

ELIGIBILITY FOR ADA PARATRANSIT

THIS SERIES OF TOPIC GUIDES INCLUDES:

- 1** Equipment Maintenance
- 2** Stop Announcements and Route Identification
- 3** Eligibility for ADA Paratransit
- 4** Telephone Hold Time in ADA Paratransit
- 5** Origin To Destination Service in ADA Paratransit
- 6** On-Time Performance in ADA Paratransit
- 7** No-Shows in ADA Paratransit

A Series of
Topic Guides
for Transit
Agencies,
Riders, and
Advocates on
the Americans
with Disabilities
Act (ADA) and
Transportation

The series is available at <http://dredf.org/ADAtg>

TABLE OF CONTENTS

| | |
|--|----|
| INTRODUCTION | 5 |
| ELIGIBILITY CATEGORIES | 6 |
| a. Can't Navigate the System Independently | 6 |
| b. Needs an Accessible Vehicle | 6 |
| c. Obstacles Prevent Reaching the Bus or Train | 8 |
| TYPES OF ELIGIBILITY | 8 |
| a. Unconditional Eligibility (All Trips) | 9 |
| b. Conditional Eligibility (Some Trips) | 9 |
| c. Temporary Eligibility | 9 |
| APPLYING CONDITIONAL ELIGIBILITY: TRIP-BY-TRIP ELIGIBILITY | 10 |
| Case Study on Trip-by-Trip Eligibility: Access Transportation in Pittsburgh, Pennsylvania | 11 |
| RESIDENCY NOT A FACTOR | 12 |
| AT LEAST ONE COMPANION MAY ALSO RIDE | 13 |
| Other Key Issues Regarding Companions and Personal Attendants | 13 |
| IMPORTANT DO'S AND DON'TS | 14 |
| <u>DO</u> : Strictly Limit, Using Best Practices in the Transit Industry | 14 |
| <u>DO</u> : Base Decisions On Most Limiting Condition | 15 |

(Table of Contents continues on next page)

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| | |
|---|----|
| <u>DO</u> : Develop and Use a Comprehensive Task/Skills List | 16 |
| <u>DO</u> : Apply Reasonable Person Test | 17 |
| <u>DO</u> : Identify Specific Abilities and/or Limitations | 17 |
| <u>DON'T</u> : Do Conditional Eligibility Only Part Way | 17 |
| <u>DO</u> : Manage Weather-Related Eligibility Appropriately | 18 |
| <u>DON'T</u> : Make Blanket Denials Based On Type of Disability | 19 |
| <u>DO</u> : Apply Variable Conditions Appropriately | 20 |
| <u>DON'T</u> : Base Eligibility on Travel Training Not Yet Completed | 21 |
| <u>DON'T</u> : Deny Eligibility Based on Prior, Occasional Use of the Fixed Route System | 21 |
| <u>DON'T</u> : Require Applicants to Identify Where They Cannot Go | 22 |
| <u>DON'T</u> : Mix Eligibility With the Common Wheelchair Definition | 23 |
| <u>DO</u> : Allow Applicant Choice of Mobility Aid | 23 |
| <u>DO</u> : Interpret Safety Issues Properly | 23 |
| <u>DON'T</u> : Limit Travel By Children Inappropriately | 24 |
| <u>DON'T</u> : Limit Eligibility Based On Trip Purpose | 25 |
| <u>DON'T</u> : Steer Applicants Away From ADA Paratransit | 25 |
| <u>DON'T</u> : Grant "Feeder Service Only" Eligibility | 26 |
| ELIGIBILITY DETERMINATION PROCESS | 26 |
| No Fees | 26 |
| Twenty-One (21) Day Process | 26 |
| In-Person Interviews and Functional Assessments | 28 |
| Collect Adequate Information | 29 |
| Not Overly Burdensome | 29 |
| Eligibility Determination Letters | 29 |
| Appeal Process for Denials of Eligibility | 31 |

(Table of Contents continues on next page)

| | |
|--|----|
| Recertification | 33 |
| Visitors | 33 |
| Suspension for a Pattern of Missing Scheduled Trips, or No-Shows | 34 |
| Accessible Formats | 35 |
| WHAT ELSE APPLICANTS, RIDERS, AND ADVOCATES NEED TO KNOW | 36 |
| Documentation Applicants May Wish To Submit | 36 |
| Bring Help If You Need It | 37 |
| More About Personal Attendants | 37 |
| If You Are Denied | 38 |
| Other Resources | 40 |
| The Role of Riders and Advocates | 40 |
| WHAT ELSE TRANSIT AGENCIES NEED TO KNOW | 40 |
| Policy Manual | 40 |
| Record Keeping | 40 |
| Complaint Investigation | 41 |
| GENERAL RESOURCES FROM FTA | 41 |
| APPENDIX 1: | 42 |
| Assessing Abilities to Use Fixed Route Transit Services | |
| APPENDIX 2: | 45 |
| Conditional Eligibility—Excerpts from Easter Seals Project Action Teleconference Featuring Karen Hoesch | |
| ENDNOTES | 60 |

INTRODUCTION

The Americans with Disabilities Act (ADA) requires complementary paratransit in view of the fact that there will always be some people with disabilities who are unable to navigate the fixed route³ bus and train systems on their own. Public transit agencies that provide fixed route transportation to the general public must ensure the provision of paratransit service to people with disabilities who are unable to use the fixed route system.

Because the ADA requires paratransit service only for people who are unable to use the fixed route service due to a disability, eligibility determination focuses solely on the person's functional ability to use the fixed route service.

This Topic Guide on Eligibility for ADA Paratransit⁴ first addresses the ADA eligibility rules, then offers important best-practice do's and don'ts, and analyzes the eligibility process. Subsequent sections explain what else applicants, riders, and advocates need to know, as well as what else transit agencies need to know. Then two appendices provide key additional information about ADA paratransit eligibility.

More information about ADA paratransit eligibility is available in the National Transit Institute course on Comprehensive ADA Paratransit Eligibility⁵ and in the Easter Seals Project ACTION report entitled *Determining ADA Paratransit Eligibility: An Approach, Guidance and Training Materials*.⁶

FTA determinations in ADA compliance reviews indicate key transit agency requirements and responsibilities.

The Topic Guide Series on ADA Transportation is for transit agencies, public transit riders and paratransit applicants, and disability advocates. The Topic Guides bring together the requirements of the ADA and the U.S. Department of Transportation (DOT) ADA regulation, Federal Transit Administration (FTA) determinations, and best operational practices on each topic. The Federal Transit Administration enforces the ADA in the area of publicly funded transit. Readers who wish to understand the most authoritative and up-to-date interpretations of the ADA transportation requirements may wish to check both the text and endnotes of this Topic Guide to find specific FTA determinations on particular paratransit eligibility issues.

The determinations FTA makes in its ADA compliance reviews indicate key transit agency requirements and responsibilities that are important for transit agencies to implement. In each ADA compliance review, FTA *Findings* are the basis for corrective actions by the transit agency. FTA *Recommendations* identify one possible way to address the Findings. Many of the

reviewed agencies have implemented service improvements since the time of their reviews. The FTA ADA compliance reviews may be found in full at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html, or go to www.fta.dot.gov/ada and select FTA ADA Compliance / ADA Compliance Review Final Reports.

The Topic Guide series on ADA Transportation also draws information from many other sources, including DOT Disability Law Guidance; FTA ADA Letters of Finding and Bulletins; Transportation Research Board and National Council on Disability publications; National Transit Institute courses; Easter Seals Project ACTION publications and Distance Learning Sessions; American Public Transportation Association draft Recommended Practices; and the recommendations of nationally recognized ADA paratransit operators, planners, and researchers on the best operational practices for implementing ADA requirements.

ELIGIBILITY CATEGORIES

The ADA establishes three general eligibility categories, or three general criteria for determining which riders are eligible for ADA paratransit.

A. CAN'T NAVIGATE THE SYSTEM INDEPENDENTLY

A person who cannot navigate the transit system without assistance is eligible for ADA paratransit. Examples include:

- An individual with a cognitive disability, if he doesn't know where to get off the bus.
- A person with a vision disability who cannot travel in an unfamiliar location or cannot navigate complex transfers.
- A person whose lack of manual dexterity and lack of balance makes her unable to stand up and hang on, so she always needs a seat on the bus or train (since a seat cannot always be guaranteed).

Bus drivers (vehicle operators) are required to provide assistance with the use of accessibility equipment on the vehicle, such as lifts, ramps, securement devices, and so forth. The need for this assistance is not a basis for paratransit eligibility, as long as the required assistance is actually provided.

B. NEEDS AN ACCESSIBLE VEHICLE

Also eligible are people with disabilities who can use accessible buses—that is, vehicles with lifts, ramps, or other boarding assistance devices—when they want to travel on routes that are

still not fully served by accessible buses, or when their bus stop is not accessible due to physical characteristics of the stop.

Inaccessible bus routes and bus stops trigger eligibility.

The Department of Transportation (DOT) regulation Appendix D, which provides interpretive guidance on the regulation, states that a bus route is accessible when all buses scheduled on the route are accessible. A route with every other bus accessible is not fully accessible. So a person in this eligibility category who travels in that route's corridor would have paratransit eligibility until every bus on every run is accessible.⁷

A person is also eligible for paratransit when boarding or disembarking at a bus stop is not possible due to the inaccessibility of the stop. In addition, if the lift or ramp on a vehicle cannot be deployed at a particular stop, an individual with a disability who needs to use the lift or ramp at that stop is eligible for paratransit under this category. However, the ADA contains strict rules about buses serving every stop with the lift or ramp. The transit agency may not refuse to permit a passenger who uses a lift or ramp to board or disembark from a vehicle at any designated stop unless the lift cannot be deployed at the stop, or unless the lift will be damaged if it is deployed, or unless all passengers are precluded from using the stop due to temporary conditions at the stop that are not under the control of the transit agency.⁸

People are also eligible if they can use accessible trains, but they want to travel on an inaccessible light rail or rapid rail line. A rail line is not considered accessible until a transit agency has made all key stations accessible and provided at least one accessible car per train. If an area is served by both bus and rail, even if the bus service is 100 percent accessible, riders have paratransit eligibility if they are traveling to and from stops where key stations are not accessible.

Some cannot use the fixed route system when the stops are not called.

Another key feature needed to make the fixed route system accessible to certain people with disabilities is stop announcements. Some people who are blind or have vision impairments and some people with cognitive disabilities are unable to use the fixed route system when the stops

are not called. In these cases, such riders have paratransit eligibility until the problem is remedied and the fixed route system becomes accessible.⁹

C. OBSTACLES PREVENT REACHING THE BUS OR TRAIN

Also eligible is anyone who, because of a disability, cannot travel to or from the bus stop or train station due to, for example, distance, terrain, weather, safety, or other obstacles that impede them due to their disability. To trigger eligibility, the obstacles must hinder the individual beyond simply being inconvenient. At the same time, it is not necessary for independent travel to be completely impossible. As the DOT ADA regulation Appendix D states:

Inevitably, some judgment is required to distinguish between situations in which travel is prevented and situations in which it is merely made more difficult. In the Department's view, a case of "prevented travel" can be made not only where travel is literally impossible (e.g., someone cannot find the bus stop, someone cannot push a wheelchair through the foot of snow or up a steep hill) but also where the difficulties are so substantial that a reasonable person with the impairment-related condition in question would be deterred from making the trip.¹⁰

This has come to be called the "reasonable person" test.

Travel is "prevented" if a reasonable person with the disability would be deterred from making the trip.

For example, an individual with an ambulatory disability may be able to go six blocks to a bus stop, but doing so takes so long and is so physically difficult that it affects him for the rest of the day. While not physically impossible, a reasonable person would be deterred from making this trip.

TYPES OF ELIGIBILITY

The ADA requires consideration of eligibility for trips that an applicant or rider makes or might make. For this reason, different types of eligibility that have developed in the transit industry, including:

A. UNCONDITIONAL ELIGIBILITY (ALL TRIPS)

This is a person's eligibility category when it is not reasonable to use the fixed route service under any circumstances, regardless of weather, distance to the stop, and so on.

B. CONDITIONAL ELIGIBILITY (SOME TRIPS)

In this type of eligibility, the person can be reasonably expected to make some trips on the fixed route service. For example, a person may be able to reach bus stops that are no more than three blocks away, and where there is a safe, accessible path of travel, but she may require paratransit if distances are greater than three blocks, or if there are path of travel obstacles such as steep hills, deep snow or ice, or other obstacles. Another person may have a variable health condition; on some days fixed route use is possible and on other days, it is not. [Also see Appendix 2, *Conditional Eligibility Teleconference Excerpts*, p. 45 and *DO: Apply Variable Conditions Appropriately* below, p. 20].

Identify all conditions that affect travel.

When transit agencies determine individuals conditionally eligible, they should identify all conditions that affect travel. Omitting any of the conditions that affect travel will inappropriately limit the rider's eligibility. FTA has found in ADA compliance reviews that some transit providers did not adequately consider path-of-travel barriers, weather, and other possible issues when setting conditional eligibility.¹¹

Reports from transit systems that have relatively thorough eligibility determination processes suggest that approximately 30 to 45 percent of all eligible people require the service only under certain conditions.¹² Moving a portion of these trips to the fixed route service can result in significant cost savings to transit providers, though this needs to be done in a manner that is consistent with the ADA requirements, and with best operational practices, many of which are described in this Topic Guide.

C. TEMPORARY ELIGIBILITY

The ADA also includes temporary eligibility for people with disabilities that prevent them from using the fixed route system for a limited period of time.

APPLYING CONDITIONAL ELIGIBILITY: TRIP-BY-TRIP ELIGIBILITY

For riders who have conditional eligibility, for each trip they request, the transit agency may assess (or “screen”) whether that particular trip’s circumstances 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.

Conditional eligibility and trip-by-trip eligibility form a two-stage process. First, in conditional eligibility, the transit agency assesses an individual’s functional ability to use the fixed route transit system. Second, in trip eligibility, the transit agency applies the individual’s conditions to his or her specific trips, one by one.

Neither conditional nor trip eligibility is required by the ADA. But when they are implemented properly, consistent with the best operational practices in the transit industry, it can save money for transit agencies while preserving the ADA rights of riders. It can also yield additional benefits, such as specific information on how to make the fixed route system more accessible [also see Appendix 2, *Conditional Eligibility Teleconference Excerpts*, p. 45].

Many of the best operational practices in conditional and trip-by-trip eligibility are described in this Topic Guide. More information is available in the National Transit Institute course on Comprehensive ADA Paratransit Eligibility¹³ and in the Easter Seals Project ACTION report entitled *Determining ADA Paratransit Eligibility: An Approach, Guidance and Training Materials*.¹⁴

In doing trip eligibility, transit agencies consider environmental and other conditions, such as the path of travel to and from the bus stops, 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 the completion of an environmental assessment.¹⁵

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

CASE STUDY ON TRIP-BY-TRIP ELIGIBILITY: ACCESS TRANSPORTATION IN PITTSBURGH, PENNSYLVANIA

Long considered a national model for thorough trip-by-trip eligibility, Access Transportation in Pittsburgh, Pennsylvania provides 1.8 million total paratransit rides annually, which includes ADA paratransit, senior transportation, and coordinated agency paratransit service. About 32 percent of Pittsburgh's 4200 eligible paratransit riders are considered conditionally eligible.

Since Access has provided 100 percent trip-by-trip eligibility since 1996, many riders with conditional eligibility are now using the fixed route system for more of their rides and are requesting fewer paratransit trips—the system reports that the 32 percent of riders with conditional eligibility only request about 18 percent of all trips. Of these 18 percent, roughly 40 percent are subscription trips and have already been screened, or only need to be screened once. This leaves only about 10 percent of all trips that are non-subscription and being requested by riders with conditional eligibility. Many of these are trips that riders have taken in the past, since most paratransit riders use the service for three to five common trips, so they have already been screened.

Access provides about 40,000 ADA trips a month, which means approximately 4,000 non-subscription trips by conditional riders monthly, or approximately 130 non-subscription conditional rider requests a day. But since most of these have already been screened, since they were made by riders in the past, Access Director Karen Hoesch indicated that only about 30 of these 130 daily trips need a new review, which can be provided with approximately .5 (one-half) of a full-time staff person.

To allow riders some choice even if it is determined that certain trips can be made on fixed route, Access has implemented a policy they call the "convenience fare." If it is determined that a trip can be made by fixed route, but a rider still would like to take the trip by paratransit, for convenience or other reasons, the rider can pay twice the ADA paratransit fare and still get the trip as a non-ADA paratransit trip. Access feels that the convenience fare policy has been very useful in working with riders to implement trip eligibility.

Pittsburgh finds about 2,000 requested trips a month are not eligible for paratransit. Those 2,000 trips a month yield an annualized savings of \$450,000 a year. By reinforcing the trip-by-trip process every time people request transportation, soon many more people are choosing fixed route, and they don't even call to request a paratransit trip.

The experience gained by Access Transportation Systems in Pittsburgh is not unattainable or difficult to implement elsewhere. Once a transit agency has implemented conditional eligibility by thoroughly identifying and communicating the conditions under which each conditionally eligible person can use the fixed route system, trip-by-trip screening can begin at a manageable scale, by focusing on frequently-made trips, identifying those that can be made by fixed route, communicating this information to riders, and offering support to make the transition (such as someone to go with the person on the first fixed route trip). This is a “one-on-one” effort that can be implemented with available resources. If the system can only dedicate one person, she or he can begin with five-day-per-week trips, then move to four-day-per-week trips, and so on, focusing on one rider at a time and scaling the effort to available resources.

The experience gained in Pittsburgh is not difficult to implement.

It does not take many successful transitions to the fixed route system to pay for the resources dedicated to this process. Positive benefits that outweigh the costs can begin immediately. Another benefit is communicating to paratransit riders through implementation of trip eligibility that the conditions of eligibility really mean something. Riders pay attention to them and make increasingly appropriate decisions on when to use the fixed route bus or train service.

Read more about how Access Transportation System in Pittsburgh achieves 100 percent trip-by-trip screening for conditionally eligible riders in Appendix 2, *Conditional Eligibility Teleconference Excerpts*, p. 45.

RESIDENCY NOT A FACTOR

Paratransit eligibility does not depend on where one lives.¹⁶ People who live outside of the paratransit service area can still apply for ADA paratransit eligibility, and the transit agency must review their applications, just like those of area residents. Although paratransit service is not required to go outside of the defined service area, if a paratransit eligible person who lives outside the service area can, for example, catch a ride with a neighbor or bring himself to a point inside the service area, he may use the ADA paratransit service.

AT LEAST ONE COMPANION MAY ALSO RIDE

At least one companion (also termed an associate) may ride with any eligible recipient of paratransit service. Transit agencies must carry an eligible rider's additional companions if space is available.¹⁷

Transit agencies must carry additional companions if space is available.

If the eligible rider with a disability needs a personal attendant in order to make the trip, the attendant will not count as the one companion. The need for the attendant may occur during the ride or at the destination. Anyone eligible for ADA paratransit might need to travel with a personal attendant at any point during the term of his or her eligibility.

Transit agencies may require companions to pay the same paratransit fare as the eligible rider with a disability, which may not exceed twice the full non-discounted fixed route fare. A personal attendant may not be charged any fare.¹⁸ Transit agencies may also require additional attendants to pay the same fare as the rider.

Any rider might need a personal attendant at any point during the term of his or her eligibility.

OTHER KEY ISSUES REGARDING COMPANIONS AND PERSONAL ATTENDANTS

The transit agency may require that space for the companion(s) and/or attendant be reserved when the eligible rider arranges the ride, and it is a best practice to ask when reservations are placed, so that the information can be used to develop runs and make sure that vehicles have adequate capacity for all passengers.

A rider who needs a personal attendant on some or most trips may not be required by the transit agency to bring an attendant on every ride. Several FTA ADA compliance reviews found transit agencies requiring that a personal attendant must always accompany certain riders, merely because the riders stated on their applications that they travel with an attendant. But the ADA does not allow a transit agency to impose this requirement. FTA also found this was an inappropriate use of the information in the application.¹⁹ Another transit agency Rider's

Guide indicated that personal attendants must be “pre-registered,” but FTA found that this may not be required.²⁰

A personal attendant can be another person with a disability, as well as another person who is eligible for ADA paratransit. A child of the eligible person (though not an infant) may also serve as an attendant, as he or she can assist in a number of ways, such as in shopping or as a language interpreter.²¹

Companions must have the same origin and destination points as the eligible rider. Transit agencies may, in appropriate circumstances, also wish to provide service to a companion who has either an origin or destination, but not both, in common with the rider. The DOT ADA regulation Appendix D uses the example of dropping off an individual’s date at her own residence on the return trip from a concert.²²

Transit agencies have sometimes expressed concern that, in their view, some riders take advantage of the “attendant rides free” ADA requirement. While there are a few people who may take advantage of this rule, the abusers will not tend to be the majority of riders, but rather, occasional exceptions. Much of the work of an attendant can legitimately vary over time. Also, in-depth attendant inquiries are not practical. They can be overly burdensome on riders and inappropriately personal in the transit context. Subjecting applicants or riders to such inquiries, which are not directed at the functional skills needed to use the fixed route system, could dissuade people from applying for ADA paratransit and unfairly deny riders their right to paratransit eligibility.

[Also see *More About Personal Attendants* below, p. 37.]

IMPORTANT DO’S AND DON’TS

DO: STRICTLY LIMIT, USING BEST PRACTICES IN THE TRANSIT INDUSTRY

The ADA requires the paratransit eligibility determination process to strictly limit ADA eligibility to people who meet the ADA criteria [see *Eligibility Categories* above, p. 6]. This does not necessarily mean that a transit agency has violated the ADA by granting eligibility to someone who can use the fixed route service. Rather, this requirement is intended to prevent transit agencies from conferring ADA paratransit rights on large sections of the general public, due to the cost implications and the inevitable decline in the quality of service that such a transit system would provide its eligible riders.

At the same time, years of experience in ADA paratransit eligibility determination has taught the important lesson that strictly limiting eligibility to people who meet the ADA criteria needs to be paired with full implementation of the best operational practices in ADA paratransit eligibility, many of which are described in this Topic Guide. A failure to limit eligibility in an

appropriate way yields a system where costs cannot be contained and inappropriate constraints must be placed on service to balance the budget, resulting in ADA violations limiting transportation for many eligible individuals who have no other option. A program that strictly limits eligibility without utilizing best industry practices risks many eligibility denials to people who have a civil right to ADA paratransit service.

For these reasons, transit agencies should adopt a program of thorough eligibility assessment that utilizes the best operational practices in the transit industry, many of which are described in this Topic Guide.

It is also important that strict eligibility for ADA paratransit be paired with robust efforts to make the fixed route bus and/or train service fully accessible to riders with disabilities. It is disingenuous to apply strict ADA paratransit eligibility if it is known that there are limitations to the accessibility of the fixed route system. The entire transit agency—the fixed route division as well as the paratransit division—needs to support the disability community to utilize the fixed route service fully.

DO: BASE DECISIONS ON MOST LIMITING CONDITION

Consider the applicant's potential travel throughout the entire service area, during all seasons.

An applicant's eligibility should be based on his or her most limiting conditions. The transit agency should consider the applicant's potential travel throughout the entire transit system service area, not only near the home or workplace, during all seasons.²³ For example, just because a rider can reach a bus stop that is within one level block of her home, doesn't mean she can reach destinations once she disembarks that may be up to $\frac{3}{4}$ mile away from the bus stop. And while there may be an accessible path of travel from her home to the bus stop, she may encounter path-of-travel barriers when traveling throughout the service area during her entire term of eligibility.

Secondary conditions such as disorientation, fatigue, and difficulties with balance should be considered, as well as variable conditions such as multiple sclerosis, which may change the applicant's ability to travel at different times. Staff proficient in assessing functional ability to use the fixed route service and evaluating barriers to travel should conduct eligibility and route assessments.²⁴

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 [also see *Obstacles Prevent Reaching the Bus or Train* above, p. 8]. For this reason, individuals who are blind, individuals who use wheelchairs, and individuals 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. [Also see Appendix 2, *Conditional Eligibility Teleconference Excerpts*, p. 45.]

DO: DEVELOP AND USE A COMPREHENSIVE TASK/SKILLS LIST

To correctly assess eligibility, a transit agency must consider:

- The individual's functional ability
- The accessibility of the transit system, and its stations and stops
- The impact of architectural barriers including streets and intersections, lack of sidewalks and poor sidewalks, lack of curb ramps and poor curb ramps
- Specific local environmental conditions, such as the climate

Transit agencies should develop a comprehensive list of skills needed and tasks required to use the fixed route service, and use it each time someone's eligibility is assessed. An example of such a list can be found in Appendix 1, p. 42, but the list should be individualized based on where the transit system is located and its characteristics, in consultation with the local disability community. It should include all the tasks a person must be able to do to use the fixed route transit service with a reasonable level of effort and risk, consistently (not just one time), such as going to and from the stop, going throughout the service area, traversing various surfaces, and so on. A rider must be able to perform the tasks under a variety of environmental conditions (low light, snow, ice, rain, heat, humidity, and so on, if such conditions are present in the geographical locale of the transit agency), be able to handle unexpected situations, and so forth, as illustrated in the example list in Appendix 1, p. 42.

Also on the list are the physical, cognitive, and sensory skills needed to perform these tasks. They include physical skills such as walking speed and endurance (for example, can one cross the street safely?), and cognitive skills such as the ability to orient oneself to person, place, and time; short- and long-term memory; the ability to stay on task; the ability to seek and act on directions; and so forth.

When assessing eligibility, transit agency staff should be aware that applicants might not always list all relevant factors on their application forms, particularly if they are not frequent users of fixed route transit. Whoever is reviewing the application needs to consider the person's disability and functional ability, and have the checklist in the back of their mind.

They should note the most limiting disabling condition(s) for the applicant, and remember that for any particular disability and mobility aid, the assessment needs to evaluate every item on the Task/Skills List and how it affects the applicant. Given the many disabling conditions and all of the factors on the Task/Skills List, many determinations will require follow-up contact with the applicant or a named professional.

Note the applicant's most limiting disabling condition.

DO: APPLY REASONABLE PERSON TEST

The "reasonable person" test explained above should be applied to ADA paratransit eligibility as a whole [see *Obstacles Prevent Reaching the Bus or Train*, above, p. 8]. As the U.S. Court of Appeals for the Ninth Circuit affirmed in 2003, it need not be "literally impossible" for a person with a disability to reach a bus stop to qualify for ADA paratransit. Eligibility is warranted if a reasonable person with the disability in question "would be deterred from making the trip."²⁵

DO: IDENTIFY SPECIFIC ABILITIES AND/OR LIMITATIONS

Transit agencies that expect ever to implement trip-by-trip eligibility should identify specific abilities and/or limitations rather than just an individual's eligibility category. It is not particularly useful to determine that a rider is "Category three eligible," for example, but rather, that a rider is eligible for paratransit if he must go:

- More than three level blocks to get to and from the bus stop,²⁶ and/or
- Over steep terrain to the bus stop, and/or
- Through snow and ice to reach the bus stop, and/or
- Across an intersection with several lanes of traffic.

Then, this can be applied to each trip, to determine eligibility for that trip. [Also see Appendix 2, *Conditional Eligibility Teleconference Excerpts*, p. 45.]

DON'T: DO CONDITIONAL ELIGIBILITY ONLY PART WAY

It is not a best practice to utilize conditional eligibility only part way, particularly if a transit agency ever expects to implement trip-by-trip eligibility. For example, some transit agencies feel they can't implement an assessment of environmental conditions such as path of travel, so

they will only consider broad seasonal or weather conditions in their eligibility, such as eligibility during winter months. But finding someone eligible for paratransit only in winter months presumes that during the summer, she is able to travel throughout the service area under all other conditions, which is unlikely to be accurate. She may, for example, still have functional limitations related to distance, lack of curb ramps, inaccessible bus stops that are present throughout all seasons, or other barriers. The result is that the rider's eligibility has been inappropriately restricted, because these additional conditions were left out.

“Seasonally eligible” presumes that during the summer, the person can travel without limitations, which is unlikely.

When the agency begins assessing her trip requests, they will not know what barriers to look for, since the additional conditions are not described.²⁷ Thus, it is important that the transit agency thoroughly identify all the conditions under which a rider cannot use the fixed route service. [Also see Appendix 2, *Conditional Eligibility Teleconference Excerpts*, p. 45.]

DO: MANAGE WEATHER-RELATED ELIGIBILITY APPROPRIATELY

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 don't begin and end predictably, it inevitably denies some rides to people who should be eligible for them, and vice versa.

If seasonal eligibility is used, it is important to set the date range conservatively, so a late snowstorm doesn't 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.²⁸

Transit agencies implementing trip-by-trip eligibility can still plan trips in advance for people with weather-related eligibility, even though the weather can change. In fact, this can be a simple condition to apply. For example, on unpredicted bad weather days, Access Transportation in Pittsburgh found they have many cancellations, so it is easy to provide same-day service to the handful of people who have weather-related eligibility. On the other hand, if the weather is nicer than was predicted, Access still provides the expected trip.²⁹

When transit providers assess trip eligibility based on the weather, it is a best practice to use the National Weather Service (NWS) forecasts. If there is a 30 percent chance or greater of weather that would confer eligibility for a trip, the trip gets booked. (Note that 30 percent is the lowest probability predicted by the NWS.) Then, as a safety net, riders who have weather-related eligibility should be able to call and obtain same-day service if the report was wrong, and weather that prevents their travel actually develops.

DON'T: MAKE BLANKET DENIALS BASED ON TYPE OF DISABILITY

Some transit agencies appear to have denied eligibility based on blanket decisions about the applicants' type of disability. 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 utilizing a case-by-case evaluation. Such practices will inevitably lead to violations of the ADA.

An assumption that anyone using a motorized wheelchair can take the bus will inevitably lead to ADA violations.

People Using Motorized Wheelchairs: An assumption that anyone using a motorized wheelchair can take the fixed route bus or train system ignores the fact that a case-by-case determination still needs to be made. An individual's travel may be limited by other factors, including lack of sidewalks or safe paths of travel, heat, cold, snow and ice, fatigue, or lack of adequate control of the wheelchair.³⁰

People With Visual Impairments: An assumption that once a bus system is served by automated bus stop announcements, people who are blind or have vision impairments can all use the transit system, ignores the fact that a case-by-case determination must still needs to be made, due to many factors, including:

- Traveling to unfamiliar locations. For a location to be familiar means that the person knows how to use the fixed route service to get there. Some systems have wrongly classified a location as "familiar" simply because the person made trips there before on the paratransit system.
- Traveling where there is not a safe, detectable path of travel. The conventional wisdom is that the individual must be able to stay at least five feet from quickly moving traffic and must have a detectable path that stays separate from the street. In addition to roadways without sidewalks, wide-open parking lots present another major barrier.

- Crossing busy streets and intersections, including intersections that allow constant right-on-red turns, and intersections with crossings that aren't aligned. Further, the lack of accessible pedestrian signals and detectable warnings, important features of accessible public rights-of-way, may confer eligibility.
- Traveling in areas with a lot of ambient background noise that precludes a traveler from hearing how traffic is moving and utilizing these cues.
- Using bus stops that are not detectable. If a traveler cannot locate a bus stop (for example, if the pole is away from the sidewalk up a hill), the stop is not detectable. Bus stops that lack unique tactile identifiers are also, arguably, not detectable. For example, in Oregon and Washington, and in Houston, Texas, some agencies have unique pole designs. Eugene, Oregon bus stops have square poles, and no other poles 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.
- Traveling after dark (night-blindness issues).

Much depends on the level of independent travel skills of each person. This is information that only the rider and individuals who may have worked with him or her on mobility and orientation can provide.

DO: APPLY VARIABLE CONDITIONS APPROPRIATELY

Sometimes only the rider can decide if fixed route is an option for a trip.

Transit agencies may be able to use a rider's eligibility conditions to determine if fixed route service is an option for a particular trip. For example, if one of a rider's conditions is that he requires paratransit service if the walking distance to or from bus stops is more than four blocks, transit agencies may be able to examine the locations of bus stops and the rider's origin and destination, and find that there is an alternate path of travel or a fixed route option with bus stops within two or three blocks.

On the other hand, sometimes only the rider can decide if fixed route is an option for a particular trip. This is the case when the rider's functional abilities are variable, including, for example, some people with multiple sclerosis and some individuals with psychiatric disabilities

that vary from day to day. Such riders may not know until the day of service if they are able to get to and from, and use, the fixed route bus or train.

DON'T: BASE ELIGIBILITY ON TRAVEL TRAINING NOT YET COMPLETED

If people with disabilities can navigate the transit system only with travel training, that doesn't change their eligibility until they voluntarily avail themselves of travel training, and subsequently can, in fact, navigate the system. Transit agencies are not allowed to require travel training, or to base eligibility decisions on applicants' potential to be successfully trained to use the fixed route service. Instead, decisions should be based on actual current abilities to use the bus and/or train.³¹

For people who voluntarily enter travel training, it is a best practice to provide them temporary eligibility, because it is possible that their ability to use the fixed route service may change in the short term: there may be trips they can make by fixed route at the end of the training that they cannot make beforehand. Temporary eligibility is appropriate just as it is for any applicants when there is reason to believe their travel abilities may change in the short term. Before temporary eligibility expires, the applicant should be reassessed because paratransit may still be needed. But if people are not interested in travel training, a transit agency may not condition their eligibility on it, nor may the agency force an applicant to take travel training.

DON'T: DENY ELIGIBILITY BASED ON PRIOR, OCCASIONAL USE OF THE FIXED ROUTE SYSTEM

Occasional use of the bus does not mean a person can use it under all conditions.

It is not a best practice, and will lead to ADA violations, to establish a policy that applicants are not eligible if they've 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," and if the applicant says "yes," this may be used as a reason 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. A proper assessment may show that such a person would be conditionally eligible for ADA paratransit.

Particularly when ADA paratransit eligibility is an "all or nothing" proposition—that is, when a paratransit service allows only two choices, full-time unconditional eligibility or no eligibility—

then paratransit riders who could take some trips on the fixed route service may 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 any eligible riders who show they can use the bus or train at any time. According to the National Council on Disability, in these circumstances, paratransit riders may actually be inadvertently discouraged, rather than encouraged, to try the mainline bus or train service. For some riders to be comfortable using fixed route, transit agencies will need to guarantee that they won't lose their paratransit eligibility. Trip-by-trip eligibility may be a good solution for such riders.³²

DON'T: REQUIRE APPLICANTS TO IDENTIFY WHERE THEY CANNOT GO

It is not consistent with the ADA to require applicants to identify the specific destinations where their disabilities will preclude use of fixed route transit, as a prerequisite to granting eligibility. Rather, during the eligibility determination process, transit agencies should focus on the generic types of barriers and conditions that would prevent fixed route travel. Then, if conditional eligibility is granted, the agency can use the conditions to screen trips a rider requests in the future.

As FTA explained in a Letter of Finding:

Determinations of ADA paratransit eligibility must consider the ability of applicants to travel to *any* origins or destinations in the paratransit service area under *all* possible conditions. The simple fact that you only identified destinations in the system that were accessible to you is not a proper eligibility determination based on the most limiting factor. Conditional eligibility would therefore be appropriate in your situation. If you had not traveled to a location before and were not certain whether or not the location was accessible, you would then be conditionally eligible for paratransit service to this location unless and until [the transit agency] has determined that this location is accessible for you via fixed route service. You would not be eligible for paratransit trips when the origin and destination of your trip is accessible, such as those routes identified by you and inspected by [the transit agency] during your eligibility screening.³³

Requiring applicants to identify their possible trips that might include barriers in advance is not reasonable and is likely to be overly burdensome, necessitating that applicants must accurately anticipate their travel needs for several years into the future and explore the locations to see if they encounter barriers.³⁴ This is likely to be especially difficult for applicants who have little or no experience using the fixed route service. Rather, the transit agency must determine an

applicant's overall eligibility first. If conditional eligibility is granted, the transit agency may then screen particular trips based on the rider's eligibility conditions.

If a transit agency can find an alternative path of travel that consistently enables a conditionally eligible rider to use the fixed route service for a particular trip, it may deny paratransit for that trip. But the transit agency may not deny the individual's eligibility as a whole, in advance, based on finding alternative paths of travel for specific predicted trips, because an eligibility determination must be based on the applicant's potential travel throughout the entire service area.

Also see *DO: Base Decisions On Most Limiting Condition* above, p. 15 and *Not Overly Burdensome* below, p. 29.

DON'T: MIX ELIGIBILITY WITH THE COMMON WHEELCHAIR DEFINITION

Applicants should not be denied eligibility because their wheelchairs don't meet the common wheelchair definition.

FTA has found that applicants should not be denied eligibility automatically even if they indicate that they use wheelchairs that do not meet the common wheelchair definition. FTA found that the functional abilities of the applicants must still be considered, that eligibility should be granted, and that the decision to limit service to people using mobility aids that may not meet the definition of common wheelchair should be addressed as a separate issue from eligibility.³⁵

DO: ALLOW APPLICANT CHOICE OF MOBILITY AID

Eligibility should be based on the mobility aid that the applicant chooses to use, not on the possible use of other mobility aids that an applicant is not currently using, or chooses not to use. If an applicant travels with more than one type of mobility aid, it is appropriate to make determinations for each type of aid that he or she uses.³⁶

DO: INTERPRET SAFETY ISSUES PROPERLY

Generally, public safety is not a factor in determining ADA paratransit eligibility. For example, the fact that there is a high crime rate in an area doesn't automatically confer eligibility on persons with disabilities in that area.

However, there are personal safety skills that riders must possess in order to safely travel independently in the community. These personal safety skills should be considered in eligibility determinations.

Note the example list of comprehensive skills needed and tasks required to use the fixed route service in Appendix 1, p. 42 as well as in *DO: Develop and Use a Comprehensive Task/Skills List* above, p. 16. Included among the tasks is *Travel Safely in the Community*, and among the skills is *Judgment and Safety Skills*. Transit agency staff should use such a list, individualized based on local characteristics, or be mindful of how every listed skill and task affects any applicant, including these personal safety skills, when determining eligibility.

Riders must have certain safety skills to travel independently; these skills should be considered in eligibility determinations.

FTA made this clear in an ADA compliance review that stated:

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, “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 such as fear of possible crime that are not directly related to a disability.³⁷

DON’T: LIMIT TRAVEL BY CHILDREN INAPPROPRIATELY

FTA has found that policies limiting the availability of transit service to children may not be imposed solely on the paratransit system. For example, FTA found that several transit agencies had policies that required children to travel with accompanying adults. In one city, children under the age of 14 were not allowed to travel alone on paratransit.³⁸ In another, the minimum was set at 13 years.³⁹ In neither, however, were there similar limitations on the fixed route system.

FTA has indicated that if there are no age limits applied equally to fixed route and paratransit, then ADA paratransit eligibility determinations must consider the independent ability of children to use the fixed route service. On the other hand, if there are parallel age limits on all modes, eligibility determinations can consider the functional abilities of children to use fixed

route with the assistance of an accompanying adult.⁴⁰ In the latter situation, as FTA wrote in a Letter of Finding, “The ADA paratransit eligibility process can consider the abilities of the ‘team’ (child and accompanying adult) when determining eligibility because the child would also be required to be accompanied by an adult [due to the child’s age] when using fixed-route service. Once the child with a disability reaches the minimum age, the child would be reassessed.”⁴¹

DON’T: LIMIT ELIGIBILITY BASED ON TRIP PURPOSE

Eligibility for ADA paratransit should not be limited to particular categories of trips. FTA ADA compliance reviews found that several transit agencies granted eligibility only for dialysis trips. One transit agency also granted eligibility only for certain work trips. This is a violation of the ADA ban on prioritizing paratransit trips based on the trip purpose,⁴² and FTA has repeatedly found it to be an inappropriate application of conditional eligibility.⁴³ If, for example, an applicant receives dialysis treatment, eligibility should be granted not only when going to dialysis, but any time that severe fatigue prevents travel to any destination in the service area.

DON’T: STEER APPLICANTS AWAY FROM ADA PARATRANSIT

FTA has expressed concern over inappropriate practices by several transit agencies that steered applicants toward other services. In one ADA compliance review, where a transit agency had both ADA paratransit and a non-ADA community dial-a-ride program, FTA found that only a small number of dial-a-ride users were also registered as ADA paratransit eligible, even though it appeared that many would be eligible, and the same point of contact was used for eligibility for both services. FTA expressed concern that the transit agency may not be fully explaining the benefits of ADA paratransit eligibility, and that this lack of information could keep some individuals from seeking it, which would constrain use of the service. FTA recommended that the transit agency consider using a consolidated application for all its programs.⁴⁴

In two other ADA compliance reviews, FTA found that it was inappropriate to force individuals to choose between ADA paratransit service and other transportation benefits. Both systems allowed individuals who were determined ADA paratransit eligible to use the fixed route service free of charge. However, they were required to choose between ADA paratransit service and free fixed route service. If they chose the free fixed route service, they forfeited their right to ADA paratransit. This practice violated the ADA right to paratransit of any applicants who chose the free fixed route option, if they could not use the fixed route service for all needed rides. Further, it could also discourage use of the fixed route service, as many applicants may decide not to use bus or train even when they could.⁴⁵

DON'T: GRANT "FEEDER SERVICE ONLY" ELIGIBILITY

FTA found that granting a status of "feeder service only" to all applicants who could not go to and from bus stops was an inappropriate limitation that will result in long trip times and could discourage use of the paratransit service.⁴⁶ While feeder service might be appropriate for longer trips, it will not be appropriate for others. Providing feeder service for all future trips by certain riders, regardless of the trip distance or other considerations, would result in the need to provide feeder service at both ends of every trip. This will result in excessively long total ride times, particularly for shorter trips. Also, double feeder service is an operational challenge at best, and is rarely used in paratransit operations. Requiring it for every future trip requested by a rider is an unrealistic and inappropriate limitation.

ELIGIBILITY DETERMINATION PROCESS

The ADA gives transit agencies flexibility to design their own process for determining paratransit eligibility.

All information provided to the public about the process, all materials necessary to apply for eligibility, and all notices concerning eligibility must be provided in accessible formats upon request. For more detailed information, see *Accessible Formats* below, p. 35.

NO FEES

No fees may be imposed on applicants for eligibility. The transit agency must provide transportation without charge, if needed, to and from any appointments required by the eligibility determination process, because not providing transportation would be an indirect fee. This includes in-person eligibility interviews and functional assessments, as well as trips to obtain photo IDs that may be required to use the service.⁴⁷ Similarly, applicants may not be required to pay for information from a medical professional, if providing such information is a required part of the process. Nor may transit agencies require applicants to provide their own photos for photo identification cards.⁴⁸

TWENTY-ONE (21) DAY PROCESS

Must Provide Service After 21 Days

If the transit agency has not made a determination of eligibility by a date 21 days after the submission of an individual's completed eligibility application, the applicant must be treated as eligible and provided service unless and until the transit agency denies the application.

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.⁴⁹ It is not a violation of the ADA to take longer than 21 days to make determinations (although it is desirable 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. Many FTA findings indicate that it is not enough to put this information in a Rider's Guide or general public information. FTA has stated repeatedly that it should be included in information sent to applicants with application materials.

If there is no determination of eligibility by 21 days, the agency must provide service.

In one such finding, FTA indicated that there is an obligation to take affirmative action to notify riders of this right to service:

DDOT'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 DDOT receipt of a completed application until a determination has been made. If DDOT has not made an eligibility determination within 21 days after receiving a completed application, ***DDOT does not affirmatively notify applicants that they are temporarily eligible to use MetroLift.*** Should applicants inquire as to the status of their application after the 21 days has elapsed, DDOT grants them temporary eligibility. ***DDOT'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 has elapsed.***⁵⁰ [emphasis added]

21-Day Rule: Procedures and Best Practices

There are many models of transit agency procedure with respect to the 21-day rule. FTA has found it acceptable that, if *all* applicants are not only required to complete a paper application form, but also to participate in an in-person interview and/or functional assessment, then the application is not considered complete, and the 21-day clock does not start, until the interview or functional assessment are conducted.⁵¹ However, it is essential that transit agencies schedule the interviews and functional assessments in a reasonable period of time following receipt of a completed application, such as a week or ten days.⁵² If, on the other hand, only *some* applicants are asked to engage in in-person interviews and/or functional assessments,

then a best practice is for the 21-day clock to start for everyone when the completed application is received. Scheduling and conducting in-person interviews and/or assessments are then considered part of the information-gathering process by transit agencies.⁵³ However, in this situation, if an applicant does not come to his or her interview or functional assessment, the 21-day clock is stopped, and does not start again until the person participates in the interview or functional assessment.

Regardless of the method used, FTA also found that a number of transit agencies have taken well over 21 days to complete some eligibility determinations, and has offered suggestions to reduce the time they take.⁵⁴

IN-PERSON INTERVIEWS AND FUNCTIONAL ASSESSMENTS

The application process may include functional evaluation or testing of applicants. Many of the larger 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 of an applicant attempting to perform functional tasks that simulate a fixed route trip, such as climbing steps, crossing a street, walking measured courses, taking cognitive tests, and other activities.⁵⁵ [Also see *Applying Conditional Eligibility: Trip-by-Trip Eligibility* above, p. 10.]

Some disabilities cannot be evaluated by functional assessments, such as seizure disorders and psychiatric disabilities.

It should also be noted that some disabilities cannot be evaluated by functional assessments, such as seizure disorders and psychiatric disabilities.⁵⁶

In 2003, Easter Seals Project ACTION issued a comprehensive guidebook for transit agencies on the in-person interview and functional assessment process entitled *Determining ADA Paratransit Eligibility: An Approach, Guidance and Training Materials*. The guidebook provides a model approach to this type of eligibility determination, and is available from Easter Seals Project Action free of charge at <http://projectaction.easterseals.com/site/DocServer/04ELIG1.pdf?docID=4703>.

Appropriate professionals should perform functional assessments. For example, the Easter Seals Project ACTION report recommends that physical therapists, occupational therapists, or professionals with similar qualifications should conduct physical functional assessments.⁵⁷ If assessments are used for people with significant vision loss (legal blindness or greater), the

report recommends that only Orientation and Mobility Specialists conduct these assessments.⁵⁸

COLLECT ADEQUATE INFORMATION

FTA found in several ADA compliance reviews that some applicants appeared to be denied merely because of inconsistent information in paper application forms. FTA indicated that transit systems should contact applicants and/or professionals to follow up on these apparent inconsistencies and gather more information for consideration, rather than denying eligibility based on inconsistent or unclear information.⁵⁹ [Also see *Eligibility Determination Letters* below, p. 29.] It is not a best practice to deny eligibility if there are open questions, with the attitude that “people can always appeal.” An effort should be made to make a correct initial determination. Many people may not appeal and this would inappropriately deny the right to ADA paratransit service.

NOT OVERLY BURDENSOME

The process may not be overly burdensome for applicants.

While it is important to be accurate and thorough when making eligibility determinations, the process may not be overly burdensome for applicants. According to the DOT ADA regulation Appendix D:

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

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. FTA has found it may be overly burdensome to require applicants to take a second trip to get a required photo identification card. FTA also found that a four-page professional verification form that could only be completed by a doctor could be burdensome, because it may require a doctor visit and possible fees.⁶⁰ For another example, also see *DON'T: Require Applicants to Identify Where They Cannot Go* above, p. 22.

ELIGIBILITY DETERMINATION LETTERS

A transit agency determination of eligibility must be documented in writing, stating clearly whether someone is ADA paratransit eligible. If eligibility is denied or even limited (for

example, limited to conditional or temporary eligibility), the written statement must provide the reasons in detail, so there is a clear basis if the applicant wishes to make an appeal. This documentation must also include the name of the eligible individual, the name of the transit provider, the telephone number of the paratransit coordinator, an expiration date for eligibility (if applicable), and any conditions or limitations on the individual's eligibility, including the use of a personal attendant.⁶¹ The written statement must also include information about the appeal process, including how to file an appeal [also see *Appeal Process for Denials of Eligibility* below, p. 31].

If eligibility is denied or limited, written documentation must provide the reasons in detail.

FTA found in many ADA compliance reviews that letters to applicants denied ADA paratransit eligibility do not specifically state the reasons for the denial.⁶² These transit agencies made only general statements such as "The process found that you are able to use the fixed route system." The FTA-sponsored National Transit Institute (NTI) course on ADA Paratransit Eligibility teaches that a good rule of thumb is to include enough information to allow applicants to fully prepare an appeal. Applicants need to know the specific observations made, or the answers to questions that led to the denial. The NTI training suggests that if the information provided in letters does not allow for full and complete appeal preparation, it is not detailed enough.

FTA also found that the wording in some letters granting conditional eligibility did not clearly indicate what the conditions of paratransit use were. The letters had cryptic statements such as "Walk up to three blocks" in a list of conditions, rather than saying something more clear—for example, that the person could use ADA paratransit "when the distance to or from bus stops is more than three blocks."⁶³

Another inappropriate practice FTA has identified is sending denial letters to applicants whose applications are merely incomplete, inconsistent, or improperly completed. An "Incomplete" letter should be sent, rather than a letter indicating that because the application is not complete, the person has been found to be ineligible.⁶⁴ [Also see *Collect Adequate Information* above, p. 29.] A related practice by one agency was to deem an application incomplete, and to decline to process it, because only minor information or non-pertinent questions were left blank. As long as all key, pertinent information is provided, the application should be considered.⁶⁵ If only minor information is missing, it is a best practice to follow up with the applicant, rather than delaying the process unnecessarily by sending the application back to the applicant.

APPEAL PROCESS FOR DENIALS OF ELIGIBILITY

The transit agency must establish a local appeal process through which individuals whose eligibility has been denied or limited (for example, given conditional or temporary eligibility) can obtain review of the denial.

The letters that inform applicants they have been found ineligible, or that their eligibility is limited in any way, must include information about the appeal process, including how to file an appeal.⁶⁶ FTA has issued several findings that appeal information was not included in letters to applicants found conditionally eligible or eligible only on a temporary basis.⁶⁷ Anything less than full unconditional eligibility requires appeal information.

If an applicant misses the appeal deadline, he or she may reapply at any time, and if denied, appeal.

The transit agency may require that appeals be filed within 60 days of the eligibility denial.⁶⁸ If an applicant misses this deadline, he or she may reapply at any time for eligibility, and then, if denied again, may file an appeal.

The local appeal process must include an opportunity to be heard and to present information and arguments. If the applicant needs transportation to the appeal hearing, the transit agency must provide it.

The decision on an appeal must be made by a person or panel of people uninvolved with the initial decision to deny eligibility. The DOT ADA regulation requires a separation of authority between those making the initial eligibility determination and those making the decision on an appeal.⁶⁹ For example, neither a subordinate of the person who made the initial decision, nor his or her supervisor, should hear appeals.

The first part of the appeal process, from request to hearing, does not have a specific time limit, but it is not open-ended. If it takes too long to complete, this is not consistent with the ADA because it is administratively burdensome on the applicant [also see *Not Overly Burdensome* above, p. 29].

The ADA does place a specific time limit between the appeal hearing and the final decision. If the agency has not made a decision within 30 days of the completion of the appeal process, service must be provided from that time, until and unless a decision to deny the appeal is issued.

Written notification of the result of the appeal must be provided, with detailed, specific reasons stated.⁷⁰

More On Eligibility Appeals: Before, During, and After

Transit agencies may not require advance information about the reason for the appeal.

FTA has found that several transit agencies required too much detailed information from applicants who request appeals.⁷¹ Some transit agencies required applicants to provide their case for the appeal, or why they feel the decision was incorrect—and in some cases fill out appeal request forms that contain this information—before the agencies will schedule an appeal. FTA indicated that transit providers may require appeals to be requested in writing, but may not require more detailed information about why the applicant is appealing. Based on a written request alone, an appeal must be scheduled and heard. Guidance or forms may be suggested to applicants, however, as a way to help them plan for and organize an appeal.

It is a best practice to have an informal review of eligibility denials when applicants request appeals. If the internal, informal review finds that an error was made in the initial determination, and the decision is changed, a formal appeal can be avoided. However, these informal reviews should be transparent to the applicant. If an internal review is considered a first formal part of the appeal process, all requirements related to formal appeals must be met.⁷²

Generally, the transit agency need not provide paratransit service to the individual during determination of the appeal. However, if the person filing the appeal received ADA paratransit service in the past, but was denied eligibility during recertification, it is a best practice to continue paratransit service during determination of the appeal. [Also see *Recertification* below, p. 33.]

The transit agency should have a rotational pool of panel members available on call, so it can convene a panel quickly.⁷³ It is recommended that appeal decision makers be people who are independent and objective, and bring added knowledge to the process. They should receive training on relevant ADA paratransit issues, such as the issues discussed in this Topic Guide.

A high rate of overturned denials in the appeal process may indicate that improvements are needed in initial determinations. It is a best practice for transit agencies to use appeals decisions to identify possible problems with the initial determination process, and make changes to avoid the same mistakes in the future. A low rate of overturned denials in the

appeal process may indicate that the initial determination process is very thorough and accurate. But it may also indicate that the person or panel deciding appeals is not properly trained in ADA eligibility standards, and is not sufficiently scrutinizing initial eligibility determinations. Strong trends in the outcomes of appeals (whether high or low) should be considered carefully by transit agencies.

[Also see *If You Are Denied* below, p. 38.]

RECERTIFICATION

A transit agency may require recertification of eligibility at reasonable intervals. It is a best practice to notify riders of the need to reapply in order to avoid lapses in 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. FTA made a similar finding, acknowledging that the ADA permits periodic recertification of all riders, but pointing out: "waiving recertification for certain customers whose inability to use the fixed route is unlikely to change can avoid associated costs ... and inconvenience to customers."⁷⁴

Regarding continuation of service during the process of appeals that result from recertification decisions, see *More On Eligibility Appeals: Before, During, and After* above, p. 32.

VISITORS

A visitor is anyone with a disability who does not reside in the jurisdiction(s) served by the transit agency, or by other transit agencies within a region with which the transit agency provides coordinated paratransit.

A visitor presenting documentation of ADA paratransit eligibility elsewhere must be treated as eligible.

Any visitors presenting documentation that they are ADA paratransit eligible in their home jurisdiction must be treated by the transit agency as eligible, and no further documentation may be required before paratransit service is provided.

If a visitor does not have documentation of ADA paratransit eligibility, the transit agency may require documentation of the individual's place of residence. If the visitor's disability is not

apparent, documentation of disability may also be required. But no documentation of disability may be required if the visitor's disability is apparent, such as, for example, a person using a wheelchair, or an individual who is blind or has a vision impairment and travels with a guide dog. The transit agency must provide paratransit service to the individual.

A transit agency is not required to provide service to a visitor for more than 21 days per year; that is, per 365-day period from the first day of use. For example, if a person with a disability travels to Florida for three weeks a year, she never needs to apply for local eligibility. The transit agency may require, in order for the person to continue receiving paratransit service beyond 21 days within the same year, that she apply for eligibility in the same manner as would a resident. This is true whether the 21 days are consecutive or parceled out over several shorter visits.

Riders who wish to use ADA paratransit in a location where they don't reside are encouraged to start planning as soon as possible by contacting the ADA paratransit provider where they will visit. Anyone can obtain information about how to contact the ADA paratransit provider in another U.S. city by calling Easter Seals Project ACTION at (800) 659-6428, or may find the information using the Project ACTION Travelers Database Search at http://projectaction.easterseals.com/cgi-bin/traveler_search.cgi. Another useful way to find transit providers is the Resource Library of the American Public Transportation Association. APTA's on-line listing of United States Local and State Transit Links is at www.apta.com/resources/links/unitedstates/Pages/default.aspx. The local transit agency should be able to guide riders to the local ADA paratransit provider.

SUSPENSION FOR A PATTERN OF MISSING SCHEDULED TRIPS, OR NO-SHOWS

The transit agency may suspend, for a reasonable period of time, the provision of paratransit to riders who establish a pattern or practice of missing scheduled trips (no-shows). Trips missed by a rider for reasons beyond his or her control (including trips missed due to transit agency error or lateness) may not be a basis for determining that a pattern or practice exists.

Before such a suspension, the transit agency must notify the rider in writing, citing with specificity the reason for the proposed suspension and its length, including the exact no-shows on which the proposed suspension is based. The appeal process described above for eligibility denials must be made available [also see *Appeal Process for Denials of Eligibility* above, p. 31]. If a rider requests an appeal, transportation service must be continued until the appeal is heard and decided.

Many FTA ADA compliance review findings have questioned whether the transit agencies' no-show policies are consistent with the ADA.⁷⁵ In some, FTA found the policies too restrictive

regarding the number of no-shows that subject a rider to a suspension. For example, FTA stated:

Considering only three no-shows in a one month period to be excessive and an abuse of the service may unreasonably limit service to ADA eligible customers.⁷⁶

FTA found that considering only three no-shows in one month to be an abuse may unreasonably limit service.

In other compliance reviews, FTA found that no-show suspension policies should not be based solely on a set number of no-shows per month, such as three or more. FTA held that, rather, the frequency of an individual's rides and the frequency of his or her no-shows should be considered to determine if a true pattern or practice exists. 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 someone who only schedules five or ten trips a month.

When 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. If the overall no-show rate is five percent, for example, a rider who no-shows only five percent of his scheduled trips should not be considered an abuser of the service, because this is the average. Abuse could, for example, be considered as several times the overall system average, such as 15 percent if the system average is five percent.

More information on *No-Shows in ADA Paratransit*, which is the subject of another Topic Guide, is available at <http://dredf.org/ADAtg>.

ACCESSIBLE FORMATS

The ADA requires transit agencies and other covered entities to use accessible formats (also called alternate formats). Accessible formats are types of auxiliary aids and services. Auxiliary aids and services are measures to ensure communications access for people with impaired vision, speech, or hearing.⁷⁷

In the context of the paratransit eligibility determination process, this requirement means that all transit agency communications with applicants and riders must provide effective communication. This includes all information provided to the public about the eligibility

determination process, all materials necessary to apply for eligibility, and all notices concerning eligibility.

An applicant with a vision impairment may need a letter in large print, in Braille, or in an audio or electronic format.

For example, a print letter may not provide effective communication for an applicant who is blind or has a vision impairment. Such an applicant may need his or her letter in large print, in Braille, or in an audio or electronic format.

It is not appropriate to assume that all riders who are blind or have vision impairments can use the same alternate format. An e-mailed notice may provide effective communication for some people; a notice in Braille or one in large print may provide effective communication for others. According to the DOT ADA regulation Appendix D:

A document does not necessarily need to be made available in the format a requester prefers, but it does have to be made available in a format the person can use. There is no use giving a computer disk to someone who does not have a computer, for instance, or a braille document to a person who does not read braille.⁷⁸

WHAT ELSE APPLICANTS, RIDERS, AND ADVOCATES NEED TO KNOW⁷⁹

DOCUMENTATION APPLICANTS MAY WISH TO SUBMIT

Applicants may provide any information or documentation that will help to show that they are eligible because they cannot use the fixed route transit system—that is, the bus and/or train. Be sure to include information on any secondary disabilities you have, such as disorientation, fatigue, or difficulties with balance. You should consider your potential travel throughout the entire bus and/or rail system during all seasons, not just those in your immediate neighborhood or those that you normally use. For example, you may be able to get to the bus stop near your home, but not the one near your workplace or the movie theater, or near other future travel destinations. Think about your ability to deal with the variety of environments you might face across town, as well as any variable conditions that you experience due to your disability, such as from multiple sclerosis.

You may wish to use the Task/Skills List in Appendix 1 to help you identify the obstacles you face in using the fixed route bus or train system [also see Appendix 1, *Assessing Abilities To Use Fixed Route Transit Services*, p. 42].

Documentation may include any of the following:

- A detailed statement from a disability service provider (independent living specialist, rehabilitation counselor, travel trainer, employment support specialist, and others). This should explain how your disability or its symptoms/effects prevent you from using the bus or train.
- A detailed statement from a medical professional (physician, psychologist, therapist, and others). Medical or disability-related information should explain how your disability or its symptoms/effects prevent you from using the bus or train.
- A detailed personal log/journal that documents the impact of travel on your disability, health, energy, stamina, and so on. This can be as detailed as you wish, as long as it is clear. For example, one entry might read: July 31, 2010: I went four blocks to the store this afternoon. While at the store, I needed to take 20 minutes to rest before getting the energy to shop. When I returned home, I needed to rest for two hours before I had the energy to make dinner.”
- A detailed listing of the access barriers that prevent you from traveling to the bus stop or rail station. For example, no curb cuts on all four corners, no sidewalks, extremely busy intersection with fast “walk/don’t walk” cycle, no pedestrian signals, lack of snow removal, hilly terrain, weather during portions of the year that makes negotiating the distance impossible for you, and so on.

BRING HELP IF YOU NEED IT

When you have an in-person ADA paratransit eligibility interview or functional assessment and you need self-advocacy help, you can bring someone with you. This person could be a friend, family member, advocate, service provider, lawyer, therapist, or other individual. Make sure that you discuss how the person will help you before you go to the assessment. If you need this help, you may be able to get assistance from a Center for Independent Living or other disability service agencies.

MORE ABOUT PERSONAL ATTENDANTS

The Federal Transit Administration (FTA) has found that some transit agencies consider the need for a personal attendant too narrowly. For example, some have only considered the need

for an attendant during travel, but not at the passenger’s destination. FTA found that too few people were being authorized to travel with attendants in some cities.⁸⁰

Any riders who may not use a personal attendant today, but who may need someone to travel with them at some point in the future, should indicate on their applications for ADA paratransit eligibility that they may sometimes travel with a personal attendant.

[Also see *At Least One Companion May Also Ride* above, p. 13.]

IF YOU ARE DENIED

There are still steps you can take, if your ADA paratransit eligibility is denied or limited (for example, if you are given conditional or temporary, rather than full, eligibility).

1. *File a Local Appeal*

If you missed the deadline for an appeal, you may reapply at any time for eligibility, and if denied, appeal.

Any applicant may appeal an unfavorable eligibility decision. If you think you were denied or limited incorrectly or unfairly, it is important to file this local appeal. If you missed the deadline for a local appeal, you may reapply for eligibility at any time, and then, if denied again, you may file an appeal. [Also see *Appeal Process for Denials of Eligibility* above, p. 31]

2. *Engage in local advocacy*

You can also engage in a variety of efforts to advocate for changes by your local transit agency.

You may be able to obtain assistance from local, state, and national disability rights organizations, including:

- Your state’s Protection and Advocacy Agency, which you can find by going to <http://ndrn.org> and scrolling down to the “Get help in your state” section, or by calling 202/408-9514 (or by TTY, 202/408-9521).
- Your local center for independent living (CIL), which you can find by going to www.ilru.org/html/publications/directory/index.html or calling 713/520-0232 (Voice/TTY). You can also find CILs by going to www.ncil.org/directory.html.

In some cities, the disability community and the transit agency have succeeded in building a collaborative relationship in which they work together to improve transit service for people with disabilities.

3. File an ADA complaint in Washington, D.C.

If your local appeal is also denied, and you think that the ADA paratransit eligibility process was inappropriate or unfair, you can file a complaint with the Office of Civil Rights of the Federal Transit Administration (FTA) in Washington, D.C.

You must appeal your denial of eligibility locally first, and include a copy of the denial letter, in order for FTA to consider the circumstances of your complaint fully. You can file the complaint by:

- Filling out and sending the form at www.fta.dot.gov/civilrights/ada/civil_rights_3889.html
- Going to the FTA ADA website at www.fta.dot.gov/ada and selecting ADA Technical Assistance / File an ADA Complaint with the FTA
- Sending a complete letter to:

Director
FTA Office of Civil Rights
East Building – 5th Floor, TCR
1200 New Jersey Ave. SE
Washington, D.C. 20590

Include as many details as possible (who, what, when, where, and so forth), including a record of ongoing ADA violations you believe have occurred, and your local denial letter. As the FTA Office of Civil Rights states on the Rider Complaint Form:

You should include specific details such as names, dates, times, route numbers, witnesses, and any other information that would assist us in our investigation of your allegations. Please also provide any other documentation that is relevant to this complaint.⁸¹

4. File a lawsuit

The other method of enforcing the ADA is to file a lawsuit.

OTHER RESOURCES

You will find many other resources on the FTA ADA website at www.fta.dot.gov/ada. You may also contact the FTA Office of Civil Rights by e-mail at FTA.ADAAssistance@dot.gov or by telephone at 202/366-4018 or 888/446-4511 (or by TTY at 800/877-8339).

In addition to providing technical assistance via telephone and e-mail, the FTA Office of Civil Rights conducts ADA compliance reviews of several transit agencies every year. These are posted on the FTA ADA website at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

Additional resources may be available from a variety of local, state, and national disability rights organizations.

THE ROLE OF RIDERS AND ADVOCATES

Riders, advocates, and transit agencies should all work to ensure that the best practices in determining ADA paratransit eligibility (many of which are described in this Topic Guide) are implemented. Riders and applicants are important sources of information about service quality and can help transit agencies with feedback about service. And as the National Council on Disability has shown, disability advocates can play an important role in improving the performance of their transit agencies.⁸²

WHAT ELSE TRANSIT AGENCIES NEED TO KNOW

POLICY MANUAL

It is a best practice to have a comprehensive manual describing the eligibility process in detail, including staff responsibilities as well as agency policies and procedures. Staff should be familiar with the materials and implement the policies and procedures.

For example, FTA lauded one transit agency for the quality of its written eligibility procedures, stating, “[The transit agency] ADA paratransit eligibility determination materials and process are very comprehensive. The process combines information from the applicant, from named professionals, and from in-person interviews and assessments. The use of all of these key sources of information is very thorough. Development and use of a very detailed *ADA Eligibility Desk Manual* is also a good practice and is to be commended.”⁸³

RECORD KEEPING

Transit agencies should maintain thorough records of the eligibility determination process.⁸⁴ Transit agencies also need to maintain detailed documentation of eligibility decisions in the

event that there is an appeal or the decision is questioned in other ways. Detailed records of appeal hearings should also be maintained. While not required, it is a good practice to record appeal hearings.

Maintain detailed documentation of eligibility decisions and appeal hearings. Recording appeal hearings is a good practice.

Eligibility-related information should be treated as strictly confidential.

COMPLAINT INVESTIGATION

The thorough investigation of all complaints related to ADA paratransit is an important part of monitoring and compliance. Transit agencies should ensure that all applicant and rider complaints are recorded and investigated. Transit agencies are required to have procedures to receive, resolve, maintain records of, and report on complaints.⁸⁵

Transit agencies should provide timely responses to people who have filed complaints with information about the outcome of investigations. Transit systems should then use information obtained from investigations to address any performance issues and improve service, as an integral part of their ADA compliance effort.

GENERAL RESOURCES FROM FTA

Many ADA resources are available on the website of the Office of Civil Rights of the Federal Transit Administration at www.fta.dot.gov/ada. The FTA Office of Civil Rights may be contacted by e-mail at FTA.ADAAssistance@dot.gov or by telephone at 202/366-4018 or 888/446-4511 (or by TTY at 800/877-8339).

APPENDIX 1

Assessing Abilities to Use Fixed Route Transit Services

Part 1 of 2: EXAMPLE/DRAFT TASK LIST

(To Be Discussed and Refined with Local Input)

Following is a draft list of tasks to be considered when developing a master task list with local input. Tasks must be performed independently or with assistance provided by drivers or transit system employees based on ADA requirements and local agency policies and procedures. With a reasonable level of effort or risk, can the applicant consistently:

Get and Remember Transit System Information

Walk/Wheel to and from Transit Stop/Station

Throughout area – up to $\frac{3}{4}$ mile

Over various surfaces

Over various terrain

Up/down curbs

Up/down curb cuts

Cross streets of various widths and with various controls

Find way in familiar and unfamiliar settings

Enter and Exit Transit Stations

Flights of stairs

Elevators and escalators

Navigating complex stations

Wait at a Stop/Station for Transit Vehicle

With and without benches/shelters

Locate and Recognize Bus/Train to Take

Single route and multiple routes with transfers

Board and Exit Vehicle

Inaccessible vehicles

Accessible vehicles (lift, ramp)

Pay Fare

[Continued on next page]

Part 1 of 2: TASK LIST [continued]

Get to Seat/Securement Area

Ride in Seated or Standing Position

Recognize where to exit the bus or train

Signal for Stop

Perform Above Tasks in Various Weather and Environmental Conditions:

Snow, ice, rain, heat, humidity, cold, smog

Bright light, low light, background noise

Handle Unexpected Situations

Travel Safely in the Community (includes many disability-related safety skills such as, for a person with a vision disability, staying at least five feet from moving traffic; for a person with a cognitive disability, responding to situations in a way that would not put the individual in danger)

Part 2 of 2: EXAMPLE/DRAFT FUNCTIONAL SKILLS LIST

(To Be Discussed and Refined with Local Input)

PHYSICAL FUNCTIONAL SKILLS

Physical functional abilities needed to perform tasks required to use fixed route transit system.

Walking speed

Endurance

Coordination

Strength

Balance

Gait

Range of Motion

Dexterity

[Continued on next page]

Part 1 of 2: FUNCTIONAL SKILLS LIST [continued]

COGNITIVE FUNCTIONAL SKILLS

Cognitive functional abilities needed to perform tasks required to use fixed route transit system.

- Orientation to Person, Place and Time
- Judgment and Safety Skills
- Problem Solving
- Coping Skills
- Short and long-term memory
- Concentration (Attention to Task)
- Ability to Seek and Act on Directions
- Ability to Process Information
- Ability to Communicate Needs
- Consistency
- Behavioral Skills

SENSORY FUNCTIONAL SKILLS

Sensory functional abilities needed to perform tasks required to use fixed route transit system.

- Orientation to Place
- Directional Wayfinding
- Ability to Detect Changes on Surfaces
- Ability to Detect Environmental Cues (Hearing)
- Proficiency in Using Mobility Aids

APPENDIX 2

Conditional Eligibility

Excerpts from
Easter Seals Project ACTION Teleconference
Featuring:

Karen Hoesch

**Executive Director, Access Transportation Systems, Pittsburgh, Pennsylvania
February 5, 2008**

These excerpts focus on information not already included in this Topic Guide on ADA Paratransit Eligibility. The full transcript of the Teleconference is available at:

http://projectaction.easterseals.com/site/PageServer?pagename=ESPA_distance_learning_2008_para_elig_conditional

“Some key issues to remember whenever you are making ADA paratransit eligibility determinations: these decisions are functionally based, there is no automatic ADA eligibility based on a diagnosis, a type of disability, or a mobility aid used. This is a transportation and not a medical decision. People have to be prevented from using fixed route as opposed to something that is difficult, uncomfortable, or inconvenient, which using fixed route transit often is.

“There is no automatic ADA eligibility based on a diagnosis, a type of disability, or a mobility aid.”

“Prevented, however, doesn’t mean that the person actually has to keel over on the way to the bus stop and that prevents them from getting there. Every decision we make has to be in the context as what is the reasonable level of effort or risk to perform that task.”

* * * * *

“If I am a person who is a totally blind cane traveler and I am able to get to and from virtually every place I want to go on the fixed route system because the neighborhood in which I live is very accessible and the neighborhoods to which I travel are very accessible, a transit system might be inclined to find me not eligible for ADA paratransit because I am a regular and

frequent bus user. However, it is important that the transit system and the eligibility reflect whether or not there is any condition in the environment or in the transit system that would prevent me from getting safely to or from the bus because I am blind, and then reflect that condition in my eligibility.

“It is very difficult for totally blind cane travelers to [go] through wide-open parking lots... Eligibility has to reflect [that].”

“So for example, generally it is very difficult for totally blind cane travelers to travel through wide-open parking lots with no detectable path of travel. Even though I may never go to a destination that has a wide open parking lot, [though] I may never have a need to travel there, my eligibility has to reflect the fact that if I were to travel to such a location, I would be prevented from doing so because of my disability.

“[We consider] whether ... a person can literally get to and from every bus stop within our [service] area.”

“Therefore, I might have only one condition of eligibility that would never apply to a trip I take, but it reflects the fact that we have to determine eligibility based on whether or not a person can literally get to and from every bus stop within our fixed route transit system area.”

* * * * *

“...the best indication of an accurate thorough process is the number and accuracy of people who you find conditionally eligible.”

“Our communities are slowly becoming more accessible and more pedestrian friendly, and people with disabilities have access to training, mobility aids, and other kinds of technical assistance that they never had before. Many people think that an indication of a thorough eligibility process is how many people are denied ... Quite the opposite; ... the best indication of an accurate thorough process is the number and accuracy of people who you find

conditionally eligible. Who are those people who can take the bus sometimes and need paratransit as their safety net?

“An industry standard right now would be that 30-45% of applicants will be found conditionally eligible in a thorough process. Conditional eligibility is powerful because it reflects back to the individual their ability in a strength-based model. It is not about limitations. It is not about what you can’t do. It is about what you can do.”

“30 – 45% of applicants will be found conditionally eligible in a thorough process.”

* * * * *

“The ‘if’ and the ‘when’ of conditional eligibility is if there are some reasonable conditions under which the individual can use the bus, list what those conditions are. When none of those conditions prevent the person from taking the bus, the trip is not ADA eligible.

“One of the greatest mistakes that I see being made in determining conditional eligibility is the lack of specificity of the conditions. A good solid conditional eligibility process will start with some kind of a rational process used to determine conditions of eligibility. And by rational I mean that it has to be valid in some way and it has to be fact-based.

“One of the greatest mistakes that I see ... is the lack of specificity of the conditions.”

“It must be thorough and it must be complete. This is not a guessing game or negotiation with consumers. This is a process to accurately capture every single condition that would prevent the person from using the fixed route system and when we describe those conditions, there should be little or no interpretation required of what we meant. Using words like ‘safety’, ‘dangerous’ and ‘barriers’ require interpretation.

“My notion of what is meant by safety and someone else’s notion of what is meant by safety will differ. So it is incumbent on us to describe exactly what is it that is transit-specific and functionally based, that makes something safe or unsafe.

“What is a barrier ... ? If we describe the conditions specifically, two people looking at the conditions should get exactly the same answer so our conditions have to be measurable and

they have to be meaningful. Let me give you some examples.

"If a consumer applied for eligibility and they had only been able to learn to use the bus on trips for which they had received extensive travel instruction, their eligibility would reflect the fact that travel training is part and parcel of their functional ability to use the bus. The way to describe this condition would not be 'if you participate in travel training' or 'you must have travel training' or 'once you have had travel training.' The overall condition and the functional limitation would be something more like 'you are not able to use the bus unless you have been taught to take the trip by a travel instructor.'

"That reflects back to the person your understanding that they have some ability to learn fixed route skills, but it requires the assistance and the instruction of someone else to teach them how to do that. Independently, absent of that travel instruction, they lack the functional ability.

"So if the individual has learned one route, their condition of eligibility could be something like – 'you are eligible unless you are taking a trip with an origin / destination served by the 21A because the 21A is the route you have learned.' If the individual has learned one specific trip, instead of saying 'you are eligible for all trips to and from work,' you should say instead 'you are eligible for any trips except your trip to and from 21 Main Street to 3000 Oak Street.'

"The difference between the two is the first phrases the eligibility in terms of the trip purpose. It is not because the person is going to work, it is because they have only learned the trip from one point to another point so by describing those two points, you are reflecting back to the person that regardless of the trip purpose, that is the only origin to destination trip that they have learned to take on fixed route, and any other trip they request would be eligible, because they lack the functional ability without the assistance of travel instruction.

"Bad weather is not a condition of eligibility. We have weather every day, and whether or not it is bad is based on your opinion..."

"Here are some typical conditions that will be reflected in conditional eligibility. ... We have to know how far people can walk. What is their endurance and how far are they able to walk within a reasonable amount of time? Are they affected by weather? Bad weather is not a condition of eligibility. We have weather every day, and whether or not it is bad is based on your opinion and your perception of the weather, so we have to be specific about what is meant by the weather. Do we mean ice? Do we mean snow? Do we mean temperature? Do we mean wind? Do we mean pouring rain? What is it about the weather that affects me functionally? Time of day is a personal limitation for some individuals. For example, someone

with low vision may have fairly good functional abilities in the environment when there is sufficient ambient light for them to see where they are going and find the cues that they need, but when it is dark out, that functional ability is extremely limited.

“So their eligibility would be based on the time of day when it is dark out, and that is usually reflected as ‘dusk to dawn’ because that time changes throughout the year. Some people with multiple sclerosis, for example, start the day pretty well and by slightly after lunchtime, are overcome by tremendous fatigue. Their eligibility could be based on either the number of hours that they are out or the time of day after which they experience severe fatigue that would prevent them from getting to and from the bus stop.

“The same goes for dialysis treatment. There is a huge misconception that people who are receiving kidney dialysis are in great shape and raring to go on the way to dialysis, and only require transportation home from dialysis. Dialysis is just another way of framing eligibility by trip purpose instead of the functional limitation. The functional limitation would be expressed better and more accurately by saying ‘when you are prevented by severe fatigue from getting to and from bus stops.’

“Cognitive ability is another example of a personal limitation that could include people who can ride a single route but who can’t transfer; people who can learn to ride the bus for trips they take all the time but for places they travel to infrequently, don’t have the functional ability.

“Many conditions are episodic so you have extreme swings of good days and bad days that are difficult to predict in advance.

“If you can’t see the stop, is there some other way of knowing you are standing at the right place?”

“Physical conditions of transit system accessibility include routes and stations that are accessible, bus stops that are detectable, and by that I mean that there is a detectable landmark to mark the stop. If you can’t see the stop, is there some other way that you have of knowing that you are standing at the right place?

“Other bus stop accessibility issues include if you [must] stand along the side of the road without a sidewalk less than three feet from quickly moving traffic to catch the bus, if you can’t stand more than ten minutes and there is no seat at the bus stop, or if the lift or ramp can’t be deployed at that stop. For many people, the most limiting condition of riding the bus can be [the inability to stand] on a moving vehicle. If your transit system doesn’t have a local policy

that exceeds the ADA and requires individuals to get up and give their seat to accommodate an individual with a disability, the ability to stand on the fixed route system has to be considered as a condition of eligibility.

“The ability to stand on the [bus] has to be considered as a condition of eligibility.”

“Typical conditions that relate to path of travel include terrain which can be hills or uneven surfaces; the actual pedestrian route which can be lacking sidewalks or well defined paths of travel; wide open parking lots; lack of curb cuts; or obstacles at head or chest level that people who are blind would not be able to detect; and certainly, unfortunately, the most common and the most difficult to mediate is poor intersection design and street crossing challenges.

“The most common condition ... is poor intersection design.”

“I am often asked if there is a certain number of conditions at which you should just give it up and make the person unconditionally eligible. There is no absolute number for how many conditions are too many. This gets back to what is considered a reasonable level of effort or risk

“There is no absolute number ... for how many conditions are too many ... but you cannot leave any out.”

“So there is no absolute number but you cannot leave any out. The conditions of eligibility have to be inclusive. For example, if you are an individual who lives in Pittsburgh and you use a manual wheelchair, your minimum eligibility will include the presence of snow and ice, the lack of curb cuts any time you [must] travel along the berm of a road without a sidewalk less than five feet from quickly moving traffic, an accessible bus stop, and uneven surfaces like gravel and broken pavement with no alternate path of travel.

“I could just about guarantee that anybody who uses a manual chair in Pittsburgh will have all of those conditions of eligibility, plus potentially several more. That doesn’t mean that individual can’t use the fixed route system, so the absolute number of conditions isn’t

necessarily a key to whether conditional eligibility is appropriate. Many systems go wrong by trying to simplify conditions.”

“Many systems go wrong by trying to simplify conditions.”

* * * * *

“[Applicants] who receive these [eligibility determination] letters often receive them with fear and apprehension; and remember, many of the individuals have little experience with the fixed route system. The ADA regulations are quite specific in instructing us that we have to provide conditions in writing and they must be specific. The way to bring them home to people is to provide examples that are relevant to the person.

“If you can outline the conditions of eligibility for the individual and then give an example and relate them to some trip destination or environment with which they are personally familiar, it will give them some insight into what is meant by those conditions.

“[In] letters ... the way to [explain] conditions is to provide examples that are relevant to the person.”

“If you ask people in advance the trips that they take frequently, you can actually potentially reflect back the eligibility of each of those trips that they requested, in their initial eligibility decision. And we found it very helpful ... to assign someone who is not the ADA eligibility coordinator but some other individual on your staff to call people a few days after they have received that eligibility letter and ... act as their navigator; an advocate ... [who] will help them ... work through the process of understanding their conditional eligibility.”

* * * * *

[QUESTION] “If a person uses a power wheelchair and states that he or she needs to use paratransit to go shopping because they cannot carry groceries, should they be listed as conditionally eligible for ADA complementary paratransit?”

[RESPONSE BY KAREN HOESCH] “That is a good question ... and one that comes up a lot because in real life we have to figure out how to get our groceries home from the store. ... I don’t believe that anywhere on your master functional skills list [see example list in Appendix 1], will you see [that] a required functional ability for transit use is to carry packages. That

would be a master functional skill if you were determining how to figure out whether someone could go grocery shopping.

“But what you are figuring out is whether someone can access the fixed route system. Grocery bags are not considered an environmental, architectural, or transit system barrier. So even though the need to carry grocery bags home is very real and the need for transportation for that individual is very real, carrying grocery bags will not be on your master functional skills list, and grocery bags do not represent one of the types of barriers that we are allowed to consider.

“This is when it is very attractive to offer some kind of extra service for customers. So maybe for a higher price, perhaps through a taxi voucher program or a special fare that you offer, you encourage the individual to take fixed route to the store and then offer them some kind of premium service to come home with their grocery bags. That is acknowledging that they are trying to do what they can. They have an issue and you will support them as long as you are financially able to do that.”

* * * * *

[QUESTION] “This ... is a small urban location and we have both bus stops and flag bus boarding locations, and [for] people with blindness or low vision, this can certainly be an obstacle. How do you handle conditional eligibility in that kind of a situation?”

[RESPONSE BY KAREN HOESCH] “I am not a bus stop expert but ... I have heard it expressed that flag stops, by their very definition, are always inaccessible to people with low vision or who are totally blind, because there is no way for them to know when they are flagging the bus.

“For those of you who don’t have flag stops in your system, if I’m totally blind and I am supposed to flag down the bus, how do I distinguish the bus noise from any other vehicle that is rolling down the road? So I am flagging the Fed-X truck, or the mail truck, or the furniture delivery truck. In my opinion, flag stops could be considered inaccessible bus stops for people who are blind or visually impaired.”

* * * * *

“Let me continue ... talking ... about trip- by-trip eligibility. If we have done a good job in determining conditional eligibility, and if as many as 40% of our eligible individuals can be conditionally eligible, it makes sense then that we would want to think about having a process where in real life, we apply the conditions of eligibility to the paratransit trips people want to take.”

* * * * *

“The best ... goal for conditional eligibility is ... to help systems to shift paratransit users to fixed route for those trips ... where they are able It is a tool to help you identify which people and which trips that is appropriate for.

“If your transit system is not welcoming and useable for people with disabilities, ... it will [seem] disingenuous to implement trip eligibility in a strict way.”

“It is important to ask yourself whether your transit system in your community is ready. If you do not have a transit system that is welcoming and useable for people with disabilities, if there are still issues with fixed route accessibility and the minimum fixed route requirements in the ADA, it will be perceived as fairly disingenuous to be implementing trip eligibility in a strict way if your transit system isn’t ready to accept people with disabilities on fixed route.

“Public input should never be overlooked in changing your eligibility process or implementing trip eligibility. It is very important to create an ongoing process for input and to give the community, particularly consumers with disabilities and their advocates, input prior to a significant change.

“And by input, I mean meaningful input. An opportunity for everybody ... to sit down and actively listen, learn, and understand each other’s points of view. A process that creates strict conditional eligibility and a requirement for trip-by-trip eligibility that rolls it out as a done deal and asks people to react to it will almost always be fraught with problems.”

“A strict process ... rolled out as a done deal ... will almost always be fraught with problems.”

* * * * *

“In trip-by-trip eligibility, all we are really trying to do is take those 40% of the individuals who have conditions that would prevent them from using the bus, and apply those conditions to the specific trips that they have requested.

“But more importantly and more powerfully, trip-by-trip eligibility is really a way to evaluate [and] catalog ... the environmental, architectural, and transit system barriers in the service

area. And used best, it is a tool that you can share with people who are in a position to help eliminate [those] barriers.”

* * * * *

“Conditions have to be reasonable, meaningful, and specific.”

“[The] conditions have to be reasonable, meaningful and specific. ... Then we look at the trips people wish to take. Why should we manage trip eligibility? A huge reason, even seventeen years after the ADA, is that lots of people with disabilities have little experience on fixed route for a variety of reasons. And there really is no central repository of information where people with disabilities can call to get good trip planning and barrier information.

“There is no 1-800 Barrier number in Pittsburgh where I can call to find out whether there is a curb cut between my bus stop and where I want to go. If I don’t have any reasonable way of finding that information, I am not going to be very inclined to go out and try to figure it out on my own.

“Why aren’t we implementing trip eligibility as an industry? The first problem is that most of our systems lack solid conditional eligibility. Without thorough, specific, accurate conditional eligibility, it is impossible to apply conditions to trips people wish to take.

“There is a perception in the industry that it is too complicated, ... too expensive ... There is a lack of political will.”

“There is also a perception in the industry that it is too complicated, that it is too expensive, and so it is not worth it; that it requires sophisticated technology that costs millions and millions of dollars and it is really impossible to do in the real environment of operations. Quite frankly, in many of our communities, there is a lack of political will to implement trip eligibility.”

* * * * *

[KAREN HOESCH, IN RESPONSE TO A QUESTION ABOUT USING GOOGLE MAPS]

“It isn’t necessary to start trip eligibility with, on the very first day, being able to implement every trip request exactly based on every single condition of the individual.

“It isn’t necessary to start trip eligibility [for everyone] on the very first day... Start [with] subscription trips.”

“That is why I suggested that systems might want to start a trip screening process by looking at the subscription trips. Start with those and make sure the community understands you selected those because of their frequency, and not because of their trip purpose.

“In evaluating path of travel barriers, [some] tools ... that can be available on the Internet can be good at determining distances, but nothing substitutes for actually looking at the physical environment and measuring things accurately.

“You do [need] to expend some shoe leather in implementing conditional eligibility.”

“It is very difficult to see from a ‘space-ship’ kind of resolution what an intersection design looks like and what kind of traffic is flowing through there. So I think you do [need] to expend some shoe leather in implementing conditional eligibility.

“In Pittsburgh, we don’t use any software at all to manage the process or to store the information. It is [entirely] possible to do this with pencil and paper.

“In Pittsburgh, we don’t use any software ... It is possible to do this with pencil and paper.”

“I don’t think my friends in Spokane, Washington would mind me saying that they were determined to start doing trip-by-trip eligibility and they started by keeping track of trips on an Excel Spreadsheet. So it is more important to have the conceptual framework necessary. The technical tools are helpful but they are not a deal breaker.”

* * * * *

“Remember that you [must] start with the specific conditions that are objective and measurable. You [need] good communication with your customers, so that they understand

what it is that you are trying to do, and you ... [must] be prepared to build a database of what your community looks like in terms of getting to and from bus stops.

“You [need] good communication with your customers ... and you [must] be prepared to build a database of what your community looks like in terms of getting to and from bus stops.”

“By clear and measurable conditions, let me give you a few examples. We talked about ‘safe’ and ‘dangerous’ before, and the fact that it could result in three people evaluating the word ‘safe,’ [and] coming up with three different meanings Instead of saying to an individual, ‘you are eligible when you can’t get safely to or from the bus stop,’ we might want to rephrase that as follows. ‘When low lighting or nighttime darkness prevents you from getting to and from the bus stop.’

“That explains to the individual the functional limitation that they have that makes it unsafe for them to get to the bus stop and this is when you can use “dusk to dawn” eligibility. Instead of saying ‘if you [must] travel along a dangerous path of travel,’ you might want to say ... ‘if you [must] walk along the side of the road with no sidewalks and less than five feet from quickly moving traffic.’ Instead of saying ‘if the distance is too great,’ we should frame exactly what we mean by distance.

“That could be ‘if you [must] walk more than three level blocks.’ The person might live in a suburban area where there are no blocks so make sure that you are able to define a block by measurements. The Easter Seals Project ACTION materials lists 330 feet as a suggestion, but whatever it is, explain it to people in both ways. Instead of ‘return from dialysis,’ we want to say, ‘when extreme fatigue prevents you.’ Instead of ‘seasonal,’ we want to say exactly what it is about the weather that prevents you. ‘The temperature is less than 35, greater than 80, there is the presence of snow or ice.’

“So how do we actually do this in real life, is a question that I get a lot. We’ve been doing trip-by-trip eligibility in Pittsburgh for quite some time now, and my best advice to you is that decisions about individual trips should be made administratively, not by the dispatcher or the call taker at the time of the trip.

“So a trip request would be referred to a specialist in the ADA Eligibility Office who would investigate whether the barrier is present or not, particularly for standing orders or subscription trips ...

“That can be entered with just an origin and destination address and an indication of eligibility in a client file, in any kind of system that you use, even if you are using pencil and paper. Then when the individual calls for that trip, the call taker doesn’t [need] to evaluate the conditions of eligibility and the barriers in the trip, they simply go to a drop-down screen in the client file that lists that origin and destination pair

“You presume the trip is eligible until you have information to the contrary.”

“If a call comes ... to a call taker and the call taker doesn’t see the trip on the drop-down screen, the person should probably be given presumptive eligibility for that trip. That means that you presume the trip is eligible until you have information to the contrary.

“[It’s] helpful to mail people a ... page describing that particular trip.”

“It is important that if trips are given presumptively, for someone to make sure that the consumer understands why the trip is eligible, and when we find out whether there is a barrier or not, how that decision will be communicated back to the individual. When screening new trips for individuals, we want to be sure that we communicate the decision about trip eligibility by phone and in writing, and we found it very helpful to mail people a little one-page sheet that just describes that particular trip.

“Pretty soon they end up with something that looks like Triple A Trip Tics for each of the trips that they wish to take, particularly if they are able to take them on the bus. We ... give them directions to and from the bus stop, including landmarks, the name of the route they are going to get on, the stop that they need for the exit, schedule information, and the accessible path of travel.

“To implement this thoroughly, [it’s] about a half-time position.”

“If you are getting started on trip eligibility, our experience in Pittsburgh is that to implement this thoroughly, this is about a half-time position. You must start with clear specific conditions

of eligibility. You should have a bus stop inventory for your system and it is very helpful to start with subscription trips first because that is where you get the most bang for your buck.

“You should also be sure to partner with others in the community who are skilled and qualified to help you do community barrier assessments. They are out there all the time doing this kind of work. Travel instructors, orientation and mobility specialists, your centers for independent living, city planning, and even transit roads supervisors can feed you back lots of information that you need to be able to evaluate the quality of path of travel. Collecting data is very useful because whatever barrier creates eligibility can often be corrected, so it is very helpful to code trips that people want to take that are determined eligible because of a particular barrier.

“I get a weekly report of every trip that’s eligible because the bus stop wasn’t accessible. I give it to the transit system to eliminate those barriers.”

“So every week, for example, I get a report of every trip that was determined eligible because the bus stop was not accessible. I can give that information back to the transit system and they can work to eliminate those bus stop barriers that will help us transition those individuals to the fixed route system.

“Trip-by-trip eligibility sounds overwhelming when you consider that 30-45% of your registered customers might have conditional eligibility, but in Pittsburgh, where we have been doing this for many years, trips requested by people with conditional eligibility have never been more than 18% of the total. That, to me, is an indication that people with conditional eligibility are using the fixed route and are only requesting trips that they can’t take on the fixed route system.

“We screen 2,000 trips a month and save \$450,000 annually.”

“We still screen about 2,000 trips a month that we find not eligible. Just those 2,000 trips a month gives us an annualized savings of \$450,000 a year. And by reinforcing this process every time people request transportation, we find that many more people are choosing fixed route and don’t even bother to call and request a paratransit trip—they understand what to do.

“At the same time, the accessibility and the reliability of the fixed route system is improving. For long-term demand management for ADA paratransit, conditional eligibility is definitely the

key, and what we found very powerful here in Pittsburgh is that the money we save on having trip eligibility is reinvested in making the paratransit service better. Our transit system has agreed to use the savings that result from strict eligibility to do more than the ADA minimum.

“Our transit system has agreed to use the savings that result from strict eligibility to do more than the ADA minimum.”

“We’ve been able to hold fares to equal to fixed route, rather than double, and we provide service throughout the county instead of the three-quarter mile corridor, and we have no restrictions on days and hours of service.

“If it is possible to offset some of the limitations of paratransit for people who can never access the fixed route with the money that is saved from conditional eligibility, this will help people in the community understand why this is an important adventure.”

ENDNOTES

- 1 The authors of the Topic Guide Series on ADA Transportation are Marilyn Golden, Policy Analyst, Disability Rights Education & Defense Fund (DREDF) and Russell Thatcher, Senior Transportation Planner, TranSystems Corporation.

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The authors also extend appreciation to DREDF staff Ann McDonald-Cacho, Dave Nold, Julia Epstein, Linda D. Kilb, and Katie Keil.

- 2 This report was funded through a cooperative agreement between the Disability Rights Education & Defense Fund (DREDF) and the Federal Transit Administration (FTA), U.S. Department of Transportation. The views and policies expressed herein do not necessarily represent the views or policies of the Federal Transit Administration. The United States government assumes no liability for the contents or use of this report.
- 3 Fixed route transit systems are those that operate along prescribed routes according to fixed schedules, in contrast to demand response transit service, in which a vehicle is dispatched or routed in response to a potential rider's request. For example, the subway train is a fixed route system; taxis are a demand response service.

- 4 This Topic Guide discusses the provisions of the Americans with Disabilities Act (ADA) at 42 U.S.C. § 12143(c), available at www.ada.gov/pubs/adastatute08.htm, and of the Department of Transportation (DOT) ADA regulation at 49 C.F.R. Subpart F, §§ 37.123 – 37.127 and 49 C.F.R. Part 37, App. D, Subpart F, §§ 37.123 – 37.127, available at www.fta.dot.gov/civilrights/ada/civil_rights_3906.html.
- 5 Information about the National Transit Institute (NTI) course on Comprehensive ADA Paratransit Eligibility is available at <http://ntionline.com/CourseInfo.asp?CourseNumber=FP011>. NTI may also be reached at (732) 932-1700 (phone) and (732) 932-1707 (fax).
- 6 Easter Seals Project ACTION, *Determining ADA Paratransit Eligibility: An Approach, Guidance and Training Materials*, 2003. This report is available from Easter Seals Project Action free of charge at https://secure2.convio.net/es/site/Ecommerce/1509166542?VIEW_PRODUCT=true&product_id=5781&store_id=9663.
- 7 Corridors are part of the ADA definition of paratransit service area. The ADA requires the paratransit service area to include corridors that are ¾ mile wide on each side of every bus route. 49 C.F.R. § 37.131(a).
- 8 49 C.F.R. § 37.167(g).
- 9 A Letter of Finding from the Federal Transit Administration Office of Civil Rights stated in 2003, "Where the failure to call stops is a systemic problem with low rates of calling out stops, and the person with the disability cannot use the system, the transit system must make that rider ADA Complementary Paratransit eligible. This is so until such time as the problem is remedied and the system becomes accessible."

Letter of Finding by Cheryl L. Hershey, then ADA Group Leader, Office of Civil Rights, Federal Transit Administration, October 14, 2003, regarding FTA Complaint No. 99218 against Maryland Transit Administration, p. 3.
- 10 49 C.F.R. Part 37, App. D, § 37.123. Further, the U.S. Court of Appeals for the Ninth Circuit has favorably referenced the "reasonable person" test included in the guidance that DOT promulgated along with its ADA regulation. See *Storman v. Sacramento Regional Transit Dist.*, 70 Fed. Appx. 438, 439 (9th Cir. 2003)(*unpublished decision citing 49 C.F.R. Pt. 37 App D*). See also Transit Access Report, *Transit Agency in Sacramento Settles Case on ADA Eligibility*, Pace Publications, October 26, 2004, p. 7 (discussing *Storman* case).

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- 11 FTA found inadequate consideration of all conditions affecting applicants' travel in several ADA compliance reviews, including these three:

Finding: "The Centro CAB ADA complementary paratransit eligibility determination process and application form for Onondaga, Oswego, and Cayuga Counties do not appear to adequately address path-of-travel issues or the impacts of weather on travel abilities, and consequently paratransit eligibility appears to be improperly restricted. CAB has implemented an eligibility determination process that very strictly interprets ADA paratransit eligibility requirements. Determinations are primarily based on a paper application and do not appear to adequately consider all of the functional limitations that could affect applicants' ability to use the fixed route system. A review of 20 recent determinations identified several examples where applicants' abilities to use fixed route were likely affected by path-of-travel barriers or severe weather conditions. These issues were not included, however, in the conditions of eligibility in final determination letters."

Recommendation: "The form and process should obtain information about path-of-travel barriers as well as the effects of severe weather on travel abilities. Many transit systems that set and implement conditions of eligibility use an in-person process with interviews and functional assessments as needed to more completely identify all travel issues. CNYRTA should also review eligibility determination guidance developed by Easter Seals Project ACTION on this topic: "Determining ADA Paratransit Eligibility: An Approach, Guidance and Training Materials." This report is available free of charge from Project ACTION."

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, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

Finding: "Many of the determinations of conditional eligibility may be too restrictive. Applicants who indicate that they use powered wheelchairs are typically granted conditional eligibility only when the fixed routes they need to use are not accessible. These determinations appear to assume that if a powered wheelchair is used, there are no impediments to getting to and from bus stops. This might not be the case, however, if individuals were required to travel in busy streets because of a lack of a sidewalk or other safe and accessible path of travel. Similarly, individuals who indicate issues with fatigue due to renal disease are typically granted

conditional eligibility only for travel to and from dialysis centers. These determinations assume that the fatigue associated with the disability is only an issue when traveling to or from dialysis treatment centers. This might not be the case, though, if individuals needed to travel to other places on the day of treatment or if fatigue also was a problem on non-treatment days.”

Recommendation: “When determining the eligibility of persons who use powered wheelchairs, it is recommended that path of travel barriers in getting to and from bus stops be considered. While powered wheelchairs may permit users to travel greater distances, safe accessible paths of travel are still required.”

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, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

Finding: “A relatively small proportion of applicants are determined to be conditionally eligible (4.5 percent in 2006). The current eligibility determination process does not appear to identify more common endurance and path-of-travel issues, such as maximum walking distances, walking speeds, and street crossing abilities. In-person functional assessments, not part of the existing COTA process, would likely be needed to gather sufficient information to accurately set endurance and path-of-travel eligibility conditions.”

Recommendation: “COTA should consider utilizing in-person functional assessments as part of its eligibility determination process to more completely identify all conditions that prevent fixed route bus travel as well as conditions under which some riders might be able to use fixed route bus services. Functional assessments would likely be particularly useful in identifying endurance and path-of-travel conditions, which typically are some of the most common conditional eligibility issues.”

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, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

- 12 National Transit Institute, *Comprehensive ADA Paratransit Eligibility*, www.ntionline.com/CourseInfo.ASP?CourseNumber=FP011 and Easter Seals Project ACTION Distance Learning Session, *Selected Topics in Paratransit Eligibility: Conditional Eligibility*, Karen Hoesch, Executive Director, Access Transportation Systems, Pittsburgh, Pennsylvania, February 5, 2008, available at http://projectaction.easterseals.com/site/PageServer?pagename=ESPA_distance_learning_2008_para_elig_conditional.
- 13 Information about the National Transit Institute (NTI) course on Comprehensive ADA Paratransit Eligibility is available at <http://ntionline.com/CourseInfo.asp?CourseNumber=FP011>. NTI may also be reached at (732) 932-1700 (phone) and (732) 932-1707 (fax).
- 14 Easter Seals Project ACTION, *Determining ADA Paratransit Eligibility: An Approach, Guidance and Training Materials*, 2003. This report is available from Easter Seals Project Action free of charge at https://secure2.convio.net/es/site/Ecommerce/1509166542?VIEW_PRODUCT=true&product_id=5781&store_id=9663.
- 15 Transit Cooperative Research Program (TCRP) Synthesis 30, *ADA Paratransit Eligibility Certification Practices*, Transportation Research Board, National Academy of Sciences, Washington D.C., 1998.
- 16 FTA found in several ADA compliance reviews, including the following three, that transit agencies should not deny eligibility because applicants live outside the service area. For example, one compliance review stated:

Finding: "A small number of applicants for ADA Complementary Paratransit eligibility appear to be denied because they reside outside the VIP service area. While BJCTA is not required to provide trips that have origins or destinations outside the defined service area, determinations of eligibility should not be based on place of residence. Individuals may live outside the service area and may take trips that are within the area."

Recommendation: "BJCTA should discontinue the practice of denying ADA Complementary Paratransit eligibility to otherwise eligible applicants because they reside outside the service area and should review decisions in the past that have been made on this basis."

Federal Transit Administration ADA Compliance Review of Birmingham Jefferson County Transit Authority (BJCTA), Birmingham, Alabama, *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted April 29 – May 2, 2002, Final Report dated October 25, 2002, pp. 21 and 22, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

Similar findings were also made in these two ADA compliance reviews and in a Letter of Finding:

Letter of Finding by Cheryl L. Hershey, then ADA Team Leader, Office of Civil Rights, Federal Transit Administration, December 21, 2005, regarding FTA Complaint against City of Winchester Department of Transportation, Winchester, Virginia, p. 2.

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, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

Federal Transit Administration ADA Compliance Review of Merrimack Valley Regional Transit Authority (MVRTA), Haverhill, Massachusetts, *ADA Complementary Paratransit Service Compliance Review*, conducted March 15 – 18, 2005, Final Report dated December 26, 2006, pp. 33 – 34, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

- 17** FTA found in this ADA compliance review that the transit agency had a policy that all companions are served on a space available basis, though the DOT ADA regulation requires that one companion always be served, and additional companions may then be served on a space available basis:

Finding: "Pierce Transit's current policy is to accommodate all companions ('guests') traveling with ADA paratransit eligible riders on a space available basis. Section 37.123(f) of the DOT ADA regulations requires that one companion always be accommodated and that others may be served on a space available basis."

Federal Transit Administration ADA Compliance Review of Pierce Transit, Tacoma, Washington, conducted November 2007.

18 49 C.F.R. § 37.131(c).

19 In several ADA compliance reviews, including the following three, FTA found that transit agencies may not require a rider to always be accompanied by an attendant, merely because the rider stated he or she may need an attendant.

Finding: "Policies regarding the use of personal care attendants (PCAs) do not appear to comply with the regulations. The policies do not allow persons to travel with PCAs only when needed. These policies appear to have impacted travel with PCAs – the number of riders authorized to travel with PCAs is quite low (13%) and the number of trips with PCAs is also very low (only 2% of all trips)."

Recommendation: "TARTA should amend its policies regarding personal care attendants to allow individuals to be authorized to travel with PCAs at their discretion. Travel at all times with a PCA should only be required where there is documentation that travel without a PCA has resulted in serious disruption of the service, or violent or illegal conduct. Since the assessment, TARTA has revised its policy to permit accompaniment by a PCA when the customer feels it is necessary for a given trip. On April 11, 2001, TARTA issued an information bulletin ... to its customers advising them of the change in the policy regarding PCAs along with other changes."

Federal Transit Administration ADA Compliance Review of Toledo Area Regional Transit Authority (TARTA), Toledo, Ohio, *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted April 2 – 5, 2001, Final Report dated September 10, 2001, pp. 20 – 21, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

FTA made similar findings and recommendations in these two ADA compliance reviews:

Federal Transit Administration ADA Compliance Review of Gary Public Transportation Corp. (GPTC), Gary, Indiana, *Compliance Review of ADA Complementary Paratransit Service*, conducted April 22 – 25, 2003, Final Report dated November 21, 2005, pp. 24 – 25, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

Federal Transit Administration ADA Compliance Review of Washington Metropolitan Area Transit Authority (WMATA), Washington, D.C., *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted September

24 – 28, 2001, Final Report dated June 26, 2007, pp. 22 – 23, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

- 20 FTA ADA Compliance Review of Maryland Transit Administration (MTA), Baltimore, Maryland, *op. cit.*, p. 22.
- 21 National Transit Institute, *Comprehensive ADA Paratransit Eligibility*, *op. cit.*
- 22 49 C.F.R. Part 37, App. D, § 37.123, *originally published at* 56 Fed. Reg. 45747 (Sept. 6, 1991).
- 23 In two ADA compliance reviews and a Letter of Finding, FTA made it clear that eligibility cannot be denied just because an applicant indicates that, for example, he can get to the bus stop nearest his home or from bus stops to destinations most often frequented. FTA made it clear that travel throughout the area under various conditions must be considered.

“You state that ‘...there are times when I get off the bus [and] because of a lack of...accessible public rights [of] way [I] am not able to get to my destination due to the fact I use a wheelchair.’

“... ASI claims that they based their determination of your ineligibility on your interaction with the environment. ASI claims that your condition may make it more difficult for you to get to or from the bus, but does not prevent you from doing so. ASI evaluated each of the locations and destinations that you indicated and found that each had an alternative path of travel to access the bus.

“Determinations of ADA paratransit eligibility must consider the ability of applicants to travel to *any* origins or destinations in the paratransit service area under *all* possible conditions. The simple fact that you only identified destinations in the system that were accessible to you is not a proper eligibility determination based on the most limiting factor. Conditional eligibility would therefore be appropriate in your situation. If you had not traveled to a location before and were not certain whether or not the location was accessible, you would then be conditionally eligible for paratransit service to this location unless and until ASI has determined that this location is accessible for you via fixed route service. You would not be eligible for paratransit trips when the origin and destination of your trip is accessible, such as those routes identified by you and inspected by ASI during your eligibility screening.

“We will place ASI in follow-up status as to the issue of your paratransit eligibility. We have requested that they reevaluate you for paratransit eligibility based on your most limiting factor and report their findings to us within 30 days.”

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.

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 and 32, available at www.fta.dot.gov/civilrights/ada/civil_rights_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 and 28, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

- 24 National Transit Institute, *Comprehensive ADA Paratransit Eligibility*, *op. cit.*
- 25 *Storman v. Sacramento Regional Transit Dist.*, 70 Fed. Appx. 438, 439 (9th Cir. 2003)(*unpublished decision citing* 49 C.F.R. Pt. 37 App D).
- 26 The three blocks is only an example, not a blanket rule for mobility-impaired riders. Each person’s conditions must be individualized to his or her functional abilities.
- 27 National Transit Institute, *Comprehensive ADA Paratransit Eligibility*, *op. cit.*
- 28 FTA stated in this ADA compliance review that “It is not clear what temperature was considered ‘too hot’ for applicants and what documentation HRT uses to indicate that this temperature is not exceeded regularly before June 15 or after September 15,” and recommended that “HRT should establish a temperature standard for conditional eligibility based upon extremely hot weather, and, based upon meteorological history in the area, establish a calendar period for granting such eligibility based upon the temperature data.”

FTA ADA Compliance Review of Transportation District Commission of Hampton Roads (Hampton Roads Transit), Hampton, Virginia, *op. cit.*, pp. 30 and 32.

29 Easter Seals Project ACTION Distance Learning Session, *Selected Topics in Paratransit Eligibility: Conditional Eligibility*, *op. cit.*

30 An FTA ADA compliance review addressed decisions affecting riders using motorized wheelchairs:

Finding: "Many of the determinations of conditional eligibility may be too restrictive. Applicants who indicate that they use powered wheelchairs are typically granted conditional eligibility only when the fixed routes they need to use are not accessible. These determinations appear to assume that if a powered wheelchair is used, there are no impediments to getting to and from bus stops. This might not be the case, however, if individuals were required to travel in busy streets because of a lack of a sidewalk or other safe and accessible path of travel...."

Recommendation: "When determining the eligibility of persons who use powered wheelchairs, it is recommended that path of travel barriers in getting to and from bus stops be considered. While powered wheelchairs may permit users to travel greater distances, safe accessible paths of travel are still required."

FTA ADA Compliance Review of City of Tucson Transit Services Division, Tucson, Arizona, *op. cit.*, pp. 24 – 25.

31 In this ADA compliance review, 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."

Federal Transit Administration ADA Compliance Review of Pierce Transit, Tacoma, Washington, *op. cit.*

32 National Council on Disability, *The Current State of Transportation For People With Disabilities in the United States*, June 13, 2005, p. 51.

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- 33** 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, p. 2.
- 34** The Department of Transportation (DOT) regulation Appendix D, which provides interpretive guidance on the regulation, states, “The [eligibility determination] process may not impose unreasonable administrative burdens on applicants” DOT ADA regulation at 49 C.F.R. Part 37, App. D, Subpart F, § 37.125.
- 35** In several ADA compliance reviews, including these two, FTA found that applicants should not be denied eligibility automatically even if they indicate that they use wheelchairs that do not meet the common wheelchair definition, and that common wheelchair issues should be addressed separately from eligibility determinations.

Finding: “Metro’s policy is to make determinations of ADA complementary paratransit eligibility based on whether the applicant’s mobility aid meets the definition of a ‘common wheelchair.’ This determination fails to make the distinction between the eligibility of the applicant and the applicant’s mobility aid. The determination of eligibility should be made solely based on the applicant’s ability to use fixed route service as addressed in 49 CFR §37.123, and not on the mobility aid that the applicant uses. The decision to limit service to mobility aids that meet the definition of a common wheelchair should be addressed by Metro as a separate issue from eligibility.”

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, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

A similar finding appeared in:

FTA ADA Compliance Review of Capital District Transportation Authority, Albany, New York, *op. cit.*, Federal Transit Administration 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. 11 – 12, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

- 36** National Transit Institute, *Comprehensive ADA Paratransit Eligibility*, *op. cit.*

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- 37 Federal Transit Administration ADA Compliance Review of Pierce Transit, Tacoma, Washington, *op. cit.*
- 38 Federal Transit Administration ADA Compliance Review of Palm Tran Incorporated (Palm Tran), Palm Beach County, Florida, *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted April 17 – 20, 2000, Final Report dated January 2001, p. 15, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.
- 39 Federal Transit Administration ADA Compliance Review of Pinellas Suncoast Transit Authority (PSTA), Pinellas County, Florida, *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted December 13 – 16, 1999, Final Report dated July, 2000, p. 40.
- 40 National Transit Institute, *Comprehensive ADA Paratransit Eligibility*, *op. cit.*
- 41 The FTA Letter of Finding regarding eligibility for children stated:

“If a transit authority does not have a minimum age policy below which children using the fixed-route system must be accompanied by a parent or guardian, then the ADA paratransit eligibility process would have to consider the child’s independent ability to use the fixed-route system....

“If, on the other hand, the policy for use of the fixed-route system is that an adult must accompany children under a minimum age, then the ADA paratransit eligibility process would consider whether a child under the minimum age, with the assistance of an adult, would be able to use the fixed-route system. It is possible that there may then still be some level of eligibility, but it is likely that the child with an adult would be able to use fixed-route service more often. The ADA paratransit eligibility process can consider the abilities of the “team” (child and accompanying adult) when determining eligibility because the child would also be required to be accompanied by an adult when using fixed-route service. Once the child with a disability reaches the minimum age, the child would be reassessed.”

Letter of Finding by John R. Day, Acting ADA Team Leader, Office of Civil Rights, Federal Transit Administration, February 25, 2009, regarding FTA Complaint No. 07–0025 against Lakeland Area Mass Transit District d.b.a. Citrus Connection, Lakeland, Florida, pp. 3 – 4.

- 42 49 C.F.R. § 37.131(d).

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- 43 FTA made findings against limiting eligibility to certain types of trips in several ADA compliance reviews, including the following four:

Finding: "DART grants conditional eligibility to some individuals based on the purpose of the trip, such as work or dialysis. Section 37.131(d) of the DOT ADA regulations states that service restrictions or priorities must not be imposed on the basis of trip purpose."

Recommendation: "DART should base eligibility determinations on an individual's functional ability to use fixed route service, rather than on a specific trip purpose."

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, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

Finding: "CDTA appears to overly restrict ADA complementary paratransit service to individuals to whom it grants conditional eligibility. For example, ... CDTA granted conditional eligibility to two applicants for travel only 'to and from dialysis,' and to two other applicants for travel only to and from a particular destination. The condition should address an applicant's functional ability, not a trip purpose or particular destination."

FTA ADA Compliance Review of Capital District Transportation Authority, Albany, New York, *op. cit.*, pp. 26 – 27.

Finding: "One applicant received conditional eligibility for a specific trip purpose (trips to dialysis) rather than on the more appropriate functional issue (when severe fatigue prevents use of the fixed route service)."

Recommendation: "When setting conditions of eligibility, MVRTA should use limitations related to specific functional abilities rather than trip purposes or types of service. For example, eligibility 'when severe fatigue prevents you from using the fixed route bus' would be more appropriate than eligibility for 'dialysis trips only.'"

FTA ADA Compliance Review of Merrimack Valley Regional Transit Authority (MVRTA), Haverhill, Massachusetts, *op. cit.*, pp. 33 and 34.

Finding: "Many of the determinations of conditional eligibility may be too restrictive.... Individuals who indicate issues with fatigue due to renal disease are typically granted conditional eligibility only for travel to and from dialysis centers. These determinations assume that the fatigue associated with the disability is only an issue when traveling to or from dialysis treatment centers. This might not be the case, though, if individuals needed to travel to other places on the day of treatment or if fatigue also was a problem on non-treatment days."

Recommendation: "When determining the eligibility of applicants who indicate renal failure, it is recommended that the determination not be trip specific ('only to and from dialysis centers') but rather be related to functional ability ('eligible when severe fatigue prevents you from using fixed route bus service')."

FTA ADA Compliance Review of City of Tucson Transit Services Division,
Tucson, Arizona, *op. cit.*, pp. 24 – 25.

- 44** Regarding a concern about not steering applicants away from ADA paratransit, FTA stated in this ADA compliance review:

Finding: "Far fewer than expected persons have dual eligibility. An examination of Hartford Dial-a-Ride client applications indicated that perhaps a third might be ADA Complementary Paratransit eligible. However, only about 12 percent of Hartford Dial-a-Ride applicants are also ADA Complementary Paratransit eligible. In recent years, the percentage of applicants granted dual eligibility also appears to have fallen. In Wethersfield, only two percent of recent dial-a-ride applicants are also ADA Complementary Paratransit eligible, compared to 35 percent in past years. In Hartford, the rate of dual eligibility has fallen from 18 to 10 percent in recent years, and in East Hartford the rate has fallen from 17 to 6 percent. These numbers and percentages suggest that applicants either may not fully understand the benefits of being eligible for both programs or may be directed to only one program when they may be eligible for both services. The confusion could result in applicants who are otherwise eligible for ADA Complementary Paratransit service not applying for the service."

Recommendation: "To avoid potential confusion to applicants who are eligible for ADA Complementary Paratransit service, GHTD should consider the use of a consolidated application for all of GHTD's demand-responsive transportation services. GHTD staff should be instructed to review and make ADA Complementary

Paratransit service determinations for all applicants, and dial-a-ride applicants as appropriate.”

Federal Transit Administration ADA Compliance Review of Connecticut Department of Transportation/Greater Hartford Transit District, Hartford, Connecticut, *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted June 25 – 28, 2001, Final Report dated December 20, 2001, pp. 22 – 23, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

- 45 FTA addressed the forced choice between ADA paratransit and free fixed route service in these two ADA compliance reviews:

Finding: “Requiring MATAPlus applicants to choose between ADA Complementary Paratransit service and reduced fare fixed route benefits is inappropriate.”

Recommendation: “MATA should not require applicants for the MATAPlus service to relinquish fixed route reduced fare cards. Additionally, MATA should review its recent records to identify individuals who have been given the choice of one ID or the other. Any individuals who decided not to have a MATAPlus ID made because of this choice should be contacted immediately and provided with a MATAPlus ID card. Also, reduced fare eligibility should be reinstated for all individuals who relinquished their half fare IDs for a MATAPlus ID.”

Federal Transit Administration ADA Compliance Review of Memphis Area Transit Authority (MATA), Memphis, Tennessee, *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted February 14 – 17, 2000, Final Report dated August 1, 2000, p. 23, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

There was a similar finding in:

Federal Transit Administration ADA Compliance Review of Metro-Dade Transit Agency, Special Transportation Services, Miami, Florida, *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted February 12 – 15, 2001, Final Report dated September 6, 2001, p. 14, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

- 46 An FTA ADA compliance review regarding “feeder service only” eligibility determinations stated:

Finding: "The current practice of granting "feeder service only" eligibility to riders without more detailed information about the specific abilities of riders to get to and from bus stops appears to require that HRT needs to offer feeder service on both ends of all trips requested by these riders. In addition, because information about the ability of riders to wait for a bus at a stop is not part of the final determination, HRT is planning to make feeder transfers only at selected bus stops that are equipped with amenities such as benches, shelter and phones. It appears likely that the combination of needing to provide "double feeder" service for all trips to riders determined "feeder service only" eligible and the need to make transfers at only designated locations with certain amenities will result in excessively long trip times. Consequently, the policy of only offering feeder service to certain riders could result in a substantial number of significantly long trips and could discourage use of the service."

Recommendation: "For applicants who might benefit from paratransit feeder service, HRT should identify the specific travel abilities of the person in the eligibility determination and then apply these conditions of eligibility to requested trips to decide if feeder service is appropriate for the trip in question. This would allow HRT to offer feeder service when it is operationally feasible and appropriate rather than offering feeder service at both ends of every trip requested. For example, if HRT determines that an applicant can travel up to 1/4-mile to get to and from bus stops, feeder service might only be offered when the distance to the origin and destination for the trip requested is greater than 1/4-mile. Similarly, HRT might decide to offer feeder service only for trips for which the rider can travel independently on one end (thus eliminating double feeders and potentially significantly long trips)."

FTA ADA Compliance Review of Transportation District Commission of Hampton Roads (Hampton Roads Transit), Hampton, Virginia, *op. cit.*, pp. 31 and 33.

- 47** Several FTA ADA compliance reviews, including the following three, reached the conclusion that transportation to and from any required eligibility-related appointments should be provided. In one such review, FTA found that the transit agency "should immediately begin offering transportation to and from the interviews if applicants indicate that this is needed."

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, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

FTA indicated that transportation to either interviews/assessments or subsequent trips for photo IDs should be free of charge in these two additional ADA compliance reviews:

FTA ADA Compliance Review of Gary Public Transportation Corp. (GPTC), Gary, Indiana, *op. cit.* p. 24 and 25.

FTA ADA Compliance Review of Central Ohio Transit Authority (COTA), Columbus, Ohio, *op. cit.*, p. 42 and 43.

48 Federal Transit Administration ADA Compliance Review of Autoridad Metropolitana de Autobuses (AMA), San Juan, Puerto Rico, conducted October 2007 (draft).

49 In many ADA compliance reviews, including the following eleven, FTA addressed transit agency failure to inform applicants they have a right to service if eligibility decisions take longer than 21 days.

FTA ADA Compliance Review of Maryland Transit Administration (MTA), Baltimore, Maryland, *op. cit.*, p. 23.

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, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

FTA ADA Compliance Review of Rochester-Genesee Regional Transportation Authority (R-GRTA), Rochester, New York, *op. cit.*, p. 32.

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, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

FTA ADA Compliance Review of Transportation District Commission of Hampton Roads (Hampton Roads Transit), Hampton, Virginia, *op. cit.*, p. 33.

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, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

FTA ADA Compliance Review of Capital District Transportation Authority, Albany, New York, *op. cit.*, pp. 27 and 28.

FTA ADA Compliance Review of Metro, St. Louis, Missouri, *op. cit.*, p. 33.

FTA ADA Compliance Review of Washington Metropolitan Area Transit Authority (WMATA), Washington, D.C., *op. cit.*, p. 23.

Federal Transit Administration ADA Compliance Review of Autoridad Metropolitana de Autobuses (AMA) (draft), San Juan, Puerto Rico, *op. cit.*

FTA ADA Compliance Review of Delaware Transit Corporation, Dover, Delaware, *op. cit.*, pp. 32 and 34.

50 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, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

51 In this ADA compliance review, FTA found it acceptable that, if all applicants are not only required to complete a paper application form, but also to participate in an in-person interview and/or functional assessment, then the 21 days begins after the in-person assessment:

Finding: “Metro has defined its eligibility process such that the application is complete after the in-person assessment. Based on this standard, Metro made determinations within 21 days for only 4 of the 12 applications in the review team’s sample of applications filed between March and December of 2004. Four applications took at least 90 days and two applications took up to 170 days. In a February 2005 sample, Metro greatly improved the timeliness of its application

processing, making determinations for 20 of 22 completed applications within 21 days.”

FTA ADA Compliance Review of Metro, St. Louis, Missouri, *op. cit.*, p. 31.

- 52 National Transit Institute, *Comprehensive ADA Paratransit Eligibility*, *op. cit.*
- 53 In this ADA compliance review, FTA stated the 21 days begins upon receipt of the completed application form, since not all applicants must appear in person for interviews and/or functional assessments:

Finding: “HRT’s practice of considering the 21-day determination process to start after both the interview has been held and professional verification has been received appears to be inconsistent with the regulatory requirements for timely processing of eligibility determinations. Section 37.125(c) of the regulations states that the processing time begins upon receipt of a complete application. Because HRT has chosen to have applicants mail in applications prior to in-person interviews, the 21-day processing time begins upon receipt of the completed application form. The time required to schedule and hold an interview is not within the control of the applicant. Similarly, the application form only asks individuals to provide the names of professionals who can be contacted if necessary. The time required by HRT to request and receive information from professionals also is not within the control of the applicant.”

FTA ADA Compliance Review of Transportation District Commission of Hampton Roads (Hampton Roads Transit), Hampton, Virginia, *op. cit.*, pp. 30 and 32.

- 54 In several ADA compliance reviews including the following two, FTA found that transit agencies took well over 21 days to make eligibility decisions and offered suggestions for reducing the time taken.

For example, after finding that one transit system had taken up to 170 days to complete the eligibility determination process, FTA stated:

Finding: “The time from submittal of a written application and an in-person interview is significant and could be an impediment to ADA complementary paratransit eligible individuals obtaining access to service. The average number of days in the 2004 sample was 63 days between receipt of written application and the

in-person assessment. This decreased to 33 days in the 2005 sample. Metro did not have any documentation to identify the reason for the extended period between application submission and in-person assessment.”

Recommendation: “Metro should take action to reduce the time from receipt of a written application to conducting an in-person assessment. As one means of doing this, Metro could set the date for the in-person assessment before the written application and professional verification has been submitted. Another means of reducing the time span is to have the applicant bring the written application form and professional verification to the in-person assessment. Yet another possibility is to schedule the in-person assessment within one or two weeks of receipt of the application.”

FTA ADA Compliance Review of Metro, St. Louis, Missouri, *op. cit.*, pp. 31 and 33.

And in another ADA compliance review, FTA stated:

Finding: “Based on the sample of application files reviewed by the assessment team, 97 percent of determination decisions made between July and September 2002 appear to have taken longer than 21 days. Only eight percent of all determinations were made in less than 30 days. Thirty-eight percent of determinations during this period took longer than 60 days. The switch to the new eligibility determination process appears to be contributing to very long delays in completing determinations.”

Recommendation: “It is recommended that HRT consider ways to streamline the eligibility determinations process and to improve the efficiency of the staff performing certifications. Following are some ways this might be accomplished:

- “Have applicants call to schedule an in-person interview after they have completed the application form. When applicants call, HRT staff could ask applicants whether they have completed all sections of the application form. Then, have applicants bring the application form with them to the in-person interview. Certification Specialists could then spend a few minutes reviewing the application form in preparation for the interview and could work with the applicant to fill-in any missing information. This would allow the 21-day processing time to begin at the time of the interview. It would also eliminate delays now created when forms are mailed back to applicants for minor

omissions or for information that is collected as part of the interview. Appointments for in-person interviews should be promptly scheduled.

- “Have a manager schedule interviews for the certification specialists rather than allowing the Certification Specialists to create their own interview schedules. The current practice of allowing certification specialists to set their own schedule has led to an average of only about four interviews per day for all staff combined between May 1 and August 31, 2002.
- “Reduce the delays created by Certification Coordinator review and sign-off on all determination recommendations made by Certification Specialists. For example, the Certification Coordinator might review all recommendations for conditional eligibility or denials of eligibility but might only randomly spot-check recommendations for unconditional eligibility. Alternatively, other duties now assigned to the Certification Coordinator might be assigned to other staff to allow her to spend more time reviewing eligibility recommendations.”

FTA ADA Compliance Review of Transportation District Commission of Hampton Roads (Hampton Roads Transit), Hampton, Virginia, *op. cit.*, pp. 32 – 33.

- 55 National Transit Institute, *Comprehensive ADA Paratransit Eligibility*, *op. cit.*
- 56 Kevin Irvine, formerly of Equip for Equality, and Marilyn Golden, Disability Rights Education and Defense Fund, *ADA Paratransit Eligibility: How to Make Your Case*, pp. 5 – 6, 2003, available at www.equipforequality.org/programs/transportationrights/info_paratransit.php.
- 57 Easter Seals Project ACTION, *Determining ADA Paratransit Eligibility: An Approach, Guidance, and Training Materials*, Washington D.C., August 2003, pp. 5 – 26.
- 58 Easter Seals Project ACTION, *Determining ADA Paratransit Eligibility: An Approach, Guidance, and Training Materials*, *op. cit.*, pp. 7 – 31.
- 59 A number of ADA compliance reviews, including these five, exemplify the trend in FTA findings regarding denials based merely on inconsistent information in paper application forms.

Finding: "Information provided in the paper application form sometimes fails to accurately represent the applicant's situation. Denials of eligibility based solely on information in the application form and professional certification form may not always be appropriate. When additional information is presented during the appeals process, many initial determination decisions are changed. Of the 91 applicants in the past three years who were initially denied eligibility and who appealed, 88 (97%) were determined eligible through the appeal. A review of recent denials of eligibility also indicated that additional information might have been helpful. MARTA should obtain additional clarifying information before denying eligibility based on inconsistent or unclear information in application forms."

Recommendation: "MARTA should consider making it standard procedure to make follow-up calls to applicants and/or named professionals if denial of eligibility is being considered. This will allow any incorrect information to be corrected and considered and potentially avoid the need for some appeals."

Federal Transit Administration ADA Compliance Review of Metropolitan Atlanta Rapid Transit Authority (MARTA), Atlanta, Georgia, *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted September 10 – 14, 2001, Final Report dated March 19, 2002, pp. 19 – 20, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

Finding: "A review of recent denials of eligibility indicated that denials are based largely on responses to information in the application form with limited confirmation through follow-up with applicants or named professionals. A few of the denials seemed to be based on inconsistencies in the answers to the questions in the application. These individuals could have misunderstood the questions or could have had difficulty completing the form. Follow-up with the applicant or named professionals would probably have been helpful making an accurate eligibility determination in these cases."

Recommendation: "If there are inconsistencies in responses to questions in the application form, or if applicants appear to have had difficulty completing the form, GHTD staff should follow up with the applicant by phone before denying eligibility based on these inconsistencies or incomplete responses."

FTA ADA Compliance Review of Connecticut Department of Transportation/Greater Hartford Transit District, Hartford, Connecticut, *op. cit.*, pp. 21 and 22 – 23.

Similar findings appeared in these three additional ADA compliance reviews:

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. 48, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

FTA ADA Compliance Review of City of Tucson Transit Services Division, Tucson, Arizona, *op. cit.*, p. 13.

FTA ADA Compliance Review of Central New York Regional Transportation Authority, Syracuse, New York, *op. cit.*, p. 21.

- 60** In several ADA compliance reviews, including these two, 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 C.F.R. 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."

FTA ADA Compliance Review of Central Ohio Transit Authority (COTA), Columbus, Ohio, *op. cit.*, p. 19.

Finding: "AMA requires that a medical doctor complete an extensive (four-page) section of the application form for *Llame y Viaje* service. Verification from other health care professionals, such as physical therapists or occupational therapist, is not accepted. Completion of this portion of the form could require applicants to

make an appointment and pay for a doctor’s visit. This requirement could therefore be construed as a prohibited fee or undo administrative burden on applicants.”

Federal Transit Administration ADA Compliance Review of Autoridad Metropolitana de Autobuses (AMA) (draft), San Juan, Puerto Rico, *op. cit.*

- 61** 49 C.F.R. § 37.125(e). To implement the DOT ADA regulation on required information in the documentation of eligibility, FTA found that several transit agencies, including the following two, needed to make a change. FTA asked one transit agency to revise its ADA identification card to explicitly state that it confers eligibility for ADA Paratransit Service, and asked another to include information about authorization to travel with a personal attendant.

FTA ADA Compliance Review of Connecticut Department of Transportation/Greater Hartford Transit District, Hartford, Connecticut, *op. cit.*, pp. 22 – 23.

FTA ADA Compliance Review of Delaware Transit Corporation, Dover, Delaware, *op. cit.*, p. 34.

- 62** FTA found in a number of ADA compliance reviews, including these six, as well as a Letter of Finding, that letters to applicants denied eligibility but did not state the reasons specifically.

Letter of Finding by David W. Knight, then ADA Team Leader, Office of Civil Rights, Federal Transit Administration, December 4, 2007, regarding FTA Complaint No. 04-0191 against Washington Metropolitan Area Transit Authority (WMATA), Washington D.C., p. 2.

FTA ADA Compliance Review of Palm Tran Incorporated (Palm Tran), Palm Beach County, Florida, *op. cit.*, p. 15.

FTA ADA Compliance Review of Connecticut Department of Transportation/Greater Hartford Transit District, Hartford, Connecticut, *op. cit.*, pp. 22 – 23.

Federal Transit Administration ADA Compliance Review of Detroit Department of Transportation, Detroit, Michigan, *op. cit.*, pp. 24 – 25.

FTA ADA Compliance Review of Metro, St. Louis, Missouri, *op. cit.*, pp. 32 – 33.

FTA ADA Compliance Review of Washington Metropolitan Area Transit Authority (WMATA), Washington, D.C., *op. cit.*, pp. 22 – 23.

FTA ADA Compliance Review of Delaware Transit Corporation, Dover, Delaware, *op. cit.*, pp. 32 and 34.

- 63** The ADA compliance review regarding greater clarity on conditions of paratransit use stated:

Finding: “The letters of determination sent to applicants in Onondaga, Oswego, and Cayuga Counties provide confusing descriptions of conditions of eligibility. Brief phrases such as ‘walk up to one block,’ or ‘stand up to 2 minutes’ are used to explain conditions of eligibility. These phrases do not clearly explain conditions of eligibility to applicants. Several riders contacted in advance of the review indicated that they were confused about conditional eligibility. These phrases also do not provide sufficient information to permit an applicant to make an informed appeal of the determination....”

Recommendation: “CNYRTA should revise the wording of conditions of eligibility in its determination letters to more clearly communicate to riders the circumstances when they are eligible for CAB services and when they are expected to use the fixed route system. For example, instead of using the phrase ‘Walk up to 3 blocks,’ determination letters could state that applicants are ‘eligible to use the Call-A-Bus service for trips that would require walking more than 3 blocks to get to and from fixed route bus stops.’”

FTA ADA Compliance Review of Central New York Regional Transportation Authority, Syracuse, New York, *op. cit.*, pp. 49 and 51.

- 64** FTA found that several transit agencies sent eligibility denial letters when applications were merely incomplete, inconsistent, or improperly completed, including in these three ADA compliance reviews.

FTA ADA Compliance Review of Connecticut Department of Transportation/Greater Hartford Transit District, Hartford, Connecticut, *op. cit.*, pp. 22 – 23.

FTA ADA Compliance Review of Birmingham Jefferson County Transit Authority (BJCTA), Birmingham, Alabama, *op. cit.*, pp. 21 and 22.

Federal Transit Administration ADA Compliance Review of Wichita Transit, Wichita, Kansas, *Assessment of ADA Complementary Paratransit Service Capacity Constraints*, conducted August 12 – 15, 2002, Final Report dated April 21, 2003, pp. 18 – 19, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

- 65 FTA ADA Compliance Review of Memphis Area Transit Authority (MATA), Memphis, Tennessee, *op. cit.* p. 24.
- 66 This FTA ADA compliance review asked the transit agency to revise its denial letter to inform the applicant that he or she has 60 days to appeal the decision.

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, pp. 19 – 20, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

- 67 FTA found that transit agencies did not provide adequate appeal information—particularly, appeal information for applicants found conditionally eligible or given temporary eligibility—in many ADA compliance reviews, including these five:

Federal Transit Administration ADA Compliance Review of Metropolitan Atlanta Rapid Transit Authority (MARTA), Atlanta, Georgia, *op. cit.*, p. 19.

FTA ADA Compliance Review of Maryland Transit Administration (MTA), Baltimore, Maryland, *op. cit.*, pp. 23 – 24.

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, *op. cit.*, pp. 28 – 29.

FTA ADA Compliance Review of Capital District Transportation Authority, Albany, New York, *op. cit.*, pp. 27 – 28.

FTA ADA Compliance Review of Metro, St. Louis, Missouri, *op. cit.*, pp. 32 – 33.

- 68 In several ADA compliance reviews, including these four, FTA found that the time allowed for appeals did not meet the regulatory requirement of 60 days. Transit agencies in the first three compliance reviews listed below were found to only allow 30 days for appeals to be requested. In the fourth, the transit agency was found to allow only 14 days.

FTA ADA Compliance Review of Maryland Transit Administration (MTA), Baltimore, Maryland, *op. cit.*, p. 23.

Federal Transit Administration ADA Compliance Review of Detroit Department of Transportation, Detroit, Michigan, *op. cit.*, pp. 24 – 25.

FTA ADA Compliance Review of Washington Metropolitan Area Transit Authority (WMATA), Washington, D.C., *op. cit.*, pp. 22 – 23.

FTA ADA Compliance Review of Delaware Transit Corporation, Dover, Delaware, *op. cit.*, pp. 33 – 34.

- 69 Several FTA determinations, including these two ADA compliance reviews and one Letter of Finding, found transit agencies did not or may not have appropriate separation of authority by appeal decision-makers.

Finding: "Participation by the Oneida County general manager in the six-person committee that hears formal ADA complementary paratransit eligibility appeals in Oneida County appears to violate the DOT ADA regulatory requirement that there be separation of functions between those hearing appeals and those making the initial eligibility decision."

FTA ADA Compliance Review of Central New York Regional Transportation Authority, Syracuse, New York, *op. cit.*, p. 50.

Finding: "The Wichita Transit General Manager is the sole individual who makes the decision on eligibility appeals. He is the supervisor (two levels above) of the Special Services Manager, who makes the initial determination of eligibility. This procedure may conflict with DOT ADA regulatory requirements for separation of function in the appeals process at 49 CFR section 37.125(g)(2)."

Recommendation: "Wichita Transit should revise its appeals process so that the General Manager does not participate. WT could still have a WT staff member hear the appeals if that person is not a direct supervisor or subordinate of the Special

Services Manager. The individual(s) who hears the appeals may also be someone who does not work for WT. During the assessment, the Special Services Manager mentioned possible candidates, such as the city's ADA officer and professionals with experience working with individuals with disabilities."

Federal Transit Administration ADA Compliance Review of Wichita Transit, Wichita, Kansas, *op. cit.*, pp. 18 – 19.

"Subsequent to your compliant and WMATA's response, we conducted a compliance review of MetroAccess, WMATA's ADA complementary paratransit service, in December of 2006. The final report is available publicly at www.fta.dot.gov/ada. During that review, we looked at WMATA's eligibility process to ensure that it is meeting the requirements outlined in DOT's regulations. During that review we noted that WMATA's eligibility letters do not contain sufficient information, and we cited WMATA for inappropriate involvement in appeals hearings by the Director of MetroAccess. WMATA is in the process of revising their letters as well as adopting a revised appeals policy and we will keep those findings open until satisfied by WMATA's actions.

"After reviewing all documents submitted by WMATA, FTA finds that WMATA did not appropriately handle several stages of your application for paratransit eligibility. By separate letter, we will ask WMATA to reconsider your eligibility. We will also encourage them to provide on-going training to members of their appeals committee to ensure that decisions are based on functional ability."

Letter of Finding by David W. Knight, then Acting ADA Team Leader, Office of Civil Rights, Federal Transit Administration, December 4, 2007, regarding FTA Complaint No. 04-0191 against Washington Metropolitan Area Transit Authority (WMATA), Washington, D.C., p. 2.

- 70** A 2007 FTA Letter of Finding stated, "The letter issued to you following your appeal ... lacked sufficient reason for that decision, as required by § 37.125(g)(2)."

Letter of Finding by David W. Knight, then ADA Team Leader, Office of Civil Rights, Federal Transit Administration, December 4, 2007, regarding FTA Complaint No. 04-0191 against Washington Metropolitan Area Transit Authority (WMATA), Washington D.C., p. 2.

- 71 FTA found transit agencies required too much detailed information from applicants requesting appeals in several ADA compliance reviews including these four:

Finding: "EBP's 'Request for Appeal' form includes, 'I think I am eligible for ADA paratransit services because,' followed by blank lines. All that is required of the appellant is a signed declaration, within the specified timeframe, that he/she is exercising his/her right to appeal."

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, *op. cit.*, pp. 28 – 29.

Finding: "According to CDTA's current appeals process for eligibility determination, the written appeal 'must contain all the details necessary to evaluate the position of the person requesting the appeal...' While CDTA may *request* that the individual appealing the decision provide supporting information with the written appeal, CDTA cannot require this information to accompany the written request. CDTA must allow an in-person appeals hearing to allow the individual (and/or a representative) to present his or her case (49 CFR §37.125(g)(2))."

Recommendation: "CDTA should revise its appeals process to request information that supports the appeal with the written request for an appeal, but not require the supporting information. CDTA should provide the appellant an opportunity to be heard in response to a written request to appeal a determination, without provision of supporting information in advance."

FTA ADA Compliance Review of Capital District Transportation Authority, Albany, New York, *op. cit.*, pp. 27 – 28.

Finding: "The mandatory use of the current 'Request for Appeal' form does not appear to be consistent with Section 37.125(g)(2) of the DOT ADA regulations. This section of the regulations indicates that the appeals process must provide an opportunity for appellants to be heard (in person) and to present information and arguments. Requiring applicants to complete a detailed form and answer complex questions before being heard appears to be inconsistent with the regulations. The requirement to complete this form may discourage individuals from pursuing an appeal."

Recommendation: "HRT should not require individuals to complete the 'Request for Appeal' form before they can schedule an appeal. HRT can revise the procedure to request or suggest to the appellant the types of additional information that will be helpful in deciding their appeal. Certain questions (such as asking how long the appeal will last and having the appellant list in advance all of the witnesses who will be present) should also be reconsidered. The ADA regulations do allow HRT to request that individuals make a formal written request for an appeal (to distinguish between general questions about the decision and a desire to have a formal appeal)."

FTA ADA Compliance Review of Transportation District Commission of Hampton Roads (Hampton Roads Transit), Hampton, Virginia, *op. cit.*, pp. 32 – 33.

Finding: "Metro's appeals process description states, 'Appeals must be made in writing' and 'The written appeal should state the reason or reasons you believe the determination to be incorrect.' To require the appeal be made in writing and state the reason for the appeal could deprive the appellant of an opportunity to be heard and present information and arguments that the appellant would otherwise have if the appeal were made orally and without advance written reasons."

FTA ADA Compliance Review of Metro, St. Louis, Missouri, *op. cit.*, p. 32.

- 72** This FTA ADA compliance review found the transit agency did not have proper separation of authority in internal reviews that were considered part of the formal appeal process.

Finding: "In the first stage of CDTA's appeals process, the chief of staff/marketing director makes the decision whether to uphold or revise the initial determination. In the second stage of CDTA's appeals process, the executive director makes the decision. The executive director is the direct supervisor of the chief of staff/director or marketing. The DOT ADA regulations state that a person hearing an appeal should not be the direct supervisor or subordinate of a person who made the original determination or heard a previous appeal (Appendix D to 49 CFR 37, Section 37.125)."

Recommendation: "CDTA should revise its appeals process so that none of the decision-makers in the eligibility determination process—initial decision, first appeal stage, or second appeal stage—is the direct supervisor/subordinate of one of

the other decision-makers. CDTA can consider using outside experts to hear the appeals, e.g., medical professionals, municipal civil rights or ADA officials.”

FTA ADA Compliance Review of Capital District Transportation Authority, Albany, New York, *op. cit.*, pp. 27 – 29.

- 73** Easter Seals Project ACTION Distance Learning Session, *Paratransit Operations Series, Session 4: The Appeals Process*, John Cleveland, Ph.D., National Transit Institute at Rutgers University, February 24, 2010, available at <http://projectaction.easterseals.com/site/Calendar?view=Detail&id=30481>.
- 74** Federal Transit Administration ADA Compliance Review of Autoridad Metropolitana de Autobuses (AMA) (draft), San Juan, Puerto Rico, *op. cit.*
- 75** In many ADA compliance reviews, including these ten, FTA has found that transit agencies’ no-show suspension policies may be inconsistent with the ADA. Some of the policies imposed too restrictive a number of no-shows that can subject a rider to suspension. Other reviews stated that transit agency no-show policies should not be based solely on a set number of no-shows per month, but rather, on their frequency in comparison to the overall number of rides by that customer. Some of the compliance reviews point out that the period of suspension should be revised to be reasonable.

Finding: “COTA’s no-show policy imposes suspensions on riders for no-showing three or more times per month for two or more months in any given year. Considering only three no-shows in a one month period to be excessive and an abuse of the service may unreasonably limit service to ADA eligible customers. Appendix D of 49 CFR Part 37 states that suspensions of eligibility for no-shows are intended to prevent a ‘pattern or practice of ‘no-shows.’” It is further noted, ‘a pattern or practice involves intentional, repeated or regular actions, not isolated, accidental or singular incidents.’”

Recommendation: “Before imposing suspensions for ADA complementary paratransit service, COTA should consider not only a rider’s absolute number of no-shows, but the proportion of no-shows relative to the total number of trips scheduled. Three no-shows in a month for a rider who travels two or more times each day would still only be a small percentage of that person’s total trips scheduled.”

FTA ADA Compliance Review of Central Ohio Transit Authority (COTA), Columbus, Ohio, *op. cit.*, pp. 43 – 44.

Finding: “EBP has a suspension policy for riders in which three no-shows in a calendar quarter could result in a 30-day suspension. EBP has not suspended any riders for excessive no-shows for at least two years. Nevertheless, this policy’s threshold for potential suspension may be an overly restrictive interpretation of the DOT ADA regulations. Appendix D of 49 CFR Part 37 indicates that suspensions of eligibility for no-shows are intended to prevent a ‘pattern or practice of ‘no-shows.’” It is further noted, ‘a pattern or practice involves intentional, repeated or regular actions, not isolated, accidental or singular incidents.’”

Recommendation: “EBP should consider revising its suspension policy for no-shows so that, when enforced, the policy does not unduly penalize riders.”

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, *op. cit.*, pp. 28 and 29.

Finding: “At the time of the review team’s visit, CDTA’s no-show suspension policy stated that ‘if you no-show three times in one month, you could lose your STAR riding privileges for a period of 30 days.’ According to the paratransit coordinator, CDTA has not been implementing this policy since early 2005. CDTA was in the process of reviewing and possibly revising this policy.”

Recommendation: “When CDTA revises its suspension policy for no-shows, the policy should consider the number of a rider’s no-shows as a proportion of his/her total trips during a period of time, rather than consider only the absolute number of no-shows during that period.”

FTA ADA Compliance Review of Capital District Transportation Authority, Albany, New York, *op. cit.*, pp. 28 and 29.

Finding: “GPTC has a suspension policy for riders in which eight no-shows in a 12-month period could result in a 30-day suspension. GPTC has not suspended any riders for excessive no-shows recently. Nevertheless, this policy’s threshold for potential suspension may be an overly restrictive interpretation of the DOT ADA regulations. Appendix D of 49 CFR Part 37 indicates that suspensions of eligibility for no-shows are intended to prevent a ‘pattern or practice of ‘no-shows.’” It is

further noted, 'a pattern or practice involves intentional, repeated or regular actions, not isolated, accidental or singular incidents.'"

Recommendation: "GPTC should consider revising its suspension policy for no-shows so that, when enforced, the policy does not unduly penalize riders."

FTA ADA Compliance Review of Gary Public Transportation Corp. (GPTC), Gary, Indiana, *op. cit.* pp. 24 – 25.

Finding: "HRT's policy of considering only three no-shows in a 90-day period to be excessive and an abuse of the service may unreasonably limit service to ADA eligible customers and does not appear to be consistent with the intent of the regulations. Appendix D of 49 CFR Part 37 indicates that suspensions of eligibility for no-shows are intended to prevent a 'pattern or practice of 'no-shows'. . . A pattern or practice involves intentional, repeated or regular actions, not isolated, accidental or singular incidents.' Given that a rider who forgets that he or she has booked a trip could be assessed two no-shows for a single round-trip, three no-shows could be exceeded by forgetting to cancel only two round-trips. For a rider who travels regularly (say, 10 one-way trips a week), three-missed trips in a 90-day period would be only two percent of the total trips made by that person. Missing only two out of every 100 trips scheduled does not seem to be a reasonable standard for defining a 'pattern or practice' or abuse of the service."

Recommendation: "HRT should consider revising its definition of 'excessive' no-shows to better reflect a true pattern or practice of abuse of the service. The periods of suspension should also be revised to be reasonable, in keeping with the intent of the DOT ADA regulations."

FTA ADA Compliance Review of Transportation District Commission of Hampton Roads (Hampton Roads Transit), Hampton, Virginia, *op. cit.*, pp. 31 and 33.

Finding: "ASI has a suspension policy for riders in which three documented valid no-shows in 90 days could result in a 90-day suspension. In practice, ASI has not enforced this policy. Nevertheless, this may be an overly restrictive interpretation of the DOT ADA regulations. Appendix D of 49 CFR Part 37 indicates that suspensions of eligibility for no-shows are intended to prevent a 'pattern or practice of 'no-shows.'" It is further noted, 'a pattern or practice involves intentional, repeated or regular actions, not isolated, accidental or singular incidents.'"

Recommendation: "MTA and ASI should consider revising ASI's suspension policy for excessive no-shows so that, when enforced, the policy does not unduly penalize riders."

Federal Transit Administration ADA Compliance Review of Los Angeles County Metropolitan Transportation Authority (MTA), Los Angeles, California, *op. cit.*, p. 30.

Finding: "A policy of considering only six missed trips in a calendar year to constitute a pattern or practice of abuse may unreasonably limit service to ADA eligible customers and does not appear to be consistent with the intent of the regulations. Appendix D of 49 CFR Part 37 indicates that, 'suspensions of eligibility for no-shows are intended to prevent a 'pattern or practice of 'no-shows.'" It is further noted, 'a pattern or practice involves intentional, repeated or regular actions, not isolated, accidental or singular incidents.' For a person traveling regularly (e.g., 10 trips a week), this level of missed trips would constitute only about 1% of all scheduled rides. Missing only one out of every 100 trips scheduled does not seem to be a reasonable standard for defining a 'pattern or practice' or abuse of the service."

Recommendation: "It is recommended that the standard used to define a 'pattern or practice' of missed trips that could result in a suspension of service, be reviewed with public input. A standard that would be appropriate for regular and frequent riders as well as occasional riders should be considered."

FTA ADA Compliance Review of City of Tucson Transit Services Division, Tucson, Arizona, *op. cit.*, p. 25.

Finding: "While the current practice appears to be appropriate, the formal policy, which considers seven or more no-shows or late cancellations in a six-month period to be an abuse of the service could unreasonably limit service to ADA eligible customers and does not appear to be consistent with the intent of the regulations. Appendix D of 49 CFR Part 37 indicates that, 'suspensions of eligibility for no-shows are intended to prevent a 'pattern or practice of 'no-shows.'" It is further noted, 'a pattern or practice involves intentional, repeated or regular actions, not isolated, accidental or singular incidents.' Seven no-shows or late cancellations in a six-month period, particularly when considering a customer who uses the service frequently, may not rise to the level of a pattern or practice as intended by the regulations and described in the associated appendix."

Recommendation: "It is recommended that NYCT revise its policy for service suspensions to take into consideration the frequency of use of the service and the percentage of trips no-showed or late cancelled. A frequency of no-shows and late cancellations that shows a clear 'pattern or practice' should then be the basis for a proposed suspension of service. It is also recommended that public input be obtained for this policy revision."

Federal Transit Administration ADA Compliance Review of New York City Transit, New York, *ADA Complementary Paratransit Service Compliance Review*, conducted September 10 – 18, 2003, Final Report dated October 22, 2004, pp. 46 – 47, available at www.fta.dot.gov/civilrights/ada/civil_rights_3899.html.

Finding: "AMA's policy of suspending customers for any combination of three no-shows and/or late cancellations within one month may result in inappropriate suspensions of service for customers who travel frequently. The DOT regulations permit service suspensions for customers who establish a pattern or practice of missing scheduled trips. According to the 'Manual de Usasrio' AMA may suspend a customers service for a combination of three no-shows or late cancellations in a one-month period. Three no-shows for a customer who make many trips during a month could be viewed as insufficient to establish a pattern or practice of abuse of service."

Federal Transit Administration ADA Compliance Review of Autoridad Metropolitana de Autobuses (AMA) (draft), San Juan, Puerto Rico, *op. cit.*

Finding: "Considering only six no-shows or late cancellations in a six-month period to be excessive and an abuse of the service may unreasonably limit service to ADA eligible customers. Appendix D of 49 CFR Part 37 indicates that suspensions of eligibility for no-shows are intended to prevent a 'pattern or practice of 'no-shows.'" It is further noted, 'a pattern or practice involves intentional, repeated or regular actions, not isolated, accidental or singular incidents.' R-GRTA should reconsider this policy and should also consider analyzing overall frequency of riders' use of the service as well as the number of no-shows when determining whether there is a sufficient pattern or practice of no-shows to justify a suspension."

Recommendation: "R-GRTA should consider revising its definition of 'excessive' no-shows to better reflect a true pattern or practice of abuse of the service. The

periods of suspension should also be revised to be reasonable, in keeping with the intent of the regulations.”

FTA ADA Compliance Review of Rochester-Genesee Regional Transportation Authority (R-GRTA), Rochester, New York, *op. cit.*, pp. 31 – 33.

- 76** FTA ADA Compliance Review of Central Ohio Transit Authority (COTA), Columbus, Ohio, *op. cit.*, pp. 43 – 44.
- 77** See 42 U.S.C. § 12186(a)(1) and 49 C.F.R. § 37.167(f); 42 U.S.C. § 12182(b)(2)(a)(iii) and 28 C.F.R. § 36.303; and 42 U.S.C. § 12186(b) and 28 C.F.R. Subpart E, §§ 35.160 – 35.164. 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).
- 78** 49 C.F.R. Part 37, App. D, § 37.125, *op. cit.*
- 79** Most of the information in this section is drawn from *ADA Paratransit Eligibility: How to Make Your Case* by Kevin Irvine, formerly of Equip for Equality, and Marilyn Golden, Disability Rights Education and Defense Fund, pp. 4 – 5, 2003, available at www.equipforequality.org/programs/transportationrights/info_paratransit.php.
- 80** FTA findings that transit agencies have considered the need for personal attendants too narrowly appeared in several ADA compliance reviews, including these two:

Finding: “Based on an interview of staff at the Gramercy assessment site, it appears that contractors consider only assistance needed to use fixed route service when deciding whether a PCA is needed. The contractor in making the eligibility recommendation did not consider PCA assistance needed by the traveler at his or her trip destination.”

Recommendation: “It is recommended that contractor staff that interview and/or assess the functional abilities of applicants be asked to determine the need for a PCA based not only on assistance needed to travel on the fixed route system but also on the need for assistance with other tasks when at a destination. If contractor staff continue to only consider the need for a PCA in transit, NYCT should be sure that Certifiers are aware that recommendations from assessors on PCAs only

consider this very narrow need and that Certifiers consider other types of PCA assistance that the traveler may need at their decision.”

FTA ADA Compliance Review of Capital District Transportation Authority, Albany, New York, *op. cit.*, pp. 45 and 47.

Finding: “Eligibility determinations do not appear to authorize travel with personal care attendants in all cases where warranted. Current application forms do not appear to obtain adequate information about the need for personal care attendants. As a result, only 11 percent of all riders in Onondaga, Oswego, and Cayuga Counties are authorized to travel with personal care attendants. A review of 25 application files identified several cases where applicants appeared to require personal care attendant services sometimes, but travel with a personal care attendant was not authorized in the final determination letters.”

Recommendation: “CNYRTA should include specific questions about the possible need for and use of personal care attendants in its application form and should more thoroughly consider when applicants should be authorized to travel with a personal care attendant.”

FTA ADA Compliance Review of Central New York Regional Transportation Authority, Syracuse, New York, *op. cit.*, pp. 49 and 51.

- 81 Federal Transit Administration Office of Civil Rights, *Rider Complaint Form*, available at www.fta.dot.gov/civilrights/ada/civil_rights_3889.html.
- 82 National Council on Disability, *op. cit.*, pp. 97 – 99.
- 83 Federal Transit Administration ADA Compliance Review of Pierce Transit, Tacoma, Washington, *op. cit.*
- 84 Record-keeping problems were an FTA concern in these two ADA compliance reviews. In the first compliance review, FTA issued a finding that the transit agency was not adequately documenting when a completed application was received and when the eligibility determinations were made. FTA asked the agency to date-stamp and log all applications, to log all dates that letters of determination are sent, and to review these records regularly to ensure that applications are processed within 21 days or that presumptive eligibility is otherwise granted.

FTA ADA Compliance Review of Memphis Area Transit Authority (MATA),
Memphis, Tennessee, *op. cit.*, p. 23.

In the second compliance review, many determinations took longer than 21 days, some likely because applicants no-showed scheduled interview appointments. However, the tracking system used by the transit agency was not detailed enough to identify when the delays were the responsibility of applicants.

FTA ADA Compliance Review of Metro, St. Louis, Missouri, *op. cit.*, p. 12.

- 85** This requirement is not in the DOT ADA regulation, but rather in what is called Part 27. Part 27 contains other transit agency obligations including the DOT regulation for Section 504 of the Rehabilitation Act of 1973, another disability rights law. Part 27, which is formally cited as 49 C.F.R. Part 27, is available at www.fta.dot.gov/civilrights/ada/civil_rights_3907.html. The reporting requirement is at 49 C.F.R. § 27.13(b), 49 C.F.R. Subpart C, §§ 27.121 – 27.129.