to raise your hands. Drivers are courteous and know what they're doing.⁵⁸²

Jan Campbell, Chair of the Committee on Accessible Transportation for TriMet in Portland, Oregon, said this about accessible cabs:

We have a lot of accessible taxis, but many are contracted to TriMet [our transit agency], or to school districts. If you're a private-pay fare, it's very hard to get an accessible cab. In the evening, they aren't available. You call and they say, "We'll send a cab." You call back and they say, "Oh, we checked and we don't have any." You might wait an hour or an hour and a half sometimes until they call a driver at home and say, "We need an accessible cab on the street." That happened to me at 11:00 one evening. I wouldn't have been able to get home.⁵⁸³

ADA Requirements Are Limited

The ADA does not require that taxi companies include accessible vehicles in their fleets. While they are subject to the requirements of private entities primarily engaged in the business of transportation with demand-responsive service, taxi providers are not required to operate accessible vehicles as long as their vehicles are sedan-type automobiles.

If a taxi company purchases or leases a new vehicle other than a sedan-type automobile—such as a van with a seating capacity of fewer than eight people, including the driver—the acquired vehicle must be accessible, unless the company is already providing “equivalent service” as defined by the ADA, which includes such factors as response time, fares, schedule, and service area.

However, if a public entity, such as a city or county, uses local taxicabs for a user-side subsidy program, it is required to ensure that equivalent service is provided to people with disabilities, including those who use wheelchairs. The public entity must ensure that its user-side subsidy program does not discriminate against people with disabilities. So, for example, if a city launches a taxi voucher program for people 65 and older that uses local taxicabs, the city must ensure that the program does not discriminate against people in that age group who have disabilities. The city could either require taxi companies to have accessible vehicles or could engage the services of another company to provide accessible service that is equivalent to the rest of the service in the voucher program in terms of response times, fares, service area, schedule, and so on.⁵⁸⁴

Regardless of the type of vehicle, taxi companies must follow other ADA requirements and may not discriminate against people with disabilities. For example, they may not charge higher fares for passengers with disabilities; they may not refuse to serve a passenger with a disability who can use a taxi sedan (including people who use wheelchairs); they may not refuse to stow a wheelchair or other mobility device in the

trunk of a sedan or impose a special charge for doing so; and they must accept passengers traveling with service animals.⁵⁸⁵

To close the gap of limited ADA requirements for accessible taxicabs, a bill has been introduced in Congress to require a robust accessible taxi program across the nation. Senate bill S.2887, the Accessible Transportation for All Act, was introduced by Senator Tom Harkin on September 18, 2014. It addresses both standard taxi systems and transportation network companies such as Uber, SideCar, and Lyft. The bill would require that—

Any person who owns, leases, operates, or arranges for the operation of transportation services to members of the public through a for-hire transportation company, taxi service, or transportation network company shall provide, or arrange for, the adequate provision of accessible vehicles for hire to serve individuals with disabilities who require such services.

S.2887 would ban discrimination and would require DOT to organize a national competition to design the accessible taxi vehicles in collaboration with the disability community. It would establish an Accessible Taxi and For-Hire Transportation Board to increase the availability of accessible taxis, require states to develop strategic plans to increase accessible taxis, require the development of standards for both accessible taxi vehicles and service, and establish a tax credit for accessible taxis.

Caught in the Act of Discrimination

In May 2013, WUSA Channel 9 in Washington, DC, broadcast the results of an undercover investigation showing taxis stranding passengers with disabilities on the curbs of DC streets. The channel had previously exposed similar discrimination against African Americans. WUSA used volunteers who said they encounter taxi discrimination when accompanied by service dogs or using a wheelchair. Of 42 cabs tested, using passengers with wheelchairs or guide dogs, 20 cabs (48%) drove right past the

passenger with a disability in favor of another fare, took the fare to the wrong location without warning, or charged an illegal extra fee. According to the WUSA website,

In one case, while we were leaning inside a taxi asking him why he'd refused service to a blind woman with a service dog, he peeled off—forcing our undercover reporter out—driving away with the door still open.

...

Another cab added a \$1.50 extra charge to [a] blind woman's tab while only disclosing the full fare due. ...

A different cab dropped off American Council of the Blind advocate Eric Bridges at the wrong building on the wrong street. "It happens probably a few times a month," Bridges said about drop-offs at wrong locations. "DC and the cab system here is a bit like the Wild West." ...

When confronted, nearly every cabby who passed the highly visible disabled passengers claimed he did not see [them]. [One] cab picked up speed as soon as traffic cleared and offered a ride a hundred feet down the street to the WUSA decoy who didn't have a service dog or wheelchair.

The Equal Rights Center did a similar test in 2010 which showed that 60 percent of passengers using guide dogs received discriminatory service. When it released the 2010 results, the Equal Rights Center called for enforcement from DC government, mandatory training for taxi companies, and compliance monitoring.

A second WUSA broadcast showed taxis similarly refusing service to both black passengers and passengers with disabilities.⁵⁸⁶ (For more on taxi discrimination, see the section on Service Animals in chapter 6.)

Accessible Taxis

Since the 2005 NCD report, wheelchair-accessible taxis have become more available in larger communities around the country. Cities with accessible taxi services include Chicago, Boston, San Francisco, Miami, Las Vegas, and Portland.⁵⁸⁷

When they are operating properly, wheelchair-accessible taxis provide traditional on-demand taxi service for people who use wheelchairs and cannot, or may not wish to, transfer to a taxi sedan, as well as to people whose wheelchairs cannot be stowed in a sedan. The communities where these taxis operate can and sometimes do use regulatory mandates, incentives, or some combination of the two to ensure that their local taxi industry includes accessible vehicles and provides service equivalent to the taxicab service available to the general public.⁵⁸⁸

Unfortunately, all too often accessible taxis are not available in adequate numbers and, in some cases, not at all. The size of the community is no predictor. New York City, for example, has had notorious difficulties achieving anything close to an adequate number of accessible taxis, although recent developments should result in a significant increase in the future. (See the case study below about New York City.) In some locations, a variety of obstacles remain even if taxis that are structurally accessible have been acquired.

The 2005 NCD report discussed the many issues and concerns that should be considered in the implementation of accessible taxi programs but which are often ignored.⁵⁸⁹ These considerations can play a significant role in determining the success or failure of accessible taxi programs. The fact that operating accessible taxis costs more than operating standard sedan taxis—in a continuing manner that goes beyond acquisition of the vehicle—means that mandates for accessible vehicles may not be successful on their own. Have all stakeholders bought into the plan? Are the necessary incentives, sanctions, regulatory involvement, and enforcement in place?⁵⁹⁰

Incentives

Incentives appear to be necessary, generally, for both taxi companies and drivers. Sometimes only company incentives are provided, but because taxi drivers are rarely company employees in the traditional sense, a failure to provide driver incentives can create future problems.

For the company, incentives can include vehicle grants or low-cost leasing arrangements if the public sector can obtain vehicles at lower cost than the private operator. Some cities have obtained accessible taxi vehicle support from the program formerly known as New Freedom (now MAP-21).

One type of incentive is promoting greater use of accessible taxis in user-side subsidy programs and as contractors to the public transit agency for ADA paratransit and similar services. However, it is important to be careful not to use all available accessible vehicles in contract services—some must be left on the street. (See Keeping the Vehicles in Use below.)

(In using taxis of any kind in ADA paratransit and similar services, it is important to use the best practices described in chapter 3 in the section on Using Taxis in ADA Paratransit Service.)

The driver needs incentives as well. Communities must recognize that the driver can lose revenue twice, first in providing trips for people with disabilities, which are statistically less lucrative, and second in cashing in a voucher or other form of subsidy. In most cities, the company charges the driver up to 8 percent or more of the face value of a voucher.

Drivers need funds to defray costs that they must otherwise bear individually. Lower daily leases for drivers may not be enough to persuade them to provide accessible service. The incentives must be balanced with regulation and oversight. For example, the city of Chicago found that two drivers who had received \$15,000 to make their vehicles accessible had never carried any people with disabilities in almost two years. It is crucial to understand that simply providing funds or other incentives to companies or drivers will not make accessible taxi service happen automatically. Incentives combined with regulation, monitoring, and oversight are necessary. (See sections on Enforcement and specifically on Chicago below.)

Keeping the Vehicles in Use

Once the accessible taxis are purchased, there are a number of challenges to keeping them in use. Sometimes they are left sitting on the lot. Often they are the first vehicles taken out of service and the last ones put into service. Also, even if they are in service, they are not necessarily providing rides to people who need an accessible vehicle.⁵⁹¹

Sometimes most or even all of the accessible vehicle capacity is dedicated to other sources, such as ADA paratransit contracts (see the best practices described in chapter 3 in the section on Using Taxis in ADA Paratransit Service). Localities should track and monitor denials of private pay service as well as response times. For example, should it take two hours to get an accessible cab when the average response for inaccessible taxis is 20 minutes? If public entities responsible for taxi services track denials and response times, they will know when to increase the number or percentage of accessible cabs.

Many drivers of accessible vehicles in large cities station themselves at the airport, where they are called to the front of the line for people traveling in large groups or carrying golf clubs or other bulky equipment. Because the average wait time for a fare at the airport can exceed two hours, this is a substantial incentive to drive an accessible vehicle but to use it for fares other than riders with disabilities. Regulators in Boston have disciplined drivers of accessible vehicles several times for refusing calls from people with disabilities while sitting in line at the airport.

Similarly, in some Florida communities, people with disabilities know they cannot obtain accessible taxis on the days the cruise ships arrive, because the taxis are stationed at the dock to pursue more lucrative business from large groups traveling together or those with a great deal of luggage. These taxis occasionally do transport people with disabilities coming off the cruise ships, but they are primarily waiting there for expensive runs from the dock to the airport.⁵⁹²

Demand for accessible vehicles varies by community. In Indianapolis, for example, the accessible cabs serve people with disabilities because there are not many other requests for the large vehicles.⁵⁹³

Accessibility and Nondiscrimination

Localities should adopt ADA nondiscrimination and vehicle design standards into their local ordinances to address problems faced by people with service animals and drivers refusing service to people due to their disabilities. Such ordinances can help ensure that accessible taxis meet ADA requirements. Local regulators, most of whom are not from the transit industry, are rarely familiar with what constitutes accessibility. Many taxis that are supposedly accessible do not actually meet ADA standards for door width and other clearances. If the regulations are locally enacted, there is a greater likelihood that regulators will know and enforce the exact vehicle specifications.

Cities should consider enacting stricter measures than those required by the ADA. For example, the ADA regulations require that a rear door entry have 56 inches of clearance from the top of the ramp or lift to the top of the door. Because of the wording of the regulation, it is legal to measure the clearance on the diagonal, which denies access to many wheelchair users. Localities could require that the vertical measurement be made on a 90-degree angle.⁵⁹⁴

Other accessibility issues include poor securement practices in many accessible taxis. Even when wheelchair securements (tie-downs) are present and used correctly, taxi drivers frequently do not have lap belts and shoulder straps for wheelchair riders, or do not understand how to use them. (See more in chapter 6 in the section on Securement of Mobility Devices.)

Training

Driver training is essential yet sometimes is minimal or nonexistent; for example, a one-hour film might be shown in the driver break room and the drivers might be talking, not

watching it. Drivers will admit that they have not been trained because there are no effective sanctions.⁵⁹⁵ Yet some cities have developed effective training programs.⁵⁹⁶

Enforcement

Enforcement is a crucial element in an accessible taxi program, and its absence can be the biggest obstacle to effective service. Usually, the local regulator—the person who enforces taxi accessibility regulations—is part of a city agency that regulates a wide variety of business standards. In a few cities, regulation of taxi accessibility is governed through police departments. Most regulators are extremely busy and are not personally committed to accessibility; insurance and safety standards often take priority.⁵⁹⁷

Sometimes these regulators understand the needs of the taxi industry better than the needs of people with disabilities and are not sympathetic to demands for accessible service. While there are always exceptions, without special education, local taxi regulators generally do not ensure that accessible vehicles are on the road at all, let alone providing appropriate service to people with disabilities.⁵⁹⁸

Communities must make an effort to independently monitor the level and quality of accessible taxi service. There is a need for concrete data to prove to local regulators that discrimination and poor service exist, and for phantom riders—people who call for service in order to test and report on what happens. Some of the phantom riders must be people who are themselves wheelchair users or people who are blind or visually impaired, including people with service animals. They must record specific dates, times, vehicle numbers, and driver's license numbers, so the regulators cannot deny or ignore the problem. The industry will not regulate itself, and the regulators, in general, will not do so either.⁵⁹⁹

Drivers must be required to keep logs; those logs must be checked and response times monitored. If a community does not monitor and enforce all aspects of the regulations, many companies will buy inappropriate vehicles and fail to adequately train drivers. The drivers themselves will bypass people with disabilities, refuse to carry service animals,

and refuse to leave the airport or cruise ship dock to respond to calls from people in the neighborhoods. In the absence of monitoring and enforcement, drivers will learn that they can defy the regulations with impunity.⁶⁰⁰

Case Studies

Chicago

The 2005 NCD report credits Chicago with being the first large city to monitor and enforce its accessibility and other taxicab requirements.⁶⁰¹ Chicago's leadership in accessible taxis dates back to the 22-year administration of Mayor Richard M. Daley, and current Mayor Rahm Emanuel's administration has continued the trend. Daley supported a city ordinance requiring that 1 out of every 15 taxicabs be accessible, and the disability community was involved early in the process. Through the Department of Business Affairs and Consumer Protection (formerly the Department of Consumer Services), which oversees taxis, funding was allocated to address the extra cost of accessible vehicles, so a number of these vehicles went into service.

A problem developed when riders with disabilities needed to call individual cab companies for an accessible taxi. Sometimes it was not easy to summon an accessible cab, so riders with disabilities made a practice of requesting personal cell phone numbers of individual drivers, with some success. After the Department of Consumer Services conducted tests to assess how easily callers could obtain an accessible taxi, a solution was devised to have one toll-free number through which a person can request an accessible cab from any Chicago cab company. This central dispatch system has been a success, and the cabs arrive within a reasonable time.

According to a 2007 panel presentation⁶⁰² by Norma Reyes, then commissioner of the Department of Consumer Services, the Chicago commitment to truly accessible taxi service included these targets:

- Increasing the number of wheelchair-accessible vehicles. Reyes acknowledged that Chicago is considered a success, but she would not count it as fully successful until every cab is accessible.
- Ensuring a successful central dispatch program.
- Providing funds to upgrade vehicles, install GPS, and provide additional taxi rides.
- Providing incentives, including an accessible awards program that rewards taxicab drivers who provide extraordinary service to the disability community with a free medallion. This confers the right to own and operate a taxicab in Chicago.⁶⁰³ (The value of such a medallion in 2014 was approximately \$350,000.⁶⁰⁴)
- Conducting a thorough enforcement program with prosecutions and sanctions for violators of accessibility requirements.

According to “Hailing the Future,” a Northeastern University School of Law study of wheelchair-accessible taxi programs in cities across the United States, the situation in Chicago is as follows:

There are 178 wheelchair-accessible taxicabs with medallions in Chicago out of an overall fleet of 6,720 taxicabs.

The Regional Transportation Authority (RTA) and Mayor Rahm Emanuel initiated a taxicab reform project along with 9th Ward Alderman Anthony Beale and the City Council Transportation and Infrastructure Committee. ... The project proposed changes to the Chicago taxicab industry regulations that would give taxicab company owners incentives to modernize their fleets, put safer taxicab drivers on the streets, and increase overall safety.

The new city ordinance that reformed taxicab operations included an incentive for taxicab companies to make more wheelchair-accessible vehicles. They will receive \$100 off of the annual \$600 medallion fee, and

any taxicab company with more than 20 taxicabs must maintain at least 5 percent as accessible vehicles.

The RTA awarded funds from the New Freedom program (now MAP-21) to the city of Chicago Wheelchair Accessible Vehicle (WAV) Fund. The grant of \$1.77 million will be used to purchase WAVs and convert current taxicabs in 2013. The WAV Fund became eligible for this money because they indicated they could provide a necessary match of over \$650,000 annual income by increasing the [cost of the] city's 6,500 medallion licenses by \$100 each.

Additionally, the fund will reimburse taxicab owners up to \$15,000 for converting their taxicabs to WAVs and up to \$20,000 for the purchase of a new WAV. Also, the WAVs that use alternative fuel can operate one year longer than regular taxicabs under the new ordinance, as long as they are in good condition.

The type of taxicabs that will be used in Chicago are the MV-1, which are manufactured by AM General in Mishawaka, Indiana. This vehicle operates on compressed natural gas and can accommodate two wheelchair [user]s and three non-wheelchair passengers at the same time.

To ensure compliance by the taxicab companies, the city of Chicago sued 15 taxicab owners for noncompliance [with] the city's new ordinance regarding wheelchair [accessibility]. The claims stated that owners named in the suits did not have a sufficient number of properly functioning WAVs. According to the ordinance, taxicab owners with more than 20 medallions need to have at least 5 percent functioning WAVs in their fleet.⁶⁰⁵

Rhode Island

Also according to "Hailing the Future," "The smallest state ... provides an intriguing study into the effectiveness of well-orchestrated advocacy for wheelchair-accessible vehicles (WAVs)." This advocacy involves coordination among various approaches including legislation, empirical studies on the status of the transportation options in the state, and efforts by the quasi-public Rhode Island Public Transit Authority (RIPTA).

In 2007, the Rhode Island legislature mandated that 2 percent of taxicab fleets be wheelchair accessible. During the same legislative session, tax credits were also made available for the purchase of WAVs. ... Despite these enacted credits, two years later no accessible taxicabs had been

purchased. ... A 2009 study conducted by RIPTA, the Human Service Transportation Study, reviewed the available means of coordinating transportation for “older adults, individuals with low incomes, and persons with disabilities.” ...

[As a result,] in April 2011, RIPTA announced that WAVs were expected to be in operation by November. The RIPTA plan utilized funding through the New Freedom Act (now the MAP-21 program), in which the federal grant would pay for 80 percent of the cost of the taxicabs. ... A year later, on April 11, 2012, thirteen WAVs were made available to taxicab companies in Rhode Island. ... [This] is a starting point for wheelchair-accessible taxicabs across the state.⁶⁰⁶

New York City

The 2005 NCD report described attempts in New York City through 2004 to obtain a full complement of accessible taxicabs.⁶⁰⁷ New York has a long history of resistance to accessible taxis through the actions of the City of New York Taxi and Limousine Commission (TLC), which regulates taxicabs. In 2013, the tireless efforts of New York City advocates for accessible taxis resulted in an unprecedented and extremely significant victory.

The disability community advocacy group Taxis for All Campaign (TFAC) had long sought meaningful access through city legislation. New York City has 13,000 yellow cabs (taxis) that can only be hailed instead of dispatched; only 231 of them are accessible. Yellow cabs operate in Manhattan, south of 96th St., and at the airports. In the other four boroughs—Bronx, Brooklyn, Queens, and Staten Island—only livery cabs are dispatched. There are approximately 30,000, of which about 20 were accessible. TFAC advocated for access to new taxis as they are purchased for use in the hail system, and for a meaningful percentage of liveries.⁶⁰⁸

In recent years, the disability community turned to litigation in addition to seeking legislation. In 2011, United Spinal Association, along with other disability groups, represented by Disability Rights Advocates, filed a lawsuit against the TLC, arguing that the commission is covered by Title II of the ADA and thus must provide meaningful access to the New York City taxi system.⁶⁰⁹ The U.S. Justice Department filed a

statement of interest in the case in support of people with disabilities, stating that every taxi should be accessible. In December 2011, the Southern District Court of New York stated that meaningful access to both liveries and taxis was required. The TLC appealed to the Second Circuit Court of Appeals. The Second Circuit ruled in favor of the TLC and sent the case back to the Southern District.

In February 2012, Governor Andrew Cuomo signed A8691A-2011, otherwise known as the HAIL Act (Hail Accessible Inter-borough License). The legislation would have issued 18,000 hail licenses for the five boroughs of New York City. These new licenses would have gone to livery cabs, which would provide metered services and be able to pick up hailing passengers. The law required that 20 percent of the new licenses go toward wheelchair-accessible vehicles. In addition, the law allowed for the sale of 2,000 new wheelchair-accessible taxi medallions, which would have raised \$1 billion for the city.

In August 2012, the New York State Supreme Court overturned the HAIL Act, stating that the city had violated the home-rule provisions of the state constitution, because only the city council, not the New York state legislature, can add medallion taxis to the fleet. The vast majority of the arguments against the state law did not revolve around wheelchair-accessible taxis.⁶¹⁰

In April 2013, the Federal Court for the Southern District of New York allowed Disability Rights Advocates to include in their case against the TLC a complaint citing that the Nissan NV200, the new taxi model of choice for New York City, is a van. Therefore, its purchase would violate the ADA, which requires that new vans used as taxis be wheelchair accessible. According to Disability Rights Advocates, which represented the plaintiffs in the suit,

The current taxi system is 98.2% inaccessible and people who are non-disabled are 25 times more likely to get a taxi within ten minutes than is a person who uses a wheelchair. In addition, 80% of New York's subway stations have no elevators and leave people with mobility disabilities unable to use these two essential forms of transit in NYC.⁶¹¹

Later in April 2013, the New York City Council held a hearing on Proposed Int. No. 433-A, a bill that would require all new taxis in New York City to be accessible. The Bloomberg administration continued to oppose accessible taxis⁶¹²; the mayor himself had long opposed a significant expansion of wheelchair-accessible cabs. “He said they weigh too much. They’ll use too much gas. That’s all nonsense. I don’t think the mayor would treat any other protected class this way,” stated James Weisman, Senior Vice-President and General Counsel of United Spinal Association.⁶¹³

In June 2013, the highest court of New York state reinstated the HAIL Act, which would put in place a New York City plan to expand street-hail taxi service to the outer boroughs and auction off 2,000 medallions for wheelchair-accessible yellow cabs.⁶¹⁴ In another advancement for the disability community, the Greater New York Taxi Association issued a joint statement with the Taxis for All Campaign in support of a 100 percent wheelchair-accessible taxi fleet.⁶¹⁵

The HAIL Act required a plan to be prepared with stakeholder input to provide accessible taxi service permanently in New York City. Mayor Bloomberg’s administration refused to participate or facilitate planning, instead opting to dispatch the 231 yellow cabs in the lower Manhattan service area. There is no central dispatch service available in the outer boroughs, however, and persons seeking accessible livery service must call livery companies.⁶¹⁶

In October 2013, according to the Associated Press,

A plan to remake New York’s yellow cab fleet with a minivan-style “Taxi of Tomorrow” was slammed into park Tuesday when a judge blocked it three weeks before cab owners would be required to start phasing in the new vehicles. ... The Greater New York Taxi Association, an owners’ group, said the city was improperly forcing owners to buy a vehicle they didn’t want. The group also noted that the NV-200 isn’t a hybrid and isn’t wheelchair-accessible without modifications. “We believe that the Nissan Van NV-200 was inappropriate for people in need of accessible vehicles and those who are concerned with the environment,” Executive Director Ethan Gerber said.⁶¹⁷

In another positive development in November 2013, the Office of the Attorney General of the State of New York concluded that nearly 500 of the yellow cabs in the city violate the Americans with Disabilities Act because they are not wheelchair accessible. By any commonsense measure, Toyota Siennas and Ford Transit Connects are vans and must be able to carry wheelchair users under the ADA, according to Attorney General Eric Schneiderman's office. The *New York Daily News* reported,

The definition of van under the ADA is the subject of ongoing litigation between advocates and the Bloomberg administration. [The Attorney General's Office] isn't involved in the lawsuits but his opinion is "quite significant," Jim Weisman, General Counsel at the United Spinal Association, said. "He's the chief law enforcement officer in the state."

The United Spinal Association has asked a federal judge to declare Nissan's NV200—the Bloomberg administration's chosen "Taxi of Tomorrow"—a van that must be wheelchair accessible under the ADA.⁶¹⁸

The New York Attorney General's Office letter asked the U.S. Department of Transportation for more definitive guidance defining vans as distinguished from automobiles, for the purpose of carrying out the ADA access requirements in the area of accessible taxis.⁶¹⁹

Then, in a stunning announcement in December 2013, on the eve of the departure of Mayor Bloomberg from office after the election of Bill de Blasio, a news release announced that the "City of New York and Disability Advocates Announce Landmark Settlement to Dramatically Increase NYC Taxicab Accessibility: One out of every two medallion taxicabs will be wheelchair accessible by 2020."⁶²⁰ It was released by four disability organizations (the Taxis for All Campaign, United Spinal Association, 504 Democratic Club, and Disabled in Action) as well as Disability Rights Advocates, New York City Mayor's Office for People with Disabilities, New York City Law Department Office of the Corporation Counsel, and the TLC. It announced that these groups had reached a historic settlement agreement [of their lawsuit] to phase in wheelchair-accessible yellow medallion taxicabs so that 50 percent will be accessible to men, women, and children who use wheelchairs and scooters by 2020. The agreement

is the first of its kind in the country and would make New York's yellow taxi fleet the most accessible in the nation and one of the most disability-friendly in the world.⁶²¹

The agreement calls for the TLC to propose rules that, if approved, will require yellow taxi fleets to replace, via attrition, at least 50 percent of taxicab vehicles with wheelchair-accessible vehicles by 2020. New York City taxicabs typically have a lifespan of three to five years, depending on how they are operated, and the 2,000 new medallion licenses that will be issued over the next several years (200 of which have already been auctioned) will count toward the 50 percent goal. The rulemaking process will determine how the remaining number will be achieved.

"We're overjoyed that the city has finally seen fit to treat us fairly," said Edith Prentiss, chair of the Taxis for All Campaign, now the named plaintiff in the lawsuit. "We believe this historic pact will soon make a huge difference for people who use wheelchairs not only here in New York City but across the country." James Weisman, who also served as General Counsel for plaintiff United Spinal, added, "This is going to save the city tens of millions a year in paratransit costs. Making cabs accessible is not just the sensible thing to do for the many New Yorkers and visitors to the city who use wheelchairs, it's fiscally responsible."⁶²²

At the same time, a memorandum of understanding was submitted to the court with a transition plan that included the following technical provisions about how the phase-in will operate:

The Proposed Rules shall ensure that, consistent with all applicable laws, after the start date, not less than 50 percent of medallion taxicab vehicles put in service in any year be wheelchair accessible; provided, however, that if as of any particular date, 50 percent or more of the vehicles put into service since the start date are accessible, there shall be no violation of this agreement if in any given year less than 50 percent of the new vehicles put into service are wheelchair accessible.

Notwithstanding any other provision of this agreement, the Proposed Rules shall ensure that 50 percent of the medallion taxicab vehicles are accessible vehicles no later than Jan. 1, 2020; provided, however, that if

as of such date: (1) 50 percent or more of vehicles put into service since the start date are accessible; and (2) inaccessible vehicles scheduled to be retired and replaced with accessible vehicles during the year 2020 are sufficient to get to 50 percent of the total fleet, then such date shall be extended to Dec. 31, 2020. The 50 percent accessibility requirement shall not be considered as a ceiling on accessibility.⁶²³

This victory was capped in April 2014 when the TLC finally voted to make 50 percent of New York taxis accessible by 2020, effectively settling the litigation and “making a big, historic leap into the future,” according to Weisman. “[There will be] 7,500 accessible taxis in Manhattan by 2020.”⁶²⁴ The TLC voted to fund this through a 30-cent surcharge applied to all taxicab rides beginning in 2015, as proposed by Mayor Bill de Blasio.⁶²⁵

Accessible Taxi Payment Technology

For people who are blind or have vision impairments, a different accessibility obstacle in most taxicabs has been fare payment systems that are inaccessible. For example, in April 2014, the National Federation of the Blind and four blind individuals filed suit against RideCharge, Inc., and three taxicab companies in California. The companies had deployed the RideCharge self-service touchscreen payment terminals, which are inaccessible to blind riders, in taxicabs throughout Southern California.⁶²⁶

However, many other transportation service providers have installed text-to-speech output and tactile controls on their self-service terminals that allow blind riders to operate them independently.⁶²⁷

In October 2013, the U.S. Access Board hosted a demonstration of new taxi technology that makes fare payment systems accessible to passengers who are blind or have vision impairments. Developed by Creative Mobile Technologies (CMT) in partnership with Lighthouse International, the software enhancement has been installed in hundreds of New York City taxicabs.

According to the CMT website,

The system features an audible touch screen with large, easy-to-navigate sections and step-by-step prompts and verbal instructions. The adaptive software announces fares at regular intervals during a trip and facilitates each step of payment by cash or credit card, including verification of fare and selection of payment options and tip percentages. It can be activated independently by riders through the touch screen or a free swipe card issued by Lighthouse International, as well as by drivers upon request.

Mark Ackermann, President and CEO of Lighthouse International, and CMT President Jesse Davis briefed Board members on the system and its installation in New York City cabs. They also demonstrated a sample system that Board members were able to try out for themselves. The software, according to Ackermann “is an excellent example of the private sector working with government leaders and advocates to voluntarily change a system that has excluded the independent participation of millions of people who are blind or visually impaired for far too long.”

The software is responsive to a New York City law mandating taxi payment options that are accessible to passengers with vision impairments. In addition to its New York City roll-out, CMT plans to install the system in about a dozen other cities, including Boston, Chicago, San Francisco, and Philadelphia.⁶²⁸

Uber, SideCar, Lyft, and Similar Transportation Apps

The past few years have seen the rise of Uber, SideCar, Lyft, and other companies that provide smartphone transportation applications (apps) that help people find rides in return for a payment. These transportation network companies (TNCs) offer an alternative to taxicabs. Many of the government bodies that regulate taxicab service are greatly concerned about this completely unregulated sector, and the TNCs have consistently attempted to evade regulation. In fact, Uber has claimed publicly that it is not covered by the ADA.⁶²⁹

Some people with disabilities benefit from using TNC services and point to the convenience and speed with which car service can be obtained. Some note positive steps TNCs have taken. For example, following a dialogue between stakeholders and an Uber representative at a forum held by the National Council on Disability in May 2014 in Berkeley, California, Uber issued a statement in which it committed to

“disenfranchise” any driver who wrongfully refuses to accommodate a passenger with a service animal.⁶³⁰ In another example (March 2014), Uber committed to undertake pilot programs to study and increase the availability of wheelchair-accessible vehicles in Chicago: “Wheelchair-accessible taxis operated by third parties—yellow cabs in the traditional, medallion-based system—will appear in the Uber app whenever the company’s own network can’t supply wheelchair-accessible vehicles.”⁶³¹

However, TNCs may prove to be an even more difficult arena than taxicabs in which to guarantee people with disabilities the right to services equivalent to the services received by the general public. A consensus appears to be forming among many disability activists across the United States who are advocating with local authorities and share the goal of regulating TNCs the same way taxicabs are regulated, by the same regulatory authorities, under the same rules that govern taxis. Wherever local advocates can gain a higher level of regulation, they are avidly pursuing it.⁶³²

This view was echoed by Beth Finke, Interactive Community Coordinator at Easter Seals headquarters in Chicago and a person who is blind, in a July 16, 2014, blog:

Chicago cab drivers are required to take classes to learn about service dogs, and they have to pass a Public Chauffeur Licensing Exam before getting a livery license. They know they are required to pick us up, and [I’ve reported] cab drivers [who] were fined for refusing to do so. More importantly, each had their livery license temporarily suspended.

... An NBC News story that said a blind man in San Francisco complained to UberX after one of their drivers refused to pick him up with his guide dog. UberX apologized and gave him a \$20 credit toward his next ride. The driver was not penalized. ... The blind man who was refused the ride might take civil action, but that could take a lot of time. And money.

And that’s my problem with this whole ride-sharing thing. I didn’t have to pay a cent to report the Chicago cab drivers who disregarded the law, the cases were resolved quickly and efficiently, and the drivers were penalized. If a driver from a ride-sharing service refuses to pick me up with ... my Seeing Eye dog, I will have little recourse. The burden will be on me to pay to take the ride-sharing service and the driver to court.

... I'm not against innovation, but I believe the new services should be subject to some regulation and required training—just like cabs.⁶³³

A ruling by the Maryland Public Service Commission (PSC) affirmed this position in September 2014, as explained by journalist Andrew Zaleski:

The final act in the PSC look into Uber began ... when the presiding judge ... issued a proposed ruling that PSC commissioners would [later] affirm unanimously ... [stating that], “because 20 percent of an Uber passenger’s fare goes to Uber itself, the company does receive pay for passenger-for-hire services; because Uber provides drivers with an iPhone loaded with the Uber app and sends requests to drivers to accept or decline rides, it exercises enough influence over drivers to be considered the ‘owner’ of each car, even though it doesn’t hold the titles to the vehicles; because Uber hasn’t released a list of its UberBLACK and UberSUV drivers to the PSC, the commission has no way of knowing whether the company is using PSC-licensed drivers; and because Uber can change its rates at will through its surge-pricing policy during peak hours, it escapes PSC protocol that requires for-hire drivers to file their rates, which cannot be changed without 30 days’ notice.

“I find that Uber is a common carrier ... offering passenger-for-hire services, and is therefore a public service company, subject to the jurisdiction of the commission,” wrote the chief judge. ... In other words, if Uber doesn’t change its ways to adhere to the PSC ruling, it can’t operate in Maryland anymore.

According to Uber spokesman Taylor Bennett, the company has yet to decide whether to appeal the state’s ruling. ... Asked ... whether Uber ... would leave Maryland, Bennett said, “I don’t have an answer to that.”

But that answer could be a sign of how Uber—which is valued at \$18 billion and has grown to 190 cities—fares around the country and the world. Since the company’s founding five years ago, local, state and national governments ... have pushed back against a company they see as disrupting transportation markets and operating outside the government’s eye; just last week, a Frankfurt court ruled to ban the company’s ridesharing service from Germany altogether (though Uber is appealing the decision and will continue to operate there in the meantime). Not surprisingly, some of the company’s biggest opponents are cabbies, who have taken to the streets claiming that Uber drivers get a leg up on business by dodging local regulations, from commercial licenses to background checks.⁶³⁴

Many stakeholders see significant risks on the horizon from TNCs. “Serious matters are at stake, for the disability community, the taxi industry that serves them, and the general public as well,” said Annette Williams, manager of the San Francisco Municipal Transportation Agency (SFMTA) Accessible Services program.⁶³⁵

Christiane Hayashi, former Deputy Director of Taxis & Accessible Services with SFMTA, wrote a letter in March 2014 to the Seattle City Council, which was about to vote on regulation of TNCs. Her letter was instrumental in Seattle’s decision to limit TNCs. According to a private website that posted the letter, “Before Hayashi sent her letter, the Seattle Council was split on the vote. After they read it, they voted unanimously to regulate.”⁶³⁶ Hayashi’s letter stated,

Ever since TNCs launched their operations in San Francisco about two years ago, including more than a year that they operated in open defiance of a cease and desist order from the CPUC [California Public Utilities Commission], the numbers of these vehicles have proliferated on a frightening scale. ... They [told] the CPUC ... they would reduce congestion and emissions because ... people would get rid of their cars. The opposite is true. **This burgeoning phenomenon has had a very destructive influence on our taxi industry.** [emphasis added]

Taxis provide transportation that is universally accessible on a 24/7 basis, [365 days a year], whereas TNCs can pick and choose when and where they drive, and who they want to pick up, to the extreme that the companies Lyft and SideCar give the drivers a choice as to whether they [will] pick up service animals [used by people with disabilities], which SideCar calls “service pets.”

Taxis are required to charge the same amount to everyone at all times, and that amount is set by a public agency with the goal of ensuring that ... transportation is available to people who are disabled or on fixed incomes and cannot maintain their own personal vehicle. TNCs, ... on the other hand, set their rates behind closed doors and ... change them at will ... to undercut their competition ... with lowball prices that can be tripled or more if it rains, if there is an emergency, and during ... high demand times.

Because there appears to be no end to the exponential growth of TNC vehicles on the streets of San Francisco, and because they cherry-pick the best business, many of our taxi drivers have ... left the industry.

[Our] wheelchair-accessible vehicles are not getting onto the streets because there is no one to drive them. Fully 25% of our accessible taxis are no longer in operation ... The level of service to people [using] wheelchairs ... plunged by 50% in 2013. ...

Rules ... become impossible to enforce if [our] enforcement capacity is overwhelmed by vehicle numbers. Without [strict] limits, you can expect increased congestion, increased pollution, and a riskier environment for pedestrians and bicycles.

Many jurisdictions that have considered this issue have recognized the problems TNCs create and have prohibited them outright, including New York City, Austin, New Orleans, Portland, Miami, Detroit, Philadelphia and most recently, Madison, Wisconsin.⁶³⁷

Annette Williams added that TNCs do not require background checks, training, and other measures to protect the public. She also pointed out, “They don’t provide wheelchair-accessible vehicles, available in our taxis with same-day service and cheaper to boot. ... Another issue is that the TNCs rate their passengers. ... If a person with a disability gets a low rating because he or she requires more time, they may not get picked up again. But taxis, a regulated industry, are required to pick up everyone; there are sanctions for not doing so. Who will sanction the TNCs? ... And who will monitor the service on a day-to-day level, [as our agency does our taxis]?”⁶³⁸

In his June 2014 article “Will Uber Serve Customers with Disabilities?” Ted Trautman wrote,

Traditional taxi companies are required in many cities to make some of their vehicles wheelchair-accessible. Companies like Uber and Lyft have no such obligation. One alarming side effect of the transportation network companies’ rapid rise is that, in some cities, it could result in an overall decrease in taxi options for wheelchair users. These startups, which are mostly unregulated, are recruiting drivers aggressively and luring experienced cabbies who hope to earn more working for Uber or Lyft than they do in a yellow taxi.⁶³⁹

Lex Frieden, a professor at the University of Texas Health Science Center at Houston, director of independent living research at TIRR Memorial Hermann, and longtime

disability advocate, said one of his colleagues asked her taxi driver if there is talk among drivers about what is happening with TNCs. It turned out that this driver had formerly driven for Uber, and he said it is an open secret among Uber drivers that they avoid picking up wheelchair users and other mobility-impaired people because of the time it takes them to board.⁶⁴⁰

An international perspective was provided by the *New York Times* in June 2014 in an article titled “Traffic Snarls in Europe as Taxi Drivers Protest Against Uber”:

Europe’s taxi drivers on Wednesday picked a fight with Uber, an increasingly popular smartphone car-paging service, and dared consumers to choose sides. From London to Lyon and Madrid to Milan, thousands of taxi drivers protested the rise of Uber, an American upstart, stopping in the middle of streets and shutting down major portions of cities.

“Uber cabs are stealing our clients,” said José Losada, 36. “We are regulated to death, while they circumvent the law.”

Efforts Toward Regulation

A number of jurisdictions, including the state of California, Washington, DC, Chicago, Houston, and Seattle have expressed significant concerns about the need for TNC regulation. Yet some have not had the political will to impose those regulations. In most of these places, disability issues are raised, but strong requirements for disability nondiscrimination and accessibility are not always imposed on the companies. Other locales where TNC regulation is under consideration are Boston, Georgia, Denver, Dallas, and Pittsburgh.⁶⁴¹

State of California

In California in 2012 and 2013, the California Public Utilities Commission (CPUC) took steps in the rulemaking process to determine whether and how TNC services arranged through apps such as Uber, SideCar, and Lyft might affect public safety. In its decision, the CPUC said that each TNC must be licensed by the CPUC, require criminal

background checks for each driver, establish a driver training program, implement a zero-tolerance policy on drugs and alcohol, and obtain an insurance policy that is more stringent than the current CPUC requirement for limousines. The CPUC found that TNCs are engaged in transportation for compensation and that so-called donations from passengers are equivalent to direct compensation. The CPUC decision requires TNCs to allow passengers to indicate whether they need a wheelchair-accessible vehicle but does not require that one be provided.⁶⁴²

In response to inquiries by the *San Francisco Chronicle*, Kate Toran, interim director of taxi and accessible services at SFMTA (known as San Francisco Muni) and Christiane Hayashi provided comments on TNCs. San Francisco Muni also regulates taxis. Their critique of TNCs and the minimal effort by the CPUC to regulate them included the following points:

The TNC draft access plans posted on the CPUC site were ... all very light on detail. ... [Our agency has a video that illustrates] the frailty of some of our passengers and the time it takes to provide good service. I've heard taxi drivers say that providing good service to seniors and people with disabilities gives them karma points, and that the time it takes providing service will be offset by a good fare later in the shift or on another day. ...

SFMTA should regulate TNCs, which are taxis simply requested through new technology. Regulating the taxi industry is not in the CPUC's experience. ... It's more cost effective and rational for the oversight of the TNCs in San Francisco to be folded into SFMTA's existing regulatory structure.

Wheelchair-accessible vehicles cost more to purchase and maintain, use more gas, and require [more] training for the driver. Transporting individuals who use wheelchairs takes more time, because the wheelchair must be secured using a four-point tie-down system. Simply adding a feature to an app that allows a rider to request a wheelchair-accessible vehicle will be meaningless unless there are [such] vehicles in the fleet.... Without major incentives, there will be very few wheelchair-accessible vehicles Yet seniors and people with disabilities have a civil right to access public services, and the TNCs provide a public service.

[Regarding the CPUC requirement about] service animals: passengers should not have to indicate in advance that they are traveling with a

service animal. People with service animals face a lot of discrimination, and advance notice will most likely provide an opportunity for drivers to decline the trip. The ADA is civil rights legislation and requires public services to be accessible to people with disabilities, [including] individuals with service animals. The CPUC [should not] imply that there is an option to deny service based on whether or not an individual is traveling with a service animal. ... The CPUC itself set up this condition, indicating the lack of thought that went into the CPUC decision. ...

Despite allegations in the TNC plans, wheelchair-accessible vehicles that are used by [drivers with disabilities] do not necessarily have another securement system It would be unsafe for a wheelchair user to ride in a TNC without being properly secured. ... The CPUC would need a system for inspecting accessible vehicles to make sure that the wheelchair securement system was installed and functional. ...

Generally, seniors and people with disabilities take longer to get in and out of a taxi. Since time is money in the taxi industry, slow passengers are not highly valued. Drivers may comment on a passenger's behavior or actions without ever mentioning disability and ... create an atmosphere of discrimination.

If the CPUC sets rules, who will enforce them? The CPUC's decision relies on enforcement through self-reporting, which is ludicrous on its face.⁶⁴³

Washington, D.C.

In the District of Columbia, a number of sources document months of extensive battles over taxi regulation in 2012 and 2013 that, at times, proposed new rules to cover Uber and similar companies in ways that are much weaker than taxi, livery, and limousine regulations.⁶⁴⁴ For example, The Verge, a website on "the intersection of technology, science, art, and culture," featured an article titled "Uber wins unanimously in Washington, DC, which is now rewriting its taxi laws ... after a drawn-out saga." The article stated,

Uber just won a showdown in Washington, DC, one of the many cities where the traditional taxi and livery industry has revolted against the smartphone-native newcomer. ... The legislation says that the Commission can only assert power over digital dispatch companies [such as Uber] when "necessary for the safety of customers and drivers,

consumer protection, or the collection of non-personal trip data information.”⁶⁴⁵

Carol Tyson, Senior Policy Associate with United Spinal Association, explained that after the DC City Council passed a taxi law in July 2012, there was an attempt that December to enact further rules to regulate and sanction so-called digital dispatch services (DDSs) such as Uber. A part of the law included limited accessibility requirements. Uber organized a significant base of support among its riders for the law and against full regulation, and succeeded in avoiding all but minimal regulation. Now, a DDS may set its own rates. The 2012 law states that a DDS must give passengers the option to indicate interest in receiving wheelchair-accessible service, but the DDS is not required to provide that service. DDSs do have certain minimal requirements; for example, the new sedan law prohibits them from allowing their operators to discriminate. DDSs are required to inform the Taxi Commission if their vehicles are wheelchair accessible, and they must collect a sedan passenger surcharge. The surcharge is deposited into a consumer service fund for Taxi Commission operations and efforts to increase accessibility. As of December 2013, Uber had not even registered as a certified DDS in the District.⁶⁴⁶

Tyson commented that currently in DC, Uber and similar operations are explicitly free of nearly all regulation:

We’re in a huge state of flux in the DC taxi community, because the new law requires a great deal of taxi companies, including certain lights, credit card machines, changes to the color of their cars, and so forth, with little support to pay for any of it. Yet Digital Dispatch Services have felt little impact.

Tyson pointed out that standard nondiscrimination provisions regarding disability—such as the requirements to stop for people with disabilities, take service animals, allow wheelchair users who can do so to transfer; and have accessible communications—are all part of taxi regulations in DC. DDSs are not, however, required to follow any of them.

The DC Human Rights Act prohibits discrimination against 19 classes of people, including people with disabilities. It covers, as part of an extensive list of types of public accommodations, “all public conveyances operated on land or water or in the air, as well as the stations [and] terminals thereof.”⁶⁴⁷ Theoretically, these provisions apply to DDS operations. Moreover, there are requirements for accessible taxis, sedans, and limousines (although, at this time, not DDSs). By the end of 2014, 6 percent of the fleets of taxi, sedan, and limousine companies with more than 20 cabs must be accessible vehicles. After a few years, that goes up to 12 percent, and after another few years, to 20 percent. The disability community could conceivably use this Act to impose these requirements on DDSs.

There have been additional efforts to regulate TNCs in Washington, DC. In response to advocacy by the disability community, council members have made public statements reflecting the importance of disability access.⁶⁴⁸ “We have gotten the attention of our city council. We hope they will include accessibility standards in their TNC bill,” Carol Tyson reported. Tyson and other advocates are pressing the DC City Council to include these provisions:

1. Require accessibility of websites, apps, and other communication materials.
2. Require TNC staff and operators to undergo training in disability etiquette and services.
3. Require TNC operators to stow a wheelchair, adaptive equipment, or other mobility devices.
4. Require TNCs to uphold and publicize a zero-tolerance policy against employee and passenger discrimination, including requiring service provision to passengers with service animals.
5. Require wheelchair-accessible vans and fleets over time.

6. Require an equivalent service standard for people with disabilities
7. Enforce these provisions.
8. Include accessible TNC incentives in the Public Vehicle for Hire Consumer Services Fund.⁶⁴⁹

Chicago

In Chicago, disability advocates successfully used pressure from the taxi industry for regulation of TNCs to include a requirement in their new ordinance that the TNCs contract with entities that have wheelchair-accessible vehicles. According to Marca Bristo, President and CEO of Access Living, the new ordinance—

... increases the Chicago mandate that taxi owners with 10 or more medallions must have 10% of their fleet be wheelchair-accessible vehicles (up from 5%). And it allows passengers to opt out of being rated by drivers. Now we are working on regulations, including how to use the accessible taxi fund generated from fees from both cabs and TNCs.

Despite these legislative gains, however, Bristo expressed concern that TNCs will inevitably fall far short of equivalent service by the very nature of their highly problematic business model.⁶⁵⁰

Houston, Texas

In Houston, disability advocates are pressing their city council for strong regulation of TNCs on the basis of many concerns, including negative experiences with TNC service. Richard Petty, Program Director at Independent Living Research Utilization, wrote,

Denial of service is already a significant issue and how it can and will occur will be especially insidious, especially for those of us who are blind.

I have attempted to use [TNCs] to have a better understanding of the experience. Even in my limited use, I've had a very high level of failed pickups—from places in which I was highly visible. ... Only those drivers foolish enough to stop and tell a person with a disability that they won't

transport us will be caught. This is enough evidence for me that the ordinance language needs to be stronger and that training must include prohibition of denial of service and the consequences of denial. In Houston, the Yellow Cab service has implemented a stringent training and enforcement program. It has made a difference. Something similar needs to be implemented with TNCs.

Cities should be required to initiate random testing programs to identify instances of denial of service. The testing needs to be frequent enough and conducted widely enough to both have a good sample of drivers and to create a level of respect for the consequences of failure to comply.⁶⁵¹

Lex Frieden remarked on the “lobbying blitz” by the TNCs. “They hired the best marketing people in Houston to work for them, and two outstanding attorneys. They have four high-powered lobbyists, seeing Council members and their staff every day.”⁶⁵²

Regarding a TNC ordinance, Frieden explained that the disability community is advocating for a percentage of accessible vehicles:

The ordinance must require a minimum floor for the percentage of wheelchair accessible vehicles. The 2% precedent has already been established here. A study will substantiate the need for a significantly higher proportion, but in order for the current updated ordinance to be valid, in my opinion, there must be a stated requirement applied across all categories of for-hire service that have a fleet size of 10 or more. ... We need to see a goal of 20%, as I believe that is about the number that will be required to achieve equivalency of service as measured by wait times.⁶⁵³

Petty listed the disability community’s other demands:

- Strong penalties for denial of service.
- Maintaining background fingerprint checks, as safety is a key concern for people with disabilities.
- Regulatory prohibition against ride charges if the passenger determines that the vehicle is unsuitable (for example, a person who uses a walker cannot climb into a vehicle with a high step or running board).

- Regulatory prohibition against minimum charges when a driver fails to locate a passenger (for example, a person who is visually impaired).
- Regulatory requirement for “app” capacity that will allow passenger-to-driver telephone contact after the ride has been negotiated, which could prevent missed connections in those instances in which the driver truly does intend to accept a trip with a potential passenger who may not see the vehicle.⁶⁵⁴

Petty added, “I continue to marvel at the disingenuousness and deceit of the [TNC representatives]. They’ve misstated, prevaricated, and outright lied in front of the Houston City Council, even to the point of altering a page from a taxi study publication in such a way that it presented positive feedback about Lyft that wasn’t in the original study.”⁶⁵⁵

Seattle, Washington

The For Hire Vehicle Association of Seattle/King County and Seattle-area taxi dispatch companies, drivers, and owners have worked to address the impact of TNCs. They successfully passed a model law that would regulate TNCs in the same way taxis are regulated. The law was signed by the mayor in March 2014; within a week, Uber, Lyft, and SideCar mounted a well-funded campaign to have the law overturned by the voters.

Henry Yates, who represents the For Hire Vehicle Association of Seattle/King County, wrote,

The TNCs are collecting signatures for [their] effort [to overturn the model law] and, with the money they have, we suspect millions will be spent to repeal the Seattle ordinance. We have been told that they do not want other jurisdictions thinking that they can pass the sort of ordinance that has been adopted in Seattle.⁶⁵⁶

A few months later, Yates wrote,

We had a city council hearing yesterday where the original ordinance was repealed. Next Monday, we are anticipating the new ordinance to pass. It will include more stringent insurance requirements for TNCs, equivalent

driver training, vehicle licensing, background checks, and so forth. In exchange for all this, the TNCs got no capping on their numbers.

We, the for-hire vehicle industry, are advocating for the city to provide incentives for more accessible vehicles on the street. On our own, one of our companies just bought three accessible vehicles and intends to purchase more, because we see it as a needed and growing service.⁶⁵⁷

Yates also reported that some of the TNC disability-related issues that were discussed in other cities have been absent from the Seattle debate, perhaps because no disability advocates were involved. Issues that went unmentioned in Seattle include requiring TNCs to accommodate riders' service animals, provide trips to anyone regardless of disability (nondiscrimination), and accommodate a rider's manual wheelchair by having the driver stow it in the trunk.⁶⁵⁸ While these important protections are already required by the ADA, some TNCs, such as Uber, have claimed they are not covered by the Act (see the introduction to this section, above). Although that claim may or may not be true, disability advocates in some cities have taken the precaution of ensuring that local regulations for TNCs include these protections.

The new Seattle ordinance did impose some disability-related requirements on TNCs, according to Toby Olson, Executive Secretary of the Washington State Governor's Committee on Disability Issues and Employment:

- The ordinance creates an annual \$850,000 Wheelchair Accessible Taxi (WAT) fund from a \$0.10 per trip surcharge, including TNC-provided trips. The city of Seattle will work with its consumer-based disability advisory task force to determine the best way to apply the funds to cause the biggest increase in accessible taxi capacity.
- The ordinance requires that the total fare or fare range be clearly displayed on the application before confirming the ride, and that any variables that may result in higher charges—such as tips, waiting time, demand pricing, or any other surcharges—be clearly articulated before confirming the ride. This will

mean that before a TNC attempts to ask for a surcharge related to stowing a wheelchair or transporting a service animal, it would be required to describe that intent in writing to the city, and list that surcharge with a clear description on its application.⁶⁵⁹

Subpart B. Intercity Bus Service and Over-the-Road Buses

Overview

Bus travel between U.S. cities, also known as intercity bus service, is usually provided in over-the-road buses (OTRBs), defined as buses characterized by an elevated passenger deck over a baggage compartment.⁶⁶⁰ Private companies such as Greyhound and a host of others provide this service. The 2005 NCD report⁶⁶¹ described how a 1998 update of the DOT ADA regulation established requirements that new OTRBs must be accessible. Also, by 2006, 50 percent of the buses in the fleets of large companies would be required to be accessible, and by 2012, 100 percent. Following those key changes in the regulation, there was a gradual phase-in of wheelchair-accessible buses into the fleets of some, but not all, intercity bus service providers.

The 2005 NCD report quoted Janna Willardson, then general manager of Telephone Information Centers for Greyhound Lines Inc. and currently listed on a company website as the Customer Care Director of Greyhound, who made a statement on behalf of the company in October 2004. Among other issues, she described a problem Greyhound observed in a portion of the U.S. intercity bus industry:

Greyhound has cooperated with the regional carriers to provide fully integrated accessible service. We believe that these traditional carriers are making strong good faith efforts to serve disabled passengers and fully comply with the ADA. However, a new group of discount, curbside intercity bus operators has emerged, primarily in the Northeast corridor. We believe that many of these carriers make no effort to comply with either the vehicle acquisition or service requirements of the ADA. These new operators appear to be either totally ignorant of the ADA requirements, or willfully ignoring them.⁶⁶²

(For more about Greyhound, see the section on Amtrak Reservations in chapter 2, which describes the bus company’s quick resolution of a reservations website problem.)

This section on intercity bus service and over-the-road buses first addresses the ultimately successful struggle during the years before and since the publication of the 2005 NCD report to attain compliance by companies that had disregarded the ADA requirements for many years. It also explores what happened when the 2012 deadline was reached for final implementation of 100 percent fully accessible OTRBs by large carriers. The section further addresses how DOT dealt with a problem created by this deadline related to interlining, which is when multiple companies, both large and small, coordinate the issuing of tickets. Finally, the section explores some problems with accessible OTRB service, including one that arose for some passengers related to malfunctions in moving seats necessary to create accessible spaces for wheelchairs.

There are other issues with intercity bus carriers. For example, Alice Ritchhart, Transportation Committee Chair of the American Council of the Blind, described a problem for her community on intercity buses:

Blind people who are diabetics, they call the disability line and tell them, “I’m going to need to relieve my guide dog and get something to eat when we stop.” [Then] there’s no one there to help them, so that’s a big issue, especially when they are doing transfers, getting the proper assistance.

With guide dogs, they try to tell you they want you in the front seats, but there’s no room [for the dog] and they get all bent out of shape if you put the dog on the seat or he lays out in the aisle. I’ve found you can resolve that if you are an assertive blind person, but we have some people who are more timid.⁶⁶³

Curbside Carriers Disregarded the ADA for Years

In 2007, the *Washington Post*, in a Discrimination Watch column, published an article called “Hedging Your Bets—Buses Flout Rules,” which detailed guide dog discrimination in the intercity over-the-road bus service of a private company.

“No dog, no dog,” shouted the driver and another worker when District resident Joe Orozco and his guide dog tried to board a Today's Bus from Washington to New York. Orozco protested that the company is required by law to accommodate service animals, but the workers continued to block his entry and laughed, he says, when he threatened to call police. Once he called police, the workers said he could ride if the dog was put in the bottom of the bus with the luggage. They relented after police came.

When Orozco tried to board the return bus the next day, a Today's Bus employee in New York yanked his ticket away and tried to return his money. ... The bus pulled away. After Orozco called police, workers said he could take the next bus but ordered him to sit in the back. He complied, but he is filing a complaint with the Justice Department, which enforces the Americans With Disabilities Act (ADA). Today's Bus did not respond to four telephone messages left for the manager and owner.

The ADA guarantees interstate service to disabled passengers; that includes providing access, with advance notice, to people in wheelchairs. But many of the companies that pick up passengers curbside—the so-called “Chinatown buses”—simply ignore the law. In 2004, regulators checked 14 companies that operate between Washington and New York and cited 11 of them for violating the ADA. ...

[Another party] recently called Today's to ask about wheelchair access. The man who answered refused to give his name, but his answer was clear: “No wheelchair.”⁶⁶⁴

Further documenting these problems later in 2007, an Associated Press article titled “Fung Wah Ordered to Pay Damages for Refusing Service to Blind Couple” reported,

The [Massachusetts] Attorney General's office said today that it has won a discrimination complaint against the Fung Wah bus company.

Attorney General Martha Coakley said that the Massachusetts Commission Against Discrimination ... awarded a blind couple \$60,000 in damages after the discount carrier refused to sell them tickets to New York because they wanted to travel with a guide dog.⁶⁶⁵

Greyhound, unhappy to be facing competition from curbside carriers that, unlike itself, bore none of the costs of ADA compliance, started its own curbside bus service, BoltBus, operating along the eastern seaboard like other curbside carriers, between

Boston, New York City, DC, Philadelphia, and so forth. Unlike the others, however, Bolt buses were lift-equipped.⁶⁶⁶

Greyhound also deserves credit for its unceasing efforts to pressure the Department of Transportation to undertake rigorous enforcement of the ADA against noncompliant carriers. In pressing DOT to take responsibility in terms of enforcement, the interests of the larger, more traditional intercity bus providers such as Greyhound, which had made many efforts to comply with the ADA, were aligned with those of the disability community, which wanted the newer carriers that were flouting the law to comply. Greyhound applied itself assiduously to this task, working with disability community organizations and providing its lobbying muscle along with other resources. The joint efforts of this unlikely coalition eventually resulted in passage of the Over-the-Road Bus Transportation Accessibility Act of 2008, which required the Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of Transportation to enforce the ADA requirements with intercity carriers and other OTRB operators. FMCSA is the office at DOT that licenses and regulates privately operated bus carriers.

Before that Act was passed, however, FMCSA spent a number of years actively resisting any relationship to ADA enforcement, prompting the Disability Rights Education and Defense Fund (DREDF) to send a letter to DOT Secretary Mary Peters urging enforcement and describing how the disability community viewed FMCSA priorities. Referring to a positive DC Circuit Court decision that played an important role in the pressure campaign, the DREDF letter stated,

We were very pleased to see that the DC Circuit understood the importance of the ADA and the significant problems with DOT's position to date. The court rejected FMCSA's position. A concurring opinion written by Judge Tatel pointed out that FMCSA's position places "the interests of the disabled" as less important than safety, financial responsibility, noise emissions, radar detectors, records storage, and other civil rights concerns such as race discrimination.⁶⁶⁷

FMCSA inaction persisted despite congressional pressure, as stated in an October 2007 letter from Congressmen James Oberstar and Peter DeFazio to John Hill, then Administrator of FMCSA:

We write to you regarding the Federal Motor Carrier Safety Administration's implementation and enforcement of the Department of Transportation's accessibility regulations pursuant to the Americans with Disabilities Act.

We urge FMCSA to promptly amend agency policies to: (1) develop a procedure for FMCSA to investigate complaints of ADA violations in coordination with the Department of Justice; (2) institute penalties for violations of ADA regulations, including revocation of a carrier's operating authority; and (3) deny applications of new entrants when an entrant does not have lift-equipped buses and is not able to otherwise demonstrate the ability to comply with ADA regulations. If we do not receive a response within 14 days regarding FMCSA's plan to institute these changes, the Committee will pursue legislative action.⁶⁶⁸

Further congressional pressure, also resisted by FMCSA, came from a November 2007 Transportation Appropriations Conference Report, which stated,

The conferees reiterate concerns expressed in both of the House and Senate Committee reports regarding DOT's failure to enforce its own regulations requiring accessibility to over-the-road buses for people with disabilities. The U.S. Court of Appeals for the DC Circuit rejected FMCSA's assertion that it did not have the authority to deny bus operators registration based on an interstate bus company's unwillingness or inability to comply with DOT's Americans with Disabilities Act regulations, and remanded the case to FMCSA for further interpretation. On October 26, 2007, FMCSA responded by reasserting its claim that it lacks the authority to enforce DOT's own ADA regulations. The conferees find this interpretation to be mystifying, unacceptable, and deliberately evasive. It certainly calls into question the commitment of both the Secretary and the Administrator to enforcing both the letter and the spirit of Federal laws designed to protect the rights of the disabled. The conferees disagree with FMCSA that further statutory language is needed to clarify FMCSA's enforcement role in this area. Even so, given the recalcitrant stance and steadfast refusal of the Secretary and the Administrator to enforce the law on this matter, the conferees are supportive of the prompt enactment of HR 3985: The Over-the-Road Bus Transportation Accessibility Act of 2007. This bill makes clear, again, that FMCSA has the authority to

enforce compliance with DOT's ADA regulations. ... The conferees can only hope that, once this law is enacted, the Secretary and Administrator will not concoct still further evasive strategies to avoid their statutory responsibility.⁶⁶⁹

All these efforts led to a turning point with the passage of the Over-the-Road Bus Transportation Accessibility Act of 2008, which required FMCSA to fully consider ADA compliance when it grants and revokes operating authority to passenger motor carriers. This Act was not part of the ADA but rather amended the law that grants FMCSA its authority, adding the DOT ADA regulation (Part 37) to the list of items FMCSA must consider in granting and revoking operating authority. It also required FMCSA implementation within 30 days and a coordinated enforcement agreement between FMCSA and the Department of Justice within six months.⁶⁷⁰

In Recent Years, Enforcement Actions Pursued Actively

Since the passage of this Act, there has been a sharp increase in the level of positive, robust enforcement on the part of two federal agencies in cooperation: the Department of Justice and the Federal Motor Carrier Safety Administration of the Department of Transportation. The two agencies have brought more than 20 enforcement actions against OTRB transit providers, correcting issues including lack of accessible vehicles, lack of employee training, problems with wheelchair lift maintenance, failure to provide accessible service and operations, and failure to file required annual reports. (Also see chapter 4 on Enforcement. The section on DOJ/FMCSA settlements lists a number of these actions and the problems that were found and corrected.)

The 2012 Deadline: DOT Denies Extensions Requested by Large Carriers

October 29, 2012, was a major ADA deadline in the intercity bus industry and for all large private companies using over-the-road buses. According to the FMCSA website page titled ADA Guidelines for Over-the-Road Bus Companies,

A [large⁶⁷¹] fixed-route OTRB company must ensure that: (1) each new OTRB purchased or leased is accessible; (2) half of the company's fleet consists of accessible buses by October 2006; and (3) the entire fleet consists of accessible buses by October 2012. Until the fleet of a fixed-route OTRB company becomes fully accessible, it must provide accessible OTRB service to passengers with disabilities on a 48-hour advance notice basis.⁶⁷²

A DOT statement regarding over-the-road buses, e-mailed from the office of Richard Devylder, Senior Advisor for Accessible Transportation, on November 29, 2012, announced the following:

The Department of Transportation is committed to ensuring bus access for all passengers. DOT received letters from 22 companies requesting additional time to equip and configure remaining buses in their fleets to bring them into ADA compliance as they were required to do by October. After careful review, the Department denied the requests based on insufficient evidence from the companies that further delay beyond this 14-year deadline is warranted.

To help bus companies finish updates to their fleets, the Federal Transit Administration is providing \$8.9 million to 77 transportation transit providers that can be used to purchase, install, and properly operate wheelchair lifts and related equipment. Since 1999, the FTA has provided \$100 million to [bring] approximately 430 private-sector bus operators' fleets into ADA compliance by installing about 2,500 wheelchair lifts.

Bus passengers may report ADA compliance complaints to FMCSA's National Consumer Complaints Database (NCCDB) online at <http://nccdb.fmcsa.dot.gov> or by calling the toll-free hotline, 1-888-368-7238, Monday–Friday from 9:00 a.m. to 7:00 p.m. ET.

In an interview, Richard Devylder stated, "The Secretary felt the October 29, 2012, deadline was very important. He also felt that, regarding most of the companies' extension requests, they've known for 14 years about the compliance requirement, and they had 12 years to comply ... and not just that, but Congress allocated funding during that 12-year period with a total of almost 100 million dollars to assist those companies to come into compliance. So with all those things taken into consideration, the Secretary denied their requests. The legislation authorizing that funding expired in 2012."⁶⁷³

The Interlining Problem and How It Was Addressed

In late 2012, DOT released “Guidance on Interline Service and Notice to Passengers,” which addressed a Catch-22 in the DOT ADA regulation that affected some OTRB passengers when multiple bus companies, both large and small, coordinated the issuing of tickets.

The guidance explains, “An interline trip involves a passenger purchasing a ticket or making a reservation with one operator for a fixed-route trip of two or more stages in which another operator provides service for one or more of the transportation stages. For example, a passenger goes to the ticket office of Operator X, a large, fixed-route operator, and buys a ticket from Point A to Point C. The ticket provides for the passenger to transfer at Point B to a bus operated by small, fixed-route Operator Y. This arrangement is an interline trip.”

The guidance continues,

Under the [DOT ADA] regulations, large, fixed-route OTRB operators are required to have 100 percent of their fixed-route fleets readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, by October 29, 2012. However, small, fixed-route operators and demand-responsive operators do not have a parallel fleet accessibility requirement. Consequently, many or most of these small and demand-responsive OTRB operators that are not subject to the October 29 deadline may not have fully accessible fleets by October 29, 2012. By law, such operators can [still] require up to 48 hours’ advance notice to provide accessible service.

If a passenger buying a ticket for an interline trip does not realize that a small operator involved may need 48 hours to get an accessible bus for its portion of the journey, the passenger requiring the accessible bus may be unable to complete the trip in a timely manner.

This guidance applies to all large, fixed-route OTRB operators (companies) engaged in interline service.

[DOT] believes that a passenger with a disability who purchases a ticket or makes a reservation for an interline trip that will connect to a small, fixed-route over-the-road bus (OTRB) operator should, at the time of booking, be notified that the small carrier may require 48 hour advance notice in order to provide an accessible bus and, if there is less than 48 hours at booking, of the possibility that an accessible bus may not be available at his or her transfer point to complete the subsequent leg of the trip.

This notice is intended to help prevent a situation in which a passenger traveling from Point A to Point C is unexpectedly stranded at Point B. To avoid such a situation, when a passenger [who is] booking an interline trip connecting with a small operator visibly appears or self-identifies as someone with a disability requiring an accessible bus, the large operator should inform the passenger that the small operator may require 48-hour advance notice to provide accessible service. To help inform the public, one way large operators could provide this notice is on their Web sites.

[DOT] believes that large operators engaged in interline service should notify the public (e.g., on its Web site [or in] promotional materials), in a manner that is readily accessible to and usable by people with disabilities, of the possibility that small operators may require 48-hour notice for accessible service, identify all routes that may be affected by this advance notification requirement, and provide this information at the time that the passenger books the trip.

Interline service requires communication among the different bus companies. When a passenger with a disability reserves or purchases a ticket for an interline bus trip, the primary operator must arrange for an accessible bus to be provided for each of the subsequent stages of the trip by communicating with the other operators involved with the trip. Subsequent operators have a responsibility to maintain open channels of communication and pay attention to communications received from booking operators.

If passengers are informed of the 48-hour notice requirement for small operators involved in interline trips, they could reserve later trips, make alternative travel arrangements, or research overnight accommodations at their transfer points in the event they are informed that the small operators cannot provide accessible buses at the time requested and they may need to wait overnight or longer for accessible service.⁶⁷⁴

Some disability advocates have encouraged a stronger, more straightforward approach. Only a handful of large OTRB companies engage in interlining, and when they do it is

ongoing; meaning that, for example, the Greyhound or Trailways trip from DC to Vermont either uses interlining or it does not. It would be easier for the public if Greyhound and the other large carriers made clear on their websites that particular trips use interlining service with another company that might qualify as a small carrier, for which advance notice might be needed, with 48-hour notice preferred. The advocates point out that the term should be “preferred,” rather than “required,” because the DOT ADA regulatory provision for 48 hours is not a hard-and-fast rule: Less than 48 hours’ notice still requires a good faith effort by the carrier to provide an accessible bus. Forty-seven hours should not present difficulty. It is also unlikely that 24 hours would present difficulty.⁶⁷⁵

“Asking for Notice Is Passé”

After the October 2012 deadline for large OTRB companies, which began requiring 100 percent accessible bus fleets, the 48-hour advance notice requirement that had been previously allowed to these companies expired. No longer were the companies allowed to require passengers with disabilities to provide advance notice of the need for a lift-equipped bus. As stated above, the 48-hour advance notice provision was a temporary one:

*Until the fleet of a fixed-route OTRB company becomes fully accessible, it must provide accessible OTRB service to passengers with disabilities on a 48-hour advance notice basis.*⁶⁷⁶

As expressed by *Transit Access Report*, “DOT Maintains, for the Record, That Asking for Notice Is Passé.” In May 2013, this periodical reported that it asked DOT whether, for a large fixed-route carrier, requesting advance notice of the need for a wheelchair-accessible bus was still allowed. DOT replied that the allowable request for notice is limited to situations in which the large carrier is interlining with a small carrier. The DOT response included these points:

The OTRB fleet used by large operators to provide fixed-route service is required to be 100 percent wheelchair-accessible. Consequently, the interim 48-hour advance notice rule (49 CFR § 37.193) no longer applies to this kind of service provided by large operators. As you note, however, the Department did provide guidance to large operators providing minimal relief for operations completed pursuant to interline agreements with small operators. Pursuant to the guidance, only in these limited situations, large operators may recommend that passengers confirm availability of a wheelchair lift-equipped bus at least 48 hours before scheduled travel.

Transit Access Report also observed that some companies still have policies requiring advance notice—on their websites, for example. Yet after a certain point, it reported,

Greyhound ... appears to have moderated its position.

On its website, visited May 27, 2013, Greyhound now advises passengers with disabilities as follows:

“With advanced notification, Greyhound can better meet the service needs of all customers with disabilities, including people who travel in wheeled mobility devices. Advanced notice is not required, including for a lift-equipped bus for those who wish to travel in a wheeled mobility device; however, each bus can only accommodate two passengers traveling in a wheeled mobility device, and there are capacity limitations on every bus for all passengers. Advanced notice will help us serve you better.”⁶⁷⁷

In June 2013, the journal reported,

The U.S. Department of Justice has forced DeCamp Bus Lines, a private operator of bus service based in northern New Jersey, to stop saying it requires advance notice for service on a wheelchair-accessible bus.

The DOJ clamped down on DeCamp, apparently to make an example for the over-the-road bus industry, even though DeCamp’s entire fleet of motorcoaches is said to be wheelchair-accessible. ...

The Department of Transportation maintains [that notice] should not be [asked for], except to warn passengers [that] they may have to give notice if connecting to a small carrier. ...

As a large fixed-route OTRB operator, the bus line was required under ADA regulations to have a fully accessible fleet by October 29, 2012.⁶⁷⁸

Industry Bemoans Low Ridership and Requests Further Relief

In 2013, DOT sought comments on a Notice of Retrospective Review of the Americans With Disabilities Act Regulations for Over-the-Road Bus Operators.⁶⁷⁹ Many intercity bus companies and other companies with fleets of over-the-road buses urged a weakening of DOT ADA requirements.

For example, Eugene J. Berardi Jr. submitted these comments on behalf of Adirondack Trailways, Pine Hill Trailways, and New York Trailways on April 26, 2013:

Based upon [a number of conditions including] the elimination of federal funding to underwrite the capital cost of an already unreasonable expense, increasing the annualized cost per capita—for each Trailways wheelchair lift use—from an unreasonable \$2604 to an unsustainable \$3942. ...

Trailways has received 82 requests for accessible OTRB service with a minimum of 48-hour advance notice.⁶⁸⁰

Adirondack Trailways wanted DOT to weaken its ADA regulations by reinstating the 48-hour advance notice and to restore funding. All of its buses are accessible at a claimed cost of \$35,000 each, in addition to “significant” maintenance costs. The comment further stated,

There are motorcoach operators who deliberately avoid carrying passengers with disabilities and who, when called on to provide such service, frankly and illegally tell the passengers to “call Greyhound or Trailways” or any other legitimate, ADA-compliant carrier.⁶⁸¹

Many industry groups, such as Trailways, requested that DOT funding of the OTRB industry continue. Their statements stunned some disability advocates who reviewed the docket. Toby Olson, Executive Secretary of the Washington State Governor’s

Committee on Disability Issues and Employment, pointed out that, unlike other industry groups, the OTRB industry “persists in complaints after having solicited and received \$100 million in federal funding to underwrite their access expenditures. Other than some relatively modest tax incentives, no other industry covered by any part of the ADA has had its compliance subsidized.”⁶⁸²

Other organizations submitting comments to the DOT docket took a different viewpoint from that of the industry. For example, the Open Doors Organization (ODO), a nonprofit disability organization dedicated to improving travel and tourism for people with disabilities, which has conducted extensive ADA motorcoach training, drew from this experience an entirely different perspective on low ridership in the private OTRB industry. It agreed with only one point in the industry comment: that when ODO members call some companies to request an accessible bus, they are flatly turned away. “[They have told] us that we could ride only if we could put our wheelchair under the coach and climb the steps.” The ODO comment continued:

Open Doors Organization is not disputing the fact that ridership by the disability community, at least with regard to use of lift-equipped OTRBs, has been low. But we would argue that there are clearly a number of reasons for this [that] in large part stem from within the motorcoach industry itself.

1. **Lack of outreach by motorcoach operators.** Very few bus company websites or promotional materials include any information for customers with disabilities or mention the availability of lift-equipped coaches. ... Not surprisingly, both the traveling public and charter customers remain ignorant with regard to the growing availability of lift-equipped vehicles. ... Historically there was great animosity in the [disability] community due to the industry’s resistance to the ADA, and no welcome mat has been put out since.
2. **Discriminatory behavior by chartering parties.** More people who need lift-equipped service would be traveling and demand would be higher if institutions of all types—tour operators, museums, libraries, alumnae associations, schools, etc.—were not turning them away. Some still believe that an accessible coach would cost more, but most simply do not want to slow down the tour or ensure that the attractions and accommodations needed for these customers are accessible.

3. ***Lift-equipment problems and failures.*** Lifts remain unreliable and also are unpleasant to use. Not only are they prone to failure, but drivers often lack training and experience in operating lifts. Once a person has been stranded or delayed due to a lift failure, they are less likely to travel by bus again and will also tell all their friends not to do so. Most, however, would not bother to complain. Even when lifts work well, riders state that they feel like a spectacle with the loud beeping and the stares that they draw. Bus operators tell us that many of their older customers who should be using lifts prefer to drag themselves up the steps and store their walkers and scooters under the coach.

Now that FMCSA has begun to enforce the ADA in the motorcoach industry, we at ODO are hopeful that this vicious circle of low outreach, low demand, and poor service will finally be broken. More operators are now becoming aware not only of their obligations but also of the untapped potential of the market, which includes many people with other types of disabilities, not just reduced mobility.

... It is clear that improvements in coach and lift design are also needed.

One issue that does need to be addressed now is interlining between large and small fixed-route companies. There should be a requirement for companies to self-identify as large or small. At present, customers have no way of knowing which companies are 100% accessible and which are still operating under the 48-hour rule. This confusion and the problems that can result may also discourage ridership.

Another issue causing confusion in the [disability] community is operation of coach services under the aegis of brands which do not fall under oversight by FMCSA. For example, BoltBus advertises on its website that its coaches are 100% accessible, but its new Long Island service is using mainly coaches that are not lift-equipped. This is completely misleading to the public and doubtless will discourage future ridership when patrons expecting a lift-equipped coach cannot be accommodated and are left behind.

Other Issues and Problems with Intercity Bus Service

A number of other situations and conditions impact people with disabilities as passengers or potential passengers desiring intercity bus service. Among them are bus boarding denials and difficulty in moving seats, as discussed below.

Boarding Denials

Although large intercity bus operators have stated that they have met the overwhelming preponderance of advance-notice accessible bus requests, some complaints of service denials by wheelchair users have arisen. It is difficult to assess how frequently they occur.

For example, a 2010 Megabus complainant was not given the option to sit in the wheelchair securement space, as cited in the 2011 Megabus settlement agreement with the Department of Justice:

This matter was expanded by a complaint, received September 21, 2010, alleging that on September 11, 2010, Megabus provided noncompliant service. The complainant alleges that on a return trip from New York, N.Y., to Baltimore, Md., despite his wife having made a reservation on August 18, 2010, and reminding the New York, N.Y., station agent of their need for an accessible vehicle that morning, he was not provided with use of the ramp upon boarding or alighting the vehicle.⁶⁸³ Upon boarding, rather than being able to remain in his wheelchair and to ride in the securement area, he was assisted by Megabus personnel to a seat, and upon alighting he was lowered off the vehicle without the use of the ramp.⁶⁸⁴

Another complainant, Darrell Price, a disability advocate from Dayton, Ohio, and member of ADAPT, a national grassroots disability rights organization known for its successful transportation advocacy culminating in the transportation requirements of the ADA, sent the Department of Justice a complaint about Greyhound on January 6, 2012, which read, in part,

I called their travel assistance number for passengers with disabilities ... to request a lift-prepared bus on Friday, December 16, 2011, at 8:05 AM regarding my trip scheduled for 4:45 PM on December 23rd. At that time I was told that I must call back on Saturday, December 17, after 4:45 PM, since my initial call was before the 7-day advance notice policy. I called back on Saturday, December 17 after 4:45 PM, as requested, and was verbally given control number AG429316 to confirm my request. ...

After my return on January 1, 2012, I found [a] request confirmation from Greyhound in my mail. Please note the following apparent errors and omissions in Greyhound's document: 1. No control number provided for the request as provided to me verbally by phone; 2. my phone number area code is listed as 737, although I provided area code 937, as the agent I spoke to on the 17th stated was already on file with Greyhound as a result of similar requests for previous trips; 3. Greyhound's documentation states that the date and time of the request was 12/17/2011 at 4:05 PM, not after 4:45 PM as my call on Friday, December 16, 2011, at 8:05 AM stated was required. ...

This apparent inconsistency from Greyhound regarding the required time frame for my request, the lack of request control number on the Greyhound confirmation letter, the error in documenting my phone number, and the fact that it took longer than seven days for me to receive the Greyhound documentation so that I could use it to verify Greyhound's accuracy of my request all appear to demonstrate errors, inconsistencies, and inefficiencies in Greyhound's request process that contribute to a lack of effective compliance with wheelchair accessibility requests. ...

When the bus ... arrived at the station near the scheduled departure time of 4:45 PM, the driver stated that she was not informed of my accessibility request, and that the bus was not prepared for me to board by wheelchair lift. She spoke to the other staff at the station, who confirmed to her that my request was on file, despite her statement that she did not receive notification of my request in order to have it ready upon arrival at the station, as Greyhound promised it would be. The driver appeared frustrated that she was not informed and unsure about how to resolve the situation. I asked her what to do and she stated that I could receive "a lot of money" if I complained about the incident. After further conversation with other staff at the station I was told that the bus could possibly be made accessible at the station. But from several previous experiences I have had with errors on accessibility requests of Greyhound ... , I know that this could result in even further significant delay in departure time which was not an option for me due to concerns about losing or significantly delaying arrangements already made for travel to my final destination after arrival at the Greyhound Cleveland station. Therefore I felt I had no choice but to climb up the bus steps in order to ensure the bus arrived at the destination on time.

Difficulties in Moving Seats

Design issues on accessible over-the-road buses, as well as maintenance and training issues, have and perhaps still do lead to problems in providing accessible service.

While the two examples presented in this section relate to Greyhound, that does not necessarily mean this is a one-company problem. Greyhound is the largest intercity bus provider in the United States by far. In view of the nature of this problem, it likely occurs across the OTRB industry.

In one example, a person needed a bus ride from Butte, Montana, to Spokane, Washington, for school in 2009. Although she gave two days' notice of her need for an accessible bus and the driver arrived with an accessible bus, he reportedly refused to help move the seats to accommodate her wheelchair and told her that the only way he could transport her was for her to walk up the steps or be carried. It appeared that the driver either did not know how to move seats to accommodate the passenger or, because he was running late, he chose not to do so. This led to a complaint filed against the company on her behalf by Disability Rights Montana with the Montana Human Rights Bureau.

Greyhound later maintained that the driver tried to move the seats with the help of three passengers, but the seats malfunctioned, likely due to debris in the tracks that the seats move on. The driver's supervisor in Seattle said that moving seats on the bus malfunction "all the time" due to stray candy in the tracks and other reasons, suggesting that this could be a systemic problem. Regardless, the inability to create a wheelchair space on this "accessible" bus denied the person a ride.

According to an August 2010 Disability Rights Montana publication titled *The Bridge*, in the article "Left in the Dust,"

... a regular maintenance procedure would ensure that the seats could be moved when necessary. ... After the [Human Rights Bureau] issued its finding, Greyhound agreed to pay the wheelchair user \$15,000 in damages and attorney fees, provide disability training for the bus driver, train all drivers with routes in Montana about the accessibility features of the buses, and require drivers to test the accessible features of buses traveling through Montana at the beginning of the driver's route.⁶⁸⁵

An earlier example was reported by ADAPT member Jennifer McPhail regarding an experience in December 2007. Going from Austin, Texas, to Laredo, this rider needed two wheelchair spaces, but there were difficulties in creating the spaces on the bus, although it was classified as an accessible OTRB. McPhail also reported rudeness, disrespect, and uninformed personnel. She said that problems like this started when Greyhound began to contract for rides with another company, Americanos, which had what McPhail called “one-seater” OTRBs and had not adequately trained its staff. She also mentioned maintenance issues related to the seat-moving problem.⁶⁸⁶

The very design of accessible over-the-road buses may lead to these problems. Rather than having permanent wheelchair securement areas, the space on accessible OTRBs is otherwise utilized until the wheelchair space is needed, similar to what is done on ordinary city buses with flip-down seating. However, the design on OTRBs features seats that flip up for several rows, all mounted on a track. The seats slide in order to compress down, making an open wheelchair securement space available. This is how the first wheelchair securement area on an OTRB is created.

Creating the first wheelchair securement area is relatively simple, compared to what is required to create the second one. That requires not only compressing the seats but also removing a table. Because it is unusual for drivers to encounter a situation in which two wheelchair users unexpectedly turn up, most of them do not necessarily remember the exact procedure for creating two wheelchair spaces. This issue underscores the need for training and, possibly, for redesign.

The companies appear to be learning that when they were allowed to request advance notice, these changes could be made in advance in the garage rather than while passengers are waiting to board. Moreover, the opportunity for rearranging the seating in advance kept those seats from being occupied by nondisabled people who might later need to be asked to move.

Ordinary city buses, which are not high-floor OTRBs with baggage compartments underneath, have been extensively redesigned over the past few decades to develop

more workable configurations. The same approach may be needed for wheelchair seating on over-the-road buses.⁶⁸⁷

Chapter 11 recommendations are listed at the end of the report.

Recommendations

Overall Recommendations

1. All transportation providers must comply with the requirements of the Americans with Disabilities Act (ADA). They should establish policy and conduct training to ensure their proper implementation.
2. All federal agencies that enforce any aspect of the ADA transportation requirements should enforce them thoroughly and robustly, and take the initiative to undertake robust compliance oversight activities, such as compliance reviews, to ensure that the ADA is implemented properly.
3. Congress should undertake oversight activities to ensure compliance with the ADA transportation requirements, as well as proper implementation.
4. Transit agencies and other stakeholders should follow all the best practices identified in this report.

Recommendations by Chapter

Chapter 1. Fixed-Route Bus Transit

1. Fixed-route bus transit agencies must follow DOT ADA requirements and should follow best practices on equipment maintenance.
2. Transit agencies should allow undercover monitoring (secret rider programs) of bus service to identify pass-bys, failure to make stop announcements, problems using kneelers and securement systems, and so forth.

3. Riders should help transit agencies maintain accessibility equipment by asking drivers to radio in any lift or ramp breakdowns; noting the stop location, time, route number, and bus number when this occurs; asking for alternative service if the headway to the next bus exceeds 30 minutes; asking other people who may have observed any problem whether they are willing to serve as witnesses; and informing the bus driver and transit agency about any other access equipment problems.
4. The U.S. Access Board should maintain its proposed 1:6 maximum bus ramp slope.
5. Fixed-route bus transit agencies must follow DOT ADA requirements, and should follow best practices on stop announcements and route identification.
6. Riders should help transit agencies promote effective stop announcement and route identification programs by participating in the development of stop lists and announcement procedures, informing the transit agency if stops are not called or automated announcement technology malfunctions, and undertaking other efforts to support an effective stop announcement program.

Chapter 2. Rail Transit

Subpart A. Level Boarding and Other Rail Recommendations (Non-Amtrak)

1. Rail transit agencies should provide full-length platform-level boarding at all stations.
2. Rail transit agencies, in the rare instances where full-length platform-level boarding is impossible for reasons such as sharp curves or other civil engineering constraints, or where it cannot be provided because the track is

shared with freight rail, should research, plan, fund, and implement setback platforms that offer significant boarding advantages for people with disabilities. Setback platforms are not the same as mini-high platforms. They are larger than mini-highs, offer integrated boarding solutions for everyone, and may make double-stopping unnecessary.

3. Congress should, as it has for Amtrak, set aside funds specifically for achieving station accessibility on rapid rail (subways) where it does not yet exist, including platform connectivity, detectable warning installation, elevators, ramps, and full-length platform-level boarding. There should be clear objectives, deadlines, and outcomes analysis to achieve full and timely accessibility.

Subpart B. Amtrak

1. Amtrak must complete what was required for ADA compliance by 2010: provide a fully accessible intercity passenger rail system with accessible cars, platforms, and stations. Train cars must provide full accessibility as required by the ADA, including equivalent and accessible passenger amenities, sleeper cars, and restrooms.
2. Amtrak should provide full-length platform-level boarding at all new or rehabilitated stations, making use of technical solutions that accommodate freight traffic where necessary. Amtrak should provide full-length platform-level boarding or setback platforms at all stations.
3. Amtrak must prioritize removing significant barriers to station accessibility, including steps with no ramps, narrow doors, high thresholds, lack of accessible parking spaces, barriers to accessible routes, and lack of detectable warnings on platform edges. All stations must provide full connectivity from both sides of the track to all Amtrak facilities, such as stations and parking, and to the public right-of-way.

4. Amtrak must provide electronic train information equipment and must train and require station staff to use the equipment to provide dual mode communications on Amtrak trains, on platforms, and in stations.
5. Amtrak must provide full accessibility to the Amtrak website and telephone reservation system for people with disabilities.
6. Amtrak Thruway Bus Service must comply with all ADA requirements and provide accessibility for people with disabilities, including people with communication disabilities and mobility disabilities.
7. Amtrak should follow the recommendations in the 2009 Office of Inspector General (OIG) report to restore OIG independence to investigations of Amtrak.
8. Congress should use its funding authority to enforce accessibility requirements for Amtrak.
9. Congress should require full-length platform-level boarding at all Amtrak stations in order to increase accessibility for all people to Amtrak trains.
10. Congress should hold hearings to bring attention to the failure of Amtrak to meet accessibility requirements at its stations, on its platforms, in its trains, and throughout its provision of services.
11. Congress should include strict accessibility requirements in the next Amtrak reauthorization, with consequences for failure to meet them.
12. The Department of Justice Disability Rights Section and the Department of Transportation Federal Railroad Administration should meet with Amtrak to develop a plan to achieve prompt, full ADA compliance.

13. People with disabilities should ride on Amtrak trains, despite the accessibility problems, as Amtrak needs to see that such people are an important part of their market. Riders should report and file complaints with the DOJ Disability Rights Section, the DOT Federal Railroad Administration Office of Civil Rights, and with Amtrak itself if they encounter barriers at stations, on the Amtrak website, and onboard Amtrak trains.

Chapter 3. ADA Paratransit

1. Transit agencies, government agencies, and transportation associations should include in their discussions of the future of ADA paratransit the research findings that dispel the myth of runaway growth. A number of studies now suggest that the aging of America will not necessarily lead to explosive growth in ADA paratransit demand. Some studies suggest a plateau in demand, as well as a possible future in which demand decreases rather than grows.
2. Transit agencies, government agencies, and transportation associations should properly apply the ADA rules concerning the commuter bus exception, which do not exempt many systems that claim the exception. They should apply the general rule of thumb that commuter service is not designed to provide service all along a particular corridor but rather between destinations that are more distant from one another.
3. Transit agencies should share the commuter bus definitions and characteristics with their communities, including the disability community, and seek public input on designation of their services. In cases in which the proper designation is unclear, the community, including the disability community, should be involved in the determination.

4. Transit agencies that claim the commuter bus exception but do not meet the ADA criteria should immediately plan and carry out a prompt transition to providing ADA paratransit service.
5. The Federal Transit Administration should interpret the commuter bus exemption rules scrupulously and engage in enforcement actions when the exception is used inappropriately.
6. Riders with disabilities and local organizations that represent them should challenge transit agencies' commuter bus route designations if they do not agree with how a route is designated and if enforcers do not act.
7. Before transit agencies can provide accurate ADA paratransit eligibility determinations and before they can expect their riders with disabilities to use ADA paratransit appropriately, the agencies should, at a minimum, ensure that their fixed-route systems are accessible to people with disabilities in the following ways:
 - a. Vehicles designated as accessible must meet ADA design standards.
 - b. Stations and bus stops advertised as accessible must meet ADA design standards.
 - c. Lifts, ramps, elevators, and other accessibility features must be maintained in good working condition.
 - d. Onboard stop announcements and external route identification announcements must be made properly.
 - e. Employees must be trained to proficiency to safely operate accessibility equipment, provide appropriate assistance to riders with disabilities, and serve disabled riders in a respectful and courteous manner.

- f. Service to people with disabilities must be monitored to ensure that ADA policies and procedures are followed.
8. Transit agencies should reach out to the disability community to involve its members in the development and implementation of any changes to the ADA paratransit eligibility process and other ADA paratransit policies, as well as in efforts to promote increased use of fixed-route service.
9. Disability advocates should take advantage of opportunities for involvement with their local transit agency and should seek such opportunities if the transit agency does not provide them. Advocacy efforts to obtain such opportunities may be an effective way to improve transit service for people with disabilities.
10. Transit agencies should compensate disability advocates for their time, when appropriate. When the involvement is extensive, requires considerable commitment or expertise, or provides a tangible benefit to the transit agencies, the agencies should compensate disability advocates, just as they would pay any consultant who renders a service.
11. Transit agencies should ensure that they are taking full advantage of the experience and expertise in ADA paratransit eligibility of the Federal Transit Administration, the Transportation Research Board, the National Transit Institute, Easter Seals Project ACTION, and nationally recognized ADA paratransit operators, planners, and researchers in the following ways:
 - a. Sending staff to the National Transit Institute course on Comprehensive ADA Paratransit Eligibility (<http://www.ntionline.com/courses/courseinfo.php?id=8>).
 - b. Following the ADA requirements and best practices in the recommended written resources by the Federal Transit Administration,

Transportation Research Board, Easter Seals Project ACTION, and Disability Rights Education and Defense Fund.

12. Transit agencies should establish policy and conduct training to ensure that employees are aware that inaccessible bus routes and bus stops, as well as inadequate stop announcements, are important triggers for ADA paratransit eligibility.
13. When transit agencies determine that a person is conditionally eligible, they must identify all conditions that affect travel. Omitting any condition will inappropriately limit rider eligibility. The FTA has found in ADA compliance reviews that some transit providers did not adequately consider path-of-travel barriers, weather, and other possible issues in setting conditional eligibility.
14. Transit agencies should base ADA paratransit eligibility decisions on the most limiting condition of each applicant.
15. Transit agencies must consider the potential travel of each applicant during all seasons and throughout the entire transit agency service area, not only near the home or workplace.
16. Transit agencies must consider variable conditions, such as multiple sclerosis, which may change the ability of an applicant to travel at various times. Similarly, agencies must consider underlying conditions that negatively affect a person's functional ability to use fixed-route service, such as disorientation, fatigue, and difficulties with balance. For example, people undergoing dialysis often experience disorientation and fatigue after treatments. Difficulties with balance may prevent applicants from using the fixed-route system because they cannot walk to, stand, and wait at a bus stop, or stand up and hang on once they are on the bus or train (because a seat cannot always be guaranteed).

17. To conduct eligibility and route assessments, transit agencies should use staff members who are proficient in assessing functional ability to use the fixed-route service and evaluating barriers to travel.
18. Transit agency eligibility assessments should be conducted to ensure that applicants who are considered able to travel certain distances must be able to travel those distances with reasonable effort and in a reasonable amount of time.
19. A transit agency must not deny or limit eligibility for paratransit simply because a rider lives near a bus route and is able to reach it. Transit agency policy and staff training should accommodate the fact that not all trips an applicant might wish to make will begin at home. The environmental conditions around each fixed-route stop, whether at the trip origin or destination (such as the existence of curb cuts, obstacles in terrain, or accessibility of intersections) are not necessarily identical to those around the stop that is closest to one's home. Denying or limiting an applicant's paratransit eligibility outright for all trips based on proximity to a particular bus stop is unreasonable, as it does not take into account all the obstacles an applicant can expect to encounter when traveling throughout a transit agency's complementary paratransit service area during the entire term of his or her paratransit eligibility.
20. Transit agencies should establish policy and conduct training that emphasizes the likelihood of barriers existing in most or all communities that would prevent fixed-route travel at some point during the term of eligibility of applicants with significant disabilities. People who are blind, those who use wheelchairs, and those who have other significant disabilities will likely receive at least conditional eligibility in any accurate paratransit eligibility determination process.

21. Transit agency ADA paratransit eligibility assessments should carefully consider the input of medical professionals who know the applicant.
22. If transit agencies use seasonal eligibility, it is important to set the date range conservatively, so a late snowstorm does not render a seasonally eligible person unable to travel.
23. Transit agencies must not deny eligibility based on blanket decisions about a certain type of disability. Some transit agencies have denied eligibility to most or all riders who use motorized wheelchairs, to all blind people under certain conditions, or to people with intellectual disabilities or mental illness, rather than making case-by-case evaluations. Such practices will inevitably lead to violations of the ADA.
24. Transit agencies should establish policy and conduct training that, for certain riders, only the rider can decide whether fixed-route is an option for a particular trip. This is true if a rider's functional abilities are variable, including some people with multiple sclerosis or with psychiatric disabilities that vary from day to day. These riders may not know until the day of service whether they will be able to get to and from, and use, the fixed-route bus or train.
25. Transit agencies must not require travel training or base eligibility decisions on the potential of an applicant to be successfully trained to use the fixed-route service. Decisions must be based on actual current abilities to use the bus or train.
26. Transit agencies should follow the best practice to provide temporary eligibility to people who voluntarily enter travel training, because there may be trips they can make by fixed route at the end of the training that they could not make beforehand. Temporary eligibility is appropriate when there

is reason to believe that an applicant's travel abilities might change in the short term.

27. Transit agencies should reassess applicants before temporary eligibility expires, because they might still need ADA paratransit.
28. Transit agencies must not establish a policy that ADA paratransit applicants are not eligible if they have ever used the fixed-route system. Some transit agencies have asked on the application form "Have you ever used fixed-route service?" If the applicant marks "yes," this response is used as a basis to deny eligibility. Use of the bus or train under certain conditions does not mean a person can use the bus or train consistently throughout the service area under all conditions. An accurate assessment might show that such a person would be conditionally eligible for paratransit.
29. Transit agencies should establish policy and train their staff to recognize that, while public safety is generally not a factor in determining ADA paratransit eligibility, riders must possess certain personal safety skills to safely and independently travel in the community. These skills should be considered in eligibility determinations.
30. If a transit agency has not made a determination of ADA paratransit eligibility 21 days after the submission of a completed eligibility application, the applicant must be treated as eligible and provided with service unless and until the transit agency denies the application. It is not enough to include this information in a rider's guide or in general public information. It must be included in the materials sent to applicants. The agency has an obligation to take affirmative steps to notify riders of this right to service.
31. Transit agencies should establish policy and conduct training that some disabilities cannot be evaluated by functional assessments, such as seizure

disorders, psychiatric disabilities, and variable conditions such as multiple sclerosis.

32. Transit agencies should use appropriate professionals to perform functional assessments. Physical therapists, occupational therapists, or professionals with similar qualifications should conduct physical functional assessments. Only orientation and mobility specialists should conduct assessments for people with significant vision loss (legal blindness or greater).
33. Transit agencies should establish policy and conduct training to ensure that, while accuracy and thoroughness are of great importance, the eligibility determination process may not be overly burdensome for applicants. For example, if applicants must travel to and from interview or assessment sites, they should not be asked to make more than one trip.
34. Transit agencies should establish policy and conduct training that, although the agency may require that appeals be filed within 60 days of an eligibility denial, if an applicant misses this deadline, he or she may reapply for eligibility at any time and then, if denied again, may file an appeal.
35. Transit systems that have developed thorough ADA paratransit eligibility determination processes should provide long-term eligibility to unconditionally eligible riders whose functional ability is not expected to change, to eliminate unnecessary inconvenience to the riders and lower the costs of eligibility determination.
36. ADA paratransit service providers are required by the ADA to plan to meet 100 percent of the demand for next-day ride requests.
37. ADA paratransit providers should consider causes of operational problems excusable only if they are truly beyond the control of the transit agency. A transit agency is expected to anticipate recurrent traffic congestion,

seasonal variations in weather, and the need to maintain vehicles. Once a seemingly unforeseen pattern develops, the recurring event becomes foreseeable, and the transit authority can no longer claim that the matter is beyond its ability to address.

38. Transit agencies must, under the ADA, provide next-day service in ADA paratransit. Some ADA paratransit programs still require reservations 24 hours in advance or even earlier, which is not in compliance with the ADA next-day service requirement.
39. If an ADA paratransit provider offers a trip that is outside the 60-minute negotiation window, it must be counted as a trip denial, even if the rider accepts the trip.
40. If an ADA paratransit provider can only schedule one leg of a trip but not the return trip, it must be counted as two denials.
41. Transit agencies are not allowed to have waiting lists for ADA paratransit, other than for access to subscription service. If an eligible rider is told that no trip is available but one might become available (a so-called standby), this is considered a type of waiting list and is forbidden by the DOT ADA regulations.
42. Transit agencies must design and implement their systems to achieve minimal telephone wait times.
43. Transit agencies should establish policy and conduct training that recognizes two basic methods to measure and monitor ADA paratransit telephone hold times: maximum allowable hold time and hourly average of hold times. The best way is to establish standards for the maximum allowable hold time and then measure the hold time for each caller.

44. Some transit agencies do not have the technology necessary to measure hold times using the maximum allowable hold time approach. In that situation only, the transit agency will need to measure the *hourly* average of its hold times.
45. Transit agencies should establish policy and conduct training that measuring telephone hold times by the maximum allowable time is superior to measuring the hourly average. The maximum approach is more straightforward, simpler to calculate, and more transparent. Measuring by maximum enables transit agencies to accurately identify instances of overly long individual hold times.
46. Transit agencies should establish policy and conduct training that telephone hold times for calls to dispatch (“where’s my ride” calls) are just as important as reservation hold times, if not more so. Hold times should be at least as short as those for reservation calls. Riders making these calls cannot wait for lengthy periods while they are attempting to obtain updates on pickup information.
47. Transit agencies should provide professional, courteous, and honest information, in a patient manner, to passengers who call the “where’s my ride” line. Accurate details of a vehicle’s estimated time of arrival provided with empathy set the tone for a good customer service experience. Calls should be answered quickly. Upon answering, an agent should give his or her name and department and ask, “How can I be of assistance?” An apology should be readily offered when appropriate.
48. Transit agencies should provide callers with the most recent known location of their vehicle, the number of other stops before the caller will be picked up, the estimated time of arrival, the vehicle number, and any other identifying information, such as vehicle type and any identifying name on the vehicle. Transit agencies should not placate riders with a stock answer

such as “It will be 10 minutes” or “Your driver is around the corner.” It is preferable to give an updated estimated time of arrival and to confirm the exact location where the passenger will be waiting. Agents should then ensure that the driver receives the information.

49. Transit agencies should minimize secondary holds as much as possible. If there are any secondary holds during “where’s my ride” calls, a staff person should check with the caller frequently—at least once a minute—to let him or her know that the question is still being addressed.
50. Transit agency phone lines for ADA paratransit reservations and dispatch should have no busy signals.
51. Transit agencies should not place limits on the number of trips a caller can arrange on a single telephone call. Such limits can increase hold times because of the need for additional customer calls and can be burdensome for riders.
52. Transit agencies should train ADA paratransit call takers to provide equal communication accessibility to people with speech impairments placing voice calls and to people with speech and hearing impairments who place their calls on a TTY or through a TTY relay service. Telecommunications equipment should be maintained in working order. Staff should be trained to use both TTYs and the relay service.
53. Riders should help the transit agency reduce telephone hold times by calling during off-peak times whenever possible and by checking on rides only when they are actually late.
54. Transit agencies that adopt a policy of curb-to-curb service as the standard service mode must provide additional assistance to riders who need it on the basis of disability. On a case-by-case basis, ADA paratransit providers

are obliged to provide an enhancement to service when it is needed to meet the origin-to-destination service requirement. Transit providers are not required to take actions that would fundamentally alter the nature of the service or create undue burdens. Drivers are not required to go beyond the doorway of a building to assist a passenger, to leave their vehicles unattended for lengthy periods, or to lose the ability to keep their vehicles under visual observation.

55. If transit agencies are concerned that riders who remain on the vehicle will put the vehicle into motion, they should determine how vehicles can be secured if the driver leaves for a short period or establish a policy that drivers must keep vehicles in sight if other riders are on board. If there are no other riders or the driver can secure the vehicle, the line of sight is not necessary.
56. Transit agencies should establish policy and conduct training that, even for ADA paratransit providers with clear policies, situations that lie outside the policy often can be accommodated informally with riders. For example, if parking is unavailable, riders sometimes arrange for a nearby location where the van can reach the curb or exit from the street.
57. Transit agencies are encouraged to consider other local door-to-door policies based on actions drivers can safely perform. The most common is “door-to-door and will assist riders who use manual wheelchairs up or down one step or curb.” Some systems allow two steps.
58. Transit agencies’ origin-to-destination policies should be formalized and included in vehicle operator training. But even with thorough training, vehicle operators will need to exercise some operational judgment on the street. Training should provide as much basic understanding as possible, including when to call for backup from a dispatcher or superintendent.

59. Transit agencies should provide assistance to help eligible ADA paratransit riders who walk with limited mobility up and down the steps of the vehicle as well as on steps going to and from the vehicle, assuming that other safety policies (such as maintaining control of the vehicle) are not compromised.
60. Transit agencies should allow ADA paratransit vehicle operators, when providing door-to-door service under the DOT origin-to-destination guidance, to carry a limited number of grocery bags and other packages if needed by the rider due to his or her disability, so long as this assistance would be allowable on the fixed-route service.
61. Transit agencies should establish policy and conduct training that knocking or ringing the doorbell at the outside building door can be part of required door-to-door service, particularly if needed to communicate to the rider that the vehicle has arrived.
62. If transit agencies revise their rider assistance policies, they should include full public input. The public should be consulted on the details of proposed policy changes.
63. Transit agencies should train their ADA paratransit drivers on transit agency policies for origin-to-destination service and on how to provide assistance properly to and from the vehicle for riders with various types of disabilities.
64. Transit agencies may not require riders to make unattended paratransit transfers between vehicles. When a vehicle drops a rider off at a transfer point, the vehicle may not depart if the person cannot be left unattended; it must wait.
65. Transit agencies should consider the overall travel needs of riders in implementing the one-hour negotiation window. If a rider gets off work at

5:00 p.m. and requests a 5:15 pickup, the appropriate one-hour window would be from 5:15 to 6:15. It is not consistent with the DOT ADA regulation to offer only pickup times that would require her to leave work early. Similarly, if a rider indicates that he needs to be at work by 9:00 a.m., it would not be consistent with the ADA to offer a pickup time that would make him late for work.

66. Transit agencies must take into account a rider's needed arrival or appointment time in scheduling an ADA paratransit ride. The best way to ensure that riders arrive at their appointments on time is to book and schedule trips based on the stated appointment or desired arrival time.
67. Transit agencies should ensure that there is no difference between the negotiated time given to an ADA paratransit rider on the telephone and the scheduled time according to the transit agency, which may have made changes without notice to the rider. Also, changes are sometimes made by the computer scheduling program. The negotiated time given to the rider needs to be protected in the system, and the transit agency must notify the rider of any changes to ensure that all parties—the transit system, the vehicle operator, and the rider—are informed.
68. If transit agencies wish to make changes to any original negotiated times so that trips fit better on final schedules, they should call the riders and negotiate new times. If a rider cannot be reached, the original time should not be changed. Per the ADA negotiation window, any changes may not be more than one hour from the rider-requested time.
69. Transit agencies should establish policy and conduct training that an on-time pickup is a vehicle arrival within an on-time window established by the transit agency (alternatively termed the "pickup window" or the "be ready time"). The pickup window distinguishes between an on-time pickup and a

late or early one; it also defines the period when the rider is expected to be ready for the vehicle to arrive.

70. Transit agency ADA paratransit pickup windows should not exceed 30 minutes.
71. Riders need to be ready throughout the pickup window.
72. Transit agencies should establish policy and conduct training regarding too-early pickups, including the fact that an ADA paratransit pickup must occur during the window, not earlier or later, to be considered on time. In some locations, vehicles frequently arrive well before the announced pickup window, and if passengers are not ready, they are given a no-show. This practice is not consistent with the ADA. If a passenger rejects such a ride, the transit agency should classify it as a missed trip, unless the vehicle waits until, or another vehicle returns for the rider during, the prearranged pickup window. It is a best practice, if the vehicle arrives early, for the driver to park around the corner, so riders do not feel pressured to leave early.
73. Transit agencies may not begin the five-minute wait time (often established to designate a clear limit on how long the vehicle will wait for the rider at pickup for an ADA paratransit ride) until the start of the pickup window.
74. Transit agencies should establish policy and conduct training that if a vehicle arrives early, the driver should wait until the pickup window plus five minutes. Dispatchers should consider this before approving any no-shows.
75. Transit agencies should establish policy and conduct training that, for many trips, an on-time drop-off is as important as or more important than an on-time pickup.

76. Transit agencies should establish policy and conduct training that drop-offs at a destination should not be more than 30 minutes early. Transit agencies should also establish a window for timely drop-offs. The window should not exceed 30 minutes before the appointment time to the appointment time.
77. Transit agencies should establish policy and conduct training that boarding and disembarking time, which can be slowed by dealing with wheelchair securements and other factors, be taken into account in scheduling drop-offs. Drop-offs should be scheduled no later than at least five minutes before appointments to allow time for riders to get from the vehicle to their appointments.
78. Transit agencies should establish policy and conduct training regarding will-calls, if the agencies allow them. Will-calls are typically return trips without a specific scheduled time; instead, the riders call in when they are ready to return. Will-calls are a beneficial practice when the rider cannot predict the return time, as in some medical situations. However, they are workable only if limited in number, particularly during peak operating times. Too many will-calls at peak times can make on-time performance difficult. It is a good practice to establish a window for will-call trip pickups (the will-call response time) so riders know how long they might need to wait. A typical and reasonable policy is no more than 60 minutes.
79. Transit agencies should establish policy and conduct training that ADA paratransit travel time (also known as “trip length” or “ride time”) should not be longer than the same ride on the fixed-route system, including the additional time needed on the fixed-route system to go to and wait for the bus or train, and to get from the final stop to the destination. Having significant numbers of paratransit trip lengths that are longer than fixed-rate trip lengths is not consistent with the ADA.

80. Transit agencies should not misinterpret the DOT ADA regulation as capping subscription service at 50 percent of paratransit capacity, regardless of the circumstances. The cap applies only when there are capacity constraints. If a transit agency is not denying next-day trips, it may provide any level of subscription service that it wishes. Many transit agencies have unnecessarily limited subscription service and may increase how much they provide. This can improve on-time performance and productivity, and provides significant benefits to riders.

81. Transit agencies should establish policy and conduct training that careful, thorough monitoring of ADA paratransit is critical, particularly when the service is contracted out. Monitoring should go well beyond reliance on contractor reports; effective monitoring is often accomplished by stationing transit employees onsite in sufficient numbers to thoroughly oversee contractor operations. Transit agencies should set standards for on-time pickups and drop-offs, and for what is too early and too late, and should monitor for compliance with these standards, both on paper and by actually spot-checking pickup and arrival times.

82. Riders can play an important role in promoting on-time performance in ADA paratransit. Riders should—
 - a. Call to cancel as soon as possible if they are not taking a trip.

 - b. Be aware that most ADA paratransit systems use a pickup window lasting up to 30 minutes. The ride is not required to come at a particular time but rather at any time during the pickup window.

 - c. Confirm the pickup window when they make their reservations.

 - d. Be ready to leave throughout the pickup window.

- e. Be aware that, in many cities, ADA paratransit is a shared-ride experience. When a ride is shared, the vehicle will not necessarily take a direct route to one person's destination.
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- 83. Transit agencies should establish policy and conduct training on no-shows and late cancellations that focuses on the real abusers, while remaining customer-friendly and respectful of the average rider. Some transit agencies have sent letters to riders about their no-shows that suggest the riders are irresponsible or costly to the transit agency. This is likely to trigger a negative public response and is not recommended.
 - 84. Transit agencies may only impose service suspensions for a "pattern or practice" of no-shows. A pattern or practice involves intentional, repeated, or regular actions, not isolated, accidental, or single incidents. Transit agencies should establish policy and conduct training about these DOT ADA requirements.
 - 85. Transit agencies must not base a suspension of ADA paratransit service on any trips missed by a rider for reasons beyond his or her control, including trips missed due to transit agency error or lateness. Those trips may not be used as the basis for determining that a pattern or practice of missing scheduled trips exists. Transit agencies should establish policy and conduct training about these DOT ADA requirements.
 - 86. Many circumstances may be beyond the rider's control, including but not limited to these:
 - a. A family emergency occurred.
 - b. Illness prevented the rider from calling to cancel.

- c. A personal attendant or other party did not arrive on time to help the rider.
 - d. The rider was inside calling to check the ride status and was on hold for an extended time.
 - e. The rider's appointment ran long and did not provide the opportunity to cancel in a timely way.
 - f. Another party canceled the rider's appointment.
 - g. The rider's mobility aid failed.
 - h. The rider experienced a sudden turn for the worse in a variable condition.
 - i. Adverse weather affected the rider's travel plans, preventing him or her from canceling in a timely way.
87. Transit agency error, which may not be counted as a rider no-show, includes but is not limited to the following:
- a. Vehicle arrived late, after the pickup window.
 - b. Vehicle arrived early, before the pickup window, and rider was not ready to go.
 - c. Vehicle never arrived.
 - d. Vehicle went to the wrong location.
 - e. Driver did not follow correct procedures to locate the rider.

- f. Rider canceled in a timely way but the cancellation was not recorded correctly or was not transmitted to the driver in time.
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- 88. Transit agencies must inform riders of their right to contest particular no-shows or to state that particular no-shows and transit agency missed trips were beyond their control. Transit agencies should provide a telephone number for riders to inform the transit agency that particular no-shows were beyond their control. In large systems, this telephone number should be different from the reservation line. The calls should go to staff who are tracking and tabulating no-shows and preparing no-show suspension letters.
 - 89. Transit agencies that penalize riders after three no-shows in a 30-day period should reconsider their policies. This may still be the most common no-show policy, but the FTA has found that this formula does not necessarily reflect a pattern of rider abuse, particularly among frequent riders. Using this standard to suspend service will unfairly deny some riders their right to paratransit eligibility.
 - 90. To determine whether a true pattern or practice exists, transit agency policies should consider no-shows relative to riders' frequency of paratransit use; in other words, the proportion of trips missed, not the number.
 - 91. Transit agencies should consider the overall no-show rate for *all* riders in determining what frequency or proportion of no-shows constitutes a pattern or practice of abuse. The agencies should adjust upward so as not to penalize riders with average no-show records. For example, if the overall no-show rate is 5 percent, a rider who no-shows only 5 percent of her scheduled trips should not be considered an abuser of the service, because this is average. In this case, abuse might be considered as several times the overall system average; for example, 15 percent.

92. Transit agencies should consider the number of no-shows in addition to their frequency. A person who schedules one round-trip in a month and no-shows both ends of that trip would have a no-show rate of 100 percent, but this does not constitute a pattern or practice. It is not clear whether scheduling only two round-trips and no-showing both is a pattern or practice. A minimum number, such as five no-shows in a month, is a more appropriate minimum. When this minimum number is exceeded, that could trigger a review of the rider's no-show frequency.
93. If a rider misses a scheduled outbound trip, the transit agency may not automatically cancel his or her return trip. Each leg of a trip must be treated separately. Without an indication from the rider that the return trip is not needed, it should remain on the schedule.
94. Transit agencies should alert riders about no-shows on their record as they occur. At the very least, they should bring the record of no-shows to the rider's attention before proposing a suspension. Notifying the rider after each no-show is best; it is not reasonable to expect riders to remember the specific circumstances of each day of the past several weeks or months.
95. In transmitting rider notifications about no-shows, transit agencies should restate their policy and inform riders that they can contact the agency if they think any of the no-shows were not under their control or were charged in error.
96. Transit agencies must notify an individual rider in writing before any suspension of service due to no-shows, specifically citing the full reason for the proposed suspension and its length, including the exact no-show dates, times, pickup locations, and destinations on which the proposed suspension is based and using accessible formats when necessary.

97. In the written notification to the rider before a service suspension for no-shows, transit agencies must include information about the appeal process, including how to file an appeal. They should also include a statement that the suspension may not be based on any no-shows beyond the rider's control nor on any trip missed due to transit agency error or lateness. The statement should include how to contact the transit agency about no-shows beyond their control. These procedures help avoid unnecessary suspensions and appeals. If the rider contests one or more no-shows and the transit agency agrees, there may be no need for a suspension or for an appeal.
98. A transit agency should allow at least 15 days between receipt of a notice of a proposed suspension of service and the proposed date on which the suspension will become effective.
99. Transit agencies should limit suspensions to a reasonable period. The ADA has been interpreted to mean suspensions of days or perhaps weeks rather than suspensions of months or especially of years.
100. Transit agencies may impose a financial penalty only as an alternative to a service suspension. A fine or financial penalty may not be mandatory and may not be charged in addition to a suspension. Moreover, the ADA does not allow a transit agency to charge any fee or financial penalty (whether optional or mandatory) because of a single no-show or for any number of no-shows short of a suspension. This includes charging fares for trips not taken for any reason by a rider or a rider's companion. Transit agencies should establish policy and conduct training concerning these requirements.
101. If a rider appeals a suspension of service, the transit agency must continue to provide ADA paratransit service until the appeal is heard and decided.

102. Transit agency decisions on appeals must be made by a person or panel of people uninvolved with the initial decision to suspend service. A separation of authority is necessary between those making the initial determination to suspend service and those making the decision on the appeal. Neither a subordinate nor a supervisor of the person who made the initial decision should hear appeals.
103. Transit agencies must send written notification of the result of appeals of no-show suspensions, with detailed, specific reasons stated.
104. Transit agencies should establish and implement a no-strand policy stating that if the ADA paratransit system takes a rider to a destination, the rider will not be left stranded there, even if the rider no-shows for the scheduled return ride. Return service should be provided as soon as possible, although it may be provided without a guaranteed on-time window.
105. Transit agencies may impose rider penalties for late cancellations only if the late cancellation is the functional equivalent of a no-show. The DOT ADA regulation permits service suspension only for rider no-shows and not for late cancellations. To count toward a no-show suspension, the effects of a late cancellation must be operationally equivalent to a no-show in terms of the negative impact on service. The ADA does not consider cancellations after the close of business on the day before the service day, or even several hours ahead of the pickup time, to be the functional equivalent of a no-show.
106. Transit agencies should establish policy and conduct training that the FTA has found it acceptable to consider a late cancellation in ADA paratransit as one made less than two hours before the scheduled trip.

107. Riders should take actions that will reduce no-shows in ADA paratransit, including these:
- a. When calling to book a trip, confirm the beginning and end of the pickup window and the amount of time the vehicle will wait.
 - b. Call to cancel as soon as possible if not taking a scheduled trip.
 - c. Be ready for the vehicle during the entire on-time pickup window.
 - d. Provide detailed pickup instructions (side or rear door, and so on) for large facilities, for any pickup locations that may be difficult for drivers to find, and for any locations where a needed pickup is not at the main entrance.
 - e. Provide all telephone numbers, including at each destination, and confirm that they have been correctly recorded by the reservation agent.
 - f. Subscription riders should call to inform the transit agency of any changes in plans, such as a vacation or other absence. Telling a driver is not sufficient.
108. Transit agencies should recognize that, while taxis on contract can have many benefits in ADA paratransit—including cost-efficiency, rapid deployment, and the ability to make same-day changes—there can be problems associated with taxi contracting. The vehicles, their drivers, and the service they provide can be difficult to monitor, and it may be more difficult to implement uniform, rigorous driver training.
109. To address these problems, transit agencies should contract with taxis that are equipped with technology that allows the ADA paratransit service provider to monitor their location and communicate directly with them,

rather than relying on the taxi company dispatch. Also, the transit agency should use taxi companies that employ their drivers rather than companies whose drivers are independent operators who lease their cabs from the company.

110. Transit agencies should make efforts to bring equal respect to ADA paratransit as a legitimate mode of public transit service, including using respectful terminology when referring to it; providing the paratransit division with equal status within the transit organization; granting leadership of the paratransit division equivalent titles, status, and pay; and ensuring that agency operations, such as who attends what meetings, treat ADA paratransit consistently as an equivalent and viable mode within the agency.
111. Transit agencies should not use “feeder-only” as an ADA paratransit eligibility determination for any applicants. Feeder service is an operational choice that transit agencies may consider for specific trips, not a type of eligibility. Providing certain riders with complementary paratransit feeder service only, especially at both ends of a fixed-route transit trip, is both operationally infeasible and would result in unreasonable total travel times for many trips.
112. Transit agencies should follow these guidelines in determining whether to use feeder service:
 - a. Riders must have the functional ability to independently complete the fixed-route portion of the trip (including transfers).
 - b. Feeder trips are typically not considered for trips shorter than five to seven miles.

- c. One end of the trip should be near a fixed-route stop that is accessible for the riders.
 - d. Attempting feeder service to a route that runs infrequently can become a problem if the connection is not made on time.
 - e. The paratransit fare should be waived and a fare collected only for the fixed-route portion of the trip.
 - f. If riders might have to wait at the stop, the stop should have a bench and/or shelter. Access to a telephone (or staff who can make a call) might also be important if there is a connection issue and a rider needs to contact the complementary paratransit dispatch center.
 - g. Shorter on-time windows for feeder trips should be considered. The drop-off window might be shortened to 5 to 10 minutes rather than 30 minutes, so riders do not have long wait times at fixed-route stops.
 - h. A direct trip should be provided as a backup when connections are missed.
 - i. The total travel time for both the feeder and fixed-route transit portions of the trip should be comparable to the travel time for the same trip made without feeder on the fixed-route system.
113. ADA paratransit drivers must help secure a child in a child safety seat if assistance is needed.
114. ADA paratransit programs should establish car seat loaner programs through local agencies that lend car seats. They should also follow the best practices of some transit agencies, such as either having car safety seats permanently installed or (because few parents travel with children on ADA

paratransit) if a rider brings a car seat, he or she should be allowed to leave it on the vehicle, and the program must ensure that the same vehicle comes for the rider later that day.

115. ADA paratransit programs should offer premium service that allows same-day changes without trip-purpose restrictions for child-related emergencies, such as when a child becomes ill. Even flexible taxi service may have insufficiently trained staff to provide this kind of service. A premium service for this purpose could be established with longer driver wait times for dropping off children and special training for reservationists, dispatchers, and drivers.
116. During the eligibility determination process, transit agencies should identify riders who cannot be left unattended and clarify this with the applicant, caregiver, or guardian.
117. Transit agencies should establish policy and conduct training that, if it is agreed that a rider needs to be met at destinations, staff will clarify the limits of service to the guardian or caregiver. The caregiver needs to know that drivers will not leave the rider unattended at a destination. The rider may be taken to a safe location or may remain on the vehicle until someone is contacted, or until the transit agency and guardian or caretaker agree on some other solution. The transit agency should ensure that information such as “should not be left unattended” is in the notes on the driver manifest.
118. Transit agencies should document and discuss with caregivers or guardians any problems that arise, such a rider who cannot be left unattended but is not met at the destination. If the problem continues and if a solution cannot be found, the transit system might need to refuse service or, preferably, condition service on the rider’s being accompanied, which is a better practice.

Chapter 4. Enforcement

1. The federal agencies that enforce various aspects of the ADA transportation requirements should collectively establish a clear means, with a shared website and phone number, by which people in the disability community who encounter local problems can obtain assistance to determine whether a local, state, or private transportation practice is out of compliance. The same website and phone number should offer technical assistance so people with disabilities can exercise their full transportation rights under the ADA. This effort should include, at a minimum, the Department of Justice and the Department of Transportation, including the Federal Transit Administration, the Federal Railroad Administration, the Federal Highway Administration, and the Federal Motor Carrier Safety Administration.
2. Transit agencies should comply with DOT ADA guidance documents, including “Origin-to-Destination Service” and “Paratransit Requirements for §5311-Funded Fixed-Route Service Operated by Private Entities.” Compliance with these documents is not optional; because they interpret the meaning of the DOT ADA regulations, they are legally binding.
3. The Federal Transit Administration should regularly post compliance reviews that maintain the earlier rigor and thoroughness of the compliance review program. The FTA should maintain and strengthen its oversight efforts, not scale them back. FTA ADA compliance reviews should identify transit agency operational practices in detail. Some of the benefits of the older, in-depth reviews appear to have been lost in the new FTA approach. It is critical that FTA ADA compliance reviews continue to develop state-of-the-art operational practices to serve people with disabilities in public transportation.

4. The FTA Office of Civil Rights (OCR) should be given latitude in determining the selection of locations for ADA compliance reviews; a formal approach for selecting transit agencies to review is not necessary. Given limited FTA resources in civil rights oversight, the OCR already likely knows what the hotspots are and has a fairly accurate list of systems in need of review. If OCR staff have received a number of complaints out of City X, City X would be placed on the list for upcoming reviews. The system should respect FTA discretion in knowing how oversight funds should be spent.
5. The FTA should continue to prioritize, fund, and increase the scope and depth of oversight and enforcement efforts through compliance reviews, ADA administrative complaints, triennial reviews, and state management reviews for public fixed-route transit and ADA paratransit, as well as through key rail station reviews.
6. DOJ and FMCSA should continue to prioritize, fund, and increase the scope and depth of oversight and enforcement efforts for privately funded transit, including but not limited to that provided for over-the-road buses.
7. DOJ should continue to prioritize, fund, and increase the scope and depth of enforcement efforts in public transit.

Chapter 5. Fixed Route Deviation

1. DOT and the FTA should clarify that when a fixed route deviation service makes deviations for anyone and is considered a demand-responsive service, it must provide equivalent service to people with disabilities. In determining equivalency, DOT and the FTA should not look solely to the deviation portion of the service, separate from the fixed-route component, but should look at the service in its entirety. However, the concept of equivalency is difficult to apply in this situation: It can be challenging to

deviate without constraints and without added cost while still maintaining the reliability of the fixed-route portion of the service. DOT and the FTA should revisit how equivalency can be applied to route deviation in a workable manner. The endpoint should be consistent with ADA complementary paratransit service requirements.

2. DOT and the FTA should continue to make it clear that fixed route deviation service that deviates for only some riders, such as riders with disabilities, must meet the ADA paratransit requirements. DOT and the FTA should also clarify that, to meet the ADA paratransit requirements, the route deviation service must be supplemented in some way, either by expanding existing dial-a-ride service to supplement the deviations or by adding a separate ADA paratransit service. The best approach is to expand existing dial-a-ride service; this provides more integrated service than starting a separate ADA paratransit system.
3. Fixed route deviation transit systems and planners of those systems should take into account whether the population density of their service area is conducive to deviation. If the area is rural and the service will cover long distances with a low population density, thus necessitating stops only every mile or so, making sufficient deviations to meet all requests will be operationally feasible because there is ample recovery time. In a suburban or small city setting, however, it will likely be more difficult to operate in a way that provides equivalent service to people with disabilities. If a fixed route deviation service cannot provide unconstrained deviations without a schedule impact that is too great, route deviation is not the right mode of transit service for that community. Such a community may need an ordinary fixed-route service with a dependable schedule, complemented by ADA paratransit.
4. Transit system planners should not implement fixed route deviation service if they must constrain their capacity in order to remain viable, whether explicitly (usually by limiting deviations to a first-come, first-served basis) or

less overtly (for example, by not advertising). A first-come, first-served route deviation service will often fail to provide adequate service, because nondisabled people whose requests for deviation are not accepted can walk to the bus stop, but people with disabilities who cannot reach the bus stop and do not or cannot call soon enough will be left without transportation.

5. Fixed route deviation service should include these important implementation considerations:
 - a. All riders should be informed that deviations are possible. Information about the availability of deviations and how to request them should be included in route schedules and other public information.
 - b. Riders who board at designated stops should be informed that vehicles may go off-route and that arrival times at designated stops may vary. This can help manage rider expectations and avoid misunderstandings if vehicles run slightly off-schedule.
 - c. It is helpful if the employees who take and schedule deviation requests have experience with demand-responsive operations. It may be better to use paratransit operations staff rather than fixed-route transit dispatchers.
 - d. Fixed route deviation services should consider their stop announcements. An announcement should be made when the vehicle goes off-route for a deviation, and announcements should continue when the vehicle returns to the fixed route.

Chapter 6. Issues for All Modes of Public Transit

Subpart A. Common Wheelchair Section Removed from DOT ADA Regulation

1. Transit agencies should establish policy and conduct training that the DOT has removed the provision concerning “common wheelchairs” from its regulation.
2. Transit agencies must comply with provisions that were incorporated into the DOT ADA regulation in 2011 requiring transit agencies to carry any wheelchair and occupant that a vehicle lift can accommodate, as long as there is space for the wheelchair on the vehicle. A transportation provider is not required to carry a wheelchair if the lift or vehicle is unable to accommodate the wheelchair and its user consistent with legitimate safety requirements. DOT warned transit agencies that, to be a legitimate safety requirement, any limitation must be based on actual risks rather than on speculation, stereotypes, or generalizations about people with disabilities or their mobility devices.
3. Transit agencies should maintain inventories of detailed design specifications and dimensions of lifts, ramps, and securement areas for all vehicles. The agencies can use these capacity specifications to determine the maximum sizes and weights of wheelchairs they can accommodate on all vehicles. Transit agencies should also provide information about the maximum sizes and weights of occupied wheelchairs that their vehicles can safely accommodate, so riders can consider system limitations in purchasing wheelchairs or deciding to use the service.
4. Transit agencies should establish policy and conduct training that DOT has chosen to follow the Department of Justice approach on the new category called “other power-driven mobility devices” (OPMDs). Wheelchairs

(including scooters) are not OPMDs. DOJ defines this category as “any mobility device powered by batteries, fuel, or other engines... that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices... such as the Segway[®] PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair.” When a person with a mobility disability is using an OPMD, different rules apply under the ADA than when the device is being used by a person without a disability.⁶⁸⁸

5. DOJ does not require OPMDs to be accommodated in every instance in which a wheelchair must be accommodated but provides that transit agencies must allow such devices unless they demonstrate that allowing the device would be inconsistent with legitimate safety requirements. Legitimate safety requirements must be based on actual risks rather than on mere speculation, stereotypes, or generalizations about people with disabilities or the devices they use for mobility purposes.
6. Transit agencies are encouraged to follow the best practice established by the Santa Clara Valley Transportation Authority and its coordinated transportation brokerage for providing ADA paratransit, which is managed by Outreach and Escort Service, Inc. (OUTREACH). After someone becomes eligible for ADA paratransit, a van comes to take their picture and weigh their wheelchair or scooter. If the wheelchair or scooter is large, OUTREACH uses this information to ensure that it sends a vehicle that will accommodate the device.

Subpart B. Reasonable Modifications of Policies, Practices, and Procedures; Other ADA General Nondiscrimination Requirements

1. The U.S. DOT should issue its final rule requiring transportation providers to make reasonable modifications to policies, practices, and procedures when necessary to avoid discrimination on the basis of disability.
2. Transit agencies should follow, as a best practice, the DOT proposal to require ADA transportation providers to make reasonable modifications to policies, practices, and procedures when necessary to avoid discrimination on the basis of disability. DOT proposed to adopt such a provision into its own regulation to clarify the fact that publicly funded transit agencies must comply with this requirement.

Subpart C. Securing Mobility Devices

1. Transit agencies must allow people with disabilities who are ambulatory to ride on the lift as standees. This is essential for people who do not use wheelchairs but cannot, or cannot without difficulty, enter the bus via the stairs. Transit agencies should ensure that this practice is appropriately implemented through driver training, monitoring, and progressive discipline.
2. Transit agency drivers must help riders on and off lifts and up and down bus ramps as needed. This applies to both fixed-route buses and ADA paratransit. Transit agencies should use training, monitoring, and progressive discipline to ensure that drivers understand this requirement and implement it properly.
3. Transit agencies must provide securement of the passenger's wheelchair to the vehicle. Transit agencies should establish policy and conduct training that it is not appropriate for drivers to rely on the passenger restraint system, which means the lap belt and shoulder strap. Securing the person

without securing the wheelchair is a dangerous practice. In an accident, the full force of the wheelchair would be applied to the rider. The securement system should be separate from the passenger restraint system to prevent this outcome. Transit agencies should use training, monitoring, and progressive discipline to ensure that their drivers understand this and implement it properly.

4. Transit agencies should establish policy and conduct training about their policies on allowing wheelchair users to travel unsecured. Although the ADA allows transit systems to establish local policies allowing riders to travel unsecured, this can be wrongly interpreted as not needing to use securement devices. In systems that require securement, this should be made clear to all vehicle operators. In transit systems that permit a rider to travel unsecured if he or she chooses, transit agencies should make sure through training, monitoring, and progressive discipline that drivers do not think they are not required to secure other riders. Also, they must secure wheelchairs at riders' request.
5. Transit agencies may not require passengers' wheelchairs to be equipped with specific features such as footrests, wheel locks, or push handles as a condition of transportation, nor may they require a passenger's mobility device to be regarded as "in good condition" according to any standard.
6. The U.S. Access Board guidelines should require the enhanced dimensions already proposed for maneuvering into wheelchair spaces on buses.
7. Extensive education should be provided for people with disabilities, health care practitioners, and mobility device vendors to ensure further implementation of the voluntary standard WC-19 for wheelchairs used as seating in a bus or van. Health care funders/insurance agencies should accept this standard. Government regulation should make this a required rather than voluntary standard.

Subpart D. Service Animals

1. Taxicab companies and other transit sectors should establish policy and training that requires all drivers to follow the ADA requirements regarding service animals, in order to eliminate the high level of discrimination currently found in the taxi industry and other transit sectors.

Subpart E. Communication Access

1. Transit providers must follow the ADA requirements regarding communication access, and should follow all related best practices, including these:
 - a. Proper provision of alternative formats, both audio and visual
 - b. Ensuring the development of print material usable by people with cognitive disabilities and people who have vision impairments
 - c. Website accessibility
 - d. Accessibility of bus schedules
 - e. Meeting the needs of people with speech disabilities
 - f. Ensuring the proper use of sign language interpreters and Communication Access Realtime Translation (CART)
 - g. Open captioning of films and DVDs
 - h. Ensuring the proper use of TTYs and relay services.

Subpart F. Traveling with a Respirator or Portable Oxygen Supply

1. Transit agencies may not prohibit a person with a disability from traveling with a respirator or portable oxygen supply.
2. Transit agencies should establish policy and conduct training regarding the right to travel with a respirator or portable oxygen supply. These policies should clarify that commonly used portable oxygen concentrators are not considered hazardous materials.

Subpart G. Navigating Public Transit with a Cognitive or Intellectual Disability

1. Transit agencies should provide guidance cues that are integrated into the transit system to enable people with cognitive and intellectual disabilities to navigate the system, including color-coding routes and using simple numbering systems; providing information, including stop announcements, in multiple modes both audible and visual; and using a clear speaking voice when making stop announcements.
2. Transit agencies should provide proficient travel training to enable people with cognitive or intellectual disabilities to navigate transit systems.

Subpart H. Navigating Public Transit with Chemical or Electrical Sensitivities

1. DOJ should develop standards and guidance on the access requirements for people with chemical and electrical sensitivities.
2. Transit agencies should eliminate environmental barriers to the greatest extent possible by using nontoxic, fragrance-free products and practices, and by avoiding all nonessential chemical and electromagnetic exposures to enhance access for people with chemical or electrical sensitivities.

3. Transit agencies should encourage their employees to avoid smoking and refrain from the use of fragrances and scented personal care products to help accommodate people with chemical sensitivities.
4. Transit agencies should encourage passengers to avoid using fragrances and scented personal care products, and to accommodate people who are negatively affected by environmental exposures upon request.

Subpart I. Transit Staff Trained to Proficiency

1. Transit agencies must ensure that staff are trained to proficiency in the operation of vehicles and equipment, and in properly assisting and treating people with disabilities in a respectful and courteous manner, with appropriate attention to the differences among people with disabilities. Transit agencies should include testing and demonstrations to gauge employee knowledge and abilities.

Chapter 7. Rural Transportation

1. Congress and all federal agencies that deal with transportation should place a far greater emphasis on rural transportation in both planning and funding. The United States still has minimal or nonexistent public transit services in most rural areas. Also, compared to the resources allocated to urban areas, those allocated to rural public transportation are significantly inequitable. This creates serious, ongoing barriers to employment, accessible health care, and full participation in society for people with disabilities.
2. Federal agency coordination should address the lack of a common definition of transit throughout the transportation system. Rural transportation (where it is available) is generally defined as specialized transportation. This deficiency creates eligibility silos that lead to competition for limited funding for individual programs. Numerous

restrictions are imposed on rural providers, including limited trip purposes, limited hours of service, client-only transportation, and duplicative services. The cost of transportation in rural areas is generally higher because of the longer distances traveled.

3. Local rural planners, public officials, and staff in rural jurisdictions, and anyone affected by rural transportation, should learn about the successful strategies that have been used to provide rural transportation, including voucher programs, volunteers, flex services, taxicabs, mobility management, coordinated services, car ownership, and combinations of these.
4. Congress and the U.S. Department of Transportation should address the fact that, while Moving Ahead for Progress in the 21st Century (MAP-21) offers the potential for a significant shift in transit policy for rural communities, the short authorization timeline of the bill (24 months) and flat funding create challenges for rural providers.
5. Local rural planners, public officials, and staff in rural jurisdictions, and anyone affected by rural transportation, should learn about the sections of MAP-21 that might offer possible assistance for rural transportation. These sections include Equitable Funding, Rural Transportation Planning, and Coordination.

Chapter 8. Coordinated Transportation

1. Transit agencies, both urban and rural, and agencies that serve a rural component of their service area, should engage in coordination, which can result in both improved mobility and increased efficiency. Agencies that pay a high cost per trip when purchasing service can reduce their overall transportation expense by purchasing service from a coordinated system,

particularly one that takes full advantage of existing fixed-route transit services. Increased coordination may lead to benefits beyond cost savings. For human services agencies or transit providers that may be serving only a portion of their demand or whose unit costs are already low, coordination may enable them to serve more customers or to offer a higher level or quality of service for the same price.

Chapter 9. Commercial Driver's License Rules

1. DOT should eliminate hearing requirements for commercial driver's licenses. DOT should promptly undertake a rulemaking review regarding these requirements and should continue to expand waiver programs in the interim.
2. DOT should provide additional exemptions for drivers with epilepsy or a history of seizures, as well as drivers with insulin-treated diabetes, to allow more drivers with these disabilities and impairments to obtain commercial driver's licenses and to operate in interstate commerce.

Chapter 10. Public Rights-of-Way

1. Congress should pass the Complete Streets Act.
2. Public works departments and other state and local officials dealing with the public rights-of-way must implement the ADA provisions which require, in essence, that a "high degree of convenient access" for people with disabilities be provided in new construction. When aspects of the public rights-of-way are altered (defined as changes that affect usability) the altered area and a path to travel to it must be accessible to the "maximum extent feasible." This requirement refers to the occasional case in which the nature of the existing facility makes it virtually impossible to fully comply

with accessibility standards, but the maximum physical accessibility that is feasible must be provided. In existing facilities that are not otherwise being altered, public entities such as cities, counties, and states must provide “program access” by making systems of sidewalks, bus stops, and other aspects of the public rights-of-way accessible when viewed in their entirety.

3. Public works departments and other state and local officials dealing with public rights-of-way should follow the *Barden v. Sacramento* decision. *Barden* set a precedent requiring cities and other public entities to make all public sidewalks accessible to people with mobility and vision disabilities. The court ruled that public entities must address barriers, including missing or unsafe curb ramps, throughout the public sidewalk system, as well as barriers that block access along the length of the sidewalks. This includes installation of compliant curb ramps at intersections and removal of barriers that obstruct sidewalks, including narrow pathways, abrupt changes in level, excessive cross slopes, and overhanging obstructions, as well as improvements in crosswalk access.
4. The U.S. Access Board should quickly publish final Guidelines for Pedestrian Facilities in the Public Rights-of-Way. Both DOT and DOJ should promptly adopt final rules on mandatory standards for access to the public rights-of-way that are consistent with the Access Board guidelines.
5. Public works departments and other state and local officials dealing with the public rights-of-way should follow the Complete Streets philosophy and recommendations as best practices.
6. Transit systems and local public works departments should work together to improve the accessibility of bus stops for people with disabilities. The lack of accessible bus stops is one of the most persistent, significant transportation problems facing people with disabilities. The issue is difficult because bus stops are very often placed by a transit agency that does not

exercise any authority over improvements at the bus stop, which are provided by a local jurisdiction. To overcome this obstacle, transit agencies and city public works departments must affirmatively and deliberately coordinate their activities. This will require more than simply attending a meeting together occasionally; they must make a genuine effort to work together to coordinate this process.

7. Local transit agencies and public works departments should provide detectability to their bus stops for people who are blind or have visual impairments. They should emulate locales that have developed best practices, including unique bus stop pole designs.
8. Local transit agencies and public works departments should use the Easter Seals Project ACTION *Toolkit for the Assessment of Bus Stop Accessibility and Safety*.
9. Local jurisdictions and public works departments should provide accessible pedestrian signals at signalized intersections.
10. DOJ and DOT should promptly issue guidance to follow the forthcoming Access Board Public Rights-of-Way Guidelines as best practices until both agencies formally adopt enforceable standards for access to the public rights-of-way. These two leading federal agencies should fully support public rights-of-way accessibility, including detectable warnings, as needed features in the built environment.
11. Local jurisdictions and public works departments should provide detectable warnings at intersections to keep people who are blind or have vision impairments from inadvertently entering dangerous areas such as public streets.

12. Local jurisdictions and public works departments should provide curb ramps at all corners of intersections wherever possible, to provide mobility-impaired people, especially wheelchair users, with access throughout the public rights-of-way. These agencies should develop and implement a curb ramp transition plan to identify and schedule the work that needs to be done. Any newly placed or changed roadway or sidewalk should include curb ramps.
13. Public works departments and other state and local officials with jurisdiction over the public rights-of-way should follow the *Kinney v. Yerusalim* decision. *Kinney* ruled that the ADA requires cities to install curb ramps when they resurface streets. These public agencies should follow the joint DOJ-DOT guidance, the “Department of Justice/Department of Transportation Joint Technical Assistance on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways Are Altered through Resurfacing” at <http://www.ada.gov/doj-fhwa-ta.htm> or http://www.fhwa.dot.gov/civilrights/programs/doj_fhwa_ta.cfm.
14. Local jurisdictions, public works departments, and other state and local officials with jurisdiction over the public rights-of-way must follow the ADA obligations regarding snow removal. Public agencies must maintain their walkways in an accessible condition, with only isolated or temporary interruptions in accessibility. Public agency standards and practices must ensure that their day-to-day operations keep the path of travel on pedestrian facilities open and usable for people with disabilities throughout the year. This includes snow and debris removal, maintenance of accessible pedestrian walkways in work zones, and correction of other disruptions.

Chapter 11. Privately Funded Transit

Subpart A. Taxicabs

1. Congress should pass Senate bill S.2887, the Accessible Transportation for All Act, introduced by Senator Tom Harkin, which would require a robust program of wheelchair-accessible taxis across the nation.
2. To avoid discrimination, public entities such as cities and counties that use local taxicabs for a user-side subsidy program must ensure that equivalent service is provided to people with disabilities, including people who use wheelchairs. The public entity may either require taxi companies to have accessible vehicles in order to participate or may contract with another party to provide accessible service for people with disabilities that is equivalent to the service available to others in terms of response times, fares, service area, schedule, and so forth.
3. Taxi companies of all types, as well as transportation network companies, must follow the requirements of the ADA and may not discriminate against people with disabilities. For example, they may not charge higher fares for passengers with disabilities; refuse to serve a passenger with a disability who can use a taxi sedan, including people who use wheelchairs; refuse to stow a wheelchair or other mobility device in the trunk of a sedan, or impose a special charge for doing so; and they must accept passengers traveling with service animals.
4. Local taxi regulators, transit agencies, the disability community, and other stakeholders, including the taxi industry and transportation network companies, should work together to ensure that every locality has a well-functioning accessible taxi program. Unfortunately, accessible taxis are all too often not available in adequate numbers, if at all.

5. Local taxi regulators, transit agencies, the disability community, and other stakeholders, including the taxi industry and transportation network companies, should work together on key elements of strong accessible taxi programs, including these:
 - a. Providing incentives for both taxi companies and drivers.
 - b. Keeping accessible taxis in use.
 - c. Regulating accessibility and nondiscrimination.
 - d. Ensuring the provision of training.
 - e. Enforcement.
6. Local taxi regulators and transit agencies that use contracted taxis should ensure that new technology for fare payment in taxis is accessible to passengers who are blind or have vision impairments.
7. Local taxi regulators should regulate transportation network companies such as Uber, SideCar, Lyft, and similar companies in the same way they regulate taxicabs, by the same regulatory authorities, and should impose the same rules. The regulations should include all ADA requirements and any stronger local requirements, as well as thorough training and enforcement provisions. Training should include prohibition of denial of service and the consequences of denial. Regulators should conduct random testing programs to identify instances of denial of service. The testing should be frequent enough and conducted widely enough to include a large sample of drivers and to create a level of respect for the consequences of noncompliance.

8. State and local regulators of taxis should use local, state, and federal civil rights statutes whenever possible to impose appropriate disability-related regulations on transportation network companies and taxis.

Subpart B. Intercity Transit and Over-the-Road Buses

1. The U.S. Access Board should address over-the-road bus (OTRB) access issues, including access to interior amenities, stanchions/handrails, double-decker buses (both tour and intercity), entertainment systems, restrooms, and other passenger features and amenities. Given the dramatic increase in OTRB use, DOT and the Access Board should collaborate to ensure the necessary resources to expand the Access Board's OTRB guidelines. DOT and DOJ should promptly publish enforceable standards consistent with these guidelines.
2. Companies involved in intercity bus service must follow the DOT "Guidance on Interline Service and Notice to Passengers," which addresses a Catch-22 in the DOT ADA regulation that affects some OTRB passengers when multiple bus companies, both large and small, coordinate the issuing of tickets. In addition to following the guidance, these companies should also use a stronger, more straightforward approach. Only a handful of large OTRB companies engage in interlining, and when they do it is ongoing—meaning that, for example, the Greyhound or Trailways trip from DC to Vermont either uses interlining or it does not. The large carriers should make it clear on their websites that particular trips use interlining service with another company that might qualify as a small carrier, for which advance notice might be needed, with 48-hour notice preferred.
3. DOT should require companies operating over-the-road buses to self-identify as large or small. Currently, customers have no way of ascertaining which companies are considered large by the industry definition (100 percent accessibility required) and which are considered small (still

allowed to operate under the interim rule). This confusion and the resulting problems can discourage ridership.

4. Small bus companies should not misinterpret the ADA interim service rule as allowing them to require 48-hour notice. A more accurate reading of the regulation is that companies are allowed to “prefer” such notice. The DOT ADA regulatory provision is not a hard-and-fast rule; less than 48-hour notice still requires a good faith effort by the carrier to provide an accessible bus. Forty-seven hours should not present difficulty, and it is unlikely that 24 hours would present difficulty.
5. Motorcoach operators should consistently provide accessible service in compliance with the ADA and should conduct outreach to advertise their accessible service.
6. Motorcoach operators should maintain their lifts properly. Drivers often lack training and experience in operating lifts. When people have been stranded or delayed due to a lift failure, they are less likely to travel by bus in the future. Accessibility equipment should be operated in a manner that does not stigmatize riders with disabilities. Even when lifts work well, some riders have said they feel like a spectacle due to the loud sounds of the lifts and the stares they draw.
7. Private companies operating over-the-road buses (OTRBs) should pay particular attention to both design issues and maintenance and training issues, which can lead to problems in providing wheelchair seating. For example, on some accessible OTRBs, there can be malfunctions or jams in the tracks that the seats move on to create wheelchair spaces, so that it becomes difficult to readily create the needed spaces.
8. Over-the-road bus designers should develop improved designs for wheelchair seating. OTRBs usually feature seats that flip up for several

rows, all mounted on a track. The seats slide in order to compress down, making an open wheelchair securement space available. These tracks can become jammed. Creating a second wheelchair securement space can be especially difficult, necessitating not only compression of the seats but also the removal of a table. Because drivers rarely encounter a situation in which two wheelchair users unexpectedly arrive, most do not remember the exact procedure.

9. The over-the-road bus companies have found that when they were allowed to request advance notice, these changes could be made in advance in the garage, instead of while passengers are waiting. Moreover, rearranging the seating in advance kept those seats from being occupied by nondisabled people who might later need to be asked to move.
10. Just as the accessibility features in ordinary city buses have been extensively redesigned, redesign of the wheelchair seating on OTRBs may be necessary.

List of Interviews

Christopher G. Bell, Esq., Member, American Council of the Blind of Minnesota,
February 28, 2013

Jan Campbell, Chair of Committee on Accessible Transportation, TriMet, Portland,
Oregon, December 18, 2012

Dennis Cannon, former Transportation Accessibility Specialist, U.S. Access Board;
currently, private consultant, Synergy, LLC, March 28, 2013

John Day, ADA team leader and Senior Equal Opportunity Specialist, Federal Transit
Administration Office of Civil Rights, March 11, 2013

Richard Devylder, former Senior Advisor for Accessible Transportation for U.S.
Department of Transportation, January 9, 2013

Tracee Garner, Outreach Coordinator, Loudoun (Virginia) ENDependence (LEND)
Center, January 15, 2013

David Knight, Trial Attorney, Disability Rights Section, U.S. Department of Justice, April
16, 2013

Tricia Mason, former President, Little People of America, March 18, 2013

Maureen McCloskey, National Advocacy Director, Paralyzed Veterans of America,
February 25, 2013

Susan Molloy, long-time advocate for people who are chemically and electrically
hypersensitive, July 11, 2014

Michael Muehe, Executive Director, Cambridge Commission for Persons with Disabilities and ADA Coordinator, City of Cambridge, Massachusetts, January 23, 2013

Cliff Perez, Systems Advocate, Independent Living Center of the Hudson Valley, and Chair, National Council on Independent Living Transportation Committee, April 30, 2013

Alice Ritchhart, Transportation Committee Chair, American Council of the Blind, March 12, 2013

Howard Rosenblum, Chief Executive Officer, National Association of the Deaf, July 22, 2013

Ken Shiotani, Senior Staff Attorney, National Disability Rights Network, April 30, 2014

Dawn Sweet, Equal Opportunity Specialist, Federal Transit Administration Office of Civil Rights, March 11, 2013

Gary Talbot, Program Director for the Americans with Disabilities Act, Amtrak, April 9, 2013

Carol Tyson, Senior Policy Associate, United Spinal Association, November 12, 2013.

Angela Van Etten, Coordinator, Treasure Coast Services Coalition for Independent Living Options, Florida, and former President, Little People of America, April 25, 2013

Richard Weiner, Principal, Nelson\Nygaard Consulting Associates, September 16 & 24, 2013

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¹³⁰ Christopher G. Bell, Esq., *op. cit.*

¹³¹ *Transit Access Report*, “U.S. Judge Refuses to Dismiss Paratransit Lawsuit in Orlando,” August 26, 2013, pp. 1–2. The case is *Stravino v. Central Fla. Regional Transp. Auth.*, Civ. No. 13-00808 (M.D. Fla. filed May 24, 2013, amd’d compt filed Aug. 12, 2013).

¹³² Mark Bradley, Mark Bradley Research and Consulting, and David Koffman, Nelson\Nygaard Consulting Associates, “Improving ADA Paratransit Demand Estimation: Regional Modeling,” Transit Cooperative Research Program Report 158, Transportation Research Board, Washington, DC, 2012, pp. 3–4.

¹³³ David Koffman, David Lewis, David Chia, Jon Burkhardt, and Mark Bradley, “Improving ADA Complementary Paratransit Demand Estimation,” Transit Cooperative Research Program Report 119, Transportation Research Board, Washington, DC, 2007.

¹³⁴ Transit Cooperative Research Program Report 158, *op. cit.*

¹³⁵ Nelson\Nygaard Consulting Associates with the KFH Group, Transit Sustainability Project, Draft Paratransit Final Report, prepared for the Metropolitan Transportation Commission, 2011.

¹³⁶ TranSystems et al., *op. cit.*

¹³⁷ Paratransit Ridership, Nationwide, 1999–2011, FTA National Transit Database.

¹³⁸ American Public Transportation Association (APTA), *op. cit.*

¹³⁹ 49 CFR § 37.121(c).

¹⁴⁰ Cliff Perez, Systems Advocate, Independent Living Center of the Hudson Valley and Chair, National Council on Independent Living Transportation Committee, personal communication, November 14, 2013.

¹⁴¹ 49 CFR §§ 37.3 and App. D, § 37.3, *originally published at* 56 Fed. Reg. 45747 (Sept. 6, 1991).

¹⁴² Russell Thatcher, TranSystems Corporation, Workshop at Oregon DOT Conference, October 25, 2010. The answers and information provided by TranSystems in this presentation are not legal opinions, nor are they official regulatory interpretations of the FTA, U.S. DOT, U.S. DOJ, or any other government agency. They are opinions based on the professional experience of staff.

¹⁴³ TranSystems et al., *op. cit.*

¹⁴⁴ TranSystems et al., *op. cit.*

¹⁴⁵ TranSystems et al., *op. cit.*

¹⁴⁶ TranSystems et al., *op. cit.*

¹⁴⁷ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, pp. 48–54.

¹⁴⁸ Disability Rights Education & Defense Fund and TranSystems Corporation, “Eligibility for ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 3, “Needs an Accessible Vehicle,” June 2010, accessed October 24, 2013, <http://dredf.org/ADAtg/>.

¹⁴⁹ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*

¹⁵⁰ TranSystems et al., *op. cit.* Also see Disability Rights Education & Defense Fund and TranSystems Corporation, “Eligibility for ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 3, *op. cit.* “Conditional Eligibility (Some Trips).”

¹⁵¹ Disability Rights Education & Defense Fund and TranSystems Corporation, “Eligibility for ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 3, *op. cit.*, “Conditional Eligibility (Some Trips).”

¹⁵² FTA found inadequate consideration of all conditions affecting applicants’ travel in several ADA compliance reviews, including these three:

Federal Transit Administration ADA Compliance Review of Central New York Regional Transportation Authority, Syracuse, New York, *ADA Complementary Paratransit Service Compliance Review*, conducted April 23–26, 2007, Final Report dated March 5, 2008, pp. 48–49, and 51, accessed October 27, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

Federal Transit Administration ADA Compliance Review of City of Tucson Transit Services Division, Tucson, Arizona, *ADA Complementary Paratransit Service Compliance Review*, conducted March 24–27, 2003, Final Report dated April 1, 2004, pp. 24–25, accessed October 27, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

Federal Transit Administration ADA Compliance Review of Central Ohio Transit Authority (COTA), Columbus, Ohio, *ADA Complementary Paratransit Service Compliance Review*, conducted February 6–9, 2007, Final Report dated November 15, 2007, p. 43, accessed October 27, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

¹⁵³ Disability Rights Education & Defense Fund and TranSystems Corporation, “Eligibility for ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 3, *op. cit.*, “Applying Conditional Eligibility: Trip-by-Trip Eligibility.”

¹⁵⁴ Easter Seals PROJECT ACTION Distance Learning Session: *Determining ADA Paratransit Eligibility: An Approach, Guidance and Training Materials*, Karen Hoesch, Executive Director, ACCESS Transportation Systems, March 18, 2010.

¹⁵⁵ Letter of Finding by David W. Knight, then ADA Team Leader, Office of Civil Rights, Federal Transit Administration, April 30, 2008, regarding FTA Complaint No. 08-0020 against Access Services, Inc., Los Angeles, California, pp. 1–2.

The FTA made a similar point in these two ADA compliance reviews:

Federal Transit Administration ADA Compliance Review of Transportation District Commission of Hampton Roads (Hampton Roads Transit), Hampton, Virginia, “Compliance Review of ADA Complementary Paratransit Service,” conducted October 8–11, 2002, Final Report dated January 28, 2005, pp. 30 & 32, accessed October 9, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

Federal Transit Administration ADA Compliance Review of Capital District Transportation Authority, Albany, New York, *ADA Complementary Paratransit Service Compliance Review*, conducted June 13–16, 2005, Final Report dated January 31, 2007, pp. 26 & 28, accessed October 9, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

¹⁵⁶ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, p. 54.

¹⁵⁷ National Transit Institute, *Comprehensive ADA Paratransit Eligibility*, accessed October 9, 2013, <http://www.ntionline.com/courses/courseinfo.php?id=8>.

¹⁵⁸ Letter to Jacksonville Transit Authority, Jacksonville, Florida, March 23, 2009, Federal Transit Administration, accessed July 16, 2014, http://www.fta.dot.gov/12325_11667.html.

¹⁵⁹ Disability Rights Education & Defense Fund and TranSystems Corporation, “Eligibility for ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 3, *op. cit.*, “DO: Base Decisions on Most Limiting Condition.”

¹⁶⁰ Federal Transit Administration, Metropolitan Transit Authority of Harris County (METRO) ADA Complementary Paratransit Service Compliance Review, August 16–20, 2010, pp. 45–47, accessed July 16, 2014, http://www.fta.dot.gov/documents/Houston_METROLift_Final_Report.pdf.

¹⁶¹ Disability Rights Education & Defense Fund and TranSystems Corporation, “Eligibility for ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 3, *op. cit.*, “DO: Manage Weather-Related Eligibility Appropriately.”

¹⁶² FTA ADA Compliance Review of Transportation District Commission of Hampton Roads, *op. cit.*, pp. 30 & 32.

¹⁶³ Disability Rights Education & Defense Fund and TranSystems Corporation, “Eligibility for ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 3, *op. cit.*, “DON’T: Make Blanket Denials Based on Type of Disability,” based on, for example, FTA ADA Compliance Review of City of Tucson Transit Services Division, Tucson, Arizona, *op. cit.*, pp. 24–25.

¹⁶⁴ Christopher G. Bell, Esq., *op. cit.*

¹⁶⁵ Disability Rights Education & Defense Fund and TranSystems Corporation, “Eligibility for ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 3, *op. cit.*, “DO: Apply Variable Conditions Appropriately.”

¹⁶⁶ Federal Transit Administration ADA Compliance Review of Pierce Transit, Tacoma, Washington, conducted November 2007, accessed October 9, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html. In this ADA compliance review, the FTA stated, “The review of sample determinations ... raised questions about whether riders are given a choice to participate or not participate in travel training. FTA has provided guidance that travel training can be offered but not required and that eligibility should be determined based on applicants’ current abilities to independently travel, without travel training, should they elect not to participate.”

¹⁶⁷ Disability Rights Education & Defense Fund and TranSystems Corporation, “Eligibility for ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 3, *op. cit.*, “DON’T: Base Eligibility on Travel Training Not Yet Completed.”

¹⁶⁸ Disability Rights Education & Defense Fund and TranSystems Corporation, “Eligibility for ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 3, *op. cit.*, “DON’T: Deny Eligibility Based on Prior, Occasional Use of the Fixed-route System.”

¹⁶⁹ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, p. 55.

¹⁷⁰ Disability Rights Education & Defense Fund and TranSystems Corporation, “Eligibility for ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 3, *op. cit.*, “Prior Use of the Fixed-route System.”

¹⁷¹ Disability Rights Education & Defense Fund and TranSystems Corporation, “Eligibility for ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 3, *op. cit.*, “DO: Interpret Safety Issues Properly.”

¹⁷² Federal Transit Administration ADA Compliance Review of Pierce Transit, Tacoma, Washington, *op. cit.*

¹⁷³ 49 CFR § 37.125(c).

¹⁷⁴ In many ADA compliance reviews, including the following 10, the FTA addressed transit agency failure to inform applicants that they have a right to service if eligibility decisions take longer than 21 days.

Federal Transit Administration ADA Compliance Review of Maryland Transit Administration (MTA), Baltimore, Maryland, *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted June 17–21, 2002, Final Report dated January 16, 2003, pp. 23–24, accessed October 10, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

Federal Transit Administration ADA Compliance Review of Pioneer Valley Transit Authority, Springfield, Massachusetts, *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted July 15–18, 2002, Final Report dated January 21, 2003, p. 21, accessed October 10, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

Federal Transit Administration ADA Compliance Review of Rochester-Genesee Regional Transportation Authority (R-GRTA), Rochester, New York, *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted November 18–21, 2002, Final Report dated October 27, 2003, p. 15, accessed October 10, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

Federal Transit Administration ADA Compliance Review of Los Angeles County Metropolitan Transportation Authority (MTA), Los Angeles, California, *Compliance Review of ADA Complementary Paratransit Service*, January 27–31, 2003, Final Report dated August 2, 2004, p. 30, accessed October 10, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

Federal Transit Administration ADA Compliance Review of Transportation District Commission of Hampton Roads (Hampton Roads Transit), *op. cit.*, pp. 30 & 32.

Federal Transit Administration ADA Compliance Review of Alameda-Contra Costa Transit District (AC Transit) and San Francisco Bay Area Rapid Transit District (BART), Oakland, California, *Compliance Review of ADA Complementary Paratransit Service*, conducted February 24–28, 2003, Final Report dated March 16, 2005, pp. 28–29, accessed October 10, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

Federal Transit Administration ADA Compliance Review of Capital District Transportation Authority, Albany, New York, *op. cit.*, pp. 26 & 28.

Federal Transit Administration ADA Compliance Review of Metro, St. Louis, Missouri, *ADA Complementary Paratransit Service Compliance Review*, conducted April 11–14, 2005, Final Report dated February 25, 2007, p. 31, accessed October 10, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

Federal Transit Administration ADA Compliance Review of Washington Metropolitan Area Transit Authority (WMATA), Washington, DC, *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted September 24–28, 2001, Final Report dated June 26, 2007, pp. 22–23, accessed October 10, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

Federal Transit Administration ADA Compliance Review of Delaware Transit Corporation, Dover, Delaware, *ADA Complementary Paratransit Service Compliance Review*, conducted May 15–18, 2007, Final Report dated August 29, 2008, pp. 32–33, accessed October 10, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

¹⁷⁵ Disability Rights Education & Defense Fund and TranSystems Corporation, “Eligibility for ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 3, *op. cit.*, “Must Provide Service After 21 Days.”

¹⁷⁶ Federal Transit Administration ADA Compliance Review of Detroit Department of Transportation, Detroit, Michigan, *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted September 9–13, 2002, Final Report dated July 15, 2003, p. 24, accessed October 10, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

¹⁷⁷ National Transit Institute, *Comprehensive ADA Paratransit Eligibility*, *op. cit.*

¹⁷⁸ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, p. 54.

¹⁷⁹ Easter Seals Project ACTION, *Determining ADA Paratransit Eligibility: An Approach, Guidance, and Training Materials*, Washington, DC, August 2003, p. 5–26, accessed October 29, 2013, http://bussafety.fta.dot.gov/uploads/resource/3102_filename.

¹⁸⁰ *Ibid.*, p. 7–31.

¹⁸¹ 49 CFR Part 37, App. D, § 37.125.

¹⁸² In several ADA compliance reviews, including this one, the FTA found that transit agencies imposed requirements on applicants that may be unreasonably burdensome.

Finding: “Following the determination of eligibility, applicants must obtain a photo ID. This involves a trip to the COTA Customer Service Office in downtown Columbus. For the applicants who were asked to appear for an in-person interview, this means a second trip related to the eligibility process is needed before the service can be used. Appendix D, relating to 49 CFR Part 37.125, states that ‘The [eligibility determination] process may not impose unreasonable administrative burdens on applicants...’ Requiring applicants to make a second trip to get a photo ID, after submitting a paper application and then appearing for an in-person interview, could be considered burdensome.”

Recommendation: “COTA should streamline its eligibility determination process so that applicants can have their photo taken in the same trip as their in-person interview, so that if applicants are approved they do not have to make a second trip to get a photo ID.”

Federal Transit Administration ADA Compliance Review of Central Ohio Transit Authority (COTA), *op. cit.*, p. 43.

¹⁸³ 49 CFR § 37.125(g)(1).

¹⁸⁴ Disability Rights Education & Defense Fund and TranSystems Corporation, “Eligibility for ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 3, *op. cit.*, “Appeal Process for Denials of Eligibility.”

¹⁸⁵ Disability Rights Education & Defense Fund and TranSystems Corporation, “Eligibility for ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 3, *op. cit.*, “Recertification.”

¹⁸⁶ Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, as amended.

¹⁸⁷ Personal communication, Suzi Bernais, Disability Rights California, January 28, 2011.

¹⁸⁸ *File a Title VI Complaint with the FTA*, accessed July 23, 2014, http://www.fta.dot.gov/civilrights/12328_5104.html.

¹⁸⁹ Alice Ritchhart, *op. cit.*

¹⁹⁰ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, p. 57.

¹⁹¹ *Anderson v. Rochester-Genesee Regional Transportation Authority*, 337 F.3d 201, (2nd Cir. 2003).

¹⁹² *Anderson*, 337 F.3d at 215 (quoting Letter Brief of the United States at 5 (October 25, 2002)).

¹⁹³ Interview, John Day, ADA team leader and Senior Equal Opportunity Specialist, and Dawn Sweet, Equal Opportunity Specialist, Federal Transit Administration Office of Civil Rights, March 11, 2013.

¹⁹⁴ Jonathan Klein and Susan Clark, FTA Office of Civil Rights, “Items from Selected Topics in Paratransit Operations,” Project ACTION Distance Learning Session, March 17, 2009.

¹⁹⁵ Federal Transit Administration ADA Compliance Review of Fresno Area Express, Fresno, California, Dec. 10–13, 2007, p. 15, accessed July 16, 2014, http://www.fta.dot.gov/documents/FAX_Final_Report.pdf.

¹⁹⁶ Department of Transportation, 49 CFR Parts 37 and 38, Final Rule, *op. cit.*, p. 57931.

¹⁹⁷ *Transit Access Report*, “FTA Review in Savannah, Georgia, Finds Undercount of Denials,” June 11, 2013, p. 6.

¹⁹⁸ The Americans with Disabilities Act (ADA) at 42 U.S.C. § 12143(c)(3), accessed October 14, 2013, <https://www.law.cornell.edu/uscode/text/42/12143>, and the Department of Transportation (DOT) ADA regulation at 49 CFR § 37.131 and 49 CFR Part 37, App. D, § 37.131, accessed October 14, 2013, <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=d315855e2f2c9f940970f4c191349c12&rqn=div5&view=text&node=49:1.0.1.1.27&idno=49>.

¹⁹⁹ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, p. 69.

²⁰⁰ An FTA letter pursuant to an earlier DOJ and DOT, FTA investigation found that a transit agency “must design and implement its system to avoid busy signals and achieve minimal telephone wait times.” DOT, FTA Letter by Michael A. Winter to Christine Malafi, County Attorney, Suffolk County Department of Law, Hauppauge, New York, February 15, 2007, accessed March 27, 2015 at http://www.fta.dot.gov/printer_friendly/12325_10295.html.

²⁰¹ Disability Rights Education & Defense Fund and TranSystems Corporation, “Telephone Hold Time in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 4, “Introduction,” June 2010, accessed October 14, 2013, at <http://dredf.org/ADAatq/>.

²⁰² Disability Rights Education & Defense Fund and TranSystems Corporation, “Telephone Hold Time in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 4, *op. cit.*, “Best Practices in Telephone Hold Times.”

²⁰³ In several ADA compliance reviews, including these two, the FTA stated that measuring telephone hold times by the maximum allowable time is clearly preferred to measuring hold times by the average hold time.

Federal Transit Administration ADA Compliance Review of City of Tucson Transit Services Division, *op. cit.*, p. 32.

Federal Transit Administration ADA Compliance Review of Metro, St. Louis, Missouri, *op. cit.*, p. 38 and 39.

²⁰⁴ Disability Rights Education & Defense Fund and TranSystems Corporation, “Telephone Hold Time in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 4, *op. cit.*, “Best Method: Maximum Allowable Hold Times.”

²⁰⁵ *Ibid.*

²⁰⁶ Disability Rights Education & Defense Fund and TranSystems Corporation, “Telephone Hold Time in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 4, *op. cit.*, “Another Method: Hourly Average of Hold Times.”

²⁰⁷ Disability Rights Education & Defense Fund and TranSystems Corporation, “Telephone Hold Time in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 4, *op. cit.*, “Another Method: Hourly Average of Hold Times,” based on FTA compliance reviews quoted in the Topic Guide.

²⁰⁸ *Transit Access Report*, “Recording of ADA Trip Denials Was an Issue in Fresno Review,” September 25, 2013, p. 3.

²⁰⁹ *Transit Access Report*, “Letter to Fresno Gives Reasons for Planning New ADA Review,” September 25, 2013, p. 5.

²¹⁰ Disability Rights Education & Defense Fund and TranSystems Corporation, “Telephone Hold Time in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 4, *op. cit.*, “‘Where’s My Ride’ Calls.”

²¹¹ American Public Transportation Association (APTA), Accessibility Call Center Working Group, *Recommended Practices for Handling ADA Complementary Paratransit “Where’s My Ride?” Calls*, draft version released for public comment, May 15, 2009, pp. 4–5, accessed April 16, 2015, <http://www.projectaction.org/Portals/3/Documents/Training/APTA%20WheresMyRide-final.doc>.

²¹² This FTA ADA compliance review addressed the importance of an adequate number of dispatchers to avoid creating a bottleneck in the system that causes overly long secondary holds and makes dispatchers unavailable to handle other calls.

DOT FTA ADA Compliance Review of Pierce Transit, Tacoma, Washington, *op. cit.*

²¹³ Disability Rights Education & Defense Fund and TranSystems Corporation, “Telephone Hold Time in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 4, *op. cit.*, “Secondary Holds.”

²¹⁴ Disability Rights Education & Defense Fund and TranSystems Corporation, “Telephone Hold Time in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 4, *op. cit.*, “No Busy Signals.”

²¹⁵ Michael Winter, Letter, *op. cit.*.

²¹⁶ Disability Rights Education & Defense Fund and TranSystems Corporation, “Telephone Hold Time in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 4, *op. cit.*, “No Busy Signals.”

²¹⁷ In this ADA compliance review, the FTA found that a limit on the number of trips a caller may arrange on a single telephone call can increase hold times due to the need for repeated customer calls.

Finding: “Metro accepts only four one-way trip requests per call during peak call times. This policy can increase the length of telephone queues by requiring reservationists to handle multiple calls rather than one to serve one customer and placing multiple calls rather than one in the phone queue.”

Federal Transit Administration ADA Compliance Review of Metro, St. Louis, Missouri, *op. cit.*, p. 39.

²¹⁸ Disability Rights Education & Defense Fund and TranSystems Corporation, “Telephone Hold Time in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 4, *op. cit.*, “Avoid Limits on the Number of Trip Requests Per Call.”

²¹⁹ Disability Rights Education & Defense Fund and TranSystems Corporation, “Telephone Hold Time in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 4, *op. cit.* “Communication Access.”

²²⁰ CFR § 37.165(f) and 49 CFR Part 37, App. D, § 37.165.

²²¹ *Origin to Destination Service*, Disability Law Guidance, U.S. Department of Transportation, September 1, 2005, accessed October 20, 2013, http://www.fta.dot.gov/12325_3891.html.

²²² With regard to its legal authority, the DOT Disability Law Guidance on Origin to Destination Service states, “This guidance has been approved through the Department of Transportation’s Disability Law Coordinating Council as representing the official views of the Department on this matter.” DOT enforces the public transit provisions of the ADA, and its enforcement actions carry out the views in its guidance.

²²³ A *fundamental alteration* is a modification that is so significant that it alters the essential nature of the services offered. See 42 U.S.C. §12182(b)(2)(a)(ii) and 28 CFR § 36.302; and 42 U.S.C. § 12182(b)(2)(A)(ii), 28 CFR §35.130(b)(7) and 28 CFR Part 35, App. A, § 35.130(b)(7). See also *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001), and additional potentially relevant judicial authority including *Burkhart v. Washington Metropolitan Transit Auth.*, 112 F.3d 1207 (D.C. Cir. 1997); *Melton v. Dallas Area Rapid Transit*, 391 F.3d 669 (5th Cir. 2004); and *Boose v. Tri-County Metropolitan Trans. Dist. of Oregon*, 587 F.3d 997 (9th Cir. 2009).] or “undue burden.”

²²⁴ *Undue burden* means significant difficulty or expense. Determination of what constitutes an undue burden must be made on a case-by-case basis, based on the resources of the covered entity. If a requested action is an undue burden, the covered entity must provide an alternative action that would not be an undue burden, if one exists, which would ensure, to the maximum extent possible, that individuals with disabilities receive the services offered by the covered entity. This “undue burden” concept was first identified in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), prior to the ADA. See also 42 U.S.C. § 12182(b)(2)(A)(iii), 28 CFR §§ 36.104, 36.303, and 28 CFR Part 36, App. B, §§ 36.104, 36.303; and 42 U.S.C. § 12134(b), 28 CFR §§ 35.150(a)(3), 35.164 and 28 CFR Part 35, App. A, § 35.150(a)(3). Additional potentially relevant judicial authority includes *Burkhart v. Washington Metropolitan Transit Auth.*, 112 F.3d 1207 (D.C. Cir. 1997), *Melton v. Dallas Area Rapid Transit*, 391 F.3d 669 (5th Cir. 2004), and *Boose v. Tri-County Metropolitan Trans. Dist. of Oregon*, 587 F.3d 997 (9th Cir. 2009).

²²⁵ Disability Rights Education & Defense Fund and TranSystems Corporation, "Origin-to-Destination Service in ADA Paratransit," *Topic Guides on ADA Transportation*, No. 5, "Transit Policies and Operational Issues," June 2010, accessed October 17, 2013, at <http://dredf.org/ADAtg/>.

²²⁶ Disability Rights Education & Defense Fund and TranSystems Corporation, "Origin-to-Destination Service in ADA Paratransit," *Topic Guides on ADA Transportation*, No. 5, "Decision #1: Whether to Provide Door-to-Door Service For All Trips," June 2010, accessed October 17, 2013, at <http://dredf.org/ADAtg/>.

²²⁷ Richard DeRock, General Manager, Link Transit, Wenatchee, Washington, *Comments on Department of Transportation Docket OST-2006-23985*, April 19, 2006, p. 4.

²²⁸ National Academy of Sciences, Transit Cooperative Research Program (TCRP) Synthesis 60, *Practices in No-Show and Late Cancellation Policies for ADA Paratransit*, Transportation Research Board, Washington, DC, 2005 (research conducted in 2004), p. 10.

²²⁹ National Council on Disability, "Current State of Transportation for People with Disabilities in the United States," *op. cit.*, p. 80.

²³⁰ MetroAccess Door-to-Door Service Policy, Washington Metropolitan Area Transit Authority, 2008.

²³¹ Richard DeRock, General Manager, Link Transit, Wenatchee, Washington, *Comments on Department of Transportation Docket OST-2006-23985*, April 19, 2006, p. 4.

²³² MetroAccess Door-to-Door Service Policy, *op. cit.*

²³³ Personal communication with a California disability services program director who wished to remain anonymous, May 2006.

²³⁴ Disability Rights Education & Defense Fund and TranSystems Corporation, "Origin-to-Destination Service in ADA Paratransit," *Topic Guides on ADA Transportation*, No. 5, *op. cit.*, "Local Policies Vary."

²³⁵ Karen Hoesch, Executive Director, ACCESS Transportation Systems, Pittsburgh, Pennsylvania, personal communication, January 3, 2007.

²³⁶ Julie Carroll, Senior Attorney Advisor, National Council on Disability, Washington, DC, personal communication, February 23, 2009.

²³⁷ Disability Rights Education & Defense Fund and TranSystems Corporation, "Origin-to-Destination Service in ADA Paratransit," *Topic Guides on ADA Transportation*, No. 5, *op. cit.*, "Identifying Passengers."

²³⁸ Disability Rights Education & Defense Fund and TranSystems Corporation, “Origin-to-Destination Service in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 5, *op. cit.*, “Operational Judgment Needed.”

²³⁹ Where otherwise unstated, the material in this section is derived from “Origin-to-Destination Service in ADA Paratransit,” Disability Rights Education & Defense Fund and TranSystems Corporation, *Topic Guides on ADA Transportation*, No. 5, *op. cit.*, “Additional Examples: When Is Door-to-Door Service Required?”

²⁴⁰ Massachusetts Bay Transit Authority, Riding the T, Accessible Services, *Guide to the Ride Service*, p. 10, accessed March 26, 2015, <http://www.mbta.com/uploadedFiles/documents/RIDEGUIDE010107R1.5.pdf>.

²⁴¹ The Metropolitan Transportation Authority New York City Transit, *Guide to Access-A-Ride Service*, accessed March 27, 2015, <http://web.mta.info/nyct/paratran/guide.htm#assistance>.

²⁴² Easter Seals Project ACTION Distance Learning Session: *Determining ADA Paratransit Eligibility: An Approach, Guidance and Training Materials, Part 1*, Karen Hoesch, *op. cit.*

²⁴³ Easter Seals Project ACTION Audio Conference, *Open Mic—What’s on Your Mind—A General Session on the ADA*, November 9, 2005, with and Cheryl Hershey and David Knight, U.S. Department of Transportation, Federal Transit Administration, Office of Civil Rights.

²⁴⁴ Disability Rights Education & Defense Fund and TranSystems Corporation, “Origin-to-Destination Service in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 5, *op. cit.*, “Public Input in the Planning Process.”

²⁴⁵ Disability Rights Education & Defense Fund and TranSystems Corporation, “Origin-to-Destination Service in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 5, *op. cit.*, “Vehicle Operator Training.”

²⁴⁶ DOT, FTA Compliance Review, Metropolitan Transit System, San Diego, California, Final Report dated June 4, 2009, pp. 31 & 32, accessed October 15, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

²⁴⁷ Debra Mair, Executive Director, Utah Independent Living Center, Salt Lake City, Utah, personal communication, February 5, 2013, and Andy Curry, Director, Roads to Independence, Ogden, Utah, personal communication, February 5, 2013.

²⁴⁸ Utah Transit Authority Paratransit Rider’s Guide, revised September 2012, p. 14. At the time of this writing in November 2013, a check on the UTA website for possibly updated Rider’s Guide language found only this note: “See also: Paratransit Rider’s Guide (coming soon),” accessed November 27, 2013, <http://www.rideuta.com/mc/?page=RidingUTA-Accessibility-ParatransitServices>.

²⁴⁹ Interview, Richard Devylder, *op. cit.*

²⁵⁰ Alice Ritchhart, *op. cit.*

²⁵¹ Interview, Tracee Garner, Outreach Coordinator, Loudoun (Virginia) ENDependence (LEND) Center, January 15, 2013.

²⁵² Disability Rights Education & Defense Fund and TranSystems Corporation, “On-Time Performance in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 6, “Using the One-Hour Scheduling Window Correctly,” June 2010, accessed October 21, 2013, at <http://dredf.org/ADAAtg/>.

²⁵³ Federal Transit Administration ADA Compliance Review of Rochester-Genesee Regional Transportation Authority (R-GRTA), *op. cit.*, p. 46.

²⁵⁴ Disability Rights Education & Defense Fund and TranSystems Corporation, “On-Time Performance in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 6, *op. cit.*, “Using the One-Hour Scheduling Window Correctly.”

²⁵⁵ FTA findings regarding the need to consider appointment times have appeared in several ADA compliance reviews, including these three:

Federal Transit Administration ADA Compliance Review of Metropolitan Tulsa Transit Authority, Tulsa, Oklahoma, *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted March 11–14, 2002, Final Report dated October 3, 2002, p. 39, accessed April 16, 2015, http://www.fta.dot.gov/documents/Tulsa_Final_Report_021003.doc.

Federal Transit Administration ADA Compliance Review of Rochester-Genesee Regional Transportation Authority (R-GRTA), *op. cit.*, p. 46, accessed April 16, 2015, http://www.fta.dot.gov/documents/Rochester_Final_Report_031027.doc.

Federal Transit Administration ADA Compliance Review of Southeastern Pennsylvania Transportation Authority (SEPTA), Philadelphia, Pennsylvania, *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted March 6–10, 2000, Final Report dated November 17, 2000, p. 54, accessed April 16, 2015, http://www.fta.dot.gov/documents/Philadelphia_Final_Report_001117.doc.

²⁵⁶ DOT, FTA Letter to Rochester-Genesee Regional Transportation Authority, October 27, 2003, by Michael Winter, as discussed in Transit Access Report, *Option Urged for ADA Riders to State Desired Arrival Time*, Pace Publications, November 25, 2003, p. 5.

²⁵⁷ *Ibid.*, p. 45.

²⁵⁸ Disability Rights Education & Defense Fund and TranSystems Corporation, “On-Time Performance in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 6, *op. cit.*, “Using the One-Hour Scheduling Window Correctly.”

²⁵⁹ DOT, ADA Compliance Review Final Reports, Paratransit, New York City Transit, New York, New York (NYCT), October 22, 2004, pp. 58 & 65, accessed March 27, 2015, http://www.fta.dot.gov/civilrights/12875_3899.html.

²⁶⁰ Disability Rights Education & Defense Fund and TranSystems Corporation, “On-Time Performance in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 6, *op. cit.*, “Negotiated Time Versus Scheduled Time.”

²⁶¹ DOT, FTA ADA Compliance Review Final Reports, Paratransit, Sun Metro LIFT, El Paso, Texas, May 24, 2001, p. 22, accessed March 27, 2015, http://www.fta.dot.gov/civilrights/12875_3899.html.

²⁶² DOT, FTA ‘ADA Compliance Review, Birmingham Jefferson County Transit Authority (BJCTA), Final Report October 25, 2002, p. 51, Memphis Area Transit Authority (MATA), Final Report August 1, 2000, p. 30, accessed March 27, 2015, http://www.fta.dot.gov/civilrights/12875_3899.html.

²⁶³ Disability Rights Education & Defense Fund and TranSystems Corporation, “On-Time Performance in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 6, *op. cit.*, “Negotiated Time Versus Scheduled Time.”

²⁶⁴ *Transit Access Report*, “ADA Complaint Spurs a Review of when Pickup Window Starts,” September 10, 2013, pp. 1 & 6.

²⁶⁵ Many FTA ADA compliance reviews have addressed the need for transit agencies to monitor all aspects of on-time performance, not only pickups. DOT, FTA ADA Compliance Review of Memphis Area Transit Authority, *op. cit.*, p. 30.

²⁶⁶ Disability Rights Education & Defense Fund and TranSystems Corporation, “On-Time Performance in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 6, *op. cit.*, “The Pickup Window.”

²⁶⁷ *Transit Access Report*, September 10, 2013, *op. cit.*

²⁶⁸ In a draft ADA compliance review of the Autoridad Metropolitana de Autobuses (AMA) paratransit service in San Juan, Puerto Rico, the FTA found that the AMA 60-minute pickup window can result in service that is not comparable to fixed-route service and can result in untimely pickups, and appears to be a capacity constraint. It also stated that pickup windows up to 30 minutes are the industry standard, and result in wait times that are more comparable to that of the fixed-route service. Federal Transit Administration ADA Compliance Review of Autoridad Metropolitana de Autobuses (AMA), San Juan, Puerto Rico, conducted October 2007 (draft).

²⁶⁹ Disability Rights Education & Defense Fund and TranSystems Corporation, “On-Time Performance in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 6, *op. cit.*, “Avoid Very Early As Well As Late Pickups.”

²⁷⁰ In many ADA compliance reviews, including these five— Central New York Regional Transportation Authority (Syracuse, NY), Palm Tran Incorporated (Palm Beach County, FL), New York City Transit (NY), Pierce Transit (Tacoma, WA), Pioneer Valley Transit Authority (Springfield, MA), FTA expressed concern about the numbers of early pickups and the pressuring of passengers to board early.

DOT, FTA ADA Compliance Review, accessed March 27, 2015, http://www.fta.dot.gov/civilrights/12875_3899.html.

²⁷¹ Letter of Finding by John R. Day, Acting ADA Team Leader, Office of Civil Rights, Federal Transit Administration, December 18, 2008, regarding FTA Complaint No. 07-0203 against Access Transportation, the King County Metro paratransit service, Seattle metropolitan area, Washington State.

²⁷² Michael A. Winter, then Director, Federal Transit Administration Office of Civil Rights, letter to Rochester-Genesee Regional Transportation Authority (RGRTA), October 27, 2003, as discussed in Transit Access Report, November 25, 2003, *op. cit.*, p. 5.

²⁷³ A number of other FTA ADA compliance reviews, including these five, found problematic patterns of late arrivals that could form a capacity constraint. For example, one review stated, “The goal for on-time drop-offs is 91%. This goal would result in people being late for appointments for almost one in ten trips. Someone who uses [this service] to commute to work could be late once every two weeks while still achieving this performance goal.” DOT, FTA ADA Compliance Review Final Reports, accessed October 21, 2013 at http://www.fta.dot.gov/civilrights/12875_3899.html.

²⁷⁴ National Transit Institute, *Paratransit Scheduling and Dispatching Fundamentals*. Also, FTA ADA compliance reviews consider drop-offs that are more than 30 minutes early and make a formal finding if there are a large percentage of drop-offs that early. Early drop-offs were singled out by the FTA as a problem in these four ADA compliance reviews: Pierce Transit (Tacoma, WA), Central New York Regional Transportation Authority, (Syracuse, NY), City of Tucson Transit Services Division (AZ), and Capital District Transportation Authority (Albany, NY).

²⁷⁵ Many FTA ADA compliance reviews have found a problematic lack of tracking of various aspects of on-time performance, due to the lack of a drop-off window or a failure to measure timely or too-early drop-offs. Several such findings restated the FTA concern that “For many trips, such as medical, work, school, and business appointments, on-time drop-offs are more important to the customer than on-time pickups.” *Ibid.*

²⁷⁶ Disability Rights Education & Defense Fund and TranSystems Corporation, “On-Time Performance in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 6, *op. cit.*, “On-Time Drop-offs and the Drop-off Window.”

²⁷⁷ Russell Thatcher (TranSystems Corporation) during teleconference with Easter Seals Project ACTION, ADA National Network (DBTACs), “Promising Practices and Solutions in Accessible Transportation: Paratransit Operations Series,” February 17, 2010.

²⁷⁸ Federal Transit Administration, Americans with Disabilities Act Circular C 4710.1, Amendment 1, Draft Chapters for Public Comment, *op. cit.*, p. 8-16.

²⁷⁹ *Ibid.*

²⁸⁰ Several FTA Letters of Finding, including these two, and most FTA ADA compliance reviews, including this one, have determined whether the paratransit ride time was allowable by basing it on the fixed-route time to reach the same destination from the same origin.

Letter of Finding by David W. Knight, then ADA Team Leader, Office of Civil Rights, Federal Transit Administration, July 30, 2008, regarding FTA complaint No. 07-0286 against St. Louis Metro, St. Louis, Missouri.

Letter of Finding by John R. Day, Acting ADA Team Leader, Office of Civil Rights, Federal Transit Administration, December 18, 2008, regarding FTA Complaint No. 07-0203 against Access Transportation, the King County Metro paratransit service, Seattle metropolitan area, Washington State.

Federal Transit Administration ADA Compliance Review of Central New York Regional Transportation Authority, Syracuse, *op. cit.*, p. 84.

²⁸¹ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, p. 69.

²⁸² 49 CFR § 37.133(b) and 49 CFR Part 37, App. D, § 37.133.

²⁸³ Easter Seals Project ACTION, “Paratransit Operations Q&A” with Sue Clark and Dawn Sweet, FTA Office of Civil Rights, <http://www.projectaction.org/Portals/3/Documents/Training/Paratransit%20Operations%20with%20FTA%20Transcript.pdf>. The FTA recommended accepting all requests for subscription service, in order to reduce the number of on-call trips that must be addressed in the reservations and scheduling process. DOT, FTA ADA Compliance Review of Toledo Area Regional Transit Authority (Toledo, Ohio), *ADA Complementary Paratransit Service Capacity Constraints*, Final Report September 10, 2001, p. 32, accessed October 22, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

²⁸⁴ Disability Rights Education & Defense Fund and TranSystems Corporation, “On-Time Performance in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 6, *op. cit.*

²⁸⁵ Federal Transit Administration, Americans with Disabilities Act Circular C 4710.1, Amendment 1, Draft Chapters for Public Comment, *op. cit.*, pp. 8–20.

²⁸⁶ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, p. 73.

²⁸⁷ Americans with Disabilities Act (ADA) Department of Transportation (DOT) regulation at 49 C.F.R § 37.125(h) and 49 CFR Part 37, App. D, § 37.125, accessed October 24, 2013, <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=d315855e2f2c9f940970f4c191349c12&rqn=div5&view=text&node=49:1.0.1.1.27&idno=49>.

²⁸⁸ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, p. 76.

²⁸⁹ Disability Rights Education & Defense Fund and TranSystems Corporation, “No-Shows in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 7, “Recommended No-Show Procedures,” June 2010, accessed October 24, 2013, <http://dredf.org/ADAtg/>.

²⁹⁰ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, p. 73.

²⁹¹ 49 CFR Part 37, App. D, § 37.125, originally published at 56 Fed. Reg. 45747 (Sept. 6, 1991).

²⁹² National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, p. 75.

²⁹³ 49 CFR § 37.125(h)(1).

²⁹⁴ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*

²⁹⁵ Disability Rights Education & Defense Fund and TranSystems Corporation, “No-Shows in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 7, *op. cit.*, “What Is Beyond the Rider’s Control?”

²⁹⁶ National Academy of Sciences, Transit Cooperative Research Program (TCRP) *op. cit.*, pp. 16–17.

²⁹⁷ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, p. 74.

²⁹⁸ DOT, FTA Letter by Michael Winter, to Richard White, Washington Metropolitan Area Transit Authority, December 22, 2003.

²⁹⁹ In several ADA compliance reviews, including these four—Gary Public Transportation Corporation (Gary, IN), Los Angeles County Metropolitan Transportation Authority, Alameda-Contra Costa Transit District and San Francisco Bay Area Rapid Transit District (Oakland, CA), City of Tucson Transit Services Division (AZ)—the FTA has found that transit agency no-show policies may be overly restrictive even when the

transit agencies have not suspended any riders recently for excessive no-shows. DOT, FTA ADA Compliance Review, ADA Complementary Paratransit Service Final Reports, accessed October 24, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

³⁰⁰ Disability Rights Education & Defense Fund and TranSystems Corporation, “No-Shows in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 7, *op. cit.*, “Consider the Frequency of Trips Missed.”

³⁰¹ *Transit Access Report*, Proportional No-Show Policy Adopted in Ann Arbor, Michigan,” August 25, 2010, p. 5.

³⁰² Disability Rights Education & Defense Fund and TranSystems Corporation, “No-Shows in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 7, *op. cit.*, “Pattern or Practice Means Both Substantial Number and Above-Average Frequency.”

³⁰³ “We find EBPC policy to cancel automatically a return trip if the rider was a ‘no show’ for the first half of the trip not acceptable.” Letter of Finding by Cheryl L. Hershey, then ADA Group Leader, Office of Civil Rights, Federal Transit Administration, February 27, 2001, regarding FTA Complaint No. 00055 against Alameda-Contra Costa Transit District, Oakland, California, p. 2. Also National Transit Institute, *Paratransit Scheduling and Dispatching Fundamentals*.

³⁰⁴ Disability Rights Education & Defense Fund and TranSystems Corporation, “No-Shows in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 7, *op. cit.*, “Don’t Cancel the Return Trip.”

³⁰⁵ *Transit Access Report*, “Rights Office Plans to Respond To Policy on Subsequent Trips,” June 22, 2013, p. 1.

³⁰⁶ *Transit Access Report*, “Bad Hygiene Called ‘Disruptive’ In Analysis of ADA Suspension,” October 20, 2013, p. 6.

³⁰⁷ Disability Rights Education & Defense Fund and TranSystems Corporation, “No-Shows in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 7, *op. cit.*, “Alerting the Rider of No-Shows.”

³⁰⁸ Disability Rights Education & Defense Fund and TranSystems Corporation, “No-Shows in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 7, *op. cit.*, “Notification Before Suspensions.”

³⁰⁹ DOT, FTA ADA Compliance Review of Central New York Regional Transportation Authority, Syracuse, *op. cit.*, pp. 50 & 51.

³¹⁰ Easter Seals Project ACTION Distance Learning Session, *Selected Topics in Paratransit Operations*, Transcript of remarks by Jonathan Klein, Federal Transit Administration Region 9, and Sue Clark, Federal Transit Administration Office of Civil Rights, March 17, 2009, p. 7.

³¹¹ In this ADA compliance review, the FTA found that a transit agency may not charge riders for fares related to no-shows or late cancellations as a condition of reinstatement of the service, and that financial penalties are acceptable only in lieu of a suspension, at the rider's option. DOT, FTA ADA Compliance Review of Metropolitan Transit System (MTS), San Diego, California, *op. cit.*, pp. 53 & 55.

³¹² Disability Rights Education & Defense Fund and TranSystems Corporation, "No-Shows in ADA Paratransit," *Topic Guides on ADA Transportation*, No. 7, *op. cit.*, "Financial Penalties—Optional Only."

³¹³ *Transit Access Report*, "FTA Rejects Mandatory Fines For 'No-Shows' by ADA Riders," November 26, 2012, p. 1.

³¹⁴ 49 CFR Part 37, App. D, § 37.125, *op. cit.*

³¹⁵ *Ibid.*

³¹⁶ Disability Rights Education & Defense Fund and TranSystems Corporation, "No-Shows in ADA Paratransit," *Topic Guides on ADA Transportation*, No. 7, *op. cit.*, "Appeal Process for No-Show Suspensions."

³¹⁷ *Ibid.*

³¹⁸ Disability Rights Education & Defense Fund and TranSystems Corporation, "No-Shows in ADA Paratransit," *Topic Guides on ADA Transportation*, No. 7, *op. cit.*, "No-Strand Policies."

³¹⁹ National Council on Disability, "Current State of Transportation for People with Disabilities in the United States," *op. cit.*, p. 76.

³²⁰ Disability Rights Education & Defense Fund and TranSystems Corporation, "No-Shows in ADA Paratransit," *Topic Guides on ADA Transportation*, No. 7, *op. cit.*, "Functional Equivalent of a No-Show."

³²¹ DOT, FTA ADA Compliance Review of Central Ohio Transit Authority, *op. cit.*, p. 43.

³²² Disability Rights Education & Defense Fund and TranSystems Corporation, "No-Shows in ADA Paratransit," *Topic Guides on ADA Transportation*, No. 7, *op. cit.*, "Functional Equivalent of a No-Show."

³²³ *Transit Access Report*, "FTA Says It Will Put in Writing the Issues That Draw Reviews," March 11, 2013, p.3.

³²⁴ *Ibid.*

³²⁵ *Transit Access Report*, "Rights Office Disputes Penalty for a 'Same-Day' Cancellation," July 25, 2013, p. 1.

³²⁶ Disability Rights Education & Defense Fund and TranSystems Corporation, “No-Shows in ADA Paratransit,” *Topic Guides on ADA Transportation*, No. 7, *op. cit.*

³²⁷ Toby Olson, Executive Secretary, Washington State Governor’s Committee on Disability Issues and Employment, personal communication, November 19, 2013.

³²⁸ The Changing Paradigm for Paratransit, Easter Seals Project ACTION, “Looking Within and Without: Moving a Transit Agency and a Transit Association toward Embracing Paratransit,” *op. cit.*

³²⁹ National Research Council, Transportation Research Board Transportation Cooperative Research Program Report 9, “Transit Operations for Individuals with Disabilities,” 1995, accessed March 27, 2015, http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_09-a.pdf.

³³⁰ Based on TranSystems Corp., Regional Paratransit Study, Regional Public Transportation Authority, Phoenix, AZ, 2008.

³³¹ *Ibid.*

³³² As one of many examples, *Transit Access Report*, “FTA Turns Down a Rider’s Bid for Vehicle with Reclining Seat,” February 25, 2009, p. 1. A passenger was able to obtain a vehicle with a reclining seat under a previous service contract; the new contract did not include any vehicles in the fleet with this feature.

³³³ *Transit Access Report*, “Rights Office, Reversing Itself, Rules out Side-Facing Travel,” January 12, 2009, p. 4, quoting an FTA Letter of Finding to Santa Cruz Metro regarding side-facing securement for a particular passenger, among other matters, dated August 14, 2008.

³³⁴ Scott Crawford, personal communication, October 21, 2013.

³³⁵ Interview, Richard Weiner, Principal, Nelson\Nygaard Consulting Associates, September 16 and 24, 2013. Additional information from other sources has been inserted, as identified.

³³⁶ 49 CFR § 37.123(f).

³³⁷ DOT, FTA Letter of Finding by Cheryl L. Hershey, former ADA Group Leader, Office of Civil Rights, FTA Complaint No. 99096, December 31, 2003, accessed March 27, 2015, http://www.fta.dot.gov/civilrights/12875_3899.html.

³³⁸ Karen Hoesch, Executive Director of ACCESS Transportation Systems, Pittsburgh, Pennsylvania, speaking at Alameda County Mobility Workshop, Ed Roberts Campus, Berkeley, California, July 16, 2012.

³³⁹ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, p. 93.

³⁴⁰ Russell Thatcher, TranSystems Corporation, personal communications, July 30, 2004, & November 4, 2013.

³⁴¹ Tracee Garner, *op. cit.*

³⁴² Jan Campbell, *op. cit.*

³⁴³ *DOT Disability Law Guidance*, accessed October 1, 2013, http://www.fta.dot.gov/12325_3886.html.

³⁴⁴ *Transit Access Report*, “Official Says FTA Will Enforce New ADA Paratransit Guidance,” Volume 13, Number 6 (November 25, 2005), p. 1.

³⁴⁵ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, p. 101.

³⁴⁶ ADA Compliance Review Final Reports, accessed October 1, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

³⁴⁷ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, pp. 101–102.

³⁴⁸ This reflects what was posted on the FTA “ADA Compliance Review Final Reports” website in November 2013; accessed November 1, 2013, http://www.fta.dot.gov/civilrights/12875_3899.html.

³⁴⁹ U.S. Government Accountability Office, “Highlights of GAO-13-17,” a report to the Committee on Banking, Housing, and Urban Affairs, U.S. Senate. November 15, 2012.

³⁵⁰ *Transit Access Report*, “GAO Report Focuses Attention On FTA’s Compliance Reviews,” December 10, 2012, p. 1.

³⁵¹ *Transit Access Report*, “FTA Says It Will Put in Writing The Issues That Draw Reviews,” March 11, 2013, p. 3.

³⁵² Richard Devylder, former Senior Advisor for Accessible Transportation for U.S. DOT, personal communication, October 23, 2013; Cliff Perez, interview, *op. cit.*; and Christopher S. Hart, U.S. Access Board Public Member and former Director of Urban and Transit Projects, Institute for Human Centered Design, personal communication, November 13, 2013.

³⁵³ Richard Devylder, personal communication, October 3, 2013.

³⁵⁴ This reflects what was posted on the FTA “ADA Compliance Review Final Reports” website; accessed March 31, 2014, http://www.fta.dot.gov/civilrights/12875_3899.html.

³⁵⁵ This reflects what was posted on the FTA “ADA Compliance Review Final Reports” website on August 12, 2014; accessed August 12, 2014, http://www.fta.dot.gov/civilrights/12875_3899.html.

³⁵⁶ Federal Transit Administration, Central Midlands Regional Transit Authority Paratransit Compliance Review Final Report, Columbia, South Carolina, conducted January 6–9, 2014, Final Report dated June 30, 2014, accessed August 13, 2014, http://www.fta.dot.gov/civilrights/12875_3899.html.

³⁵⁷ Federal Transit Administration, Metropolitan Council Paratransit Compliance Review Final Report, Minneapolis/St. Paul, Minnesota, conducted September 30–October 4, 2013, Final Report dated March 17, 2014, accessed August 13, 2014, http://www.fta.dot.gov/civilrights/12875_3899.html.

³⁵⁸ Toby Olson, Executive Secretary of the Washington State Governor’s Committee on Disability Issues and Employment, personal communication, August 14, 2014.

³⁵⁹ *Ibid.*

³⁶⁰ Federal Transit Administration, Central Midlands Regional Transit Authority Paratransit Compliance Review Final Report, Columbia, South Carolina, Section 5.8, “Reasonable Policies for Proposed Service Suspensions for Missing Scheduled Trips and the Right to Appeal,” pp. 38–41, conducted January 6–9, 2014, Final Report dated June 30, 2014, accessed August 13, 2014, http://www.fta.dot.gov/civilrights/12875_3899.html.

³⁶¹ Toby Olson, Executive Secretary of the Washington State Governor’s Committee on Disability Issues and Employment, personal communication, August 14, 2014.

³⁶² *Ibid.*

³⁶³ *Rider Complaint Form*, Federal Transit Administration Office of Civil Rights, accessed July 23, 2014, http://www.fta.dot.gov/civilrights/12875_14816.html.

³⁶⁴ U.S. Department of Transportation Federal Transit Administration, Letters of Finding According to Subject, accessed October 23, 2013, http://www.fta.dot.gov/civilrights/12875_3900.html.

³⁶⁵ Transit Cooperative Research Program Legal Research Digest 23, The Americans with Disabilities Act: The Federal Transit Administration’s Letters of Findings and Compliance Assessments, July 2007, Transportation Research Board of the National Academies, accessed October 23, 2013, <http://www.trb.org/Publications/Blurbs/159195.aspx>.

³⁶⁶ Easter Seals Project ACTION, “Paratransit Operations Q&A with FTA,” Sue Clark and Dawn Sweet, FTA Office of Civil Rights, June 2011.

³⁶⁷ Interview, John Day and Dawn Sweet, *op. cit.*

³⁶⁸ *Transit Access Report*, “FTA Rejects Mandatory Fines for ‘No-Shows’ by ADA Riders,” November 26, 2012, p. 1.

³⁶⁹ *Transit Access Report*, “St. Louis Metro Told to Rethink Its Handling of ADA No-Shows,” Volume 21, Number 5 (March 11, 2014), pp. 1 & 3.

³⁷⁰ *Transit Access Report*, “Escalator and Elevator Outages Attract FTA Oversight Attention,” Volume 21, Number 5 (March 11, 2014), pp. 1 & 6.

³⁷¹ Federal Transit Administration, Americans with Disabilities Act Circular C 4710.1, Amendment 1, Draft Chapters for Public Comment, February 2014, accessed June 26, 2014, http://www.fta.dot.gov/legislation_law/12349_15846.html and http://www.fta.dot.gov/documents/Proposed_ADA_Circular_Amendment_1.pdf.

³⁷² “U.S. DOT and U.S. DOJ Fine Tornado Bus Company \$55,000 for Violating Americans with Disabilities Act Accessibility Requirements,” September 27, 2010, accessed March 27, 2015, <http://www.fmcsa.dot.gov/newsroom/usdot-and-usdoj-fines-tornado-bus-company-55000-violating-americans-disabilities-act>.

³⁷³ “Justice Department Fines Houston Bus Company \$55,000 for Violating the ADA,” March 9, 2011, accessed October 23, 2013, <http://www.justice.gov/opa/pr/2011/March/11-crt-300.html>.

³⁷⁴ Settlement Agreement under the Americans with Disabilities Act Between the United States of America and Jet Set Line, September 13, 2012, accessed October 23, 2013, http://www.ada.gov/jet_set_line_sa.htm.

³⁷⁵ Settlement Agreement under the Americans with Disabilities Act Between the United States of America and VIP Jet Tours Corp./Pegasus Transportation, September 20, 2012, accessed October 23, 2013, http://www.ada.gov/vip_jet_tours_sa.htm.

³⁷⁶ 35 CFR § 35.190(e).

³⁷⁷ “Justice Department Announces ADA Settlement with Intercity Bus Company, Megabus,” May 15, 2011, accessed October 23, 2013, <http://www.justice.gov/opa/pr/2011/May/11-crt-625.html>.

³⁷⁸ “Justice Department Settles with New Jersey Bus Company Over Unequal Treatment of Passengers with Disabilities,” May 29, 2013, accessed October 23, 2013, <http://www.justice.gov/opa/pr/2013/June/13-crt-614.html>.

³⁷⁹ Settlement Agreement between the United States of America and SuperShuttle International, Inc. Under the Americans with Disabilities Act, June 5, 2013, accessed October 23, 2013, <http://www.ada.gov/supershuttle.htm>. DOJ had a previous 2002 settlement agreement with SuperShuttle regarding providing accessible vehicles and employee training.

³⁸⁰ “Justice Department Resolves Americans with Disabilities Act Lawsuit with Jackson, Mississippi, Public Transportation System,” March 24, 2010, accessed October 23, 2013, <http://www.justice.gov/opa/pr/2010/March/10-crt-303.html>.

³⁸¹ “Justice Department Settles Lawsuit Alleging Discrimination by the Detroit Department of Transportation,” November 3, 2005, accessed October 23, 2013, http://www.justice.gov/opa/pr/2005/November/05_crt_590.html.

³⁸² National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, pp. 147–148.

³⁸³ Federal Transit Administration, *FY2013 Triennial Review Workshop Workbook*, accessed November 15, 2013, http://www.fta.dot.gov/5-24_0700_Granttee_Handbook.pdf.

³⁸⁴ Toby Olson, Executive Secretary, Washington State Governor’s Committee on Disability Issues and Employment, personal communication, August 7, 2014.

³⁸⁵ *Transit Access Report*, “FTA Questions Route Deviation As a Means of ADA Compliance,” October 25, 2013, pp. 1–3.

³⁸⁶ Toby Olson, Executive Secretary, Washington State Governor’s Committee on Disability Issues and Employment, personal communication, August 7, 2014.

³⁸⁷ *Ibid.*

³⁸⁸ *Ibid.*

³⁸⁹ National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, p. 149.

³⁹⁰ *Ibid.*

³⁹¹ Toby Olson, Executive Secretary, Washington State Governor’s Committee on Disability Issues and Employment, personal communication, July 28, 2014.

³⁹² Route Deviations, website of CATC/The Bus, accessed July 28, 2014, <http://catcbus.com/route-deviations/>.

³⁹³ Riding Utah Transit Authority (UTA) “Route Finder,” accessed July 28, 2014, <http://www.rideuta.com/ridinguta/routes/routefinder.aspx?q=5>.

³⁹⁴ Utah Transit Authority, Route Map for F94, The Sandy Flex, accessed July 28, 2014, <http://www.rideuta.com/uploads/routef94apr2014sch.pdf>.

³⁹⁵ Toby Olson, Executive Secretary, Washington State Governor’s Committee on Disability Issues and Employment, personal communication, July 28, 2014.

³⁹⁶ *Ibid.*

³⁹⁷ 49 CFR §37.5(a).

³⁹⁸ Toby Olson, Executive Secretary, Washington State Governor’s Committee on Disability Issues and Employment, personal communication, July 28, 2014.

- ³⁹⁹ TranSystems et al, *op. cit.*
- ⁴⁰⁰ Russell Thatcher, TranSystems Corporation, personal communication, September 17, 2010.
- ⁴⁰¹ 49 CFR § 37.3 (“Wheelchair,” including definition of “common wheelchair”).
- ⁴⁰² National Council on Disability, “Current State of Transportation for People with Disabilities in the United States,” *op. cit.*, p. 36.
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