

GAO

Report to the Chairman, Subcommittee
on Transportation, Housing and Urban
Development, and Related Agencies,
Committee on Appropriations,
House of Representatives

September 2007

TRANSPORTATION ACCESSIBILITY

Lack of Data and Limited Enforcement Options Limit Federal Oversight



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Highlights

Highlights of [GAO-07-1126](#), a report to the Chairman, Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, Committee on Appropriations, House of Representatives

Why GAO Did This Study

The Americans with Disabilities Act of 1990 (ADA) provides people with disabilities the legal right to access transportation and public rights-of-way, including sidewalks and street crossings. The Department of Transportation (DOT) and Department of Justice (DOJ) share responsibility for overseeing ADA compliance.

GAO was asked to review federal oversight and enforcement of ADA compliance, including (1) what is known about compliance, (2) difficulties the federal government faces in overseeing and enforcing compliance, and (3) the sources of federal help and any gaps in that help. GAO's work encompassed a wide range of federal agencies and other entities, such as industry associations, transportation providers, and disability advocacy groups, as well as detailed reviews in eight cities across the country.

What GAO Recommends

GAO makes several recommendations to DOT and Amtrak to improve data and guidance for ADA compliance, increase coordination and communication across federal agencies, and develop a legislative proposal to enable DOT to impose fines for noncompliance with the ADA. DOT agreed to consider the recommendations. Amtrak officials said the recommendations are likely to be ineffective for them without more funding and clearer federal requirements.

www.gao.gov/cgi-bin/getrpt?GAO-07-1126.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Katherine Siggerud at (202) 512-2834 or siggerudk@gao.gov.

TRANSPORTATION ACCESSIBILITY

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What GAO Found

While data indicate accessibility is improving for public transit, the extent of ADA compliance for other modes of transportation and public rights-of-way is unknown due to the lack of reliable data. For example, there are no national data on compliance with requirements for ADA paratransit—transit service that complements bus or rail transit. The Federal Motor Carrier Safety Administration solicits compliance data from registered commercial bus companies, but the response rate is low (13 percent in 2006), and the agency has not verified or analyzed the data. In other instances, such as the accessibility of Amtrak's train stations, data are still being developed.

Federal agencies face three main difficulties overseeing and enforcing compliance. First, they differ greatly in the degree to which they have an oversight framework in place. For example, the Federal Transit Administration has a memorandum of understanding in place with DOJ specifying each agency's responsibilities for public transit, while the Federal Railroad Administration and Federal Motor Carrier Safety Administration have no formal mechanism for coordinating with DOJ. Second, federal agencies' lack of data about compliance limits DOT's ability to target its oversight and enforcement efforts. Only the Federal Transit Administration uses data in this manner. Third, DOT officials regard their enforcement options, such as withholding grant money, as lengthy and complex processes that would not be undertaken lightly. DOT officials said the authority to impose fines—an option they lack—would be more useful.

Federal agencies provide a variety of technical assistance to help entities comply with the ADA, but gaps in regulations and guidance exist. For example, one gap involves a requirement for local governments to develop plans for identifying and correcting accessibility problems with public rights-of-way (such as shown in the figure below). As a result, GAO found confusion about which entities needed to develop the plans and how to use and update plans once they were developed. DOJ officials said most localities had not developed such plans, leaving themselves open to private lawsuits and federal enforcement action.

Example of Inaccessible Sidewalk in a Downtown Area



Source: GAO.

Note: This is a recent construction project in a downtown area where a median was installed in the main street, but curb ramps were not installed in the existing sidewalks, as required.

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Abbreviations

Access Board	Architectural and Transportation Barriers Compliance Board
ADA	Americans with Disabilities Act of 1990
ADAAG	ADA Accessibility Guidelines
Amtrak	National Railroad Passenger Corporation
CMAQ	Congestion, Mitigation, and Air Quality Improvement Program
DOJ	Department of Justice
DOT	Department of Transportation
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
NCD	National Council on Disability
NHS	National Highway System
NHTSA	National Highway Traffic Safety Administration
NPRM	Notice of Proposed Rulemaking
OST	Office of the Secretary of Transportation
STP	Surface Transportation Program

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United States Government Accountability Office
Washington, DC 20548

September 19, 2007

The Honorable John W. Olver
Chairman
Subcommittee on Transportation, Housing and
Urban Development, and Related Agencies
Committee on Appropriations
House of Representatives

Dear Chairman Olver:

Access to transportation and public rights-of-way¹ is critical to helping people with disabilities live independently—allowing individuals to gain access to the goods, services, employment opportunities, and social contacts that support their quality of life. According to recent estimates, there are about 40-50 million people with disabilities in the United States.² These include people with spinal cord injuries or other mobility impairments, who may use a wheelchair or other mobility aid; people who are blind or visually impaired, who may need assistance in reading signs or locating crosswalks; people who are deaf or hard-of-hearing, who may have difficulty hearing stop or route announcements; people with cognitive impairments, who may have difficulty negotiating the public transportation system; and others.

The Americans with Disabilities Act of 1990 (ADA) protects the legal rights of people with disabilities and requires the provision of services, including

¹Public rights-of-way include pedestrian access to sidewalks and streets, through crosswalks, curb ramps, pedestrian signals, and parking, among other things.

²The U.S. Census Bureau's 2002 Survey of Income and Program Participation reported that 51.2 million noninstitutionalized civilians had some level of disability. In its 2005 American Community Survey, the bureau found that 39.7 million noninstitutionalized civilians age 5 and over had one or more disabilities. According to the bureau, the definition of a disability varies between these surveys and, therefore, disability statistics vary depending on the purpose for which they are being used and the survey collecting the information.

access to transportation and public rights-of-way.³ Since ADA requirements became effective, access to surface transportation has improved. For example, reports from the National Council on Disability⁴ and the Bureau of Transportation Statistics found that more public and private transportation vehicles are accessible now than at the time the ADA was enacted.⁵

To help ensure that people with disabilities have such access, the federal government is responsible for monitoring, overseeing, and enforcing ADA requirements, as well as providing technical assistance. Specifically, the Architectural and Transportation Barriers Compliance Board (Access Board) issues guidelines that show how buildings, facilities, and vehicles covered by the law can be made accessible to individuals with disabilities. These guidelines form the basis for enforceable standards when incorporated into federal regulations. The Department of Transportation (DOT) issues regulations for both public and private transportation and is responsible for reviewing compliance among public entities. The Department of Justice (DOJ) issues regulations setting rules and standards for access in public and commercial facilities, including public rights-of-way, and has responsibility for litigation on the government's behalf in enforcing the ADA upon referral of a finding of noncompliance by DOT or by intervention in a privately filed lawsuit. DOJ is also responsible for enforcing compliance among both publicly and privately operated transportation systems that serve the general public.

Despite overall improvements in accessibility since the ADA's enactment and these federal oversight responsibilities, individuals with disabilities

³The precursor to the ADA, Section 504 of the Rehabilitation Act of 1973, prohibits discrimination against an otherwise qualified person with a disability in any program or activity that receives federal financial assistance. Section 504 also gave certain authority to the federal government for oversight and enforcement. The ADA extended the nondiscrimination principles established under Section 504 to both public and private entities without regard to receipt of federal financial assistance.

⁴The National Council on Disability is an independent federal agency that makes recommendations to the President and Congress to enhance the quality of life for people with disabilities and their families.

⁵National Council on Disability, *The Current State of Transportation for People with Disabilities in the United States* (Washington, D.C.: June 2005); and U.S. Department of Transportation, Bureau of Transportation Statistics, *National Transportation Statistics* (Washington, D.C.: Apr. 12, 2007).

continue to face barriers to accessible transportation.⁶ For example, a national study conducted by the Bureau of Transportation Statistics in 2002 found that approximately 12 percent of individuals with disabilities had difficulties obtaining the transportation they need, compared with 3 percent of people without disabilities.⁷ A 2004 national survey found that people with disabilities were twice as likely to have inadequate transportation as people without disabilities.⁸ In addition, research has shown that compliance gaps still pose significant problems for many individuals with disabilities. For example, a 2005 National Council on Disability report found that some transit agencies fail to comply with the ADA regulatory requirement to announce bus or rail stops, making it difficult for people with visual or cognitive impairments to know when to get off the bus or train. Elevators at rail stations may not be in working order, rendering those stations inaccessible to people with certain mobility impairments. The ADA requires public transit operators to provide paratransit⁹ service for persons with disabilities who cannot use the regular transit system, but many of these complementary paratransit systems have timeliness problems, providing rides either too early or too late, preventing riders from reaching their jobs or appointments in a timely manner. Further, some transportation providers—including taxi and commercial bus¹⁰ drivers—have refused to accommodate service animals, such as guide dogs, as required by law. Finally, problems with public

⁶The ADA requires transportation to be accessible, but it does not require transportation to be available. As a result, people with disabilities may face mobility challenges if they live in suburban or rural areas that are not served by public transportation, or in areas that do not have sidewalks. We have discussed such mobility challenges in several reports, including GAO, *Surface and Maritime Transportation: Developing Strategies for Enhancing Mobility: A National Challenge*, GAO-02-775 (Washington, D.C.: Aug. 30, 2002); and *Transportation-Disadvantaged Populations: Some Coordination Efforts Among Programs Providing Transportation Services, but Obstacles Persist*, GAO-03-697 (Washington, D.C.: June 30, 2003).

⁷U.S. Department of Transportation, Bureau of Transportation Statistics, *Freedom to Travel* (Washington, D.C.: 2003). DOT officials pointed out that this information is 5 years old; however, this is DOT's most recent study of the subject.

⁸National Organization on Disability, *Harris Survey of Americans with Disabilities* (Washington, D.C.: June 2004).

⁹The ADA refers to this service as “complementary paratransit service.” In general, ADA complementary paratransit service must be provided within 3/4 of a mile of a bus route or rail station, at the same hours and days, for no more than twice the regular fixed route fare.

¹⁰The ADA and federal regulations refer to these as over-the-road buses. For the purposes of this report, we use the term “commercial bus.”

rights-of-way include intersections without curb ramps or sidewalks blocked by telephone poles.¹¹

This report responds to your request that we review the federal government's oversight of compliance with the ADA. Specifically, it addresses: (1) what is known about the extent of ADA compliance for surface transportation and public rights-of-way;¹² (2) what difficulties, if any, the federal government faces in overseeing and enforcing compliance with the ADA; and (3) the sources of federal technical assistance that are available to help public transportation providers, businesses, and state and local governments comply with ADA requirements and what gaps, if any, exist. In addition, we provided information on several sources of federal financial assistance for ADA-related activities (see app. I).

To address these questions, we reviewed the statutes, regulations, and policies governing ADA requirements for surface transportation modes and public rights-of-way; reviewed relevant literature; and gathered and analyzed available federal agency data on ADA compliance. To assess the reliability of accessibility data from the National Railroad Passenger Corporation (Amtrak) and the Federal Transit Administration's National Transit Database, we spoke with agency officials about data quality control procedures and reviewed relevant documentation. We determined the data were sufficiently reliable for the purposes of this report. We interviewed officials from DOJ, DOT's Office of the Secretary, and the various offices responsible for specific surface transportation modes (transit, rail, commercial bus, and pedestrian access). These offices included the Federal Transit Administration, Federal Railroad Administration, Federal Motor Carrier Safety Administration, and Federal Highway Administration. We also interviewed officials from the Access Board, Amtrak, industry associations, and national-level disability organizations. We also made site visits to eight cities,¹³ where we met with officials from various entities, including transportation agencies, state

¹¹National Council on Disability, *Current State of Transportation*.

¹²For the purposes of this report, surface transportation includes public rights-of-way, public transportation (such as buses, subways, trolleys, and commuter rail), ADA-complementary paratransit, intercity passenger rail (Amtrak), intercity buses, and privately operated transportation that is open to the public (such as taxis and airport shuttles). Maritime and aviation are excluded from our scope, as are school transportation and the Alaska Railroad.

¹³Albany, NY; Chicago, IL; Dallas, TX; Hartford, CT; Joliet, IL; Kingston, NY; Los Angeles, CA; and Springfield, MA.

departments of transportation, municipal governments, centers for independent living, and local disability advocacy groups. These cities were selected on the basis of several factors, including size, experience with federal ADA oversight processes, and geographic diversity. We conducted this performance audit from November 2006 through July 2007, in accordance with generally accepted government auditing standards. The details of our objectives, scope, and methodology are in appendix II.

Results in Brief

Although there are indications that accessibility is improving, the extent of compliance with the ADA's requirements for surface transportation and public rights-of-way is unknown because, except for public transit, little reliable information is available. For transit, data are available on the percent of vehicles and rail stations that are wheelchair accessible in urban areas, as well as more limited data on accessibility in rural areas. These data reflect increasing compliance: for example, transit agencies reported that the percent of accessible transit buses in urban areas increased from 36 percent in 1989 to 97 percent in 2005 as new, accessible vehicles replaced older ones. However, problems persist in compliance with other ADA requirements, such as maintaining lifts and ramps and announcing transit stops. For compliance in public rights-of-way and other transportation modes, such as commercial bus and paratransit, however, less is known. While there are no national data on compliance with ADA paratransit requirements, for example, information from DOT reviews and disability interest groups indicate that problems remain, such as some transportation providers having policies to determine who is eligible for paratransit that are not consistent with the ADA and federal regulations. In some cases, data are available but unreliable. For example, DOT rules require commercial bus carriers to provide compliance data to the Federal Motor Carrier Safety Administration, but the percent of commercial bus carriers providing this data is low (13 percent in 2006), and DOT does not verify the data it receives. DOT also has not analyzed the information as required by DOT regulation, although the agency has developed a preliminary strategy for doing so and plans to finish its analysis by 2008. In other cases, data are still being developed. For example, Amtrak, which faces an ADA requirement to make most of the stations that it serves accessible by 2010, is gathering station-by-station information on accessibility but has not developed a comprehensive schedule for achieving full compliance with ADA station accessibility requirements, as required by its grant agreement with the Federal Railroad Administration. Amtrak officials said that this is due, in part, to station ownership issues and the sufficiency and timing of funding. DOT and DOJ also have data on ADA-related complaints for all modes of transportation, of which there are

relatively few, but the number of complaints alone is not a good indicator of compliance with ADA requirements.

DOJ and DOT face three main difficulties in overseeing and enforcing compliance with the ADA, according to our discussions with officials and our site visits:

- *Uneven level of oversight and enforcement provided by DOT modal administrations.* Within DOT, the various modal administrations differ greatly in the degree to which they have an ADA oversight framework in place. DOJ, Federal Transit Administration, and Federal Highway Administration have a framework, including processes for conducting regular reviews of ADA compliance and, in the case of DOJ and the Federal Transit Administration, a formal memorandum of understanding that specifies each agency's oversight and enforcement responsibilities. In contrast, officials in other modal administrations do not have a framework in place to enforce the ADA. For example, although the Federal Railroad Administration does not conduct periodic reviews of Amtrak's compliance, ADA regulations require DOT to conduct such reviews of all entities receiving financial assistance from DOT, including Amtrak.¹⁴ Federal Railroad Administration officials stated that they may begin such reviews in the future. Additionally, Federal Motor Carrier Safety Administration officials have maintained in an ongoing court case that, although they can penalize commercial bus companies for safety violations, they cannot withhold operating authority or issue civil penalties for ADA violations. These two modal administrations also lack a formal mechanism for coordinating with DOJ, although the Federal Motor Carrier Safety Administration shares information with DOJ. As a result, there appear to be gaps in oversight and enforcement for Amtrak and commercial buses.
- *Lack of data for targeting oversight and enforcement activities.* Just as a lack of data precludes knowing the extent of compliance with the ADA, it also restricts federal agencies' oversight and enforcement efforts. One exception that demonstrates the advantage of using such information is the Federal Transit Administration, which identifies and targets higher risk public transit providers using complaint data and results of reviews it conducts regularly. The Federal Transit Administration also focuses its ADA compliance reviews on areas it has identified through data analysis

¹⁴For the purposes of this report, ADA regulations refer to regulations promulgated under the ADA as well as Section 504 of the Rehabilitation Act.

and experience as problematic, such as whether transit providers are following requirements for vehicle lifts. Other federal agencies lack such data, although the Federal Railroad Administration and Federal Motor Carrier Safety Administration collect and use data to target non-ADA safety oversight and enforcement efforts. Without the necessary information on the extent of compliance, agencies are not able to target their enforcement efforts where most needed or to evaluate the effectiveness of their efforts.

- *Lack of useful enforcement options.* Officials of DOT modal administrations said they rarely use available enforcement options because the options are too drastic or lengthy to bring about compliance. For example, Federal Transit Administration officials said while they have the authority to withhold grant funds from a public transit system for ADA violations, doing so is a lengthy and complex process that would not be undertaken lightly because it could affect the entire transit system and the mobility of all riders, including those with disabilities. DOT also has the option to refer cases to DOJ for investigation, but has used this option twice to date. There are many steps that DOT must undertake before it can refer a case to DOJ and many conflicts are resolved informally before they are referred. DOT officials told us that other options, such as the authority to levy civil penalties similar to the authority DOT has under the Air Carrier Access Act, would be useful. They said such authority would provide a more focused tool for enforcing ADA compliance than withholding program funds, and the resulting penalties could be used to improve accessibility. DOT already has this ability with regard to air carriers and, between 2000 and 2006, DOT assessed approximately \$8.4 million in penalties. DOT provided incentives for airlines to offset the majority of the penalties by improving accessibility, such as increasing the number of wheelchair-assistance personnel at airports.

Federal entities—including DOJ, DOT, and the Access Board—provide a variety of technical assistance, including federal regulations and guidance, to help entities comply with the ADA, but gaps in regulations and guidance exist, creating uncertainty at the state and local levels. Sources for federal assistance include Web sites and toll-free assistance lines. Public transportation providers and states and localities that we interviewed said that, in many respects, this technical assistance was helpful. However, they identified gaps in guidance available to address certain issues in public transportation and public rights-of-way, such as how to accommodate mobility devices that can be too heavy or large for transit vehicle lifts and how to plan for and design accessible public rights-of-way. For example, ADA regulations require state and local governments to develop transition plans that inventory the accessibility of their public

rights-of-way, including curb ramps, and identify corrective actions. Some officials we interviewed from state and local governments were unsure about how to create a transition plan or when to update the plan they had developed. Federal guidance on the content and required updates of these plans is limited—for instance, a state transportation official explained that federal guidance did not clearly define what data should be collected for ADA transition plans. Thus, state and local government officials are confused about how to develop the plans. According to DOJ officials, the majority of localities they have reviewed have not yet developed transition plans. Without such plans, state and local governments lack a systematic method of identifying areas of noncompliance, hindering accessibility of public rights-of-way, and leaving themselves open to private lawsuits and possible federal enforcement action, as well as limiting the potential for collecting compliance data. Furthermore, the Access Board has not finalized its draft guidelines that would provide specific technical standards and definitions for installing public rights-of-way, and could not provide a date by which those draft guidelines would be finalized. Various studies and advocacy and industry groups cited the lack of final specialized standards for public rights-of-way as an obstacle to accessible transportation for individuals with disabilities because the draft standards are not enforceable. According to industry group officials with whom we spoke, states and localities may not be willing to invest in accessibility improvements for public rights-of-way that go beyond current regulations since draft standards would likely change.

We are making several recommendations to DOT, its modal administrations, and Amtrak. These recommendations are designed to improve DOT's knowledge of the status of ADA compliance, obtain additional data needed to oversee ADA implementation, clarify and streamline DOT's process for withholding grant funds for ADA violations, and increase coordination and communication between DOJ and DOT modal administrations. In addition, we are recommending that DOT develop a legislative proposal that would give DOT the authority to impose civil penalties in instances of noncompliance. This would provide DOT with more options for overseeing and enforcing the ADA and help ensure that accessibility is a higher priority for public and private surface transportation providers and local governments.

DOT, DOJ, the Access Board, and Amtrak reviewed a draft of this report. DOT officials agreed with our findings and conclusions and agreed to consider our recommendations. DOJ officials agreed with the report's findings, conclusions, and recommendations. The Access Board agreed with our findings. Amtrak officials stated that they have made strides in

increasing accessibility of their trains and the stations that they and others own; however, they expressed concerns about the design of train platforms in the future because DOT is proposing regulations that Amtrak officials think freight railroads are unlikely to accept and that could be very costly to implement, especially over a short period of time. Thus, they believe that our recommendations that DOT clarify and develop more targeted oversight and enforcement actions will be ineffective for them without more funding and clearer federal requirements. Finally, DOT, DOJ, and Amtrak provided technical comments that we incorporated throughout the report as appropriate.

Background

To help ensure that surface transportation—including public rights-of-way—is accessible, the ADA includes specific provisions for public entities (in Title II) and private entities (in Title III) for providing accessible transportation. Transportation-related requirements in the ADA and associated regulations vary by mode.¹⁵ In general, however, new vehicles that were purchased or leased after August 1990, and buildings or facilities that are constructed or altered after August 1990, must be accessible. Other requirements include the following:

- Transit authorities must provide comparable paratransit services to those individuals who are unable to use fixed-route bus or rail services because of a disability.¹⁶ These services are typically provided using wheelchair-accessible vans, small buses, or taxis.
- Existing intercity rail (Amtrak), commuter rail, light rail, and rapid rail systems were to have at least one accessible car per train as of July 26, 1995.

¹⁵ Airlines are not covered under the ADA; rather, they are governed by the Air Carrier Access Act of 1986. Passenger vessels (such as cruise ships) are covered under the ADA, but there are currently no federal standards specific to ships. The Access Board is in the process of developing guidelines for passenger vessels, and DOT issued a notice of proposed rulemaking in January 2007 to amend its ADA regulations to include operating requirements for passenger vessels.

¹⁶ If a transit agency can demonstrate that providing ADA-complementary paratransit would impose an undue financial burden, DOT can provide a partial, temporary waiver until DOT determines that full compliance is possible.

-
- Existing “key stations”¹⁷ in rapid rail, commuter rail, and light rail systems were to have been made accessible by 1993 unless certain extensions permitted by law were granted.
 - Most existing stations currently served by Amtrak must be accessible by July 26, 2010.¹⁸
 - Commercial bus companies must provide an accessible bus with 48-hour notice, among other things.
 - Entities such as hotels that generally offer transportation (shuttle service to the airport, for instance) must provide equivalent transportation services for people with disabilities.
 - For public rights-of-way, all projects for new construction that provide pedestrian facilities must incorporate accessible pedestrian features. Projects altering the usability of the roadway must also incorporate accessible pedestrian improvements.

Figure 1 shows examples of some of these accessible transportation features.

¹⁷DOT’s regulations state that each public entity is to determine which stations on its rail system are key stations, taking into consideration the following criteria: (1) stations where passenger boardings exceed average station passenger boardings on the rail system by at least 15 percent, unless such a station is close to another accessible station; (2) transfer stations on a rail line or between rail lines; (3) major interchange points with other transportation modes, including stations connecting with major parking facilities, bus terminals, intercity or commuter rail stations, passenger vessel terminals, or airports; (4) end stations, unless an end station is close to another accessible station; and (5) stations serving major activity centers, such as employment or government centers, institutions of higher education, hospitals or other major health care facilities, or other facilities that are major destinations for individuals with disabilities.

¹⁸Amtrak serves 525 stations, 479 of which must be accessible. Those that are not required to be accessible include 9 stations in Canada, 25 “flag stops” (at which Amtrak only stops on passengers’ request), and 12 stations for which service was suspended after Hurricane Katrina.

Figure 1: Examples of Accessible Transportation Features



Source: DOT.

Images (from left to right) include a low-floor transit bus with a wheelchair ramp, a paratransit vehicle, and a curb ramp with a tactile warning.

A number of federal agencies have a role in implementing, overseeing, and enforcing the ADA's surface transportation requirements. We will discuss them in more detail later in this report, but their general roles and responsibilities are as follows:

- *The Access Board* is an independent federal agency devoted to accessibility for people with disabilities.¹⁹ The board develops and maintains design criteria for facilities and transit vehicles (these design criteria are not enforceable until implemented in DOJ or DOT regulations). It also provides technical assistance and training on these requirements and on accessible design.
- *DOJ* has responsibility for publishing federal regulations governing access to public and commercial services. DOJ also has responsibility for investigating alleged ADA violations by private entities, including transportation providers, and conducting compliance reviews. DOJ refers allegations of ADA violations by public transportation entities to DOT for investigation. DOJ also may commence civil action in U.S. district court under certain circumstances.

¹⁹The board is structured to function as a coordinating body among federal agencies and to directly represent the public, particularly people with disabilities. It is composed of officials from most of the federal departments as well as members of the public appointed by the President, a majority of whom must have a disability.

-
- *DOT* is responsible for publishing federal regulations for carrying out the transportation provisions of the ADA. Offices within DOT have the following responsibilities:
 - *Office of the Secretary of Transportation (OST)* promulgated DOT's regulations for the ADA and Section 504 of the Rehabilitation Act. OST also coordinates and approves DOT guidance and interpretation for transportation accessibility. For example, OST issued a Notice of Proposed Rulemaking (NPRM) in February 2006 in which it proposed changes to ADA regulations, including revising commuter and intercity rail station platform requirements and clarifying public transit providers' responsibilities to modify their services when needed to ensure program accessibility. OST also sought comment on how to accommodate changes in mobility devices used by individuals with disabilities, among other things.
 - *Federal Highway Administration (FHWA)* is responsible for implementation of program access to individuals with disabilities by state departments of transportation and other FHWA aid recipients, including pedestrian rights-of-way access requirements from the ADA.
 - *Federal Motor Carrier Safety Administration (FMCSA)* informs commercial bus companies of their ADA responsibilities and collects data on ADA compliance.
 - *Federal Railroad Administration (FRA)* is responsible for overseeing federal grants to Amtrak, including ADA provisions.
 - *Federal Transit Administration (FTA)* is responsible for overseeing federal grants for public transportation,²⁰ which includes compliance with ADA requirements for public transportation systems, including ADA-complementary paratransit.

Two other agencies—one inside DOT, the other outside—also have roles in ADA compliance. The *National Highway Traffic Safety Administration (NHTSA)*, within DOT, establishes federal motor vehicle

²⁰Public transportation includes fixed-route bus service (e.g., buses operating according to a regular schedule along a prescribed route with designated bus stops), demand-responsive bus service (e.g., vehicles operating in response to calls from passengers), heavy rail (e.g., subways), commuter rail (provide service from outlying suburbs or small cities to a central downtown area), light rail (e.g., streetcars or trolleys), and automated guideway (guided, fully automated vehicle), among other modes.

safety standards for platform lifts and vehicles equipped with platform lifts (including commercial buses and public transportation vehicles). NHTSA is also responsible for ADA compliance of state motor vehicle agencies that receive federal funds. In addition, the *National Council on Disability (NCD)*, an independent federal agency, gathers information about the implementation, effectiveness, and impact of the ADA. NCD also reviews and evaluates federal policies, programs, practices, and procedures concerning people with disabilities, and all statutes and regulations pertaining to federal programs that assist people with disabilities, to assess their effectiveness in meeting those needs.²¹

Several major interest groups and industry associations also play a role. For example, the Disability Rights Education and Defense Fund provides ADA-related training, technical assistance, and legal services, and advocates on behalf of people with disabilities. Also, the American Public Transportation Association has an Access Committee designed to promote successful implementation of the transportation provisions of the ADA by facilitating information sharing and monitoring and reporting to its members on the status of pending litigation, among other activities.

A number of reports by national organizations indicate that transportation accessibility has improved since Congress passed the ADA. For example, NCD reported that the ADA has resulted in a significant expansion of lift- and ramp-equipped buses, more accessible fare collection technology, and increased availability of formats for disseminating accessible information. Because of increased regulation, vehicles are of higher quality, and travel has become more efficient.²² However, disability advocates have said (and many federal agencies and industry associations agree) that there are still problems. In a 2002 survey conducted by DOT's Bureau of Transportation Statistics, a greater percentage of people with disabilities reported having problems with several modes of transportation as compared with people without disabilities (see fig. 2).²³ Complaints and lawsuits, among other sources of information, indicate accessibility problems persist. DOJ has referred more than 500 ADA-related surface transportation complaints to DOT since 2000 and is investigating 36 additional cases, as of July 2007,

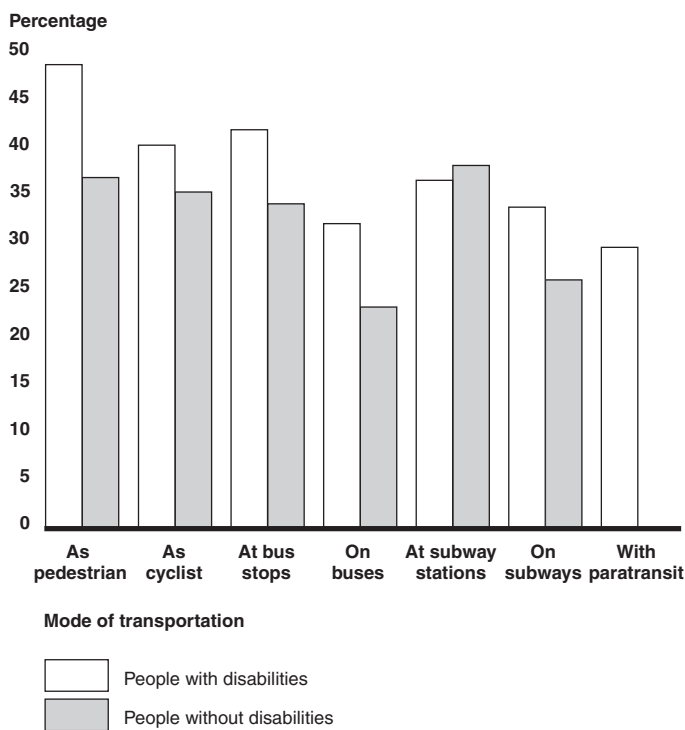
²¹For example, NCD has issued several reports on transportation accessibility that include recommendations to DOJ and DOT, among others.

²²NCD, *Current State of Transportation*.

²³Bureau of Transportation Statistics, *Freedom to Travel*.

according to DOJ officials. Also, additional complaints go directly to DOT. Finally, private parties have filed numerous lawsuits alleging violations of surface transportation and public rights-of-way accessibility requirements.

Figure 2: Percentage of People Reporting Problems with Transportation and Public Rights-of-Way, by Mode and Disability Status in 2002



Source: Bureau of Transportation Statistics.

Providing accessible transportation and public rights-of-way can be expensive, especially if an entity has to modify existing structures or purchase new equipment. Congress recognized this and phased in many of the requirements over time. Unlike other situations in which Congress identifies transportation priorities and provides grants or other funding sources to help entities address those priorities, there are few funds that are specifically targeted for ADA compliance. The ADA is a civil rights law, not a transportation program; however, many federal transportation funding sources can be used to comply with ADA requirements. (See app. I for more information on these sources.)

Extent of ADA Compliance for Surface Transportation and Public Rights-of-Way Is Largely Unknown Because Little Reliable Information Is Available

Other than for public transit, the extent of compliance with the ADA's requirements for surface transportation and public rights-of-way is unknown because little reliable information is available, although there are indications that accessibility is improving. DOT collects some accessibility data from urban public transit agencies and helped fund several surveys to determine certain accessibility information for rural and specialized transportation services.²⁴ Much of the data for other modes, however, are either unreliable or still being developed.

Some Data Are Available on the Percent of Accessible Vehicles and Stations

For public transit, data are available on the percent of vehicles and stations that are wheelchair accessible in urban areas. DOT reports that accessibility in the urban transit vehicle fleet is increasing as new, accessible vehicles are replacing older ones, since the ADA requires that all new or refurbished transit vehicles be accessible. In 1989, before passage of the ADA, 36 percent of public transit buses in the United States were accessible.²⁵ By 2005, 97 percent were lift- or ramp-equipped, according to FTA's National Transit Database.²⁶ However, accessibility varies significantly by mode of transportation. For example, only 51 percent of commuter railcars were accessible in 2005. ADA regulations do not require that transportation providers make all railcars accessible immediately; rather, that they make the fleet accessible over time as they purchase or lease new cars, and that they provide at least one accessible car per train. According to FTA officials, transit buses are more likely to be accessible than railcars because, on average, railcars have a longer life span. For example, buses are replaced about every 10 to 15 years, while according to Amtrak officials, railcars are planned for replacement after 30

²⁴Special service transportation includes vehicles that are used to provide service to seniors and persons with disabilities and receive funding through an FTA-administered formula grant to states. Special service vehicle funding is directed toward private nonprofit organizations (such as religious organizations, senior centers, and rehabilitation centers), although in certain cases specified by law, a public agency may be approved as a grantee.

²⁵NCD, *Current State of Transportation*.

²⁶FTA officials noted that data in the National Transit Database are self reported and FTA officials do not verify the data. Also, the database does not capture whether the lifts are operational.

to 40 years but may last over 50 years under certain circumstances. The ADA also requires that new transit facilities (including stations) and alterations to existing facilities comply with federal accessibility standards, and FTA has tracked this since 2002. By 2005, FTA's National Transit Database reflected that transit agencies reported that 71 percent of total transit stations were ADA-compliant.

Also, while limited, some dated estimates of accessibility in rural areas and for special service transportation exist. In a survey conducted by the Community Transportation Association of America in 2000, an estimated 60 percent of the transit fleet in rural areas was lift- or ramp-equipped, as compared with 40 percent in 1994. Also, in 2002, approximately 37,700 special service vehicles were used by approximately 4,800 special service providers including religious organizations, senior centers, rehabilitation centers, and other private and nonprofit organizations to transport seniors and persons with disabilities. The majority of the special service providers were located in rural areas. Of the special service vehicles purchased in 2002, about 76 percent were accessible (approximately 28,700 vehicles).²⁷

Although available data indicate increasing accessibility of transit vehicles, requirements in ADA regulations extend beyond having lift- and ramp-equipped vehicles. Other requirements include properly maintaining the vehicle lifts and ramps and announcing transit stops. According to an FTA official, there are no national data on compliance with these two requirements, although FTA's periodic compliance reviews provide the agency with some information about the state of compliance. We heard from a number of federal agencies and local and national disability groups that these areas continue to be a problem for transit agencies, making it difficult for individuals with disabilities to access the public transit system.

FTA also maintains data on key rail stations, which were required by the ADA to be fully accessible by 1993 (with extensions permitted through July 2020 for extraordinarily expensive structural changes²⁸). According to FTA, as of June 2007, of the 687 key rail stations identified in transit

²⁷FHWA and FTA, *2006 Status of the Nation's Highways, Bridges and Transit: Conditions and Performance* (Washington, D.C.: 2007). ADA regulations require certain types of special service vehicles to be accessible based on a number of criteria, such as number of passengers.

²⁸ADA regulations define these as installations of elevators, or alterations of magnitude and cost similar to installing an elevator or raising the entire passenger platform (49 C.F.R. § 37.51).

systems nationwide, 321 were found to be fully compliant with ADA requirements, 311 were functionally accessible but not fully compliant, 28 were not accessible, and 27 were proceeding under approved time extensions. While the number of ADA-compliant stations is still relatively low, this is a substantial improvement over the 52 key rail stations (8 percent) that FTA identified as fully compliant in 2000.²⁹

In addition to fixed-route transit, FTA also oversees ADA-complementary paratransit, which will be discussed in the next section.

Less Is Known About the Extent of ADA Compliance for Public Rights-of-Way and Other Transportation Modes

For public rights-of-way and many modes of surface transportation, such as intercity passenger rail, less is known about ADA compliance because much of the information is unreliable or still being developed. DOT and DOJ data indicate that relatively few individuals file transportation-related ADA complaints with federal agencies; however, complaints are not a reliable indicator of compliance.

Intercity Passenger Rail (Amtrak)

For intercity passenger rail service, Amtrak has data on the accessibility of its railcars but is still developing information on station accessibility. Amtrak officials indicate that all new or remanufactured Amtrak equipment is accessible, in accordance with the ADA. For example, all of the cars on the Acela high-speed rail service in operation on the Northeast Corridor are accessible because the cars were manufactured and placed in service in or around 2000-2001, according to Amtrak officials. As of June 2007, 82 percent of Amtrak's 1,451 passenger cars were fully accessible to people in wheelchairs. FRA officials said that Amtrak appears to be on schedule to have all of its passenger cars ADA-compliant by the end of 2008.

Every train is also required to have a number of wheelchair spaces (for those who want to sit in their chairs) and accessible seats (for those who want to store their chairs and sit in a seat) equal to the number of coaches. For instance, if a train has four passenger cars it must have at least four wheelchair spaces and four accessible seats somewhere on that train (but not more than two in each car).³⁰ Amtrak has policies and procedures in

²⁹For more information on accessible transit vehicle and station data as maintained by DOT, see FHWA and FTA's 2006 *Conditions and Performance* report.

³⁰In addition, each individual car that is required to be accessible must have at least one, but not more than two wheelchair spaces and at least one, but not more than two accessible seats.

place to ensure that these requirements are met. The requirements are specifically explained in the station master's guidance for each route and updated every 6 months when schedules change. Amtrak keeps an internal record of instances when it is unable to meet the accessibility requirements for each train, due to such things as mechanical failure.

In addition to requirements for accessible cars, the ADA requires Amtrak to make most of the stations that it serves fully accessible by July 2010, even if Amtrak does not own the station.³¹ According to Amtrak, transportation personnel check each station for wheelchair accessibility and report that information to Amtrak every 6 months for inclusion in Amtrak's timetable. As of June 2007, 45 percent of the 479 stations that Amtrak serves were fully accessible to people in wheelchairs. An additional 31 percent had barrier-free access between the street or parking lot, station platform, and trains, although individual facilities (such as restrooms and ticket counters) may not be accessible. Amtrak officials said that these stations serve 97 percent of passenger boardings and deboardings.

ADA requirements extend beyond wheelchair accessibility, however, such as requiring accessible telephones and detectable warnings at platforms.³² One difficulty that Amtrak cited in making existing stations accessible is that ADA regulations define "stations" to include platforms, making it difficult to determine who is responsible for making and paying for changes when one entity owns the station building (often a public entity), and another entity owns the platforms (typically a private entity such as a freight railroad). Amtrak officials said that this is impeding Amtrak's overall progress in ensuring that stations are ADA compliant.

Although Amtrak has had 17 years to make its stations accessible, in its 2008 grant and legislative request, Amtrak said that insufficient time and funding are likely to prevent full compliance at all station stops by the required deadline. Amtrak estimated the cost of compliance for all stations to be approximately \$250 million and requested \$50 million in ADA

³¹As footnoted earlier, Amtrak serves 525 stations, 479 of which must be accessible. The majority of the 479 stations are owned by entities other than Amtrak, including freight railroads and local government entities.

³²Detectable warnings are walking surfaces that are primarily intended to provide a tactile cue to pedestrians who are visually impaired. They are installed at locations such as the edge of a train platform or at the transition between the sidewalk and the street to warn pedestrians of the potential hazard that lies ahead.

funding for fiscal year 2008 above its base grant request. In addition, Amtrak asked Congress for an extension of at least 5 years after promulgation of DOT's final regulations on station platforms (discussed in the next paragraph) to meet its statutory obligation on ADA compliance.

Amtrak officials say that they requested the extension in part because DOT issued an NPRM in February 2006 that would raise the required height for certain new intercity passenger and commuter rail station platforms to eliminate the need for wheelchair lifts. DOT plans to finalize this rule by early 2008 and has received a significant number of comments on it. Amtrak officials said that, if DOT finalizes the regulation in its current form, implementing the rule would take significant additional cost (potentially more than twice as much as it would cost without the proposed rule) and time to comply. In addition, Amtrak officials expressed concern that if the cost of complying with that regulation becomes too high, Amtrak may have to eliminate service at certain smaller stations rather than make those stations fully accessible. The officials also expect to receive complaints from freight railroads that the elevated platforms would interfere with their freight railcars that run on the same tracks as Amtrak. On the other hand, DOT officials believe the cost differential between the current requirements and the additional proposed requirements is negligible for many of the Amtrak stations to which these proposed requirements would apply. Moreover, FRA officials believe that conflicts with freight traffic are likely to be minimal and that there are well known and moderately priced techniques that can mitigate conflicts that occur. Further, the other station accessibility requirements—such as for restrooms, parking, signage, and curb ramps—have not changed since 1991, and DOT officials said that their proposed regulations should not be at fault for any delay or other problems Amtrak may face in addressing ADA requirements.³³

In part due to Amtrak's slow progress in implementing the ADA, FRA's grant agreements for fiscal years 2006 and 2007 required Amtrak to assess the accessibility of the stations that it serves, identify the steps needed to make them accessible, and report to FRA by September 2006 and May 2007 on its status. Amtrak is in the process of surveying intercity passenger rail stations to determine their accessibility and has hired a contractor to help in this effort, but the study has not been completed to

³³ Amtrak officials noted that changes to platform requirements could also affect certain aspects of the station building, such as station egress.

date, limiting the available information on ADA compliance. Of the 479 stations that are required to be fully accessible, Amtrak had assessed 371 (77 percent) by June 2007 and expects to have the remaining assessments completed by December 2008, according to an Amtrak official. Amtrak reported some preliminary findings in a briefing to its board of directors in June 2007; however, the briefing did not include specific, station-by-station information on accessibility, the estimated cost to bring each station into compliance, or a schedule for achieving full compliance. An Amtrak official said that Amtrak cannot determine the cost or time frame for achieving compliance without knowing whether DOT's proposed requirements for rail platforms will be finalized or whether Congress will appropriate additional funds. Additionally, ADA regulations require that DOT periodically conduct reviews of Amtrak's compliance with ADA requirements. FRA does not conduct such reviews, further limiting the availability of data on Amtrak's ADA compliance.³⁴

Commercial Bus

There are limited data available on ADA compliance among commercial bus companies. ADA regulations require all commercial bus companies to provide accessible service within 48 hours of a request—either using the company's own buses or contracting services from another company. Large, fixed-route companies³⁵ must also purchase lift-equipped buses when acquiring new vehicles and were to have 50 percent of their vehicle fleets accessible by 2006 and to have 100 percent of the fleets accessible by 2012.³⁶ DOT regulations require commercial bus companies to report to FMCSA annually on the number of their accessible vehicles, requests for accessible service, and their ability to meet those requests. FMCSA includes information about this reporting requirement on its Web site and sent letters and e-mails to all registered companies starting in 2004, reminding them of their obligations. The two major industry associations also urged their members to respond to FMCSA's data request. However, 13 percent of companies reported this required data in 2006, compared with 21 percent in 2005 and 16 percent in 2004, and FMCSA does not have

³⁴Although it does not conduct compliance reviews, FRA does have other oversight activities that will be discussed in the next section.

³⁵Fixed-route service is where vehicles run on regular, scheduled routes, without variation. Fixed-route services typically use printed schedules or timetables and designated bus stops where passengers board and get off the vehicle. Under DOT's regulatory definition, a large commercial bus company has gross annual transportation revenue equal to or exceeding \$7.7 million.

³⁶There are different requirements for small fixed-route operators, demand-response operators, and small operators that provide both fixed-route and demand-response service.

the authority to fine companies for failure to comply with these reporting requirements. FMCSA also does not verify the reliability of the commercial bus companies' self-reported data before forwarding the data to DOJ.

Furthermore, DOT's regulations stated that DOT would analyze data on demand-response³⁷ commercial bus companies by October 2006 to determine the extent of ADA compliance and evaluate whether the agency's regulations should be revised. DOT was to also conduct a similar study for fixed-route commercial buses by October 2007. Neither study has been completed to date. After an internal disagreement within DOT about which agency is responsible for conducting these studies, officials from DOT's OST and FMCSA recently decided—in response to our preliminary findings—to work jointly to produce these reports, with participation from FTA and other DOT modal administrations. According to DOT, its General Counsel's office will meet with key officials from FMCSA and other concerned DOT organizations to finalize plans for completing the study. DOT expects to issue its results during the first quarter of calendar year 2008. In the meantime, however, the status of compliance of commercial bus companies is unknown.

According to agency officials, FMCSA has received two ADA-related complaints regarding commercial bus passenger service since 2001,³⁸ and DOJ has received relatively few complaints about the accessibility of commercial buses. However, FMCSA identified several possible ADA violations among small commercial bus companies during compliance reviews and forwarded that information to DOJ for possible investigation. Furthermore, despite the small number of complaints to federal agencies, reports in the media and several recent and ongoing court cases indicate that there may be compliance issues among some commercial bus companies. For example, in November 2006, Peter Pan Bus Lines brought suit against FMCSA with the allegation that the modal administration had not ensured that another commercial bus company was complying with the ADA.³⁹ Little is known about compliance by small charter-tour companies, but according to DOT officials, they have limited anecdotal

³⁷For the purposes of commercial bus service, demand-response service includes many charter and tour bus operations.

³⁸FMCSA has received other ADA-related complaints, but many of these involve disability-related commercial driver's licensing issues rather than bus service.

³⁹We will discuss this case in more detail in the next section. See *Peter Pan Bus Lines, Inc. and Bonanza Acquisition, LLC, v. Federal Motor Carrier Safety Administration*, 471 F. 3rd 1350 (D.C. Cir. 2006).

evidence suggesting that many such companies are unaware of ADA rules or do not comply with them.

Public Rights-of-Way

There are no national data on the accessibility of public rights-of-way, in part because there are no requirements for either FHWA or DOJ to collect such information, although individual localities may collect this information. The ADA does not require localities to retrofit existing public rights-of-way (such as curb ramps) to make them accessible, unless deemed necessary to ensure public access to programs or services—including state and local government offices, places of public accommodation, places of employment, and transportation, among other things. However, after January 26, 1992, any new construction, alteration, or renovation (including road resurfacing) must comply with DOJ regulations. Many localities are also required to inventory the accessibility of public rights-of-way under their jurisdiction as part of developing an ADA-required transition plan for improving that accessibility. Many of the national and local disability advocacy groups we spoke with, however, said that access to public rights-of-way is still a major barrier to the mobility of people with disabilities. For example, a local disability advocacy group cited several recent examples in which a locality had a major construction project in the downtown area where the renovated sidewalks and medians did not include curb ramps and were inaccessible (see fig. 3). Some groups added that inaccessible routes to bus stops also hinder access to public transit.

Figure 3: Inaccessible Sidewalks and Medians in a Downtown Area



Source: GAO.

(a) There are no curb ramps in the raised median of the street crossing or on either end of the two connecting sidewalks. (b) There are no curb ramps in either direction of this sidewalk.

Note: These images were taken in March 2007 of a recent construction project in a downtown area where a median was installed in the main street, but curb ramps were not installed in the median to make the crosswalk accessible. Also, curb ramps were not installed for existing sidewalks. A local disability advocacy group told us that the new construction project was also in front of a polling place.

Also, we heard from local officials that, in some instances, curb ramps have been installed, but are not fully compliant with federal regulations. For example, officials from one major urban area said that although the locality installed curb ramps, the ramps are too steep and are not well maintained. One difficulty is in determining who is responsible for making rights-of-way accessible. For example, providing access to bus stops can require coordination among the public transit provider, the local government office that oversees the street, and the local government office that oversees the sidewalk.

FHWA officials agreed that no data are available on the status of compliance with public rights-of-way. However, they have started to visit states to determine if they have transition plans or plans to meet

accessibility obligations using DOJ guidance as a tool.⁴⁰ While this will not provide data on actual accessibility, it should provide information on whether or not a state has a plan to meet accessibility requirements.

Private Transportation (Other Than Commercial Bus)

There are also no data at the national level on the accessibility of private transportation—including taxi and limousine service—because there are no requirements to collect this information. Available anecdotal information suggests some successes in improving access to private transportation, including rental car shuttles and hotel shuttles, but the lack of national data precludes determining the extent of accessibility among various private transportation providers. The ADA does not impose any fleet accessibility requirements for private providers and does not require that most individual vehicles (e.g., taxis) be accessible. Under ADA regulations, however, private providers must accommodate service animals (such as guide dogs) and may not discriminate against people with disabilities or charge them a premium for accessible service. Several private companies and trade associations told us that providers may choose not to purchase accessible vehicles because the economic benefits do not outweigh the additional overhead cost and maintenance expenses.

Complementary Paratransit

According to an official from FTA, there are no data at the national level to accurately measure how well entities are complying with the requirements under the ADA to provide complementary paratransit service to individuals with disabilities who are unable to use the fixed-route system. Individual transportation providers collect information on the number of paratransit rides provided and report these data to FTA, but the number of rides is not a good measure for determining ADA compliance because the data do not indicate whether transportation providers are granting rides in all eligible circumstances or whether response times are comparable to fixed-route service, for example. Likewise, FTA collects data on the number of demand-response trips—that is, trips in which vehicles respond to passenger requests for service. While ADA-complementary paratransit trips constitute the majority of such trips, the FTA official said the two types of data are not interchangeable and cannot be used to determine the extent of compliance with paratransit requirements under the ADA. FTA officials noted that, while they do not have nationwide data on compliance with the requirement for ADA-complementary paratransit service, FTA does have standards that systems are expected to meet. FTA also has

⁴⁰This guidance is in the form of a tool kit, “ADA Best Practices Toolkit for State and Local Governments,” which has a chapter on curb ramps and pedestrian crossings.

knowledge about the compliance of individual systems that it has reviewed or investigated. According to FTA officials, ADA compliance rates are subsequently high among the paratransit systems that they have reviewed.

Paratransit ridership has increased since the ADA, and although more individuals with disabilities are being served, anecdotal evidence suggests compliance with some ADA regulations is still a problem. For example, according to Easter Seals Project ACTION and a 2005 National Council on Disability report, some paratransit providers deny rides to people who may be eligible under the law or fail to provide rides to eligible individuals in response to requests made the previous day, as required by federal regulation. Transit agencies also struggle to balance providing complementary paratransit service with the increased cost of accommodating a growing ridership.

Complaint Data

DOT and DOJ data indicate that relatively few individuals file transportation-related ADA complaints with federal agencies. Examples of this data are as follows:

- In 2005, the most recent year for which complete data were available, FTA received 124 ADA-related complaints,⁴¹ FRA received 22, and FHWA received 22.
- DOJ forwarded 112 transportation-related ADA complaints to DOT in 2005. According to DOT officials, many of these are included in the totals listed above.
- FMCSA has received at least two ADA-related complaints regarding commercial bus passenger service since 2001.⁴²

A relatively low number of federal complaints may not indicate a high level of compliance with regulations. For example, in another civil rights area, fair housing, the Department of Housing and Urban Development conducted several studies of discrimination against individuals looking for

⁴¹According to FTA, of the 124 complaints that it received, 95 were handled informally and 29 required formal investigation.

⁴²FMCSA has one official who is responsible for processing complaints and forwarding them to DOJ for possible investigation; however, we found one instance in which another division within FMCSA had received an ADA-related complaint and independently forwarded it to DOJ.

housing. Their findings indicated that discrimination occurred at higher rates than the number of complaints would indicate; one study showed that only 1 percent of individuals who believed they had experienced housing discrimination reported the discrimination to a government agency.⁴³ We heard from a number of local and national disability groups that most transportation users are not aware they can file a complaint at the federal level.

Federal Agencies Conduct Oversight and Enforcement Activities but Face Difficulties in Ensuring Compliance with the ADA

DOJ and DOT, which share responsibility for ADA oversight and enforcement,⁴⁴ face three main difficulties in ensuring compliance with the ADA. First, there are uneven levels of oversight and enforcement among the DOT modal administrations, leading to gaps for some transportation modes. Second, the same lack of data that precludes a clear understanding of the extent of compliance also prevents agencies from targeting oversight and enforcement activities and evaluating the effectiveness of these efforts. Third, DOT officials indicate their enforcement options are of limited use, which suggests a need for additional options. In a number of instances, compliance has not come through federal agency enforcement but through private citizens filing lawsuits and negotiating settlements.

Unevenness in Agencies' Oversight Framework and Coordination Leads to Gaps in Oversight and Enforcement of Some Modes

The ADA divides oversight and enforcement authority between DOJ and DOT, but there are differences depending on the type of transportation. Although some agencies have a framework in place that allows comprehensive oversight, the lack of such a framework in other agencies and the manner in which responsibility is shared results in gaps in oversight and enforcement for intercity passenger rail and commercial bus and to possible duplication of effort for public rights-of-way. For public transit, DOJ and FTA have used formal means to clarify responsibilities and ensure coordinated and consistent oversight and enforcement.

⁴³U.S. Department of Housing and Urban Development, The Office of Fair Housing and Equal Opportunity, *Fiscal Year 2006 Annual Report on Fair Housing*, (Washington, D.C.: Mar. 29, 2007).

⁴⁴For the purposes of this report, oversight includes administrative efforts such as investigating complaints and conducting compliance reviews. Enforcement includes taking legal action such as filing lawsuits and reaching settlement agreements.

Federal Agencies' Role in Oversight and Enforcement of Surface Transportation Accessibility Requirements Differs by Mode

Under the ADA, responsibility for oversight and enforcement rests partly with DOT and partly with DOJ. In general, DOJ issues regulations that govern public rights-of-way and oversees and enforces compliance with those regulations and has enforcement authority over public and private transportation providers. DOT issues regulations that govern both public and private transportation providers and oversees public compliance with those regulations.⁴⁵ Under the regulations issued by both agencies, DOJ and DOT have authority to receive and investigate complaints of discrimination and to perform compliance reviews. In addition, DOT's modal authorities—primarily FTA, FHWA, and FRA—distribute federal grant money to many of the entities they oversee. Any recipient of federal financial assistance from DOT must certify that it is in compliance with applicable federal laws, including the ADA.

DOJ, FTA, and FHWA Have an Oversight and Enforcement Framework in Place

DOJ, FTA, and FHWA have established an oversight and enforcement framework that includes investigating complaints and performing various types of reviews to identify noncompliance with regulations. For example, in response to a complaint, DOJ investigated a taxi company for refusing to provide a ride to a person who is blind and uses a guide dog. DOJ entered into a settlement agreement with the taxi company, which agreed to provide ADA training to all its current and future drivers and dispatchers. In another example, DOJ negotiated settlement agreements with six taxi service providers to eliminate surcharges or bans on travelers with service animals or wheelchairs. DOJ officials told us that because they receive few transportation-related complaints regarding private entities, and they consider transportation to be a high-priority area, DOJ investigates almost all transportation-related complaints that appear to state a violation.⁴⁶ FTA and FHWA also have a record of receiving and investigating complaints. In one instance, complaints in one state regarding the installation of accessible pedestrian signals triggered FHWA

⁴⁵DOJ and DOT share responsibility for some areas. For example, public accommodations that are not primarily in the business of transporting people but that provide transportation (such as hotels or shopping centers that provide shuttle service) must comply with DOJ's regulations as well as with DOT's regulations for transportation vehicles and systems. In another example, DOT and DOJ share responsibility for facility access regulations. DOT has issued accessibility standards for access to facilities used in public transit (such as subway stations), while DOJ's barrier removal requirements apply to facilities used in certain private transportation.

⁴⁶DOJ forwards all transportation-related complaints pertaining to public entities to DOT for investigation.

to work with the state highway office to draft a plan to address pedestrian accessibility issues.

Similarly, these agencies conduct reviews to determine compliance with their respective regulations. Following are examples of some of these reviews:

- In one such effort, DOJ initiated a program called Project Civic Access that, as of June 2007, had included reviews of 143 localities' compliance with accessibility requirements, in some cases including public rights-of-way. DOJ selects the entity to be reviewed based on a number of criteria, including complaints, relative population of people with disabilities, and geographic diversity. These reviews usually result in a formal agreement between DOJ and the entity, which includes specific steps to be taken to come into compliance and a time line for completion. For example, DOJ conducted a review of the City of Omaha, Nebraska, and, based on the results of the review, entered into an agreement whereby the city agreed to provide, over a 9-year period, curb ramps at all intersections that had been built or modified since the effective date of the ADA.
- FTA conducts at least two different types of oversight reviews of recipients of its grant programs and, in cases where it identifies noncompliance, works with the audited entities to ensure they comply. These oversight reviews include periodic comprehensive reviews of all grant recipients (such as statutorily required triennial reviews and state management reviews) and discretionary targeted ADA compliance reviews. The latter category are usually focused on one of the following discrete areas: ADA-complementary paratransit service; fixed-route bus lift or ramp maintenance and reliability; fixed-route bus stop announcements and route identification; rail stop announcements and route identification; or key, new, or renovated rail station compliance. For example, FTA found in the course of a compliance review that one local agency was improperly denying ADA-complementary paratransit service to some individuals who should be eligible under the ADA. The agency made several changes to its eligibility determination process in response to FTA's recommendations.
- FHWA conducts three types of reviews of state transportation agencies—process reviews, program reviews, and compliance reviews—each of which can focus on ADA-related issues. For example, FHWA conducts a compliance review to determine whether a state transportation agency is properly fulfilling its legal or regulatory responsibilities when it receives a complaint or other indication that a state may not be in compliance with the ADA. The review would determine whether the state is installing curb

FRA and FMCSA Do Not Have a Framework for Clarifying and Establishing Their Oversight Role

ramps in pedestrian facilities that are constructed with federal funds or when roads with pedestrian crossings are newly constructed or altered.

The two other modal administrations, FRA and FMCSA, have taken much more limited roles and do not have a framework for conducting ADA oversight. FRA does not have authority over Amtrak's day-to-day customer service, but Amtrak is defined by law as a public entity for ADA purposes and is, therefore, subject to DOT's regulatory enforcement provisions. ADA regulations require DOT to conduct investigations and initiate compliance procedures.⁴⁷ FRA does not conduct any reviews that assess Amtrak's compliance with ADA regulations, although FRA is monitoring Amtrak's progress in assessing station accessibility. FRA officials also told us that they plan to conduct reviews of Amtrak's service delivery to riders with disabilities in the future. FRA officials said that when they receive ADA-related complaints about Amtrak, the first step in the investigation is to forward the complaint to Amtrak for its review, investigation, and possible settlement. FRA officials said they do not have sufficient resources to investigate all complaints themselves. They said that they review Amtrak's proposed resolution including, in many cases, contacting the complainant to determine if he or she is satisfied with the outcome. In a few instances, FRA did not agree with Amtrak's proposed resolution or determined that a complaint reflected an area of broad significance and intervened. In those instances, FRA further investigated the complaint and had Amtrak sign agreements with FRA describing steps Amtrak will take to prevent future discrimination.

FRA officials described other ways in which the agency provides ADA-related oversight of Amtrak besides reviewing complaints or conducting compliance reviews. For example, FRA provides oversight through administration of Amtrak's grant agreements, as previously discussed. In addition, FRA reviews and approves the plans or designs for certain new passenger cars and station platforms, upon referral by Amtrak. FRA officials have physically inspected new or soon-to-be renovated stations to give technical advice on how to assure compliance, according to FRA. Nevertheless, without FRA conducting direct oversight, Amtrak is largely responsible for ensuring its own compliance with the ADA.

FMCSA's role is also limited: FMCSA officials told us that they have the authority to conduct oversight of ADA compliance by commercial buses

⁴⁷ 49 C.F.R. § 37.11.

Lack of Coordination also
Contributes to Oversight Gaps
or Duplication of Effort

but do not do so because of competing priorities for their oversight resources, such as safety issues. In addition, FMCSA has asserted that it does not have the authority to withhold or revoke a bus company's operating authority on the basis of noncompliance with the ADA, although this position has been disputed in court, which reversed FMCSA's decision and directed FMCSA to reexamine the statute.⁴⁸ FMCSA officials told us that they forward any complaints to DOJ because they do not have enforcement authority for the ADA. In addition, officials said that if they become aware of possible violations of ADA regulations, they will forward that information to DOJ for resolution. For example, as part of a concerted effort to inspect commercial buses for safety violations in 2005, FMCSA identified 10 possible instances of ADA violations and provided the information to DOJ for further review.⁴⁹ FMCSA officials also said that they are considering developing a checklist that would include some component of ADA compliance for use in some or all of their safety inspections, but this idea is in the very early stages of development.

FTA and DOJ have taken a formal step to clarify and strengthen their respective roles and ensure coordinated and consistent enforcement. In 2005, these two agencies signed a memorandum of understanding addressing each agency's role in ADA oversight and enforcement. The memorandum provides that FTA will, with assistance from DOJ, investigate suspected violations of the ADA, seek informal resolution in instances of noncompliance, and refer cases to DOJ or withhold federal funding if it is unable to resolve compliance issues. For its part, DOJ will, once FTA refers a case, pursue further enforcement action with coordination and assistance from FTA. Although the agreement has not resulted in any referrals from FTA to DOJ, officials from both agencies told us that simply having a formal relationship and a requirement to meet periodically has been helpful.

⁴⁸A private bus company brought suit against FMCSA in 2005 alleging that FMCSA granted an application for operating authority from another bus company despite that company's unwillingness to comply with DOT's ADA regulations. FMCSA concluded that the statute that gives it authority to issue operating authority prevents it from considering whether the bus company is in compliance with DOT's ADA regulations. A U.S. Court of Appeals ruling reversed FMCSA's decision to grant operating authority and directed FMCSA to reexamine the statute and determine whether it has authority to withhold or revoke licenses for ADA violations. FMCSA officials told us they are reviewing this case. See *Peter Pan Bus Lines, Inc. and Bonanza Acquisition, LLC, v. Federal Motor Carrier Safety Administration*, 471 F. 3rd 1350 (D.C. Cir. 2006).

⁴⁹FMCSA officials said that they have no plans to conduct another similar effort due to the need to address other priority areas.

FRA and FMCSA do not have formal working relationships with DOJ or a memorandum of understanding to clarify their respective responsibilities in overseeing ADA compliance. Gaps appear in ADA oversight for Amtrak and commercial buses because responsibility is not clearly defined, as follows:

- *Amtrak*—FRA provides limited oversight of Amtrak but has not referred any suspected instances of noncompliance with ADA regulations to DOJ for further enforcement action.
- *Commercial buses*—FMCSA does not conduct oversight of commercial buses for compliance with ADA regulations. FMCSA conducts oversight of commercial buses for compliance with safety regulations, however, and, therefore, appears to be in an ideal position to conduct ADA oversight. DOJ officials said they have responded to information provided by FMCSA and initiated reviews of some commercial bus operators. DOJ officials also commended FMCSA for being proactive in sharing information and said that the informal relationship they have developed over the last 3 years has been mutually beneficial. However, neither FMCSA nor DOJ has a program in place to conduct ADA oversight reviews on an ongoing basis.

While there does not appear to be a similar gap in oversight of public rights-of-way, DOJ and FHWA could also benefit from better coordination. DOJ and FHWA officials said they work closely on ADA issues, but they do not do so formally. Both agencies provide compliance assistance and conduct similar oversight of public rights-of-way efforts, which could potentially overlap if the agencies are not aware of each other's activities. DOJ and FHWA officials told us that the agencies could benefit from better coordination by sharing data and expertise and by eliminating possible duplication of effort.

Agencies Lack Data with Which to Target and Evaluate the Effectiveness of Oversight and Enforcement Efforts

Most agencies lack the information needed to target their ADA enforcement efforts and to determine the effectiveness of their oversight activities. The exception is FTA, which collects data on accessibility and compliance through its triennial, state management, and ADA compliance reviews and uses this information to evaluate each grantee annually to determine the appropriate level of oversight required. FTA also focuses its ADA compliance efforts on areas that it has identified through experience and data analysis as problematic: paratransit operations, bus lift maintenance and usage, and stop announcements. By contrast, FRA, FMCSA, and FHWA lack reliable data to determine the extent of compliance with the ADA requirements for which they are responsible.

Without this information, agencies cannot target their oversight activities, establish performance goals and measures, or monitor progress to gauge the effectiveness of their oversight efforts.

The general lack of data about ADA compliance at FMCSA, FRA, and FHWA is in marked contrast to those agencies' use of data to target oversight activities in other areas. For example, in reporting on FMCSA's motor carrier truck enforcement efforts in 2005, we noted that FMCSA's enforcement approach uses major risk factors identified as contributing to crashes and that FMCSA targets its enforcement resources at the motor carriers that it assesses as having the greatest crash risk. The agency uses information that it collects and maintains about carriers' safety performance (including crash history and results of roadside inspections and compliance reviews) to identify these unsafe carriers to be targeted.⁵⁰ In addition, FMCSA has several information systems and a program to help it identify high-risk carriers and drivers and to assist it in enforcing safety regulations. FRA and, to a lesser extent FHWA, have similar programs to target oversight or enforcement based on collected information. For example, many of FHWA's division offices conduct risk assessments and use this information to target their oversight efforts for highway projects.

DOJ might have difficulty collecting information similar to the DOT modal administrations because there are no ADA reporting requirements for most of the public and private entities over which DOJ has enforcement authority. One example, introduced earlier, is that many municipalities are required to develop transition plans about improving rights-of-way access but are not required to report this information. DOJ officials said that, based on their experience with Project Civic Access reviews conducted so far, most municipalities did not have a transition plan in place. However, this information is not specific enough to help DOJ target future entities to review.

⁵⁰GAO, *Large Truck Safety: Federal Enforcement Efforts Have Been Stronger Since 2000, but Oversight of State Grants Needs Improvement*, [GAO-06-156](#) (Washington, D.C.: Dec. 15, 2005).

DOT Officials Consider Existing Enforcement Options to Be Limited

In general, DOT's modal administrations attempt to resolve instances of noncompliance informally by working with the offending entity to achieve a mutually satisfactory result. If these efforts are not successful, there are two enforcement options available: withholding federal funds⁵¹ or referring cases to DOJ for investigation and further enforcement action. DOT has rarely used these options, however.

DOT regulations encourage resolving complaints and compliance issues informally before initiating stronger methods. We found informal ADA resolution processes in use at most DOT modal administrations, but not all, as follows:

- FTA and FHWA officials told us that they are generally successful in working with grantees to achieve compliance, usually by developing a list of problems and providing technical assistance. For example, if FTA identifies a deficiency in the course of a triennial or compliance review, FTA requires the entity to take steps to correct the deficiency and monitors its progress. FTA keeps reviews open until problems are resolved, which could occur quickly or take years. For example, entities sometimes refuse to comply due to competing priorities for funds, lack of expertise, or other reasons. In those instances, FTA continues to try to work with the entity. In the case of one transit agency, for example, FTA completed a compliance review in January 2001 and has been monitoring the agency on a quarterly basis since that time. For public rights-of-way, FHWA seeks ADA compliance through the investigation and resolution of complaints through a settlement agreement. FHWA also approves state standards and reviews projects constructed or programs funded with FHWA funding, training, and technical assistance.
- For Amtrak, FRA has entered into voluntary compliance agreements in some instances. For example, Amtrak and FRA signed a compliance agreement in which Amtrak agreed to develop ADA-related training after FRA had investigated a complaint from a customer who alleged poor treatment on the basis of his disability. However, FRA investigates few complaints about Amtrak because most complaints are forwarded to Amtrak for resolution.
- Although FMCSA uses informal resolution methods for its safety oversight activities, it does not do so for ADA. FMCSA recently introduced a

⁵¹The authority to withhold federal funds comes from Section 504 of the Rehabilitation Act of 1973.

proposal to add ADA items to its safety audit of new commercial bus companies, but this would be for educational purposes and would not affect the outcome of the safety audit.

At all modal administrations, DOT officials said they have rarely used the following two available enforcement mechanisms:

- *Withholding funds*—DOT agencies we spoke with had never used this enforcement option because, in most cases, withholding all or a portion of grant funds for noncompliance with ADA regulations is a lengthy and administratively complex process.⁵² DOT agencies are required to hold a hearing in front of, and gain approval from, the Secretary of Transportation prior to withholding funding. According to FRA and FTA, the process to withdraw any funding would not be taken lightly given its effect and the need for the Secretary to weigh all the factors involved. In addition, withholding all or a portion of a transportation provider’s funding could affect the entire transit system and the mobility of all riders, including those with disabilities.⁵³ For example, for issues other than the ADA, we have previously reported that FRA has not withheld funds from Amtrak for noncompliance with grant agreements—despite the legal authority to do so—because withholding grant funds would involve large sums and could have a severe impact on Amtrak’s continued operations and the mobility of riders who depend on the service.⁵⁴ Finally, FHWA officials said that they have never withheld federal funding because they have been able to resolve compliance violations voluntarily.
- *Referral to DOJ*—DOT modal administrations have the option of referring a case on ADA noncompliance to DOJ for enforcement action. However, to date, FHWA and FTA have each formally referred one case to DOJ. FMCSA has not formally referred any cases, although it has provided information to DOJ on possible ADA violations, as previously mentioned. An FTA official said that, prior to implementing the memorandum of understanding, FTA did not have the formal working relationship necessary to provide an avenue for regular communication about ongoing cases. FTA officials also indicated that DOJ investigations can be lengthy

⁵²FMCSA does not provide grant funding to commercial bus operators and thus cannot withhold federal funds.

⁵³For example, FTA provides \$3.6 billion to cities through its Urbanized Area Formula Program, for capital projects for use in public transportation service.

⁵⁴GAO, *Amtrak Management: Systemic Problems Require Actions to Improve Efficiency, Effectiveness, and Accountability*, GAO-06-145 (Washington, D.C.: Oct. 4, 2005).

and said there are a number of steps that FTA has to pursue internally before referring a case. In several instances, however, FTA collected sufficient proof of persistent noncompliance and indicated to the grantee its intent to refer the case to DOJ, according to FTA officials. In each instance, according to FTA, grantees have then indicated willingness to make additional improvements, negating the need for a referral at that time.

DOJ's enforcement options are also somewhat limited, unless the transportation entity is privately owned. For public transportation entities, DOJ can pursue enforcement action if DOT refers the entity and, in such cases, DOJ can initiate a lawsuit, seek mediation, or negotiate a consent agreement. As mentioned previously, DOT has referred two cases formally to DOJ for investigation. DOJ can also intervene in existing private suits. For example, DOJ joined a private suit against a large city and reached a consent agreement in which the city agreed to address alleged ADA violations involving its fixed-route public bus systems. For private transportation entities, DOJ can, and has, initiated its own lawsuits, joined existing private lawsuits, used mediation, signed settlement agreements, and sought civil penalties. For example, DOJ reached a consent decree with a private entity providing fixed-route service between Memphis and the Little Rock airport, alleging that it had failed to provide accessible transportation. In another example, DOJ reached a settlement agreement with a large, door-to-door airport shuttle company in which the company agreed to add accessible vehicles to its fleet, train its employees on providing equivalent service, and pay a civil penalty. DOJ officials said that they may increase their use of civil penalties for ADA violations in the future because the ADA has been in effect for 17 years and entities should be familiar with their responsibilities.

DOT Has Another Option Available for Enforcing Airline Accessibility and Safety-Related Requirements

In contrast to surface transportation cases involving the ADA, DOT has at least one other option, the ability to levy monetary penalties, available for enforcement in similar situations. Following are examples of monetary penalties:

- DOT has the ability to levy monetary penalties against airlines that violate the Air Carrier Access Act of 1986, which largely governs accessibility issues in air transportation. DOT has levied penalties against commercial air carriers for violations of this law and has allowed carriers to use a portion of the penalties to improve their compliance. For example, in 2002, DOT found that Northwest Airlines had violated the Air Carrier Access Act and assessed civil penalties of \$700,000 with certain provisions that allowed the airline to offset a portion of the penalties. In this case,

Northwest could offset up to \$550,000 by taking steps such as increasing the number of wheelchair assistance personnel at airports, purchasing and installing grab bars in airplane lavatories, and establishing an Air Carrier Access Act Quality Assurance Program. Between 2000 and 2006, DOT imposed approximately \$8.4 million in penalties.

- Such penalties are also an option for many safety violations. FRA and FMCSA impose civil penalties against freight rail and commercial motor carriers, respectively, for safety violations, and FTA and OST officials said that extending this type of enforcement tool to FTA for use against transit agencies would be very useful and would help their ADA compliance efforts.

Agency officials indicated the threat of a fine would serve to encourage compliance but would also be useful to gain compliance for relatively minor acts of noncompliance. For example, FTA officials said that during the course of investigating a complaint against a transit agency, the agency agreed there was a problem but refused to correct it. The transit agency understood the problem was a small one and that it was unlikely that FTA would pursue one of the more extreme enforcement options available. However, if FTA were able to levy a fine for this particular instance, the transit agency would be much more likely to comply.

Private Citizens Use Lawsuits and Settlement Agreements to Bring About Compliance

In a number of instances, compliance has come not through agency enforcement but through private citizens filing lawsuits and negotiating settlements.⁵⁵ The ADA authorizes private citizens or their representatives to file suit in cases of discrimination, providing another avenue of oversight for both public and private entities where federal oversight has not resolved problems. In addition, citizens are not required to pursue resolution through complaints prior to filing suit. Lawsuits are not without limitations, however. For example, the ADA does not provide for punitive damages. Also, although the ADA does allow for recovery for legal fees, recent court decisions have made these fees more difficult to obtain.

The terms of lawsuits and settlement agreements reached by people with disabilities have resulted in more than just requiring transportation providers and state and local governments to conform to the requirements

⁵⁵As previously mentioned, DOJ has filed amicus (“friend of the court”) briefs in a number of private lawsuits. DOT officials also noted that DOT and DOJ have sometimes provided assistance to the court or to one of the parties in a suit.

of the ADA. For example, a group of passengers in Boston brought suit against the Massachusetts Bay Transportation Authority in 2002 alleging discrimination based on disability. The passengers and the transit agency eventually reached a settlement agreement that includes a commitment by the agency to ensure bus lifts are properly maintained and functional, as required by ADA regulations, and also a pledge to purchase new low-floor (rather than high-floor) buses that employ ramps instead of lifts—lifts are often deemed to be less reliable. Notably, FTA has been monitoring Massachusetts Bay Transportation Authority for compliance with ADA requirements to announce transit stops and maintain bus lifts since July 2000.

Federal Entities Provide a Variety of Technical Assistance to Help with ADA Compliance, but Gaps Exist in Regulations and Guidance

The ADA requires DOT, DOJ, and the Access Board to provide technical assistance that will help transportation providers, businesses, and state and local governments comply with ADA requirements. The agencies have provided this assistance both in regulations and in various types of nonregulatory guidance. Our discussions with officials from state and local transportation agencies indicated, however, that current assistance has several key gaps and that—in some instances—proposed regulations and guidance still leave questions about what they need to do to comply.

Assistance Takes Several Forms

DOJ and DOT each issue *regulations* covering those aspects of the ADA for which they are responsible. These regulations, discussed below, have the force and effect of law.⁵⁶

- DOJ's regulations incorporate the Access Board's guidelines as standards for accessible design. The regulations provide minimum design standards for the construction and alteration of places of public accommodation, commercial facilities, and state and local government facilities.⁵⁷ Included in these standards are basic design criteria for sidewalks and curb ramps. DOJ's regulatory standards must, at a minimum, meet the Access Board's

⁵⁶For the purposes of this report, we chose to include regulations in the discussion of technical assistance because the regulations provide information on how to implement the ADA.

⁵⁷The exception is transportation facilities, which are subject to similar standards in DOT regulations.

accessible design guidelines. DOJ also issues regulations on nondiscrimination on the basis of disability by public accommodations and in commercial facilities, as well as nondiscrimination on the basis of disability in state and local government services.

- DOT's regulations focus on the provision of transportation services by public and private entities and include accessibility requirements as they pertain to vehicles (such as public transit, intercity passenger trains, and commercial buses) and stations. Under the ADA, DOT's regulatory standards for accessible facilities and vehicles cannot be less stringent than the Access Board's guidelines. DOT's regulations also cover nondiscrimination (for example, an entity cannot require that a qualified individual with a disability be accompanied by an attendant) and requirements for complementary paratransit service, such as processes for determining eligibility.

DOJ, DOT, and the Access Board also issue *official guidance*. This guidance does not have the force and effect of law and is intended to provide clarification to assist entities in complying with regulations. For example, DOJ guidance includes information for businesses on accommodating service animals and restriping parking lots, among other things. FTA has issued guidance to assist public transportation agencies in their responsibility to transport passengers who use common wheelchairs.⁵⁸ The Access Board has provided guidance to clarify technical requirements for buses, commuter and intercity railcars, and over-the-road bus systems. To coordinate DOT's disability-related interpretations, guidance, and policies, the Secretary of Transportation established in 2003 a working group known as the Disability Law Coordinating Council. DOT recently proposed codifying the council in regulation. For more information about the council, see appendix III.

DOJ, DOT, and the Access Board all provide technical assistance through a variety of *other sources*, such as Web sites, conferences, and outreach through nongovernmental entities (see table 1 for examples). These other informational sources provide state, local, and industry officials with a source of information ranging from the regulations themselves to one-on-

⁵⁸DOT's regulations define a wheelchair as a "mobility aid belonging to any class of three- or four-wheeled devices, usable indoors, designed for and used by individuals with mobility impairments, whether operated manually or powered." They define a common wheelchair as such a device "which does not exceed 30 inches in width and 48 inches in length measured two inches above the ground, and does not weigh more than 600 pounds when occupied." (See 49 CFR 37.3.)

one assistance with specific questions. On FMCSA’s Web site, for example, commercial bus companies can obtain a summary of DOT’s ADA regulations and information about their annual reporting requirements.⁵⁹

Table 1: Other Examples of ADA Technical Assistance Sources Provided by DOJ, DOT, and the Access Board

Source	Example
Web site	FMCSA’s Web site includes information on commercial bus companies’ ADA responsibilities and reporting requirements.
Assistance line	DOJ provides a toll-free assistance line to answer compliance questions for businesses and nonprofit transportation providers, local governments, and public transportation providers.
Training and conferences	The Access Board provides training to state and local officials on public rights-of-way requirements.
Oversight reviews	As part of what is called Project Civic Access, DOJ provides reviews addressing facility modifications that will improve access, such as accessible parking and routes to and through buildings.
Funding of federal and nongovernmental entities	Easter Seals Project ACTION, funded by FTA, provides information on ADA resources, a toll-free ADA information line, and training on transportation accessibility. FHWA funds the National Cooperative Highway Research Program, which conducts research in problem areas that affect highway planning, design, construction, operation, and maintenance nationwide, including problem areas related to public rights-of-way.

Source: GAO.

Finally, other federal and nongovernmental organizations not specifically named under the ADA also provide technical assistance. For example,

- The Department of Education funds Disability and Business Technical Assistance Centers, which provide training related to ADA.
- The Department of Health and Human Services supports a nationwide system of state-level organizations that advocate for the rights of individuals with disabilities.
- The American Bus Association, an industry organization, provides a newsletter to its members addressing ADA-related topics and requirements.

⁵⁹For more information on sources and types of ADA-related federal technical assistance, see the National Council on Disabilities’ report titled “Promises to Keep: A Decade of Federal Enforcement of the Americans with Disabilities Act,” June 27, 2000.

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- Advocacy organizations such as the Paralyzed Veterans of America and the National Disability Rights Network inform transportation providers and individuals with disabilities about ADA rights and responsibilities.

Gaps in Technical Assistance for Public Transportation and Public Rights-of-Way Have Raised Uncertainty about ADA Compliance Requirements

While a number of public transportation providers and state and local officials with whom we spoke found federal technical assistance sufficient for many of their needs, they identified two key areas in which confusion existed about complying with ADA requirements. These areas were (1) uncertainty about how ADA requirements pertain to emerging issues in public transportation, such as mobility devices that do not fit the definition of a common wheelchair, and (2) lack of clarity about planning for and designing accessible public rights-of-way. According to some state and local government officials, this uncertainty has made them apprehensive about going forward with efforts to implement accessible rights-of-way, particularly those that go beyond the current ADA regulations such as installing accessible pedestrian signals. DOT is in the process of updating guidance on the emerging issues in public transportation. For public rights-of-way, however, federal agencies are not as far along in addressing areas of confusion.

DOT Is Developing Regulations to Address Emerging Issues in Public Transportation

DOT has identified emerging areas in public transportation that it is addressing through an NPRM and anticipates finalizing the rule by the beginning of 2008.⁶⁰ These issues include the increasing use of larger, heavier mobility devices on public transportation and the potential effect on DOT's current definition for a common wheelchair; requirements for public transit agencies providing paratransit services; and platform requirements for intercity and commuter rail stations.

Prior to issuing the NPRM, DOT promulgated guidance on these issues in 2005; however, a number of public transportation providers and national industry groups with whom we spoke noted that the industry was unsure about how to implement some of the guidance. For example, as more people are using larger wheelchairs or scooters and similar devices, public transportation providers with whom we spoke are unclear about how to accommodate these devices because current regulations on wheelchairs

⁶⁰Under the Administrative Procedure Act, agencies are generally required to publish an NPRM that proposes regulations and allows interested parties to participate in the rulemaking process by providing official comments (5 U.S.C. § 553 *et seq.*). According to DOT officials, DOT has received more than 300 comments on its proposed ADA requirements for public transportation entities.

and mobility devices do not address devices that fall outside of the definition of a common wheelchair.⁶¹ Further, a number of transportation providers considered DOT's 2005 guidance on how transit vehicles should transport two-wheeled, self-balancing Segway® personal transportation devices, to be unclear. Specifically, DOT guidance states that a transportation provider is not required to permit anyone to bring onto a vehicle a device that is too big or that is determined to pose a direct threat to the safety of others;⁶² however, the guidance also directs transportation providers to accommodate Segways when used as a mobility device by a person with a disability, subject to these same limitations.⁶³ Thus, to address these concerns, and others, the DOT issued an NPRM soliciting public comment on this topic, as well as on paratransit services and level boarding for rail station platforms.

More Clarity Needed for Public Rights-of-Way Requirements

Advocacy and industry groups and state and local governments told us that current federal regulations and guidance have gaps or are unclear on (1) ADA-required transition plans for assessing the accessibility of state and local governments' structures including sidewalks and curb ramps and (2) technical requirements for installing accessible public rights-of-way.

Many Jurisdictions Lack Information about Transition Plans for Correcting Public Rights-of-Way Deficiencies or Are Unaware They Have to Develop a Plan

ADA regulations require state and local governments to assess local accessibility and draft a transition plan for upgrading the public rights-of-

⁶¹ADA regulations require that every transit vehicle that is over 22 feet in length have a minimum of two wheelchair securement areas (vehicles that are 22 feet or less must have one wheelchair securement area) and that these vehicles must accommodate "common wheelchairs," as defined in DOT regulations. According to a 2005 National Council on Disability Report, as wheelchairs, scooters, and similar devices have become more varied, and more people are using these nonstandard mobility devices, an increasing number of individuals are no longer accommodated by the ADA definition for a common wheelchair. Vehicle lifts, ramps, and securement devices are designed to hold common wheelchairs, but larger, heavier mobility devices may not fit properly.

⁶²Transportation providers have expressed concern regarding the safety of transporting unsecured mobility devices, due to the potential for a mobility device to injure other riders or drivers if not properly secured in a moving vehicle. DOT has indicated that there are no data to support this assertion. DOT also notes that a transportation provider is free to acquire equipment that can accommodate larger mobility devices, if desired.

⁶³An FTA official noted that, to the best of his knowledge, his office has not received any calls from transit providers with questions about this guidance.

way within their jurisdictions. Current regulations require any public entity that employs 50 or more persons to develop such a plan. If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan must include a schedule for providing curb ramps, or other sloped areas, where pedestrian walks cross curbs, including state and local government offices and facilities, transportation, and places of public accommodation.⁶⁴ At a minimum, the plan must identify physical obstacles that might limit the accessibility of programs or activities, describe in detail the methods that will be used to make facilities accessible, specify the schedule for taking identified steps, and indicate the official responsible for implementing the plan. However, gaps exist in the current federal regulations and guidance because they do not specify how to include that information in the plans and, if a jurisdiction has a plan, when it should update the plan.⁶⁵

The American Association of State Highway and Transportation Officials surveyed state departments of transportation and concluded that considerable confusion exists among states about when and how to update transition plans. In addition, several members of an industry association (representing different states and localities) told us that jurisdictions are confused about what is supposed to be included in a transition plan and indicated that more specific federal guidance would be helpful. For example, one state transportation official mentioned that federal guidance was unclear on what data should be collected for ADA transition plans and did not address field-level implementation of ADA requirements for transition plans.

Without proper regulations and accompanying guidance from the federal government, states and localities face challenges creating these plans, or may not create them at all. DOJ Project Civic Access reviews typically reveal that, most commonly, the responsible government has not established an ADA transition plan and the accompanying policies and procedures necessary to ensure the installation of curb ramps at public rights-of-way. Absent such plans, states and localities may neither assess

⁶⁴Public accommodations include restaurants, hotels, movie theaters, and doctors' offices, for example.

⁶⁵DOJ recently published an ADA tool kit to assist state and local governments in taking steps to assess and address compliance with ADA requirements for curb ramps at pedestrian crossings, which includes similar elements as those required for transition plans.

the status of the accessibility of their public rights-of-way nor develop a schedule for updating curb ramps and ensuring access to public services and programs, leaving themselves vulnerable to private lawsuits or federal compliance actions. Furthermore, without transition plans, it is difficult or impossible for the federal government to assess compliance and collect information or data from state and local governments with regard to the accessibility of their public rights-of-way.

FHWA has recognized the lack of information on ADA-required transition plans and other aspects of civil rights requirements and plans to complete civil rights program assessments of all state departments of transportation by the end of fiscal year 2008. This project should, among other things, enable FHWA to gauge the number of states that have developed and implemented a transition plan. The program assessments are designed to assess how state departments of transportation implement ADA requirements and ascertain the extent to which they are involved with local governments' ADA implementation on projects and programs that are jointly funded by FHWA and a state department of transportation. While these program assessments are a first step, FHWA will not assess the content of state transition plans or determine whether the state transportation agencies are in compliance with the ADA. The assessments will also not address whether local governments throughout the country have created transition plans.

FHWA has also drafted a tool kit for its division offices and state departments of transportation. The tool kit will assist staff tasked with compliance and oversight activities for ADA requirements, including oversight of transition plans for state departments of transportation. According to FHWA, this tool kit is under review by FHWA's Office of Chief Counsel and is not yet available publicly. In addition, FHWA is involved in a federally funded research project by the National Cooperative Highway Research Program focusing on the development of a guide for updating ADA transition plans for state departments of transportation. This project is aimed at helping states translate applicable laws and guidance into field-level implementation of ADA requirements for transition plans and related requirements and is anticipated to be completed in May 2008.

Technical Standards for Installing Public Rights-of-Way Are Not Finalized

In addition to the transition plans required by the ADA, the Access Board developed ADA Accessibility Guidelines (ADAAG) for installing accessible

structures and devices such as curb ramps for sidewalks. These guidelines serve as the basis for DOJ and DOT's current ADA regulations, originally published in 1991. However, ADA accessibility requirements in current regulations focus primarily on accessibility standards for building facilities, not public rights-of-way. In June 1994, the Access Board published an interim rule containing more information on public rights-of-way, among other accessibility topics, to supplement the ADA accessibility requirements. As the transportation community and others reviewed these guidelines, however, they were concerned about the magnitude of the work that would be needed to meet the public rights-of-way guidance. As a result, the Access Board withdrew the sections of the rule pertaining to public rights-of-way and began conducting education and outreach activities to inform the transportation industry about accessibility of public rights-of-way. Current ADA accessibility requirements, as codified in regulation, do not contain the Access Board supplement on public rights-of-way.

In 1999, the Access Board resumed its efforts to develop final guidelines for public rights-of-way and, nearly a decade later, work continues on these draft guidelines. After soliciting input from a wide variety of stakeholders,⁶⁶ the Access Board released another draft of its public rights-of-way guidelines in 2002 for public comment and received an extensive public response. The board considered these comments and, in 2005, published revised draft guidelines for purposes of gathering additional information for an economic impact analysis, which is still under way by the Access Board. The new guidelines are expected to cover such subjects as pedestrian access to sidewalks and streets, including crosswalks, curb ramps, street furnishings, pedestrian signals, parking, and other parts of the public rights-of-way. They will likely also address issues such as access at street crossings for pedestrians who are blind or have low vision, wheelchair access to on-street parking, and constraints posed by space limitations, roadway design practices, slope, and terrain. According to Access Board and DOJ officials, the draft guidelines are more consistent with industry standards.

⁶⁶The Access Board chartered a Public Rights-of-Way Access Advisory Committee to develop recommendations for accessible public rights-of-way, contained in the report "Building a True Community" (Jan. 10, 2001). The review committee consisted of 33 members representing disability organizations, public works departments, transportation and traffic engineering groups, design professionals and civil engineers, government agencies, and standards-setting bodies.

The draft guidelines remain a work in progress. The Access Board is still working on the economic analysis, and, once it is complete, the draft guidelines will go out for public comment. As of July 2007, however, the Access Board was not able to provide an estimate for when the guidelines might be finalized. If codified into federal regulations and standards by DOJ, the Access Board draft guidelines would supplement the current ADA accessibility requirements and provide a comprehensive set of regulations for public rights-of-way.

Various studies and advocacy and industry groups, as well as officials with whom we spoke, cited the lack of final, specialized standards for public rights-of-way as a problem. Some of their comments and findings are as follows:

- According to a report by the National Academies of Sciences, improvements to pedestrian accessibility have lagged behind improvements to the rest of the transportation network, in part because no enforceable regulations for making public rights-of-way accessible have been issued.⁶⁷
- Officials with the National Council on Disabilities said that, absent such enforceable standards, localities continue to erect barriers, such as inaccessible bus stops, intersections without curb ramps or with improperly constructed curb ramps, and barriers blocking sidewalks.
- Officials with a national industry association with whom we spoke said that localities are uncertain about requirements for and definitions of accessible pedestrian signals. The officials said that there is a strong bias for localities to delay in adding pedestrian signals, depending on what the final guidelines will require. For example, one city is conducting a major construction project downtown to add light rail. In the course of this construction, 60 pedestrian signals will be modified, but the city is unsure how to proceed since accessible pedestrian signals are not defined or covered in current ADA requirements.
- Industry groups with whom we spoke noted that states and localities may not make an investment in accessibility improvements for public rights-of-way that go beyond current regulations for curb ramps, since draft

⁶⁷*The Future of Disability in America*, Institute of Medicine of the National Academies, 2007. FHWA officials clarified that no specialized standards have been adopted to mandate how to make public rights-of-way accessible.

guidelines will likely change. Furthermore, officials with whom we spoke identified aspects of current accessibility requirements that are not clear, such as detectable warning requirements for curb ramps.

- Additionally, industry and advocacy groups and state and local governments said that differences between the draft guidelines, current ADA accessibility requirements, other federal guidelines, and national and state building codes create challenges for state and local governments that are trying to comply with applicable accessibility requirements for public rights-of-way.⁶⁸

State and local government officials, as well as officials from advocacy and industry groups, pointed to the lack of finalized comprehensive standards for public rights-of-way as an obstacle to ensuring access to transportation for individuals with disabilities. FHWA, which implements ADA pedestrian access requirements for federal, state, and local government agencies that build and maintain highways, has provided some guidance, but FHWA officials acknowledge that the effectiveness of the guidance is limited.⁶⁹ Furthermore, FHWA directs states and localities to use the Access Board's draft guidelines as best practices. In the absence of finalized comprehensive standards for public rights-of-way, DOJ and the Access Board have developed guidance on these issues. For example, DOJ has developed an online tool kit for state and local governments to use in identifying and fixing problems in public rights-of-way accessibility. However, according to federal officials, it is difficult to provide effective training and technical assistance for states and localities while Access Board draft guidelines are not final and codified in regulation. Federal officials have acknowledged that the draft guidelines will likely change as a result of the rulemaking process.

Conclusions

Congress passed the ADA in part to help people with disabilities have access to transportation, but 17 years later the federal government cannot

⁶⁸For example, under current federal regulations, states and localities can choose between two sets of accessibility guidelines: the ADA Accessibility Standards and the Uniform Federal Accessibility Standards.

⁶⁹FHWA has provided technical assistance and guidance on accessible public rights-of-way using existing research and standards. This includes *Designing Sidewalks and Trails for Access, Part I of II: Review of Existing Guidelines and Practices*, FHWA-HEP-99-006 (Washington, D.C.: July 1999) and *Designing Sidewalks and Trails for Access, Part II of II: Best Practices Design Guide*, FHWA-EP-01-027 (Washington, D.C.: September 2001).

determine the extent of its success for many transportation modes due to a lack of reliable data. While some improvements have been made in surface transportation accessibility, further advances are also hindered, in part, by confusion among transportation providers and local governments about some of the more complex and emerging aspects of accessibility requirements and among federal agencies about their respective roles and responsibilities. For state and local governments, a major source of confusion is the ADA's requirement to develop and update transition plans that inventory the accessibility of public rights-of-way and identify steps and time frames for addressing deficiencies. Industry associations and state and local transportation agencies that we interviewed were unsure what should be included in the plan, what a successful plan would look like, and how often to update the plan. The problem is persistent enough that the National Cooperative Highway Research Program, which is funded by FHWA and state transportation agencies, is conducting a study to develop a tool to help state transportation agencies with these plans. FHWA is also conducting program assessments of state transportation agencies to determine whether they have completed transition plans.

There is also confusion among DOT's modal administrations about what steps DOT is able to take to enforce the ADA. DOT established a Disability Law Coordinating Council to coordinate the agency's disability-related guidance and policies, but this mission does not include coordination of oversight and enforcement efforts. FTA and DOJ crafted a memorandum of understanding that set out their respective responsibilities for shared enforcement of the ADA, and this was successful in that it helped develop working relationships that have furthered oversight and enforcement of accessibility requirements in public transportation. However, FMCSA does not conduct ADA compliance reviews or investigate complaints for commercial buses and has indicated that it cannot withhold or revoke a company's operating authority for noncompliance with the ADA. A federal court directed FMCSA to reexamine the statute for further consideration. In addition, although FMCSA and DOT's Office of the Secretary have not gathered and reviewed information on the accessibility of demand-response and fixed-route commercial bus service and determined whether to retain or modify the ADA regulations governing such buses, as required, they recently developed a preliminary strategy for doing so in response to our preliminary findings. FRA also has had limited involvement in ADA enforcement and has not conducted periodic compliance reviews of Amtrak, as required by regulation, but FRA officials indicated that they may do so in the future. Amtrak's delay in conducting station assessments, including providing information on the steps necessary to bring them into

compliance with the ADA by July 2010, hinders FRA's ability to adequately oversee intercity passenger rail accessibility.

When DOT does identify ADA violations—whether by local transit agencies, Amtrak, or other entities—DOT primarily relies on informal negotiations and reminders to attempt to obtain compliance with the ADA. In many cases, these informal methods are sufficient to correct the problem. Sometimes, however, an entity refuses to comply due to competing priorities for funds, lack of expertise, or other reasons. The ADA has been in effect for more than 17 years, and federal officials are less sympathetic to such reasons than they used to be. Other than the informal methods, DOT's other enforcement options are withholding grant funds or pursuing litigation through DOJ. However, DOT has rarely used these options because they are too drastic or lengthy to effectively address the problem in many instances. There is very little middle ground available. Civil penalties are a tool that DOT uses to achieve other goals, but it does not have authority to use them for ADA violations. DOT's Office of the Secretary already has experience in administering civil penalties against air carriers for violations of the Air Carrier Access Act. Likewise, FRA and FMCSA impose civil penalties against freight rail and commercial motor carriers, respectively, for safety violations. Similar authority for ADA violations would give DOT's oversight and enforcement efforts more weight and help ensure that accessibility is a higher priority for public and private surface transportation providers and local governments.

Recommendations for Executive Action

To improve the availability of data on ADA compliance and improve FRA's ability to oversee Amtrak's progress in implementing the ADA, we recommend that the President of Amtrak continue to report to FRA on the status of Amtrak's review of the accessibility of its stations. As required by Amtrak's fiscal year 2006 and 2007 grant agreements, this report should include data for each station and actions required to bring it into compliance, as well as an overall schedule for bringing all Amtrak stations into compliance.

Given gaps in data on the status of ADA compliance of commercial buses, we recommend that the Secretary of Transportation direct the Administrator, FMCSA and DOT's Office of the Secretary, to implement their plan to gather, review, and verify information on demand-response and fixed-route commercial bus service and determine whether to retain or modify the existing regulations, as required by DOT's regulations.

To reduce confusion among state and local entities regarding ADA-required transition plans, we recommend that the Secretary of Transportation direct the Administrator, FHWA, to work with DOJ to use the results of both FHWA's program assessments and the National Cooperative Highway Research Program's study to develop and disseminate guidance for creating and updating transition plans.

To enhance DOT's oversight of ADA compliance, we recommend that the Secretary of Transportation take the following two actions:

- develop criteria for determining circumstances under which DOT would withhold all or part of a grantee's federal funds for instances of ADA noncompliance, which could streamline the process, and
- direct the Administrator, FRA, to conduct the periodic reviews of Amtrak's ADA compliance that are required by regulation.

To increase coordination and communication among DOT's modal administrations and with DOJ, thereby improving DOT's ability to oversee and enforce the ADA, we recommend that the Secretary of Transportation direct the Administrators of FHWA, FMCSA, and FRA to enter into formal agreements with DOJ to clearly delineate responsibility for enforcing the provisions of the ADA pertaining to surface transportation and public rights-of-way. Furthermore, we recommend that the Secretary of Transportation, through the Office of the Secretary, establish or designate a formal working group or other coordinating body (such as the Disability Law Coordinating Council) to ensure a coordinated effort within DOT for overseeing and enforcing the ADA, including identifying ways to improve data for measuring compliance.

To expand the range of options available to DOT modal administrations for enforcing the ADA for surface transportation and public rights-of-way, we recommend that the Secretary of Transportation develop a legislative proposal that would give DOT the authority to impose civil penalties for ADA violations.

Agency Comments and Our Evaluation

We provided a draft of this report to DOT, DOJ, the Access Board, and Amtrak for their review and comment. DOT and DOJ provided oral comments and agreed with our findings and conclusions. Further, DOJ agreed with our recommendations, and DOT agreed to consider them. The Access Board provided oral comments and agreed with the report's findings. Amtrak provided written comments (see app. IV) and stated that

our recommendations regarding enhancing DOT's oversight and enforcement options would not be effective in cases where federal guidance was unclear and funding is not available to meet the technical requirements. DOT, DOJ, and Amtrak also provided technical comments via e-mail, which we incorporated throughout the report as appropriate. Specific comments on the report as well as our responses follow.

DOT officials stated that since they had an existing body, the Disability Law Coordinating Council, to coordinate department regulations, they said that the council's mission could potentially be expanded to coordinate oversight and enforcement of the ADA. We included the council in the recommendations.

DOJ officials asked that we clarify DOJ and DOT's statutory and regulatory authority and they provided additional examples of DOJ's activities in ADA enforcement. We made changes to reflect these comments.

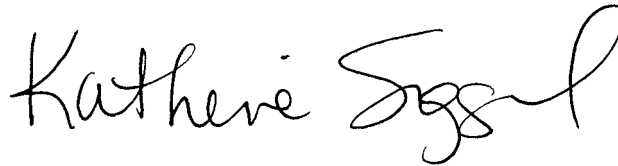
Finally, Amtrak stated its commitment to making its railcars and stations accessible to passengers with disabilities and compliant with the ADA. It also delineated three concerns impeding and increasing the cost of Amtrak's progress in constructing and renovating stations. First, Amtrak officials indicated DOT's notice of proposed rulemaking on platform heights could require considerable changes to platform design, but they are uncertain of when these rules will become final and, if they do, how the entities affected—including freight railroads—will be able to address these requirements. Second, they indicated the proposed rules are unclear regarding who is responsible for ADA compliance in areas where different public and private entities own stations. Finally, they stated these potential requirements are expensive, especially in the face of Amtrak's funding difficulties. They conclude that many technical, ownership, and funding issues are involved in addressing ADA compliance. Thus, our recommendations that DOT clarify situations under which it can withhold grant funds and consider asking for the ability to assess civil penalties are likely to be ineffective for Amtrak without more funding and clearer federal requirements.

We added further information clarifying Amtrak's difficulties in the report. We did not revise our recommendations since they apply to many situations beyond this one, such as commercial buses and public transit. Also, we believe that additional data and federal oversight of all modes of surface transportation, including Amtrak, would be beneficial in ensuring continued progress in meeting the accessibility goals of the ADA.

We are sending copies of this report to interested congressional committees, the Secretary of Transportation, the Attorney General, and other interested parties. We also will make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff has any questions about this report, please contact me at (202) 512-2834 or siggerudk@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix V.

Sincerely yours,

A handwritten signature in black ink that reads "Katherine Siggerud". The signature is written in a cursive, flowing style.

Katherine Siggerud, Director
Physical Infrastructure Issues

Appendix I: Examples of Federal Funds That Are Used for ADA Compliance

The state and local transportation providers and government agencies that we interviewed said that they used a variety of federal, state, and local funding sources—as well as farebox revenues—to help them comply with the surface transportation provisions of the Americans with Disabilities Act of 1990 (ADA). The federal funding sources are listed in table 2.

Table 2: Examples of Federal Funds that Are Used for ADA Compliance

Dollars in millions

Federal agency	Program	Use	Total fiscal year 2007 appropriation
Department of Transportation—Federal Highway Administration	Surface Transportation Program (STP)	STP funds may be used to construct pedestrian walkways and to modify public sidewalks to comply with the ADA. Ten percent of each state’s STP apportionment must be made available only for transportation enhancement activities (such as pedestrian facilities). Funds may be transferred to Federal Transit Administration formula programs.	\$6,247.9
	National Highway System (NHS)	NHS funds may be used to construct pedestrian walkways. Funds may be transferred to Federal Transit Administration formula programs.	\$5,932.5
	Congestion, Mitigation, and Air Quality Improvement Program (CMAQ)	CMAQ funds may be used for construction of pedestrian facilities. Under limited circumstances, CMAQ funds may be used to support the operating costs of public transportation. Funds can also be transferred to Federal Transit Administration formula programs.	\$1,693.7
	Highway Bridge Replacement and Rehabilitation Program	Funds may be used for replacement or rehabilitation of eligible highway bridge projects, including pedestrian walkways.	\$4,150.9
Department of Transportation—Federal Transit Administration	Urbanized Area Formula Program	Assists urbanized areas in financing capital projects for use in public transportation service; 10 percent of funds may be used to pay for complementary paratransit operating costs as a capital expenditure. Operating assistance may also be used to support complementary paratransit costs. Funds may also be used to enhance access for people with disabilities to public transportation.	\$3,606.2

**Appendix I: Examples of Federal Funds That
Are Used for ADA Compliance**

Dollars in millions

Federal agency	Program	Use	Total fiscal year 2007 appropriation
	Nonurbanized Area Formula Program	Assists nonurbanized areas in financing capital projects and operating expenses for use in public transportation service; projects that will help the area meet ADA requirements are eligible for a higher federal share of funding; 10 percent of funds may be used to pay for complementary paratransit operating costs as a capital expenditure. Operating assistance may also be used to support complementary paratransit costs.	\$404.0
	Over-the-Road Bus Accessibility Program	Competitive grant program to help commercial bus companies finance the capital and training costs of complying with ADA regulations.	\$7.6
	Fixed Guideway Modernization Program and Bus and Bus Facility Grants	Fixed Guideway Modernization Program provides capital assistance to maintain, modernize, or improve existing fixed guideway systems, including rail, bus, and other public transportation systems. Bus and Bus Facility Grants provide funding for the acquisition of buses and bus-related facilities, including transfer facilities and passenger shelters.	\$2,329.8
	Formula Program for Elderly Persons and Persons with Disabilities	This program provides formula funding to states for capital projects to assist private nonprofit groups in meeting the transportation needs of the elderly and individuals with disabilities when the public transportation service provided in the area is unavailable, insufficient, or inappropriate to meet these needs.	\$117.0
Department of Housing and Urban Development	Community Development Block Grant	Annual grants to provide services to the most vulnerable in U.S. communities. Projects benefit low- and moderate-income persons or address community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community for which other funding is not available.	\$3,710.9

Source: GAO.

In addition, DOT recently implemented the New Freedom Program, which is a formula grant program designed to support new public transportation

**Appendix I: Examples of Federal Funds That
Are Used for ADA Compliance**

services and public transportation alternatives beyond those required by the ADA. Congress apportioned \$81 million for this program for fiscal year 2007. This is a new program, and we reported in July 2007 that few governors had designated entities to receive the funds, and FTA had awarded few grants to date.¹

¹ For more information on the status of the program, see GAO, *Transportation Disadvantaged: Progress in Implementing the New Freedom Program Has Been Limited, and Better Monitoring Procedures Would Help Ensure Program Funds Are Used as Intended*, [GAO-07-999R](#) (Washington, D.C.: July 19, 2007).

Appendix II: Objectives, Scope, and Methodology

This report addresses the following three objectives: (1) what is known about the extent of Americans with Disabilities Act of 1990 (ADA) compliance for surface transportation and public rights-of-way,¹ (2) what difficulties, if any, the federal government faces in overseeing and enforcing compliance with the ADA, and (3) the sources of federal technical assistance that are available to help public transportation providers, businesses, and state and local governments comply with ADA requirements and what gaps, if any, exist.

Surface transportation, for the purposes of this report, includes public transportation (such as buses, subways, trolleys, and commuter rail), ADA-complementary paratransit (provided within 3/4 of a mile of a bus route or rail station, at the same hours and days as fixed-route transit, for no more than twice the regular fixed-route fare), intercity passenger rail (National Railroad Passenger Corporation, known as Amtrak), intercity buses, and privately operated transportation that is open to the public (such as taxis and airport shuttles). Maritime and aviation are excluded from our scope, as are school transportation and the Alaska Railroad.

To describe what is known about the extent of ADA compliance for surface transportation and public rights-of-way, we reviewed and analyzed relevant portions of the ADA, as well as related federal regulations and guidance. We also reviewed the literature on transportation accessibility, such as the National Council on Disability's reports on the status of compliance with the ADA,² and interviewed federal officials from the U.S. Architectural and Transportation Barriers Compliance Board (Access Board); the U.S. Department of Justice's (DOJ) Civil Rights Division; and the U.S. Department of Transportation's (DOT) Office of Civil Rights and modal administrations, including the Federal Highway Administration, Federal Motor Carrier Safety Administration, Federal Railroad Administration, and Federal Transit Administration. In addition, we interviewed officials from the National Council on Disability and Amtrak.

¹Public rights-of-way include pedestrian access to sidewalks and streets, through crosswalks, curb ramps, pedestrian signals, and parking, among other things.

²National Council on Disability, *The Impact of the Americans with Disabilities Act: Assessing the Progress Toward Achieving the Goals of the ADA* (Washington, D.C.: July 26, 2007); *Implementation of the Americans with Disabilities Act: Challenges, Best Practices, and New Opportunities for Success* (Washington, D.C.: July 26, 2007); *The Current State of Transportation for People with Disabilities in the United States* (Washington, D.C.: June 13, 2005); and *Promises to Keep: A Decade of Federal Enforcement of the Americans with Disabilities Act* (Washington, D.C.: June 27, 2000).

We obtained data from Amtrak and the Federal Transit Administration's National Transit Database on the number of accessible vehicles and stations. To assess the reliability of these data, we spoke with agency officials about data quality control procedures and reviewed relevant documentation. We determined the data were sufficiently reliable for the purposes of this report. We also obtained accessibility data from reports by DOT's Bureau of Transportation Statistics and the National Council on Disability, as well as from the National Organization on Disability's 2004 Harris Survey. Given that these data were used for background purposes, we did not assess their reliability.

To identify any difficulties the federal government faces in overseeing and enforcing compliance with the ADA, we interviewed Access Board, DOJ, and DOT officials (including officials from one of the Federal Transit Administration's regional offices) and analyzed documentation regarding oversight requirements and activities, including information on the type and frequency of activity, processes by which entities are selected for review or investigation, and resulting enforcement activities, if applicable, as well as the processes for receiving, processing, and responding to complaints. We also obtained and analyzed DOJ and DOT's ADA-related complaint data. In addition, we reviewed DOJ and DOT's annual reports, strategic and performance plans, and other related documents to identify agency and program goals, performance targets, and data collected for performance indicators related to improving ADA compliance.

To describe the sources of available federal technical assistance and determine whether any gaps exist, we interviewed and obtained documentation from Access Board, DOJ, and DOT officials and key technical assistance providers (such as Easter Seals Project ACTION). We also obtained and analyzed information on the processes by which federal agencies determine how to target this assistance.

To address all three of the objectives, we also interviewed 14 national industry associations and disability organizations (see table 3) to obtain their perspective on what is known about ADA compliance; federal technical assistance, including any potential gaps in such assistance; and federal ADA-related oversight and enforcement activities.

Table 3: National Industry Associations and Disability Organizations Interviewed for Our Review

Industry associations
American Association of State Highway and Transportation Officials
American Bus Association
American Public Transportation Association
Association of Programs for Rural Independent Living
Community Transportation Association of America
Easter Seals Project ACTION
Institute of Transportation Engineers
Taxicab, Limousine & Paratransit Association
United Motorcoach Association
Disability organizations
American Council of the Blind
Disability Rights Education and Defense Fund
National Disability Rights Network
National Organization on Disability
Paralyzed Veterans of America

Source: GAO.

To illustrate experiences that transportation providers and state and local governments have had with federal ADA-related technical assistance and oversight and enforcement activities, we supplemented the information from our federal interviews and documentation with interviews with officials in eight cities. The interviews included officials from 2 state departments of transportation, 11 local transportation agencies, 6 private transportation providers, 4 local governments, 4 centers for independent living, 2 technical assistance centers, and 2 local disability advocacy groups. We selected the eight cities to obtain diversity in the following criteria:

- *Experience with federal ADA oversight and enforcement processes*—We identified cities in which public transportation providers or government entities had been subject to federal oversight and enforcement processes, including FTA compliance reviews and DOJ Project Civic Access reviews. We also included transportation providers (public and private) or government entities listed in DOJ’s complaint database, those with whom DOJ had negotiated a consent decree or settlement agreement, or those whom FTA had investigated in response to a complaint and issued a letter of finding.

- *Population*—We selected a mixture of urbanized areas with very large populations (greater than 1 million), large populations (200,000-1 million), and small populations (50,000-199,000), as defined by FTA.
- *Geographic diversity*—We selected cities from around the United States.
- *Other criteria*—We also selected cities involved in additional transportation accessibility areas, including both National Organization on Disability Accessible America Award winners or runners-up in 2005 and 2006, and parties to private lawsuits identified through Internet searches, ADA-related literature, and our federal and national interviews.

Table 4 lists the eight cities that we selected on the basis of these criteria and the agencies that we interviewed. The results of these interviews cannot be used to make inferences about the entire population because the cities were selected from a nongeneralizable sample. However, we determined that the selection of these cities was appropriate for our design and objectives and that the selection would generate valid and reliable evidence to support our work.

Table 4: State and Local Organizations Interviewed for Our Review

Location	Organization
Albany, NY	Capital District Coalition for Accessible Transportation
	Capital District Transportation Authority
	Capitaland Taxi
	New York Association on Independent Living
Chicago, IL	Chicago Department of Transportation
	Chicago Transit Authority
	Coach USA
	City of Chicago Mayor’s Office for People with Disabilities
	Disability Rights Consortium
	Equip for Equality
	Great Lakes ADA Center
	Illinois Department of Transportation
	Metra—commuter rail
	Pace Bus
University of Chicago	
Dallas, TX	Dallas Area Rapid Transit
	Greyhound Bus Lines
Hartford, CT	Connecticut Department of Transportation

Appendix II: Objectives, Scope, and Methodology

Location	Organization
Joliet, IL	City of Hartford
	City of Joliet
	Will County Executive
Kingston, NY	Will-Grundy Center for Independent Living
	Adirondack Trailways
	Kingston Citibus
	Resource Center for Accessible Living, Inc.
Los Angeles, CA	Ulster County Area Transit
	Access Services, Inc.
	Los Angeles Metro
Springfield, MA	Peter Pan Bus Lines
	Pioneer Valley Transit Authority
	Stavros Advocates for Independent Living

Source: GAO.

We conducted this performance audit from November 2006 through July 2007 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix III: The Disability Law Coordinating Council

In March 2003, the Secretary of Transportation established a working group known as the Disability Law Coordinating Council to coordinate the Department of Transportation's (DOT) disability-related interpretations, guidance, and policies. The council is led by the Office of General Counsel and includes representatives from the Federal Highway Administration, Federal Motor Carrier Safety Administration, Federal Railroad Administration, Federal Transit Administration, and National Highway Traffic Safety Administration.

Its purpose, according to DOT officials, is to coordinate DOT's disability-related regulations and ensure that guidance and interpretations are consistent among DOT offices and consistent with DOT regulations that implement the Americans with Disabilities Act of 1990 (ADA), among other acts. It meets once a month for members to discuss what each modal administration is doing, uncertainties or questions that have arisen and where additional guidance would be useful. The council conducts its business informally, without formal agendas, minutes, or notes from its meetings.

DOT proposed to codify the council's role in its February 2006 notice of proposed rulemaking. DOT states that the proposed regulatory change would codify DOT's procedure with regard to the council and provide better notice to the public regarding the council's actions. The proposal has generated some controversy, however. For example, one major industry association has expressed concern that DOT's proposal does not discuss what authority the council would have to interpret the ADA and implement regulations and what balance would be struck between the council's and FTA's authority.

Appendix IV: Comments from the National Railroad Passenger Corporation (Amtrak)

NATIONAL RAILROAD PASSENGER CORPORATION
1515 K STREET, N.W. WASHINGTON, D.C. 20004-4401



September 6, 2007

Ms. Katherine Siggerud
Director, Physical Infrastructure Issues
United States Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: GAO Report on Transportation Accessibility

Dear Ms. Siggerud:

Thank you for giving Amtrak the opportunity to review and comment on GAO's draft report on Transportation Accessibility. We appreciate your willingness to incorporate Amtrak's comments into the final report.

Amtrak is committed to making its rail cars and stations accessible to passengers with disabilities and compliant with the Americans with Disabilities Act (ADA) and has made significant progress in this area over the years. However, it is important to note that Amtrak's progress in implementing plans to construct and renovate stations has been, and is continuing to be, impeded and made more costly by the following factors:

1. Uncertain Regulatory Requirements on Platform Height.

The Department of Transportation (DOT) issued Guidance in September 2005 and proposed regulations in February 2006 which, if adopted, would significantly change the rules for achieving ADA-compliant accessibility to trains from station platforms. The proposed regulations would generally mandate the construction of full-length, high level platforms for new platform construction or substantial rehabilitation. (While not having the force of law, the 2005 Guidance has been implemented consistent with the proposed regulations.) Previously, Amtrak had been relying on existing regulations which permit ramps, wheelchair lifts and mini-high platforms as acceptable means for making trains accessible to mobility-impaired passengers.

The uncertainty concerning the scope and timing of the proposed regulations has created significant problems for Amtrak in meeting the ADA mandated station accessibility requirements. First, there is significant resistance to the Guidance and proposed regulations by the host freight railroads which own the majority of the track over which Amtrak operates. Gaining cooperation and concurrence among Amtrak, the host railroads and state and local governmental entities which often own the station structures is creating challenges for Amtrak in meeting the statutory schedule for ADA compliance. Second, until DOT finalizes the regulations (currently, not expected before 2008), Amtrak is prevented practically from developing designs and constructing

Ms. Katherine Stiggerud
September 6, 2007
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improvements to the platforms and to those elements of the station structures which are impacted by the configuration of the platforms (e.g., entrances, signage). Finally, if the proposed regulations become law, the cost of making the platforms ADA compliant will increase significantly.

Amtrak has opposed the proposed regulations in extensive comments which were filed on July 28, 2006. Likewise, dozens of public transit providers and freight railroads have opposed the proposed regulations. The freight railroads are concerned that high-level platforms will introduce safety problems and will interfere with clearances required for operation of freight trains. Amtrak has recommended that the DOT suspend the proposed rulemaking and engage in collaborative rulemaking to develop regulations which are acceptable to the DOT, the Access Board, DOJ, freight railroads, commuters railroads and Amtrak, as well as to the community of disabled passengers.

2. Uncertain Regulatory Requirements on "Responsibility" for ADA Compliance.

Pursuant to the ADA, "responsibility" for compliance with station accessibility requirements is tied to ownership of the "station." The term "station" is defined in the ADA and applicable DOT regulations to include a broad set of assets, including platforms, as well as the station structure. For a preponderance of Amtrak's stations, the freight railroads own the platforms and lease them (or provide operating rights) to Amtrak, while the station structure may be owned by Amtrak, a private entity or a local public entity. The proportion of any one entity's ownership in the "station" cannot be discerned from the regulations as they currently stand. Therefore, when different entities own the various components of a station (i.e., station structure, platform and parking lot), it is often difficult, if not impossible, to determine which entity bears the responsibility for ADA compliance. This lack of clarity in the regulations is impeding Amtrak's efforts at determining which entity is responsible for particular stations and its overall progress in ensuring that the stations for which it is responsible will be ADA compliant by the dates set forth in the ADA. Amtrak has requested assistance from the Federal Railroad Administration in clarifying the regulations. In the absence of such assistance, it is likely that the issue of responsibility may have to be addressed on a station-by-station basis through negotiated agreement with applicable station stakeholders.

3. Lack of Funding.

Amtrak anticipates that, under the current DOT regulations (those permitting lifts, ramps, mini-high platforms as acceptable means of providing access to trains), it will cost approximately \$250-\$500 million to make ADA mandated modifications to all of those stations for which it may bear responsibility. (Taking into consideration the uncertainty concerning "responsibility" addressed in Section 2 above, Amtrak estimates that it could bear responsibility for complying with ADA station accessibility requirements at a preponderance of the 479 Amtrak-served stations that require ADA compliance.) If the proposed platform regulations become law, then the cost may increase more than two-fold. As you are aware, Amtrak has faced numerous

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Page 3



funding challenges over the years. Each year, limited capital funds are apportioned among various competing projects (e.g., refurbishing and replacing aging infrastructure and equipment) most of which are essential to Amtrak's mission of providing safe and cost efficient national intercity passenger rail service. This past February, as part of its FY2008 grant and legislative request, Amtrak requested that Congress allocate \$50 million (above its base grant request) toward the funding of ADA station improvement projects and that the deadline for achieving ADA compliance be extended to five years beyond the date the proposed regulations on platforms are finalized. To date, neither the additional funding nor the time extension has been granted. Amtrak will continue to advocate for this additional funding and time extension.

Conclusion

The draft GAO report focuses on government oversight and enforcement of the ADA. However, for the most part, the report overlooks the difficulties which transportation providers like Amtrak face in defining "compliance" and in establishing a compliance program with time and funding commitments as regulations change over time or remain unresolved. Amtrak is committed to meeting the requirements of the ADA, just as it is to continuing to execute its publicly mandated and significantly publicly funded transportation mission. However, to do both will require additional funding and time. Critical to Amtrak's ongoing efforts to achieve full accessibility of its stations are the following: clarity on the goal, clarity on what constitutes compliance, and clarity on which entities are ultimately responsible. Until unambiguous, realistic, and static requirements are established in the regulations and the means (funding) to implement the ADA program is identified, the proposed new oversight and enforcement actions recommended by the GAO will likely be ineffective.

If you have any questions concerning Amtrak's position in this matter, please do not hesitate to contact me.

Sincerely Yours,

A handwritten signature in black ink that reads "Eleanor D. Acheson". The signature is written in a cursive style with a large initial "E" and "A".

Eleanor D. Acheson
Vice President, General Counsel and Corporate Secretary

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Katherine Siggerud, (202) 512-2834, or siggerudk@gao.gov

Staff Acknowledgments

In addition to the individual named above, other key contributors to this report were Catherine Colwell, Assistant Director; Ashley Alley; Jean Cook; Catherine Kim; Jessica Lucas-Judy; Stan Stenersen; and Travis Thomson.

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