

---

# The Impact of the Americans with Disabilities Act: Assessing the Progress Toward Achieving the Goals of the ADA



**National Council on Disability**  
**July 26, 2007**

---

National Council on Disability  
1331 F Street, NW, Suite 850  
Washington, DC 20004

**The Impact of the Americans with Disabilities Act: Assessing the Progress Toward  
Achieving the Goals of the ADA**

This report is also available in alternative formats and on the award-winning National Council on Disability (NCD) Web site ([www.ncd.gov](http://www.ncd.gov)).

Publication date: July 26, 2007

202-272-2004 Voice  
202-272-2074 TTY  
202-272-2022 Fax

The views contained in this report do not necessarily represent those of the Administration as this and all NCD documents are not subject to the A-19 executive branch review process.



## National Council on Disability

---

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

### Letter of Transmittal

July 26, 2007

The President  
The White House  
Washington, DC 20500

Dear Mr. President:

The National Council on Disability (NCD) is charged with gathering information about the implementation, effectiveness, and impact of the Americans with Disabilities Act (ADA). In keeping with this requirement, I submit this new report, entitled *The Impact of the Americans with Disabilities Act: Assessing the Progress Toward Achieving the Goals of the ADA*, which addresses many of the goals of your New Freedom Initiative pertaining to community integration, participation, and enhancement of the independence of people with disabilities at home, at work, and throughout the course of their daily lives.

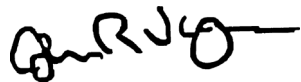
The purpose of the ADA is “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” This report describes a two-year retrospective study and review of the impact the ADA has had on the lives of Americans with disabilities over the past sixteen years, with particular focus on the four major goals of the ADA—equality of opportunity, full participation, independent living, and economic self-sufficiency. NCD consulted disability experts and ADA stakeholders from around the country through interviews, public forums, and focus groups, and analyzed existing data and information sources to gather information about the impact of the ADA. The findings are encouraging but far from complete.

The provisions of the ADA addressing architectural, transportation, and communication accessibility have changed the face of American society in numerous concrete ways, enhancing the independence, full participation, inclusion, and equality of opportunity for Americans with disabilities. Americans with disabilities report having greater access to goods and services from businesses, state and local governments, and their local communities. People with mobility impairments have experienced substantial improvements in physical access to transportation, businesses and government agencies. As workers, people with disabilities are more likely to receive accommodations and less likely to be terminated due to their disabilities. However, obtaining employment remains difficult for people with visible and severe disabilities. Disparities still exist in access to health insurance, health care, and financial assets for people with disabilities, as compared to people without disabilities. Access to information, particularly

the Internet, is inconsistent, at best, for people who are visually impaired. Progress toward the goal of economic self-sufficiency appears to be the goal having the least success.

The ADA impact report contains recommendations for addressing the barriers that are preventing full achievement of the overarching goals of the ADA, and NCD remains committed to working with the Administration, Congress, and the public to achieve the promise of the ADA for all Americans—the elimination of disability-based discrimination in all aspects of society.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Vaughn", with a long horizontal stroke extending to the right.

John R. Vaughn  
Chairperson

# National Council on Disability Members and Staff

## Members

John R. Vaughn, Chairperson  
Patricia Pound, First Vice Chairperson  
Glenn Anderson, Ph.D., Second Vice Chairperson

Milton Aponte, J.D.  
Victoria Ray Carlson  
Chad Colley  
Robert R. Davila, Ph.D.  
Graham Hill  
Young Woo Kang, Ph.D.  
Kathleen Martinez  
Lisa Mattheiss  
Anne M. Rader  
Marco Rodriguez  
Cynthia Wainscott  
Linda Wetters

## Staff

Michael C. Collins, Executive Director  
Martin Gould, Ed.D., Director of Research and Technology  
Mark S. Quigley, Director of Communications  
Julie Carroll, Senior Attorney Advisor  
Joan M. Durocher, Senior Attorney Advisor  
Geraldine Drake Hawkins, Ph.D., Senior Program Analyst  
Pamela O'Leary, Sign Language Interpreter  
Mark E. Seifarth, Congressional Liaison  
Brenda Bratton, Executive Assistant  
Stacey S. Brown, Staff Assistant  
Carla Nelson, Secretary

## **Acknowledgments**

The National Council on Disability wishes to express its appreciation to Patricia M. Jackson, Program Manager Lockheed Martin Services, Inc., Peter Blanck, Ph.D., J.D., Chair, Burton Blatt Institute, Syracuse University, and James Schmeling, J.D., Interim Co-Director, Law, Health Policy and Disability Center, University of Iowa College of Law, for conducting the ADA Impact Study and for drafting this report.

# Table of Contents

Executive Summary .....	9
Introduction.....	19
Summary of Methodology .....	23
Perceptions of the ADA Overall.....	25
I. Equality of Opportunity.....	29
A. Transportation.....	29
1. Public Transportation.....	29
a. Trains.....	31
i. ADA Requirements .....	31
ii. Relevant Data .....	31
(a). Light Rail and Commuter Rail .....	32
(b). Amtrak.....	35
b. Buses.....	35
i. ADA Requirements .....	35
ii. Relevant Data .....	36
c. Paratransit Services .....	37
i. ADA Requirements .....	37
ii. Relevant Data .....	37
d. Input from People with Disabilities .....	38
2. Private Transportation.....	39
a. Private Over-the-Road Bus Service .....	39
b. Taxis.....	40
i. ADA Requirements .....	40
ii. Relevant Data .....	40
iii. Input from People with Disabilities.....	41
3. Recommendations – Transportation .....	41
B. Sidewalks and Curb Ramps .....	41
1. Sidewalks .....	42
a. ADA Requirements.....	42
b. Relevant Data.....	42
2. Curb Ramps .....	42
a. ADA Requirements.....	42
b. Relevant Data.....	43
c. Input from People with Disabilities .....	44
3. Recommendations – Sidewalks and Curb Ramps .....	44
C. Places of Public Accommodation .....	45
1. Physical Accessibility for People with Mobility Impairments .....	45
a. ADA Requirements.....	45
b. Relevant Data.....	45
c. Input from People with Disabilities .....	49
2. Access for People with Vision, Hearing, and Speech Disabilities.....	52
a. ADA Requirements.....	52
b. Relevant Data.....	52

c. Input from People with Disabilities .....	52
3. Recommendations – Places of Public Accommodations.....	53
D. Accessibility of Telecommunications.....	54
1. ADA Requirements.....	54
2. Relevant Data.....	55
3. Input from People with Disabilities .....	57
4. Recommendations – Accessibility of Telecommunications .....	58
II. Full Participation.....	59
A. State and Local Government Services .....	59
1. ADA Requirements.....	59
2. Relevant Data.....	60
3. Input from People with Disabilities .....	63
4. Recommendations – State and Local Government Services .....	64
B. Voting.....	65
1. ADA Requirements.....	65
2. Relevant Data.....	66
3. Input from People with Disabilities .....	70
C. Other Forms of Civic Participation .....	70
D. Recommendations – Full Participation.....	71
III. Independent Living.....	73
A. Community Integration.....	73
1. ADA Requirements.....	73
2. Relevant Data.....	74
a. Federal <i>Olmstead</i> Initiatives .....	74
i. Department of Health and Human Services (HHS).....	74
ii. Department of Justice (DOJ) .....	74
iii. Department of Labor (DOL) .....	75
b. State <i>Olmstead</i> Initiatives .....	76
3. Input from People with Disabilities .....	80
B. Recommendations – Independent Living.....	82
IV. Economic Self-Sufficiency.....	83
A. Financial Assets and Insurance.....	83
1. Financial Assets .....	83
2. Health Insurance .....	85
B. Higher Education .....	85
1. ADA Requirements.....	85
2. Relevant Data.....	86
3. Input from People with Disabilities .....	88
C. Employment.....	89
1. Hiring .....	89
a. ADA Requirements.....	89
b. Relevant Data.....	89
c. Input from Employers .....	92
d. Input from People with Disabilities .....	93
2. Reasonable Accommodation and Promotion.....	95
a. ADA Requirements.....	95



b. Relevant Data.....	95
c. Input from People with Disabilities and Employers .....	99
3. Lawsuits .....	101
D. Recommendations – Economic Self-Sufficiency .....	102
Summary of Findings.....	105
Summary of Recommendations.....	107
Conclusion .....	113
Appendix A: Blue Ribbon Panel.....	115
Appendix B: Methodology .....	117
Appendix C: Mission of the National Council on Disability.....	121
Endnotes.....	125



## **Executive Summary**

Sixteen years after the Americans with Disabilities Act (ADA) was signed into law on July 26, 1990, by President George H. W. Bush, the law is having a meaningfully positive impact on the lives of people with disabilities. Many people with disabilities credit the ADA with improving their lives. As consumers, Americans with disabilities have greater access to goods and services from businesses, state and local governments, and their local communities. Service animals for people with vision and other impairments are more accepted than ever before. In addition, greater availability of relatively inexpensive assistive technology has helped people with vision and hearing impairments overcome information and communication barriers to all forms of community participation. People with mobility impairments have experienced substantial improvements in physical access to transportation, businesses and government agencies. As workers, people with disabilities are more likely to receive accommodations and less likely to be terminated due to their disabilities.

Many people with disabilities, employers, and businesses, however, still do not understand major provisions of the ADA, particularly the employment provisions. The ADA is a civil rights law—requiring equal opportunity for individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of disability. Title I of the ADA prohibits discrimination in employment. It does not provide for accessible housing, transportation to the work site, rehabilitation services, job training, job placement, or any form of affirmative action for people with disabilities. It does not address work disincentives, such as Social Security rules that make people with disabilities who work ineligible for Medicaid, the only form of insurance that provides the kind of services most people with disabilities need to function independently, nor does it require employers to provide the kind of insurance coverage people with disabilities need. While the ADA requires existing transportation services to become accessible, it does not provide transportation for people with disabilities to get to work if they work or live where there is no public transportation. To determine the impact of Title I, one must look at the degree to which employment discrimination against individuals with disabilities has decreased. One cannot measure the success of Title I

solely by the employment rate of people with disabilities unless all other barriers to work are eliminated.

Many Americans with disabilities remain frustrated that disability discrimination has not been eliminated, despite ADA implementation. People with disabilities reported the ADA has not been fully enforced; the barriers they face remain primarily attitudinal. Additionally, there is a growing backlash against disability rights and the ADA. The lack of national consistency of access makes it difficult for people with disabilities to carry out daily activities, and access to public transportation, particularly in rural areas, remains a serious problem. Although, once on the job, accommodations are easier to obtain, people with visible disabilities do not appear to be significantly more likely to be hired than before the ADA, and some argue that they are having more difficulty getting hired than before.

Regarding the attainment of the four major goals of the ADA—equality of opportunity, full participation, independent living, and economic self-sufficiency—the results are encouraging but far from complete. By virtue of greater availability of physical and communications access, accessible transportation, and education and workplace accommodations, people with disabilities have more opportunities to pursue their interests than before the ADA and are seizing those opportunities. Community participation has increased passively, by virtue of greater access, and actively, through greater efforts by businesses, employers, and governments to reach people with disabilities and encourage participation. Options for independent living have improved for people with disabilities since the ADA was passed, particularly since an important Supreme Court decision, *Olmstead v. L.C.*, which requires community integration. However, outdated government restrictions, budget priorities, and medical attitudes are slowing progress. Economic self-sufficiency appears to be the goal having the least success. While many Americans with disabilities are experiencing improvements in quality of life, some people with disabilities remain disenfranchised.

This retrospective study and review provides a snapshot of the impact the ADA has had on the lives of Americans with disabilities over the past sixteen years. Specifically:

- Most people with disabilities perceive improvements in their quality of life and many attribute those improvements to the ADA;
- A majority of people with disabilities surveyed by a Harris Poll perceived significant improvements in public facility access and public attitudes;
- Public transit systems in the United States have made significant progress in becoming more accessible, especially to wheelchair users. Private transportation companies lag behind. People in rural areas continue to be underserved by public transportation, and, as a result, participate less in all aspects of community living;
- A significant number of curb ramps have been installed and sidewalks have been made more accessible in some areas, but full access to public rights-of-way lags behind that of other facilities and there are no regulations for public rights-of-way access;
- People with physical disabilities have seen steady, although inconsistent, progress in access to public accommodations, including restaurants, theaters, stores, museums, Web sites, and government services. People with sensory or communication disabilities were less likely to report experiencing progress in access to public accommodations;
- The ADA has brought about significant improvements in access to telecommunications. Telephone relay services are being used to a greater degree, and changes in technology are making usage easier. However, some businesses are reluctant to use these technologies;
- The percentage of Americans with disabilities voting in 2004 increased dramatically from prior years;
- The education gap between people with disabilities and people without disabilities is shrinking, and people with disabilities are attending postsecondary institutions in greater numbers. Educational supports and services for students with disabilities now are available at most of the nation's postsecondary institutions;
- Many employees with disabilities are experiencing less discrimination on the job. However, people with visible and severe disabilities continue to experience discrimination in hiring;
- There is no clear evidence that Americans with disabilities are becoming economically self-sufficient;

- There is a surprising absence of ongoing, systematic data collection about the ADA, and the result is significant knowledge gaps about the impact of the ADA.

Based on these findings, this report recommends:

- Federal agencies should fund and implement state-by-state surveys of people with disabilities, based on the N.O.D./Harris Surveys using statistically significant survey populations and distinguishing among rural and urban communities, communities of diverse cultures, and high, middle, and low income communities.

## **Equality of Opportunity – Transportation**

- Congress should expand accessibility requirements for rail services beyond key stations;
- The Department of Transportation should conduct extensive training and outreach for public transit providers regarding maintenance and stop announcements;
- The Department of Transportation should work with state and local governments and taxi providers to develop and publicize effective incentives for private taxi providers to offer accessible vehicles;
- The Department of Transportation should conduct extensive training and outreach for public and private transportation services regarding service animals and increase high-profile enforcement actions by the Departments of Justice and Transportation;
- The Department of Transportation should work with paratransit providers, state and local governments, transportation experts, and representatives of disability and aging communities to explore paratransit options such as more subscription service, more flexible services, and other ideas to close the expectation gap and increase usability of paratransit for riders with disabilities;
- The Department of Transportation should study and test options for providing transportation services to people with disabilities in rural areas.

## **Equality of Opportunity – Sidewalks and Curb Ramps**

- The Department of Justice should promulgate ADA regulations for public rights-of-way as soon as possible;
- The Department of Transportation should increase funding for sidewalk access and curb ramp installation;
- The Department of Justice should develop and disseminate guidelines for the prioritization of curb ramp installations, so the most needed and useful curb ramps are installed first.

## **Equality of Opportunity – Public Accommodations**

- The National Institute on Disability and Rehabilitation Research (NIDRR) should conduct a survey of businesses, perhaps through the chambers of commerce or small business associations, to determine the degree to which businesses have instituted readily achievable barrier removal efforts, and provide guidance to Congress on adequately funding the Department of Justice to enforce this part of the statute;
- The Department of Justice, NIDRR, and the Department of Labor should provide expert, individualized, low-cost technical assistance and consulting to small businesses. The ADA and IT Centers and local offices of the National Disability Rights Network are possible agencies to carry out this effort;
- The Department of Justice should expand its Project Civic Access to increase enforcement in local areas by reviewing businesses in identified localities;
- Congress should require states to submit their building codes for access certification by the DOJ;
- The U.S. Access Board and Department of Justice should continue coordination with model building code agencies;
- The Department of Justice should increase enforcement and education regarding how to serve customers with visual and hearing impairments, particularly as it pertains to Web access and use of TTYs and relay services;

- Congress should require Web sites of places of public accommodations and commercial facilities to comply with federal Web accessibility standards;
- The Department of Justice and NIDRR should develop technical assistance materials regarding what people with disabilities and businesses should expect of existing buildings of various sizes years after passage of the ADA.

### **Equality of Opportunity – Accessibility of Telecommunications**

- The Department of Justice should publish information for businesses about how Telecommunications Relay Services work, how to use the service, and the legal obligation to use it. The ADA and IT Centers could be funded to provide this information;
- The Federal Communications Commission should establish standards to encourage the continued development of Video Relay Services.

### **Full Participation – State and Local Government Services**

- The Department of Justice and other federal agencies should focus on enforcing the ADA obligations of government agencies;
- Federal agencies should use initiatives such as Project Civic Access to increase ADA compliance at the state and local levels;
- The Department of Justice should use targeted, high-profile litigation on particularly important issues, such as access to courts, medical care, and education to increase state and local ADA compliance.

### **Full Participation – Voting**

- The Department of Justice should immediately implement the Help America Vote Act requiring installation of electronic voting equipment;
- NIDRR should study the involvement of people with disabilities in civic opportunities, such as government office;



- Other non-governmental disability organizations, such as The National Organization on Disability and the American Association of People with Disabilities, should encourage state and local governments, as part of their diversity efforts, to emphasize involvement of the disability community and provide technical assistance to help government agencies reach out to people with disabilities.

## **Community Integration**

- Congress should increase Medicaid support for community-based treatment settings;
- Congress should pass and fully fund the Money Follows the Person Act<sup>1</sup> and Medicaid Community-Based Attendant Services and Supports Act;<sup>2</sup>
- Congress should require states to expeditiously complete effective *Olmstead* plans, consistent with HHS guidance;
- The Department of Health and Human Services should require states to fund personal care services when needed to allow individuals with disabilities to remain in their community;
- The Departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Justice, and Labor, and Equal Employment Opportunity Commission, working with state and local governments and community agencies should implement local initiatives to extend the integration mandate to housing, education, transportation, employment, and other areas affecting people with disabilities;
- The Department of Justice should increase and target enforcement of the Civil Rights of Institutionalized Persons Act, requiring effective deinstitutionalization efforts and publishing creative and effective programs to provide community-based services;
- The Department of Labor's program funding home modifications should be significantly expanded to allow people with disabilities and the elderly to live in their communities;
- The Departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Justice, and Labor, and Equal Employment Opportunity Commission, should work with disability communities and others to develop an overall national policy framework for community integration of people with disabilities;

- The Department of Health and Human Services should study systems of long-term care and long-term care insurance to eliminate unnecessary institutionalization of people with disabilities and aging people.

## **Economic Self-Sufficiency**

- The Department of Education should work with colleges, universities, and public schools to enhance the effectiveness of supports, such as preparing students to better negotiate their accommodations, assisting students with coordinating and managing a variety of services from multiple sources, and facilitating the use of technology in education and employment;
- The Department of Education should improve coordination of services between the educational system and the vocational rehabilitation system, particularly as regards funding for services and assistive technology;
- Disability organizations, and research and policy centers focused on economic empowerment for people with disabilities should work with philanthropists and federal and state government agencies to improve availability of scholarship, tuition waiver, and loan repayment programs for students and adults with disabilities who wish to pursue higher education;
- Congress should extend and expand the Mental Health Parity Act to ensure that people with mental health disabilities are able to secure treatment;
- NIDRR should study insurance coverage issues that prevent people with disabilities from accessing private insurance;
- The Equal Employment Opportunity Commission, the Department of Labor, and NIDRR should place immediate priority on increasing the hiring of people with disabilities.

Sixteen years after the passage of the ADA, much has been accomplished. Yet, more needs to be done as this report demonstrates, especially in the areas of employment, transportation, health care, and education.

The Americans with Disabilities Act Restoration Act of 2006 was introduced on September 29 to address aspects of the ADA narrowed by U.S. Supreme Court decisions, and which are discussed

in this report. The bill would prohibit discrimination “on the basis of a disability” and is intended to enable individuals utilizing the ADA to focus on the discrimination they have experienced rather than having to prove they fall within the intended scope of the ADA. Passage of this bill will promote progress in those areas remaining to be addressed, and promote the inclusion of people with disabilities into society.



## Introduction

To the critics who complain that the ADA has not achieved total justice ... I say what about the Bill of Rights and the Ten Commandments? Have they achieved total justice? The vision of justice is an eternal long march to the Promised Land of the good life for all.

– Justin Dart, Jr., “Father of the ADA”<sup>3</sup>

Today, in 2006—

Mary Sims gets on the bus and goes to work.

John Witherspoon talks on the telephone to a college buddy he hasn't seen in 20 years.

Lisa Rabinovitz tries out a new restaurant in her neighborhood.

Jeremy Montauk takes notes during his economics professor's lecture.

Sylvia Mathias leads a training session on community advocacy.

Billy Wilkinsen takes part in his town's intramural baseball program.

Before the Americans with Disabilities Act of 1990 (ADA), Mary Sims, who is blind, would not have been able to take the bus to work. Her guide dog could not accompany her unless her state had a disability antidiscrimination law. Without the telecommunications relay services mandated by the ADA, John Witherspoon, who is deaf, would have difficulty telephoning anyone. Lisa Rabinovitz, a wheelchair user, rarely would eat out at a new restaurant, concerned that it would not be physically accessible. Jeremy Montauk, who has a learning disability, likely would not have received accommodations to attend and succeed in college. Fearing discrimination, Sylvia Mathias would not have disclosed her disability and become an advocate for people with mental illnesses in her community. And Billy Wilkinsen, who has an intellectual disability, may not have been allowed to play on the town's baseball team.

Prior to the ADA, employment and rehabilitation programs for people with disabilities were modeled on outmoded and medicalized stereotypes. These long-standing views date back to the birth of the Civil War pension system, which linked the definition of disability to an inability to

work and established physicians as the medical gatekeepers of disability benefits.<sup>4</sup> The medical model defined disabilities as individual infirmities that precluded full participation in employment, and society in general.<sup>5</sup> Many individuals were institutionalized, their housing and treatment determined by doctors, rehabilitation professionals, psychologists, and social workers. Because the medical model never questioned the physical and social environment in which disabled people were forced to function, one designed for individuals without disabilities, it countenanced their segregation and economic marginalization.<sup>6</sup>

By contrast, the disability civil rights model that influenced government policy in the 1970s conceptualized people with disabilities as a minority group entitled to the same legal protections for equality that emerged from the struggles of African Americans and women. The civil rights model focuses on the laws and practices that subordinate disabled persons and insists that government must secure the equality of disabled persons by eliminating the legal, physical, economic, and social barriers that preclude their full involvement in society. Under the civil rights model, disability is not an individual's infirmity but a social and cultural construct.<sup>7</sup> An evolving policy of inclusion fostered federal and state laws to address issues including voting and air travel accessibility, access to education and housing, eventually culminating with passage of the ADA in 1990.<sup>8</sup> In the ADA Congress expressly recognized the minority status of disabled persons, finding that:

Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; ... and that] individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society ....<sup>9</sup>

To redress these wrongs, the ADA's drafters delineated "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals."<sup>10</sup> Sixteen years after passage of the ADA, the long march to full equality is underway. Progress has been made, but work remains in

areas such as employment, transportation, health care, and education, as shown by national statistics, studies, and comments received from the public during this study.

NCD conducted this ADA Impact Project to review the existing information about the impact of the ADA, gathering input from ADA stakeholders and assessing the state of research and knowledge about the impact of the ADA, in an attempt to determine the extent to which the overarching goals of the ADA are being met. One of the important findings is a surprising absence of ongoing, systematic data collection about the ADA from any source. The result is significant knowledge gaps about many aspects of the ADA.

Any study of the impact of the ADA must be undertaken with the recognition that full implementation of the ADA is not complete. The ADA calls for implementation at varying times and degrees, depending on factors such as when a facility is built or altered, the technical feasibility of certain accessibility requirements, the nature, size, and resources of covered entities, and the cost of modifications. For example, when a new facility is built, the ADA's accessibility requirements are triggered. When a public accommodation is undertaking renovations or alterations of an existing facility, it must, to the "maximum extent feasible," make the alterations in "such a manner" that the facility is accessible, but only to the extent that costs are not "disproportionate." The overall accessibility standard under the ADA does not require total accessibility of all parts of buildings, nor that of all hotel rooms, parking spaces, bathrooms, stalls, etc., but only a reasonable number. For existing facilities not undergoing alterations, the ADA requires only accessibility changes that are "readily achievable," defined to mean without much difficulty or expense. Additionally, transportation facilities are only required to make "key stations" accessible, and certain transportation providers can take up to twenty-two years from the date of the enactment of the ADA to make their vehicles accessible. Thus, while progress toward implementation may be studied, the full impact of the ADA can be evaluated only when the law has been implemented fully and covered entities are in compliance.





## Summary of Methodology

This study gathered and synthesized information on the impact of the ADA sixteen years after its passage, based on the law's four overarching goals: equality of opportunity; full participation; independent living; and economic self-sufficiency. NCD established a Blue Ribbon Panel, chaired by Dr. Peter Blanck (see Appendix A for list of members and affiliations), which defined each of these goals for purposes of this study.

To assess each of these core areas, data were collected using several methods: (i) an environmental scan (reviewing publicly available documents and documents provided by various key informants), (ii) nine focus groups and five public forums, (iii) 24 individual interviews, (iv) 112 e-mails received by NCD as a result of forum publicity, and (v) requests for comments from 487 local and state organizations.

Project staff also had unique access to, and analyzed the raw data from, the National Organization on Disability/Harris Surveys of Americans with Disabilities conducted in 1994, 1998, 2000 and 2004, and the International Council of Disability/Harris Survey of 1986.<sup>11</sup>

More detail about the methodology used for this project is provided in Appendix B.

Data collection on ADA compliance efforts was difficult, as many key elements are not being systematically tracked or recorded. For example, some requirements of Title I of the ADA discourage identification and tracking of employees and applicants with disabilities. Business groups do not track the ADA compliance efforts of private businesses. Because many improvements to city sidewalks and curb ramps are done as part of ongoing street repairs, it is difficult to determine exactly how many curb ramps are being installed. Records of adoption of, and progress on, transition plans are de-centralized. Multiple sources of data on various topics use different standards to define "disability," "accessibility," and other essential elements. Therefore, one study of the status of people with disabilities will not be readily comparable to another study, because the people studied often are defined differently.

The creation of original data was beyond the scope of this project. Project researchers undertook a comprehensive search and analysis of existing studies, data compilations, and available information about the impact of the ADA. The project team also tapped into the collective knowledge about the impact of the ADA, drawing from the experiences and expertise of ADA stakeholders across the nation. The findings presented in this report reflect the project team's best efforts to pull together in one report what is known about the impact of the ADA at this time. However, one of the important findings is that there is a surprising absence of any ongoing, systematic data collection about the ADA from any source, and the result is significant knowledge gaps about many aspects of the impact of the ADA. This report contains recommendations to increase the information that is collected and made available to the public about the ADA from this point forward.

## Perceptions of the ADA Overall

Most people with disabilities who participated in the public forums, focus groups, and information requests report the ADA has had a significant positive effect on their lives. As one participant wrote:

Have we gotten all the results we want? No. Have we made the nation entirely accessible and inclusive? No. Do all people with disabilities have jobs? No. Are all decisions made ones free of bias against persons with disabilities relative to jobs, public accommodations or public services? No.

But ... more people with disabilities are out there in their communities, shopping, eating, attending movies, taking public transportation, going to school and working. People with disabilities are moving from their homes or institutions into their societies ... no, not at the pace which I and other advocates would like. Barriers are still many and plentiful from attitudes to finances to architecture ... but inch by inch they are crumbling.

And perhaps this would have happened without the ADA, but I like to think that it is in large measure because of the ADA ... because people are thinking about it, people are talking about it. Disability is out in the open, something to be discussed, analyzed, considered and factored in. There aren't many who can profess ignorance of this law and get away with it, even if they still do try the argument that they don't have to be accessible because 'no one with a disability comes here anyway' as they stand at the top of their staircase!

So, I do believe the ADA has had and will continue to have a profound impact on my life and the lives of others with disabilities. I hope that the next fifteen years see feet of barriers come crashing down instead of inches ... and that people with disabilities cement their place in history with this important civil rights law.<sup>12</sup>

According to a 2000 National Organization on Disability/Harris Survey of Americans with Disabilities,<sup>13</sup> more than 60 percent of people with disabilities perceived significant improvements in public facility access, personal quality of life, and public attitudes (see Table A).

**Table A: Percentage of Individuals with Disabilities Perceiving Quality of Life Improvements – 2000**

Access to public facilities	75%
Quality of life	63%
Public attitudes	63%
Media portrayals	59%
Public transportation	60%
People with disabilities in advertising	56%
Work opportunities	44%

The majority of people with disabilities and people without disabilities, according to the 2004 N.O.D./Harris Survey, have heard of the ADA, compared with 31 percent who had heard of Section 504 of the Rehabilitation Act of 1973 in the 1986 International Center for the Disabled Poll of Disabled Americans.<sup>14</sup>

However, most respondents to the 2004 N.O.D./Harris Survey of Americans with Disabilities did not credit the ADA with achieving these improvements in their lives. Only 30 percent of poll respondents believed the ADA had made their lives better, while 64 percent felt it had made no difference and 5 percent did not know if the law had made a difference.<sup>15</sup> This contrasts with much higher numbers in 1986 regarding the effect of pre-ADA laws. At that time, 68 percent of people with disabilities felt the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act, and other federal disability-related laws had helped them “a great deal” or “somewhat” and only 24 percent felt those laws had helped “not too much” or “hardly at all.”<sup>16</sup>

The current level of perceived impact may reflect the disability community's higher expectations of the ADA, combined with the significant delays in implementation and challenging employment figures. Or, it may reflect a new, better status quo. Compared with 1986, younger respondents in 2004 may not have much experience as adults with the pre-ADA world. Researchers on this project noted that some people with disabilities confused the requirements of a variety of laws, such as the Individuals with Disabilities Education Act, the Rehabilitation Act, and the Social Security, Medicare and Medicaid laws, and sometimes attributed aspects of the ADA to one of these laws, and vice versa.



# **I. Equality of Opportunity**

In passing the ADA, Congress found that people with disabilities traditionally have been excluded from, or limited in their ability to access, goods and services in their communities and historically have been subjected to purposeful unequal treatment. Equality of opportunity, for purposes of this project, is defined as the equalization of chances for people with disabilities to have reliable access to transportation, and goods and services from businesses and government.

## **A. Transportation**

### **1. Public Transportation**

Public transportation is essential to many people with disabilities. For many people with disabilities the use of a private automobile is not possible, either because of their disability or because the cost of modifying a car for accessible use is prohibitive. Without access to reliable public transportation, people with disabilities are severely limited in their ability to enjoy social and economic opportunities, live independently, and participate in their communities.

Testimony from people with disabilities confirmed that access to public transportation is a central issue for people with all kinds of disabilities. Despite the widely reported progress in access to public transportation, people with hearing impairments report a lack of visual signage announcing transportation information,<sup>17</sup> people with vision impairments report a lack of verbal announcements,<sup>18</sup> people with brain injuries and cognitive impairments report a lack of clear, accessible information,<sup>19</sup> and people with mobility impairments still encounter a lack of physical accessibility.<sup>20</sup>

In June of 2005, the National Council on Disability issued a comprehensive report, *The Current State of Transportation for People with Disabilities in the United States*.<sup>21</sup> In addition to the recommendations to federal agencies and transit system operators that NCD included in its transportation report, NCD echoes the sentiments of a frequent traveler with a disability who spoke at the Los Angeles public forum:

I have traveled 18,000 miles between Los Angeles and Bakersfield in an externship, and without the ADA and the Department of Transportation's provisions, I would not have managed to remain independent and commute. I've commuted to at least five or six counties on a frequent basis, and it has really increased my independence. And the access and the paratransit systems work for me because I am a very informed person. And that's what [people with disabilities] have to do. Stay informed about the ADA and know and exercise your rights.<sup>22</sup>

The 2004 N.O.D./Harris Survey found that 31 percent of people with disabilities reported inadequate access to public transportation and more than half of those people found it to be a major problem.<sup>23</sup> By comparison, the 1986 ICD/Harris Survey of Disabled Americans found that 49 percent reported that lack of access to transportation was an important reason that they did not socialize as much as they wanted.<sup>24</sup>

Most individuals submitting comments and testimony indicated that the ADA has had a significant positive effect on public transportation,<sup>25</sup> stating, for example, "My quality of life has been greatly improved since ADA .... I am able to travel and use public transportation with just some or little assistance .... All due to the wonderful law we call ADA."<sup>26</sup> Most noted that much remains to be done and that rural areas lag far behind urban ones.<sup>27</sup> One commenter indicated that states in the South, Northern Midwest, and Central Midwest lag further behind in ADA compliance in transportation than Northeastern and Western states.<sup>28</sup> Another suggested that, in some areas, transportation access has declined since passage of the ADA, because pre-existing paratransit services had larger service areas than are required under the ADA.<sup>29</sup>

Many people with disabilities, especially those in rural areas, continue not to be served by local transit systems, either because public transit systems are not available, or because they are inaccessible.

The Economic Research Service (ERS) confirms that the lack of public transportation in rural areas remains a problem for people with disabilities. In its report, *Rural Transportation at a Glance*, the ERS reports that in the 1990s public transportation in rural areas increased as a result of federal funding priorities. However, only 10 percent of federal transportation funding went to



rural areas. The ERS found that public transportation was available in 60 percent of rural counties nationwide, but that many of these transportation services offered only limited service.<sup>30</sup> ERS found that, in 2000, 23 percent of rural public transportation users had disabilities.<sup>31</sup>

In its 2005 transportation report, NCD found that people with disabilities who live in rural areas are still severely restricted in their ability to participate in all aspects of community life, and some people are even forced to live in institutions because of the lack of transportation to medical appointments.

## **a. Trains**

### **i. ADA Requirements**

The ADA requires key light rail and commuter rail stations to be accessible by July 26, 1993. However, the ADA allows the FTA Administrator to grant extensions to July 26, 2020, for stations requiring extraordinarily expensive structural modifications.

In addition to station accessibility, the ADA requires new passenger train cars purchased, leased, or remanufactured after 1990 to be accessible.<sup>32</sup> The ADA also requires commuter and light rail trains of two or more cars to have at least one accessible car by July 1995.<sup>33</sup> Under Title II of the ADA, all intercity rail (e.g. Amtrak) stations are to be accessible to people with disabilities by July 26, 2010.<sup>34</sup> In addition to accessibility of stations, new cars purchased, leased, or remanufactured after 1990 are required to be accessible and at least one car per train is required to be accessible by July 26, 1995.<sup>35</sup>

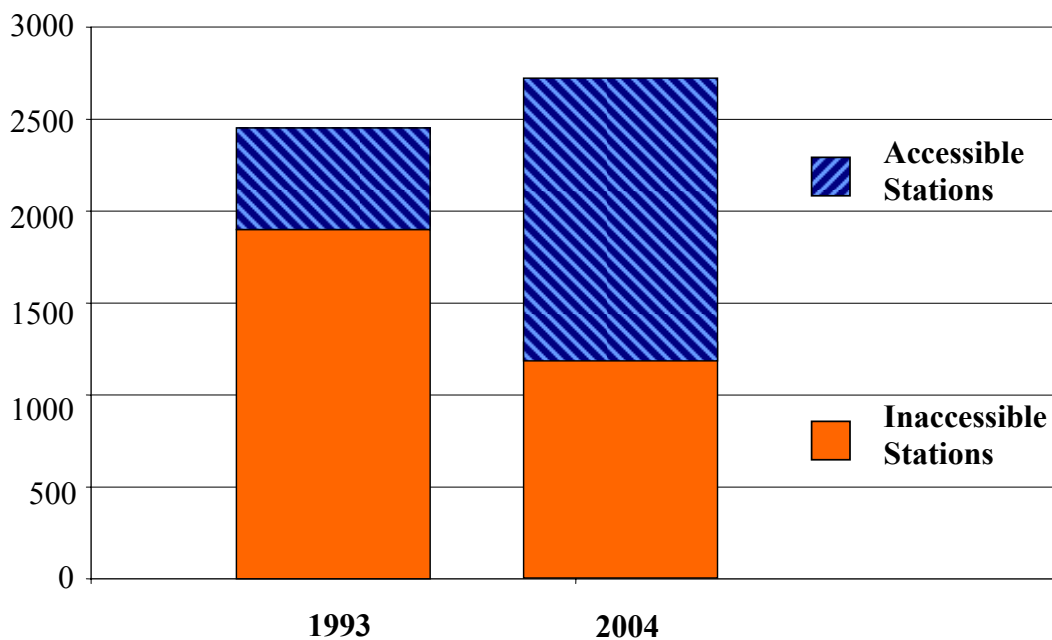
### **ii. Relevant Data**

The National Council on Disability's 2005 transportation study found that many transit agencies with fixed transportation routes fail to comply with the ADA.<sup>36</sup> According to the study, old rail systems often do not have accessible stations, and riders often find elevators out of service. Other data indicates that rail accessibility has improved since passage of the ADA.

(a). Light Rail and Commuter Rail

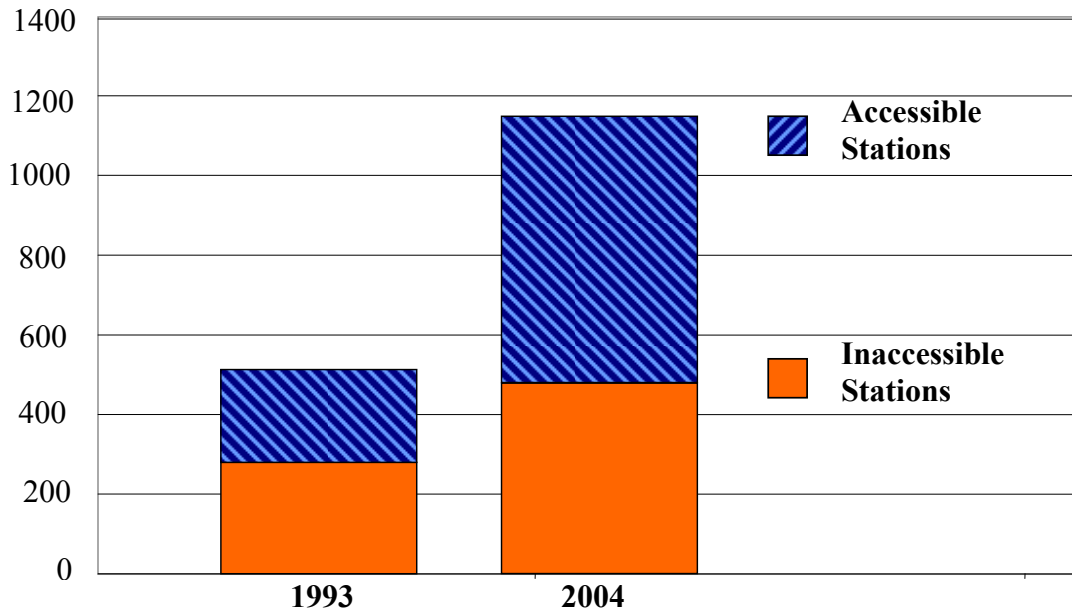
The Bureau of Transportation Statistics (BTS) reports that 22 percent of rail stations of all types (heavy, light, and commuter) were accessible in 1993 (553 out of 2,452).<sup>37</sup> The BTS also reports that, reviewing 14 heavy rail systems, 19 commuter rail systems and 26 light rail systems, 74 percent (1,666 out of 2,282) of rail stations of all types (heavy, light, and commuter) were accessible by 2004 (see Figure A).<sup>38</sup>

**Figure A: Accessibility of Rail Stations – 1993 to 2004**



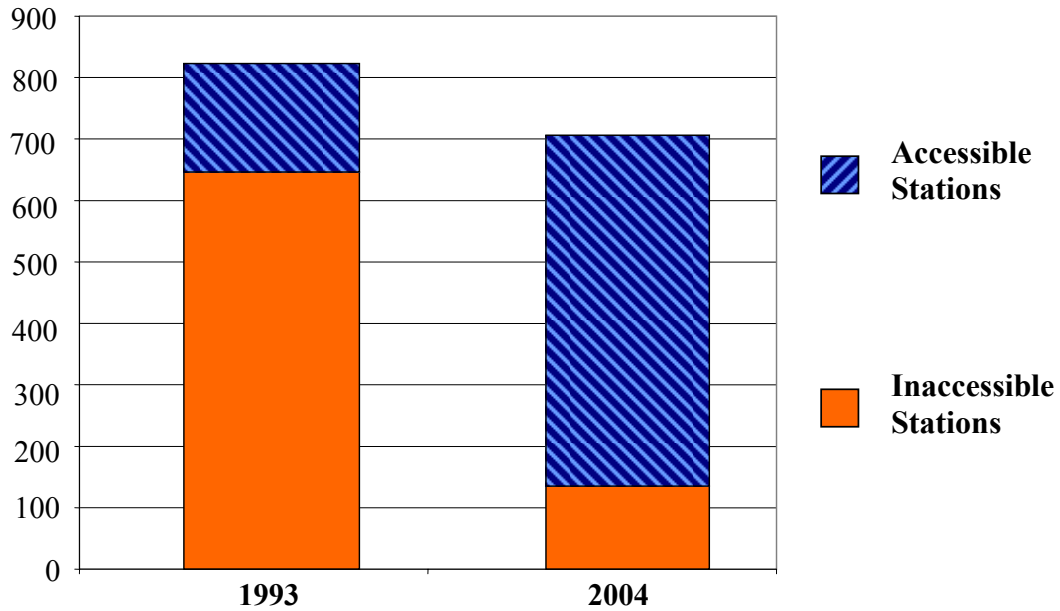
As of the end of 2004, of commuter rail systems in 19 regions, 58 percent of all stations were accessible (666 out of 1153).<sup>39</sup> Nine areas had made all stations accessible (San Jose, CA, San Diego, Los Angeles, New Haven, Miami, Dallas, Ft. Worth, Seattle, Washington, DC). The remaining ten ranged from 29 percent to 80 percent accessible (see Figure B).<sup>40</sup>

**Figure B: Accessibility of Commuter Rail Stations – 1993 to 2004**



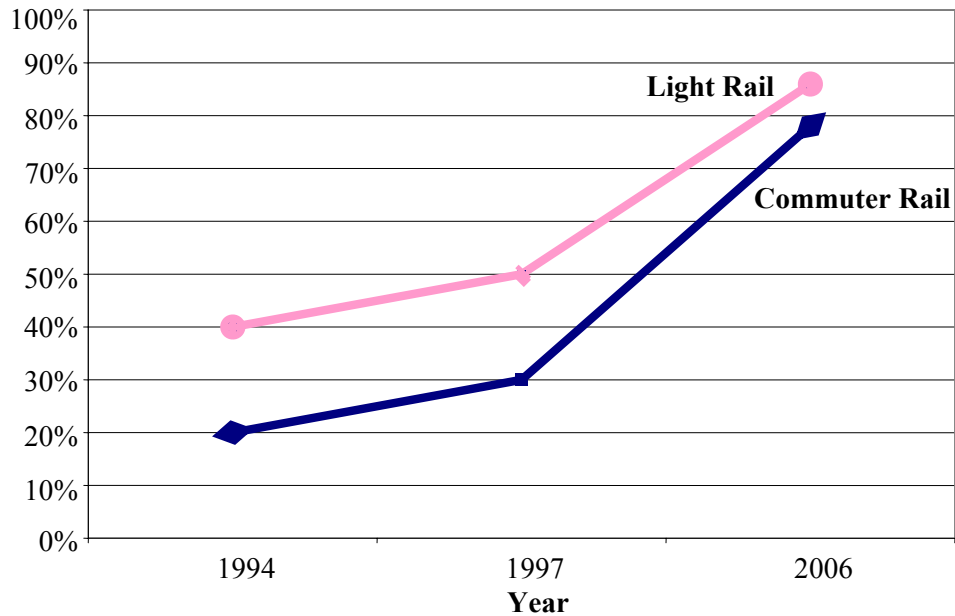
For light rail services, the Bureau of Transportation Statistics reported that, in 2004, among 26 providers, 82 percent of all stations were accessible (572 out of 706). Nineteen systems were 98 percent to 100 percent accessible, while the remaining seven ranged from 2 percent to 86 percent accessible (see Figure C).<sup>41</sup>

**Figure C: Accessibility of Light Rail Stations – 1993 to 2004**



Accessible train cars appear to have increased substantially, indicating compliance with the one-car-per-train rule. According to the American Public Transportation Association 2006 poll, 78 percent of commuter rail vehicles were accessible and 86 percent of light rail vehicles were accessible (see Figure D).<sup>42</sup>

**Figure D: Accessible Rail Vehicles – 1994 to 2006**



**(b). Amtrak**

As of 2005, Amtrak reports that 66 percent of 91 stations are physically accessible to people with disabilities.<sup>43</sup> Amtrak projects that by 2010, as new stations are built and old ones renovated, every Amtrak station in America will be in full compliance with the ADA. All Amtrak trains have at least one coach car with accessible seating and an accessible restroom. Overnight trains offer accessible seating and restrooms in at least one coach car and an accessible bedroom in each sleeping car. Accessible seating includes space for a passenger using a wheelchair, a transfer seat and storage for the wheelchair.<sup>44</sup>

**b. Buses**

**i. ADA Requirements**

The ADA requires the programs and services provided in bus stations and other public transportation stations built before 1992 to be accessible to people with disabilities, either by making physical alterations to provide accessibility, or through other means.<sup>45</sup> Newly constructed or altered transportation facilities must be accessible.<sup>46</sup> The lack of a requirement to make all bus

transportation facilities accessible by a certain date makes it difficult to track and assess progress toward achieving accessible bus transportation facilities.

The ADA requires that buses purchased or leased after August 25, 1990, be accessible, although the Department of Transportation can grant waivers.<sup>47</sup> The ADA also requires that communications by public entities be accessible to people with vision and hearing disabilities.<sup>48</sup> Bus services can comply with this requirement by verbally announcing (or “calling out”) the names or locations of stops for people with vision disabilities, and by providing visual information about the stops for people who are deaf.

## **ii. Relevant Data**

According to the Federal Transit Administration, bus systems increased by 67 new systems from 1991 to 2003 and demand responsive systems increased by 111 new systems over the same period.<sup>49</sup> Sixty-three percent of all buses in the United States operated by public transportation agencies were lift- or ramp-equipped by 1996.<sup>50</sup> FTA has set the goal of a 100 percent accessible bus fleet (lift- or wheelchair ramp-equipped) by 2007.<sup>51</sup> Interim goals moving toward that goal have been met, achieving 95 percent accessibility by 2004.<sup>52</sup>

According to the Federal Transit Administration’s *2003 National Transit Summaries and Trends* report, Type B (25–35 seat) bus accessibility increased from 54 percent in 1993 to 97.7 percent in 2003 and Type C (>35 seat) bus accessibility increased from 50.3 percent in 1993 to 99.2 percent in 2003, and articulated bus (high-capacity, flexible center) access increased from 38 percent in 1993 to 96.4 percent in 2003.<sup>53</sup>

The Bureau of Transportation Statistics confirms that bus access has increased significantly since 1993. As of the end of 2004, 98.1 percent of all buses were accessible (67,454 out of 68,789).<sup>54</sup> Similarly, an American Public Transportation Association survey indicates that, as of 2006, 97 percent of buses are accessible.<sup>55</sup> As recently as the end of 2005, however, the Department of Justice took enforcement action against the City of Detroit, Michigan, for failing to provide and maintain accessible buses.<sup>56</sup> Under the consent decree, Detroit agreed to establish systems for promptly identifying, removing from service, and repairing buses with malfunctioning

wheelchair lifts, including daily maintenance checks and service logs for each bus. Detroit also agreed to retrain its drivers and mechanics to deploy wheelchair lifts and assist passengers with disabilities. In addition, the city agreed to obtain alternative transportation promptly when there are breakdowns in accessible service, implement a complaint system, appoint an ADA coordinator, and retain an independent auditor to assess compliance.<sup>57</sup>

Bus accessibility may be more of a reality in larger, urban areas where bus replacement happens more frequently. The Bureau of Transportation Statistics and American Public Transportation Association surveys both appear to have focused on urban areas. The Economic Research Service indicated that the number of rural communities served by long-distance bus service has declined sharply since 1982.<sup>58</sup>

Physical accessibility to buses is one component of accessibility. The 2005 NCD transportation study reported that many transit agencies with fixed transportation routes fail to comply with the ADA, even if they have accessible buses.<sup>59</sup> The input from people with disabilities in the NCD transportation study was the same as the input from participants in the public forums—that some transit agencies still fail to announce bus stops, maintain wheelchair lifts on buses, and secure wheelchairs once inside the bus.

### **c. Paratransit Services**

#### **i. ADA Requirements**

Under the ADA, public entities that operate non-commuter fixed-route transportation services for the general public are required to provide origin-to-destination paratransit service to eligible individuals. This paratransit service must be comparable to the fixed-route service.<sup>60</sup>

#### **ii. Relevant Data**

The National Council on Disability pointed out, in its Progress Report in 2003,<sup>61</sup> that people with disabilities often rely on paratransit services to avoid personal health or safety challenges on fixed-route systems such as longer waits in extreme temperatures or safety challenges at isolated stops. NCD noted that people with disabilities using paratransit frequently experience long waits, trip delays, and missed trips (no vehicle arrives), making it difficult to rely upon paratransit for

employment, medical, and other appointments. NCD stated that the Department of Transportation must be vigilant in maintaining fairness and effectiveness, particularly as transit agencies consider offsetting the growth in paratransit demand with stricter trip-eligibility criteria.<sup>62</sup>

In Los Angeles County, one of the largest paratransit systems in the country, a 2005 study of paratransit service after litigation<sup>63</sup> indicated that 89 percent of riders in Los Angeles were picked up within 20 minutes of their scheduled appointment. Comparing 11 peer paratransit systems, rides were stated to be “on time” (no more than 30 minutes after the appointed time) 84 percent to 99 percent of the time. The study indicated trips were denied to 1 percent of passengers.<sup>64</sup> The Los Angeles paratransit provider’s 2004–05 annual report indicates a complaint rate of 6.59 out of 1000 trips.<sup>65</sup>

The Federal Transit Administration has conducted compliance reviews of numerous paratransit agencies and continues to find deficiencies in their policies and services. These compliance reviews indicate another area where the FTA’s standards for ADA compliance do not match with customers’ expectations. For example, the FTA considers pickups within 30 minutes after the scheduled pickup time to be “on time.”<sup>66</sup> Given that the scheduled pickup time may be up to one hour after the requested pickup time, customers may permissibly be picked up one hour and 30 minutes after their requested time. Because of these delays, people with disabilities have difficulty relying on paratransit services to meet work schedules and appointments.

#### **d. Input from People with Disabilities**

Input from people with disabilities in a previous research effort by NCD revealed that access to rail services has improved, but has not been fully achieved. In the focus groups, there were several individuals who mentioned bus services. A participant with a mobility disability indicated that accessible transportation is available in metropolitan areas but not rural areas:

I think as far as transportation, we see quite a bit of improvement in the metro areas where now all of our bus system finally is accessible. I think the last accessible bus just came on within the last two years. So it took a tremendously long time, but you get



outside the metropolitan area anything probably 50,000 and above [in population] where transportation is absolutely terrible.<sup>67</sup>

The participant's point relates to the availability of public transportation as much as it does to accessible transportation, because, if no public transportation is provided at all, the ADA does not require that accessible transportation be provided.

Participants testified that they were concerned about the attitudes of bus drivers toward people with disabilities and the maintenance of accessible equipment. For example, participants complained that bus drivers often do not announce stops.<sup>68</sup> A wheelchair user participating in the Savannah forum described how she was harassed on an Atlanta city bus for sitting on a seat with her wheelchair beside her in the aisle because the accessible seating area was inoperable.<sup>69</sup>

In the Los Angeles public forum, one participant stated, "Paratransit works for some, but for the majority of the disabled community doesn't work at all because it's a dumping ground for fixed-route nonaccessibility."<sup>70</sup>

Several witnesses testified that paratransit services are inadequate because of strict eligibility requirements, long wait times and late pickups, and limitations on the areas served.<sup>71</sup> However, several participants indicated that paratransit services had improved the quality of their lives significantly.<sup>72</sup>

## **2. Private Transportation**

### **a. Private Over-the-Road Bus Service**

In 1999, Greyhound began to put more accessible buses on the roads and to train Greyhound's bus drivers and other workers to provide accessible bus service through the operation of lifts, other boarding devices, and disability awareness.<sup>73</sup> According to a 1999 settlement reached with the U.S. Department of Justice, Greyhound was to guarantee lift-equipped bus service, upon 48 hours advance notice from the passenger, to and from all of its destinations, except in a very limited set of circumstances, by April 1, 2000.<sup>74</sup> All of Greyhound's over-the-road buses are required to be accessible by October 28, 2012.<sup>75</sup>

## **b. Taxis**

### **i. ADA Requirements**

The ADA prohibits discrimination by taxi services. Taxi services may not refuse service to people with disabilities or charge additional fees.<sup>76</sup> Automobiles are not required to be wheelchair accessible.<sup>77</sup> When a taxi provider purchases or leases a new vehicle that is not an automobile (e.g., a van), it must be accessible unless the provider can demonstrate equivalency. Taxi providers are not required to purchase non-automobiles.<sup>78</sup>

### **ii. Relevant Data**

The Community Transportation Association of America reports that some local governments have made efforts to increase accessibility of private taxi cabs. For example, the City of Chicago has passed an ordinance requiring that every fleet of more than 15 taxis must include at least one accessible taxi. Fleets of over 100 vehicles must have at least 2 accessible vehicles and one additional accessible taxi for each 100 vehicles.<sup>79</sup> Chicago has 41 accessible taxis out of 6000 taxis.<sup>80</sup> The city has also instituted a centralized dispatching system for accessible vehicles.<sup>81</sup> Los Angeles requires that taxi companies operate 2 percent of their fleets as accessible vehicles,<sup>82</sup> resulting in 127 of the city's 1,931 taxis being accessible.<sup>83</sup> Las Vegas requires that 2 vehicles in every fleet be accessible, resulting in 28 accessible taxis out of 1,100.<sup>84</sup>

According to the Community Transportation Association, some large cities appear to have no accessible taxis, including Philadelphia (1,600 cabs), Dallas (1,900 cabs), Detroit (1,320 cabs), and Seattle (850 cabs).<sup>85</sup> A 2004 newspaper article suggests that few taxicabs in New York City were accessible. According to the article, only 5 of 12,000 taxicabs in New York City were wheelchair accessible.<sup>86</sup> The Community Transportation Association indicates that the efforts of cities and taxi service providers who have committed to accessible taxi service have resulted in accessible taxis ranging from 2.5 percent to 6.6 percent of the taxi fleets in Las Vegas, San Diego, Boston, San Francisco, and Los Angeles.<sup>87</sup>

Taxi companies have been sued for discrimination against people with disabilities. Many suits claim that taxicabs discriminate against people with vision impairments who use service animals.<sup>88</sup> Others claim taxis refuse to pick up people who use wheelchairs.<sup>89</sup>

### **iii. Input from People with Disabilities**

One blind individual who uses a guide dog commented that, while most businesses are much more aware of their obligation to allow guide dogs, “Guide dog users still experience difficulties in getting taxi drivers to agree to transport the dog.”<sup>90</sup>

## **3. Recommendations – Transportation**

- Congress should expand accessibility requirements for rail services beyond key stations;
- The Department of Transportation should conduct extensive training and outreach for public transit providers regarding maintenance and stop announcements;
- The Department of Transportation should work with state and local governments and taxi providers to develop and publicize effective incentives for private taxi providers to offer accessible vehicles;
- The Department of Transportation should conduct extensive training and outreach for public and private transportation services regarding service animals and increase high-profile enforcement actions by the Departments of Justice and Transportation;
- The Department of Transportation should work with paratransit providers, state and local governments, transportation experts, and representatives of disability and aging communities to explore paratransit options such as more subscription service, more flexible services, and other ideas to close the expectation gap and increase usability of paratransit for riders with disabilities. One model for this work is the U.S. Access Board’s Advisory Committees, which bring together diverse constituencies to develop recommendations on disability-related issues;
- The Department of Transportation should study and test options for providing transportation services to people with disabilities in rural areas. Again, a model similar to that used by the U.S. Access Board’s Advisory Committees may be useful in this effort.

## **B. Sidewalks and Curb Ramps**

Accessible buildings mean little without accessible sidewalks leading to them. For people with mobility impairments who use public transportation, which often requires traveling from a

station, bus stop, or other drop-off point to a destination, inaccessible sidewalks can render an otherwise possible trip impossible. Inaccessible sidewalks also force many people to use paratransit services.

## **1. Sidewalks**

### **a. ADA Requirements**

The ADA requires all programs, services and activities of state and local governments to be accessible. The concept is commonly referred to as “program access.”<sup>91</sup> In addition, newly constructed or altered facilities must be fully accessible.<sup>92</sup> Program access to existing facilities was required by January 26, 1995. However, some cities argued that sidewalks did not constitute a city program, service or activity. When the Ninth Circuit Court of Appeals dismissed this argument in 2002 in *Barden v. City of Sacramento*,<sup>93</sup> cities began to take seriously their responsibilities to provide accessible sidewalks.

### **b. Relevant Data**

NCD’s 2005 transportation report found that public rights-of-way including streets, sidewalks, and other public infrastructures continue to be inaccessible and not in compliance with the ADA.<sup>94</sup> No published reports on the degree to which sidewalks are accessible were found in our environmental scan.

## **2. Curb Ramps**

### **a. ADA Requirements**

Title II regulations of the ADA required state and local governments to include in their transition plans, plans to install curb ramps at all existing corners by January 26, 1995 or “in any event, as expeditiously as possible.”<sup>95</sup> Newly constructed or altered streets and sidewalks are also required to provide accessible curb ramps.<sup>96</sup>

In 1993, the Third Circuit Court of Appeals resolved the question of what constitutes an alteration that would trigger the requirement to install an accessible curb ramp. The court

concluded that street resurfacing constituted an alteration that would trigger the curb ramp obligation on adjacent sidewalks.<sup>97</sup>

#### **b. Relevant Data**

In 2002, a representative of the city of Los Angeles announced that the city had concluded its ADA transition plan and had installed over 22,500 curb ramps at an average cost of \$1100.<sup>98</sup> At the same meeting, a city engineer for Memphis, Tennessee said in the last three years the city had installed over 3,000 curb ramps and was committed to installing 1,000 curb ramps a year for the foreseeable future.<sup>99</sup> Smaller cities have also worked to increase sidewalk access. For example, Culver City, California had ramped 96 percent of its curbs by 2003 and planned to complete the remaining 50 by 2005.<sup>100</sup> The U.S. Department of Justice has negotiated more than 145 “Project Civic Access” agreements with 138 local governments ensuring accessible buildings, programs and services.<sup>101</sup> These also include curb ramps.

In contrast, the Eastern Paralyzed Veterans of America (EPVA) sued New York City under these regulations because, by 1994, the city had not installed curb ramps at two-thirds of its street corners, and had no transition plan in place. When the City finally issued a “transition plan” five months after EPVA brought suit, the plan did not contain a schedule for ramping its 106,000 street corners without curb ramps. In September 2002, the city agreed to a settlement to commit approximately \$218 million to make all of its 158,738 street corners accessible to wheelchair users. According to the settlement the city agreed to commit a total of \$217,862,000 for installation of curb ramps on all of the 61,074 corners remaining to be ramped (27,747 in Queens; 13,008 in Staten Island; 10,710 in Brooklyn; 7,007 in the Bronx; and 2,602 in Manhattan).<sup>102</sup>

Some cities object to the obligation to install curb ramps. As recently as the fall of 2005, the City of Riverside, New Jersey claimed it has no obligation to install curb ramps because it has fewer than 50 employees.<sup>103</sup> The City of Chicago was sued over inaccessible curb ramps in 2005.<sup>104</sup> The City of Sacramento, California, was sued over inaccessible sidewalks and curb ramps and reached a settlement in 2004 requiring the city to spend 20 percent of its annual transportation funds on sidewalks and curb ramps for up to 30 years.<sup>105</sup> The City and County of Honolulu were

sued twice for failing to timely implement their transition plan for installing curb ramps, finally agreeing in 2001 to install 7,600 ramps by 2007.<sup>106</sup>

In 2005, a survey of San Francisco sidewalks identified 13,430 curbs needing curb ramps at 6,726 intersections, costing an estimated \$210 million.<sup>107</sup> The City estimated that it installed 650 curb ramps per year.<sup>108</sup>

Many curb ramps appear to be installed by private developers as part of their construction projects. In San Francisco, for example, approximately 450 curb ramps are installed annually by the city, while 75–90 are installed by private developers.<sup>109</sup>

These lawsuits and city reports indicate the deadlines of the ADA for installation of curb ramps have not been met and that curb ramps will continue to be inconsistently available for years to come. Lawsuits and forced settlement agreements may be essential tools for ensuring compliance.

### **c. Input from People with Disabilities**

Input from people with disabilities about curb ramps often focused on issues of safety as well as access. The lack of ramps at many intersections, curb ramps that are too steep or not adjacent to pedestrian push buttons, lack of accessible pedestrian signals for blind pedestrians, and failure of municipalities to clear snow from curb ramps were cited as issues causing people with disabilities to make unsafe street crossings and, in some instances, forcing people to use their wheelchairs in the streets or gutters.

### **3. Recommendations – Sidewalks and Curb Ramps**

- The Department of Justice should promulgate ADA regulations for public rights-of-way as soon as possible;
- The Department of Transportation should increase funding for sidewalk access and curb ramp installation;

- The Department of Justice should develop and disseminate guidelines for the prioritization of curb ramp installations, so that the most needed and useful curb ramps are installed first.

## **C. Places of Public Accommodation**

### **1. Physical Accessibility for People with Mobility Impairments**

#### **a. ADA Requirements**

The ADA requires places of public accommodation to provide physical accessibility to differing extents based on the time of construction of the facility. Facilities existing before the effective date of Title III of the ADA, must have physical access barriers removed to the extent it is readily achievable to do so. “Readily achievable” means that the barrier removal is not too difficult or too expensive given the resources available to the facility’s owner.<sup>110</sup>

Facilities constructed after the effective date of the ADA must be designed and constructed to be fully accessible in compliance with the ADA Accessibility Guidelines.<sup>111</sup> Alterations to existing facilities must comply with the ADA Accessibility Guidelines. In addition, alterations to primary function areas give rise to a requirement to make the path of travel serving the altered area accessible at a cost proportional to the cost of the original alteration. Proportional is defined as costing up to 20 percent of the cost of the alteration.<sup>112</sup>

#### **b. Relevant Data**

Systematic data measuring the accessibility of public accommodations and commercial facilities pre-ADA does not exist and the law makes no specific provisions for tracking such information. However, the National Organization on Disability/Harris Surveys suggest people with disabilities perceive improvement in access to public facilities, including restaurants, theaters, stores and museums. When asked whether access to public facilities had improved, 75 percent or more of respondents in 1994, 1998, and 2000 reported that they had perceived improvement.<sup>113</sup> Not surprisingly, the percentage of people with disabilities going out to restaurants regularly has increased from 34 percent in 1986 to 57 percent in 2004.<sup>114</sup>

In interviews with major trade associations representing businesses directly impacted by the ADA, including the National Restaurant Association, the American Hotel and Lodging Association, the U.S. Chamber of Commerce and others, not one could provide information on the number of their members that have made their facilities more accessible to people with mobility impairments in the last 15 years. The response of the Building Owners and Managers Association (BOMA) International was typical: “BOMA wishes that it had quantifiable data to share with you to fulfill your specific requests. This type of data is, to our knowledge, unavailable. Based on the vast number of designs that are incorporated into buildings, we are unable, as well, to extrapolate the total amount of ADA-inspired modifications based on anecdotal evidence of what a few modifications may have cost.”<sup>115</sup>

In an interview with the American Institute of Architects (AIA), whose members are on the frontline of assisting businesses with Title III compliance, a spokesman said the AIA has no data on the number of accessible buildings owned or operated by private entities in the United States.<sup>116</sup>

The Government Accountability Office (formerly the General Accounting Office), or GAO, last conducted a study in 1994 on whether the ADA had improved access for people with disabilities to goods and services provided by businesses and state and local governments. The GAO looked at four issues: changes in accessibility in the 15 months after the ADA took effect, the common barriers still remaining, awareness of owners and managers in that same 15-month span, and the nature of barrier removal efforts during that time. The GAO found that accessibility for people with disabilities, and managers’ and owners’ awareness of the ADA, had considerably and steadily increased. Some significant barriers remained, however, and barrier removal efforts were not always consistent with the Americans with Disabilities Act Accessibility standards. Half of the owners and managers had not made any changes to be more ADA compliant, and had no immediate plans to do so.<sup>117</sup>

According to the University of California San Francisco’s Disability Statistics Center, 12,728 small businesses applied for tax credits for disability access improvements in 1993.<sup>118</sup> According to a 2002 General Accounting Office Report on Business Tax Incentives, in 1999, about 7,199



corporations (1 out of 686) and 18,633 individuals with business affiliations (1 out of 1,570) filed for the disability access credit.<sup>119</sup> The credits amounted to approximately \$59 million. The study concluded that the disability-related tax incentives are underutilized by businesses. According to a 2003 study by the Society for Human Resource Management, 77 percent of surveyed businesses were not accessing any of the tax incentives for accessibility.<sup>120</sup>

Numerous articles have been written about the use of litigation to enforce the accessibility requirements of the ADA, generally focusing on the following types of “bad” behavior by disability attorneys and advocates:

- Failure to notify businesses and give them a chance to make improvements before filing suit (or threatening to do so);
- High demands for damages or attorneys fees;
- Insufficient attention to whether the demanded improvements are actually carried out;
- Threats of litigation over minor violations;
- Insufficient assistance to business as to what needs to be corrected or how to comply;
- Repeat lawsuits against businesses that are trying to comply;
- Multiple lawsuits by individual plaintiffs or attorneys.

While no comprehensive studies of lawsuits and complaints filed against places of public accommodation were found in our environmental scan, the U.S. Department of Justice has investigated and reached settlements with numerous restaurants, movie theaters, and other types of chains. Restaurants subject to settlement agreements with the Department include Pizza Hut,<sup>121</sup> McDonald’s,<sup>122</sup> and Burger King.<sup>123</sup> Theaters include Regal,<sup>124</sup> Cinemark,<sup>125</sup> and Shubert,<sup>126</sup> while AMC is involved in ongoing litigation with the Department.<sup>127</sup>

Data regarding nationwide compliance with the physical access requirements of Title III of the ADA is largely unavailable. Larger businesses, national chains, and new businesses have made significant efforts toward compliance, due in part to the incorporation of accessibility

requirements into local building codes and because of close attention paid by public and private enforcement agencies. As a result, people with disabilities have much more freedom to engage in social and business activities and are taking advantage of that freedom. Smaller businesses appear to face less pressure to comply. Litigation may not be an effective mechanism to force compliance by smaller businesses.

The backlash by business owners against enforcement of the ADA through litigation emphasizes the difference in expectations between people with disabilities and business owners. People with disabilities have high expectations of accessibility after the ADA, while business owners are surprised that continued access improvements are required of them, even in the absence of a complaint. Despite years of ADA enforcement and wide dissemination of technical assistance materials, business owners remain confused about the extent of accessibility required for pre-existing businesses. For example, the American Hotel and Lodging Association described the complexities their members face:

It is a significant barrier to compliance with the law that the ADA is a highly detailed, yet highly vague law, unlike other laws and regulations. Our members know, for example, that under OSHA regulations, compressed air cannot be used for cleaning purposes except where the pressure has been reduced to less than 30 pounds per square inch and then only when effective chip-guarding and personal protective equipment is provided. Under the Hotel & Motel Fire Safety Act of 1990, our members know that if they are a five-story hotel and wish to receive federal travelers, they must have hard-wired smoke detectors and be fully sprinklered. But while these specific legal details are clear and helpful, this clarity is absent from much of the ADA. Our members have long been frustrated with the inability to get clarity in compliance with the ADA. When a hotel operator wants to open a new property, an architect will be hired, zoning permits will be obtained from the local zoning boards, operating licenses will be obtained from the proper local and state offices. These various boards, commissions and government entities will perform their duties, but at no point will anyone check for compliance with the ADA. There is no entity that will give an ADA certificate informing a business that they comply with this law.<sup>128</sup>

### **c. Input from People with Disabilities**

The physical accessibility of private businesses was addressed by people with disabilities in the focus groups, public forums, and e-mail. People with mobility impairments indicated they are benefiting from such physical modifications as ramps, accessible parking, and more accessible restrooms that businesses have provided since the ADA was passed. Commenters indicated that much improvement has been made in access to businesses since passage of the ADA, but much remains to be done. One wheelchair user in Wyoming elaborated:

My impression from '92 or '90 is that things have gotten more accessible. You see a lot more power doors. Although they're legally not required, you always see a few more of those. It helps the UPS guy as well as the FedEx guy. It's kind of what we try to sell them on. I think generally overall there's an improvement in accessibility. Recently we put a big push on to look at all the businesses in town and we've run across one that was very accommodating; went over and above what we asked for. And we ran across another who just kind of thumbed their noses at us. So, we said the [heck] with it, we'll just file complaints on them. Talking to this guy didn't do any good anymore. So we still run across it 15 years later, and we're still running across a lot of ignorance; really no awareness of the law but don't really . . . give a rip one way or the other.<sup>129</sup>

A total of 53 commenters indicated that public accommodations and commercial facilities would be more accessible to more people with disabilities if enforcement mechanisms were improved. Several commenters expressed frustration at the process of filing complaints with government agencies, indicated that mediation was not an effective mechanism,<sup>130</sup> and indicated that private lawsuits were not an effective means of enforcement. As one Savannah commenter explained:

I learned of a mediation process which was conceived by USDOJ to expedite the resolution of ADA matters. Given the history of [my] experiences with the courts, I opted for the new process. I filed a complaint in 1999 against a local establishment named Stogie's which was frequented by legal professionals. The barrier was a six-inch step which prevented my entry. After several failed attempts to discuss the matter with management, the case was filed with USDOJ with a specific request for mediation. After

numerous meetings and a signed conciliation agreement, the barrier remains to date—exactly as it was when the case was filed. From my understanding, the current matter is wedged in an administrative bottleneck at USDOJ. My friends with mobility disabilities can recount many similar experiences with failed mediation which were not followed by enforcement.

I have witnessed legislative attempts to weaken the ADA through legal means of a notification provision and judicial decisions, such as the Alabama (i.e., *Garrett*) employment decision which limited the scope of coverage. The rationale behind the proposed notification requirement is to give the business community a chance. Fifteen years later and numerous administrative and legal complaints later, I believe we have extended the hand of compromise only to be slapped with it. Angry—partly; disappointed—definitely. I consider the dream once promised growing fainter as time goes by.<sup>131</sup>

Other commenters expressed similar frustrations.<sup>132</sup>

- “While the Americans with Disabilities Act has helped, there must be better enforcement and far higher fines to go along with it.”<sup>133</sup>
- “Either the Federal Government is going to have to have ADA people in each state with the power to write warning violation letters or write a federal ticket or District level ticket in a violation, with fines. Or the Federal Government is going to have to mandate States to enforce the ADA. Then if they do not, a complaint can be filed against the state.”<sup>134</sup>
- “Shopping, eating and being entertained are a fundamental part of the American way of life. We still have to fight to shop, eat and be entertained. That fight is generally through the courts. Local building officials have no jurisdiction to enforce the ADA and many states still do not have their own building standards for access and rely only on the ADA. Getting a local building official to understand that they have the responsibility and jurisdiction in the absence of state building codes is near impossible.”<sup>135</sup>

- “I believe that in order to ensure that more buildings are built/remodeled accessible, and to provide a level of protection for builders, employers, business owners etc, that there should be some way of licensing or certifying accessibility that is mandatory on states and communities. For instance, perhaps require any state/community receiving Community Development Block Grants (CDBG) or other federal money to have its building code certified as being ADAAG compliant by the Federal DOJ.”<sup>136</sup>
- “In many cases, places of public accommodation are also more reactive than proactive. In some cases business owners are uninformed and don’t know/understand the law. In other cases, owners react when hit with lawsuits or complaints. Recently this has generated a lot of ill will because of the number of local businesses receiving threatening letters if compliance work is not completed in a short amount of time. Lawsuits where plaintiffs receive settlement money [are] upsetting local business owners who feel they are victims of extortion.”<sup>137</sup>
- “Lack of enforcement for equal access [ADA] to public accommodations and prospective businesses remains the single greatest need [and political and legislative avoidance] of our national disabled community.”<sup>138</sup>
- “One area I feel is greatly lacking is the ... enforcement of the ADA in situations where proprietors choose not to cooperate. Those persons have learned that the only effective enforcement is through costly law suits and most people are reluctant to do this. And so those of us who need the ADA most have learned the only ones who comply with the Americans with Disabilities Act are those who chose to do so. The rest can simply ignore it if they wish.”<sup>139</sup>
- “First of all, the problem is not the law itself; it’s a great law. The regulations are great. To me, it’s enforcement that’s the problem. The enforcement is predicated on the ability of the individual to file a complaint. The solution I think is that the Justice Department or EEOC needs to have more investigators that would actually go out to see if people are complying with the law. That would stop the horror stories. That would make employers accountable. That would put the teeth in the law.”<sup>140</sup>

## **2. Access for People with Vision, Hearing, and Speech Disabilities**

### **a. ADA Requirements**

Title III of the ADA requires places of public accommodation to ensure that their communication with people with vision, hearing, and speech disabilities is as effective as their communication with people without disabilities.<sup>141</sup> They accomplish this by providing auxiliary aids and services, such as braille, large print, taped texts, sign language interpreters, closed captioning, notes, assistive listening devices, and text telephone devices.<sup>142</sup> Hotels must provide TTYs and closed captioned televisions.<sup>143</sup> In addition, businesses may not exclude, surcharge, or otherwise discriminate against individuals with service animals.<sup>144</sup>

### **b. Relevant Data**

A review of the U.S. Department of Justice's Web site indicates that businesses frequently fail to provide sign language interpreters to people who are deaf. The U.S. Department of Justice has participated in at least 11 settlements requiring hospitals and health care providers to provide sign language interpreters and other auxiliary aids to people who are deaf or hard of hearing.<sup>145</sup> Private suits have repeatedly been brought against hospitals for failure to provide interpreters.<sup>146</sup>

The U.S. Department of Justice's Web site also demonstrates that many hotels are not complying with their obligations to provide closed captioned televisions, TTYs, and accessible room notification devices.<sup>147</sup> The Department has entered into formal settlement agreements with at least 16 hotels and motels involving access for people with hearing impairments.

The Department investigated and resolved numerous complaints against restaurants, taxi companies, and other public accommodations over access for blind people who use service animals.<sup>148</sup>

### **c. Input from People with Disabilities**

People who are blind or visually impaired, deaf or hard of hearing, or have other communication disabilities were less likely to state that private businesses operating public accommodations are meeting their accessibility needs. Some individuals noted that businesses need to become

educated about Telephone Relay Services, saying representatives of businesses often cut short Relay calls. For instance:

- “I make a lot of business calls in a week. Either I get hung up on, or they put you on hold for 15, 20 minutes, hoping that you hang up.”<sup>149</sup>
- “Sometimes when we make a request for example, for an interpreter at a doctor’s office or attorney visit . . . . just a public accommodation, it’s very difficult. It’s hard to make that request and just like some others were saying, why is it so hard to make a request?”<sup>150</sup>

Some people who are hard-of-hearing reported missing flights because public announcements in airports, including announcements about gate changes, are not provided visually.

People with vision impairments reported that braille and large print were becoming more widely available.<sup>151</sup> However, braille and large print materials are not reliably available and verbal announcements of visual information in public spaces are rarely provided.<sup>152</sup>

People with vision impairments continue to struggle to gain access to the Web sites of public accommodations. Because the DOJ Title III regulations do not specifically mention access to Web sites, people with vision impairments have been forced to file lawsuits against entities that refuse to make their Web sites accessible. To date, the courts have been split on this issue.<sup>153</sup> But, since the implementation of Section 508 of the Rehabilitation Act,<sup>154</sup> which requires federal agencies to make their Web sites accessible, people with vision impairments are frustrated that Title III regulations have not been updated to apply the federal Web accessibility standards to places of public accommodation.

### **3. Recommendations – Places of Public Accommodations**

- The National Institute on Disability and Rehabilitation Research should conduct a survey of businesses, perhaps through the chambers of commerce or small business associations, to determine the degree to which businesses have instituted readily achievable barrier removal efforts, and provide guidance to Congress on adequately funding the Department of Justice to enforce this part of the statute;

- The Department of Justice and National Institute on Disability and Rehabilitation Research should provide expert, individualized, low-cost technical assistance and consulting to small businesses. The ADA and IT Centers and local offices of the National Disability Rights Network are possible agencies to carry out this effort;
- The Department of Justice should expand its Project Civic Access to increase enforcement in local areas by reviewing businesses in identified localities;
- Congress should require states to submit their building codes for access certification by the DOJ;
- The U.S. Access Board and Department of Justice should continue coordination with model building code agencies;
- The Department of Justice should increase enforcement and education regarding how to serve customers with visual and hearing impairments, particularly as it pertains to Web access and use of TTYs and relay services;
- DOJ should incorporate the Section 508 Standard for accessible Web sites into Titles II and III;
- The Department of Justice and National Institute on Disability and Rehabilitation Research should develop technical assistance materials regarding what people with disabilities and businesses should expect of existing buildings of various sizes years after passage of the ADA.

## **D. Accessibility of Telecommunications**

### **1. ADA Requirements**

Title IV of the ADA consists of two provisions: one requires captioning of federally funded or produced public service announcements; the other mandates nationwide telecommunications relay services (TRS). TRS is required to “provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not



have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio.”<sup>155</sup>

Newer Internet Protocol (IP) Relay Services allow people to access TRS through the Internet, rather than relying on text telephones (TTYs). A deaf caller uses a computer and the Internet to type messages to the relay operator, who calls the call recipient and voices what the caller types. Video Relay Services (VRS) allow people who use sign language to communicate with the relay center using sign language through video equipment attached to a computer. The caller signs to the relay interpreter via video and the relay interpreter contacts the call recipient by telephone and voices what the caller signs. For individuals without computers or Internet access, deaf callers can use several access centers. This service may be particularly useful for people in rural areas, where sign language interpreters may be unavailable. VRS is funded through mandated contributions from all common carriers that go into a national fund administered by the National Exchange Carrier Association, Inc. (“NECA”). The Federal Communications Commission (“FCC”) determines the rate that ensures appropriate compensation to VRS providers.

Applicability of the ADA to these new services is not yet settled. Because the ADA encourages the FCC not to discourage the advancement of technology, some disability groups have argued that the FCC should regulate VRS to encourage further development of VRS technology and performance standards.<sup>156</sup>

## **2. Relevant Data**

The telecommunications aspects of the ADA have had a positive effect on the ability of people with hearing impairments to communicate. Relay services are now widely available and usage is high. Telecommunications Relay Services (TRS) have been established for residents of every state to ensure that people with speech and/or hearing impairments have access to telecommunications 24 hours a day, seven days a week.<sup>157</sup> Relay services are available by dialing 7-1-1 or local numbers.

The evolution of new technologies has served to increase use of relay services. However, businesses have not been quick to understand and use the technology.

- No reliable data exists on the average annual number of telephone relay calls prior to implementation of the ADA.<sup>158</sup> However, use of all forms of relay service increased by 15 percent (from over 180 million minutes to over 208 million minutes) from 2003 to 2004 (see Table B). Traditional relay service use is declining slightly (.3 percent), while Internet relay service is increasing (45 percent) and video relay service is increasing tremendously (210 percent).

**Table B: Relay Service by Type, 2003–2004<sup>159</sup>**

	<b>2003 minutes</b>	<b>2004 minutes</b>
<b>Traditional TRS</b>	134,320,610	133,909,527
<b>IP Relay</b>	43,559,603	63,080,942
<b>VRS</b>	2,788,532	11,031,032
<b>Total Combined</b>	180,668,745	208,021,501

- Approximately 3,500 complaints were reported that alleged a violation of one or more of the Federal Communications Commission’s mandatory minimum standards for TRS. This number indicates that just over 1/100th of a percent (.01 percent) of TRS calls resulted in an alleged violation of required service standards. Over seventy-five percent of all complaints stemmed from the interaction between the calling party and the communications assistant.<sup>160</sup>
- The National Exchange Carrier Association (NECA) is the administrator of the Interstate TRS Fund that compensates relay service providers for the provision of relay services. NECA submitted to the FCC the proposed new provider reimbursement rates, funding requirements, and carrier contribution factor for the Telecommunications Relay Services (TRS) Fund. For the period beginning on July 1, 2005, and ending on June 30, 2006, NECA is recommending a total funding requirement of \$413.3 million, a \$124 million increase from the current fund. NECA has recommended this increase in the size of the fund, based primarily on continuing significant growth in demand for IP Relay Services and Video Relay Services (VRS).

### 3. Input from People with Disabilities

In the public forums, many individuals spoke favorably of relay services and several mentioned that technology was enhancing the service.

- “From a hard of hearing point of view, the program obviously helps thousands and thousands of people. We have 600,000 pieces of equipment out there for the deaf, the hard of hearing and disabled. Every month we do 1.5 million conversation minutes .... Relay service helps people have jobs. It helps them communicate with the hearing community, be part of the greater world.”<sup>161</sup>
- “One of the big things I’m seeing more than ever with deaf people in our community is the video relay services that are being instituted now. So much more natural than having to slowly type out what you’re going to say, and that just naturally, the communication gap that happens in the timeframe of typing.”<sup>162</sup>

Almost all of the e-mail writers on the subject of relay services were enthusiastically positive.

- “Has the ADA had an impact on the ability of people who have hearing and/or speech impairments to communicate by telephone? Yes. The Telephone Relay Service centers are making a big difference.”<sup>163</sup>
- “The [ADA has certainly benefited us when it comes to the use of relay services, yet within the African American Deaf Community few have access to the knowledge and technology needed to benefit.”<sup>164</sup>
- “My mother, 82, essentially lost her hearing by 65. It is thought it’s due to a childhood illness; that it progressively worsened in time. Were it not for the Americans with Disabilities Act; her TDD machine; MD’s Relay Service and its trained operators we, her family of 6 daughters, 4 sons-in-law and 10 grandchildren would be at a loss.”<sup>165</sup>

Commenters said the service needs to be publicized more.

#### **4. Recommendations – Accessibility of Telecommunications**

- The Department of Justice should publish information for businesses about how TRS works, how to use it, and the legal obligation to use it. The ADA and IT Centers could be funded to provide this information;
- The Federal Communications Commission should establish standards to encourage the continued development of Video Relay Services.

## **II. Full Participation**

When passing the ADA, Congress found that people with disabilities traditionally have been relegated to a position of political and social powerlessness, by virtue of being excluded from, or segregated in, community activities. Full participation, for purposes of this study, is defined as active inclusion and integration of people with disabilities in community activities, including governance and citizenship.

### **A. State and Local Government Services**

#### **1. ADA Requirements**

Title II of the ADA applies to “services, programs, and activities” of public entities.<sup>166</sup> Title II prohibits discrimination on the basis of disability and requires: (a) making reasonable modifications to policies, practices, and procedures; (b) administering services, programs, or activities in the most integrated setting appropriate to the needs of qualified people with disabilities; (c) modifications to facilities to achieve program access; (d) ensuring that communications with people with disabilities are as effective as communications with people without disabilities, and (e) accommodations in transportation. Effective communication is achieved by providing auxiliary aids and services to people with vision, speech, and hearing disabilities.<sup>167</sup>

Government programs in existing buildings must achieve “program accessibility.” This means the program, when viewed in its entirety, must be accessible to people with disabilities.<sup>168</sup>

Program accessibility may be achieved by making physical changes to facilities or by a combination of other means (e.g., moving programs upon request, providing service through other means, etc.). To achieve program accessibility, state and local governments with 50 or more employees were required to engage in a self-evaluation of their facilities and a transition plan to make their programs accessible. Any structural modifications called for by the transition plans were to be completed by January 26, 1995.<sup>169</sup>

New construction and alterations must be fully accessible in accordance with the ADA Accessibility Guidelines.<sup>170</sup>

## **2. Relevant Data**

In 1995, Condrey & Brudney surveyed municipal government personnel administrators in U.S. cities with a population of 50,000 or more. Their sample size was 334 and their response rate was 63 percent. Over 90 percent of the respondents had obtained literature on the ADA, participated in an ADA seminar, and appointed an ADA coordinator. Over 80 percent of their respondents had studied the ADA regulations, conferred with the city attorney, carried out the self-evaluation, and evaluated their job descriptions. Discussions with a labor lawyer were held by 42.5 percent of the respondents and discussions with an ADA consultant were held by 35.9 percent. The Job Accommodation Network was consulted for assistance by 21.6 percent. In over 80 percent facilities were made accessible and in over 70 percent of the local governments there had been ADA workshops.<sup>171</sup>

Pfeiffer and Finn in 1995 conducted a study of compliance with the ADA by state, territorial, and local governments. This study surveyed local governments separately from states and territories and included small as well as larger local governments. In the survey of local governments, over 840 jurisdictions responded. Just over 65 percent of local governments answered they had ADA and/or Section 504 coordinators, and the study concluded: “The most important finding of the present study is that the existence of an ADA coordinator on the local government level has a considerable impact. A person to oversee the necessary activities and to deal with complaints (in various ways) increases the implementation activities on the local level.”<sup>172</sup>

Pfeiffer and Finn found that states were likely to be in greater compliance with the ADA. “Over three quarters of the state and territorial governments have completed their [ADA compliance] self evaluations and almost 85 percent say that their agencies have transition plans. Attention is being paid to the requirements of the ADA: 97.8 percent of the states and territories reported that sign language interpreters are provided upon request. Over 90 percent had changed questions on their employment applications, provided material in alternative format, and changed locations for interviews. A reasonable accommodation had been provided by 87 percent of the states and

territories. There is considerable ADA implementation activity on the state and territorial level.”<sup>173</sup>

To promote Title II compliance at the local level, the Department of Justice (DOJ) operates “Project Civic Access,” a wide-ranging effort to ensure that counties, cities, towns, and villages comply with the ADA by eliminating physical and communication barriers that prevent people with disabilities from participating fully in community life. DOJ has conducted reviews in 50 states, as well as Puerto Rico and the District of Columbia, and is posting the agreements to help additional communities come into compliance with the Act. DOJ states it has negotiated 145 Project Civic Access agreements with 138 local governments ensuring accessible buildings, programs and services.<sup>174</sup>

Examples of issues specifically addressed by the Department of Justice’s Project Civic Access settlements include:

- Physical modifications of facilities to improve accessibility. Facilities include city and town halls; police and fire stations and sheriff departments; courthouses; centers for health care delivery, childcare, teen and senior activities, conventions, and recreation; animal shelters; libraries; baseball stadiums; parks (including ice skating rinks, public pools, playgrounds, ball fields and bleachers, band shells and gazebos). The agreements secure the following:
  - Accessible parking
  - Accessible routes into and through the facilities
  - Accessible rest rooms, drinking fountains, and telephones
  - Accessible service counters and concession stands, or the provision of services at alternate, accessible locations
  - Accessible bathing facilities at public pools
- Physical modifications to polling places and/or the provision of curbside or absentee balloting.
- Permanent and conspicuous notice to the community of their ADA rights and the government’s ADA obligations.

- Establishment of an ADA grievance procedure where none existed in communities employing more than 50 people.
- Establishment of delivery systems and time frames for providing auxiliary aids and services.
- Installation of assistive listening systems in assembly areas (e.g., legislative chambers, court rooms, municipal auditoriums).
- Strengthening of 9-1-1 emergency services through the acquisition of additional text telephones (TTYs) to achieve a 1:1 ratio of TTYs and answering positions, training to recognize “silent calls,” and accountability through performance evaluations and discipline of employees.
- Improvements in telephone communication between the government and citizens with hearing or speech impairments through the acquisition of additional TTY’s and/or utilization of the state relay service, official publication of TTY/relay numbers, and training of employees.
- Adoption of procedures for relocating inaccessible activities to accessible locations upon request (e.g., City and Town Council meetings, municipal and county court proceedings).<sup>175</sup>

One particular area of concern is access to the judicial system. As a fundamental American right, access to court proceedings should be a top priority. Yet state and local courts have been slow to improve physical access and to provide auxiliary aids. From 1994 to 2004, the Department of Justice reached settlement agreements involving courthouses in 58 cases. The Department reached informal agreements with 57 courts.<sup>176</sup> These cases primarily involved physical access issues and provision of sign language interpreters and other auxiliary aids for people with hearing disabilities. The Department of Justice recently reported on progress using litigation and informal agreements, as well as other work undertaken by the department in their report “Access for All: Five Years of Progress, A Report from the Department of Justice on Enforcement of the Americans with Disabilities Act.”<sup>177</sup>

Major lawsuit filings indicate that state and local courts still are not fully accessible, 15 years after passage of the ADA. Courthouses have been the subject of several lawsuits, including *Tennessee v. Lane*,<sup>178</sup> *Miles v. Los Angeles*,<sup>179</sup> and others. In California, the Chief Justice acknowledges that 75 percent of the state’s courthouses are not accessible to people with



physical disabilities.<sup>180</sup> Other states, such as Oregon and Arizona, began conducting accessibility surveys in 2003–2004.<sup>181</sup>

Recognizing the need for access to courts, the U.S. Access Board has issued accessibility guidelines for courthouses and has convened an Advisory Committee to provide technical assistance on courthouse accessibility.<sup>182</sup> However, the delay between issuance of guidelines by the Access Board and adoption of those guidelines as enforceable standards by the Department of Justice encourages courts to delay compliance for fear that they would waste effort implementing outdated guidelines.

Another possible reason for the delay in compliance is the belief that state and local governments cannot be held liable for monetary damages for failing to make their facilities accessible. The Supreme Court in *University of Alabama v. Garrett* found that state governments could not be held liable for monetary damages for violations of the employment provisions of the ADA, based on the doctrine of sovereign immunity.<sup>183</sup> States have also raised the Sovereign Immunity defense in ADA actions involving Title II, which covers access to state and local government programs and facilities. The Supreme Court in *Tennessee v. Lane* found that, at least for court facilities, money damages is available against states.<sup>184</sup> However, states' liability for money damages for failure to comply in other areas remains unclear and may be contributing to delays in compliance.

Although local, as opposed to state, governments are not protected by sovereign immunity the courts have imposed limitations on their liability for damages under the ADA. Courts require a showing of intentional discrimination for monetary damages to be available.<sup>185</sup> Lacking the incentive of monetary liability for noncompliance, local governments may be moving more slowly than they otherwise would.

### **3. Input from People with Disabilities**

In the focus groups, some participants confused the provision of accommodations in educational settings required by Section 504 of the Rehabilitation Act of 1973, as amended, and the Individuals with Disabilities Education Act with Title II of the ADA. There was similar

confusion with Medicare, Medicaid, and other services that do not come within the scope of the ADA. The lack of services in these areas was identified in the focus groups and often incorrectly attributed to lack of ADA enforcement. Comments from forums and e-mail were mixed regarding accessibility of government services under the ADA. 46 percent of respondents expressed negative opinions on the accessibility of government services, while 45 percent were positive. The need for greater ADA enforcement for better access to state and local government services was cited by participants numerous times.

- “The improvement in this area is *Tremendous!!* Anyone who says otherwise is not remembering how it was. Curb ramps, accessible building entrances and moving around inside, transportation, sidewalks, paths of travel, the list goes on and on and on.”<sup>186</sup>
- “Government agencies are by far the worst in compliance. Getting to and from their physical offices can be a nightmare. They choose to build or locate sites that are inaccessible for varieties of reasons not the least of which is public transportation and parking/path of travel. Of particular note are those government offices in rural areas.”<sup>187</sup>
- “Pennsylvania has been especially good about meeting the ADA accessibility requirements .... I wish facilities at Federal sites were as reliable.”<sup>188</sup>
- “There are still places I cannot go. Council Chambers are one. You cannot hear them speak. Even with microphones. Public events—cannot hear the speaker.”<sup>189</sup>
- “I would say this is the most changed and improved area of all. The agency personnel generally are more educated about disabilities and the buildings are much more accessible than private entities.”<sup>190</sup>

#### **4. Recommendations – State and Local Government Services**

- The Department of Justice and other federal agencies should focus on enforcing the ADA obligations of government agencies;
- Federal agencies should use initiatives such as Project Civic Access to increase ADA compliance at the state and local levels;

- The Department of Justice should use targeted, high-profile litigation on particularly important issues, such as access to courts, medical care, and education to increase state and local ADA compliance.

## **B. Voting**

### **1. ADA Requirements**

Two pre-ADA laws addressed the access issues of voting for people with disabilities. The Voting Rights Act of 1965 (VRA) provides that any voter requiring assistance to vote “by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice ....”<sup>191</sup> The Voting Accessibility for the Elderly and Handicapped Act of 1984 (VAEHA) requires that political subdivisions responsible for conducting elections ensure that all polling places for federal elections are accessible to elderly voters and voters with disabilities.

Title II of the ADA and its implementing regulations require that people with disabilities have access to basic public programs, including the right to vote. However, it does not strictly require that polling place sites be accessible. Instead, as with all state and local government programs, the program of voting, as a whole, must be accessible. Such program access can be accomplished in a variety of ways, including curbside voting for people with mobility impairments at inaccessible polling places, and assisted voting for people with vision impairments.<sup>192</sup>

During the 2004 election, the U.S. Department of Justice implemented new policies to protect the rights of voters with disabilities, including publishing a 39-page “ADA Checklist for Accessible Polling Places” and, for the first time, deploying election monitors trained to assess the accessibility of polling places.<sup>193</sup>

The Help America Vote Act of 2002 (HAVA) provides states with federal monies to update their voting process, including funds for the purchase of accessible voting machines and removal of the systemic and physical barriers that have denied people with disabilities their constitutional right to vote. At least one electronic voting machine, which must be fully accessible for people with visual impairments, was required in each polling place by January 1, 2006.<sup>194</sup>

## 2. Relevant Data

All states have provisions (in the form of statutes, regulations, or policies) that specifically address voting by people with disabilities. These provisions vary greatly, as do county practices for assuring voting accessibility. For example, while some counties cite accessibility as a specific criterion used in selecting polling places, others do not. All states provide for one or more alternative voting methods or accommodations that may facilitate voting by people with disabilities whose assigned polling places are inaccessible. For instance, all states have provisions allowing voters with disabilities to vote absentee without requiring notary or medical certification requirements, although the deadlines and methods (such as by mail or in person) for absentee voting vary among states. In addition, many states, but not all, have laws or policies that provide for other accommodations and alternatives for voting on or before Election Day—such as reassignment to a polling place that is accessible, curbside voting, or early voting.<sup>195</sup>

In 2001, a General Accounting Office (now the Government Accountability Office) study of polling places in the United States estimated that, from the parking area to the voting room, 16 percent of all polling places in the contiguous United States had no potential impediments, 56 percent had one or more potential impediments but offered curbside voting, and 28 percent had one or more potential impediments and did not offer curbside voting. Such potential impediments primarily affected people with mobility impairments and occurred most often on the route from the parking area to the building or at the entrance to the polling place, with more than half of all polling places having impediments in these areas. Inside the polling place, the types and arrangement of voting equipment used posed challenges for people with mobility, vision, or dexterity impairments. To facilitate voting inside the voting room, polling places generally provided accommodations, such as voter assistance, magnifying devices, and voting instructions or sample ballots in large print. However, none of the polling places visited by the GAO had special ballots or voting equipment adapted for blind voters.<sup>196</sup>

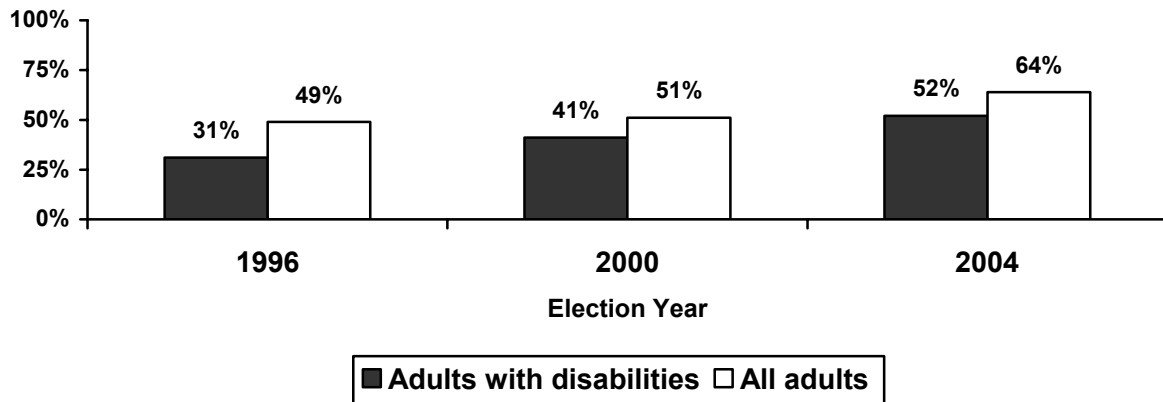
A 2004 Massachusetts survey indicated that 60 percent of its polling sites did not meet HAVA requirements.<sup>197</sup> A Missouri survey found that 70–80 percent of urban polling places were accessible, while only 10 percent of rural ones were accessible.<sup>198</sup> A 2003 Florida survey revealed that 54 percent of polling places were accessible.<sup>199</sup> Six percent of polling places in

Utah were inaccessible, according to a 2004 survey.<sup>200</sup> Ninety-four percent of polling places in Indiana were found to be inaccessible.<sup>201</sup> In Los Angeles County, accessibility of polling places substantially improved since passage of the ADA, rising from 70 percent accessible in 1986 to 98 percent accessible in 2001.

Substantial barriers to independent voting remain for people with vision impairments. Paper ballots require people with vision impairments to rely on third parties for assistance in voting, thus undermining the independence and confidentiality of their votes. The Help America Vote Act (HAVA) intended to address this problem by requiring electronic voting machines to be available at every polling place in federal elections by January 2006. According to the American Association of People with Disabilities, in 2004 about 80 percent of polling places nationwide were not fully accessible in accordance with HAVA standards.<sup>202</sup> Although states are steadily adopting electronic voting, controversies over the security of electronic voting have delayed approval, purchase, and implementation of electronic voting systems.<sup>203</sup>

Compared to prior years, the percentage of Americans with disabilities who voted in 2004 increased dramatically. According to the N.O.D./Harris Surveys, voting by Americans with disabilities has increased steadily over the last three presidential election cycles, and the gap between those with disabilities and those without disabilities who voted is decreasing (see Figure E). In 1996, 31 percent of adults with disabilities voted in the presidential election, compared to 49 percent of all adults voting. In 2000, 41 percent of Americans with disabilities voted compared to 51 percent of all adults. In 2004, turnout among likely voters with disabilities was estimated by Harris to be 52 percent, while, according to the Census, 64 percent of people without disabilities voted.

**Figure E: Voting Practices of Americans with Disabilities**



- According to the American Association of People with Disabilities, voting participation ranged from 31 percent in Georgia to 55 percent in Minnesota in the 2000 elections (see Table C).<sup>204</sup>

**Table C: Percentage of People with Disabilities Voting by State in 2000**

State	% of People with Disabilities Voting	State	% of People with Disabilities Voting
Alabama	40%	Montana	49.2%
Alaska	53.1%	Nebraska	45.2%
Arizona	33.8%	Nevada	35%
Arkansas	38.2%	New Hampshire	50%
California	35.3%	New Jersey	40.8%
Colorado	45.5%	New Mexico	37.9%

---

<b>State</b>	<b>% of People with Disabilities Voting</b>	<b>State</b>	<b>% of People with Disabilities Voting</b>
Connecticut	46.7%	New York	40.3%
Delaware	46.7%	North Carolina	40.2%
DC	39.3%	North Dakota	48.3%
Florida	40.5%	Ohio	44.6%
Georgia	30.5%	Oklahoma	39%
Hawaii	32.4%	Oregon	48.5%
Idaho	43.6%	Pennsylvania	43%
Illinois	42.2%	Rhode Island	43.4%
Indiana	43.6%	South Carolina	37.3%
Iowa	48.6%	South Dakota	46.6%
Kansas	43.3%	Tennessee	39.4%
Kentucky	41.3%	Texas	34.5%
Louisiana	43.4%	Utah	42.1%
Maine	53.8%	Vermont	51.2%
Maryland	41.3%	Virginia	42.4%

---

<b>State</b>	<b>% of People with Disabilities Voting</b>	<b>State</b>	<b>% of People with Disabilities Voting</b>
Massachusetts	46.1%	Washington	45.5%
Michigan	46%	West Virginia	36.6%
Minnesota	55%	Wisconsin	52.9%
Mississippi	38.9%	Wyoming	47.8%
Missouri	46%		

Perhaps recognizing the increased participation of individuals with disabilities, individuals running for election have been more visibly responsive to the concerns of the disability community. For example, in 2004, both Presidential candidates took public positions on disability issues—President George W. Bush’s New Freedom Initiative and Senator John Kerry’s Disability Policy Platform.<sup>205</sup> State-level election candidates have also publicized positions on disability issues.<sup>206</sup>

### **3. Input from People with Disabilities**

In the discussion about accessible voting, one participant said: “We participated in a program called “Count Us In,” where our polling places of today were visited and rated and none of them passed 100 percent. But the polling place workers were helpful and tried to do what they could.”<sup>207</sup>

### **C. Other Forms of Civic Participation**

No data were found in our environmental scan about rates of participation by people with disabilities in other forms of civic activities, such as serving in public office, participating in government advisory committees, or performing community service.



Most states have a disability commission to advise on disability policy issues<sup>208</sup> and people with disabilities serve on these commissions.

#### **D. Recommendations – Full Participation**

- The Department of Justice should immediately implement the Help America Vote Act requiring installation of electronic voting equipment;
- The National Institute on Disability and Rehabilitation Research should study and publish the involvement of people with disabilities in civic opportunities, such as government office;
- The National Organization on Disability should encourage state and local governments to emphasize involvement of the disability community as part of their diversity efforts and provide technical assistance to help government agencies reach out to people with disabilities.



### **III. Independent Living**

People with disabilities traditionally have been subject to governmental, medical, and family control in their most central life decisions, including where and with whom to live. Independent living, for purposes of this study, is defined as control by people with disabilities over their own lives, including availability of acceptable choices of housing and health care and lack of undue control by others in life decisions. An important aspect of independent living is the availability of services in integrated community-based settings.

#### **A. Community Integration**

##### **1. ADA Requirements**

In July 1999, the Supreme Court issued the *Olmstead v. L.C.* decision.<sup>209</sup> The Court's decision in that case challenged state governments to provide people with disabilities with community-based, rather than institutional, services. The *Olmstead* decision interpreted Title II and its implementing regulations, requiring states to administer their services, programs, and activities "in the most integrated setting appropriate to the needs of qualified individuals with disabilities." The Court found that unjustified institutionalization constituted discrimination under Title II of the ADA. The Court found that the cost of providing services in community-based, rather than institutional, settings was not a defense to the obligation except when the state could show that, in the allocation of available resources, immediate relief for a particular individual would be inequitable to the other individuals under the state's care.<sup>210</sup> Since the Court's *Olmstead* decision, lower courts interpreting the decision have been reluctant to insert themselves into the administration of health care services. Community-based health care, mental health, and housing services are increasing slowly in response to the *Olmstead* decision. Courts have accepted as legitimate slow movements by the states toward community-based care.

In July 2001, President George W. Bush issued an Executive Order providing guidance on the implementation of the *Olmstead* decision and allocated over \$120 million in grants in 2001–2002 to increase community-based integration for people with disabilities.<sup>211</sup>

## **2. Relevant Data**

### **a. Federal *Olmstead* Initiatives**

On March 25, 2002, the U.S. Department of Health and Human Services (HHS) submitted to the President a report entitled *Delivering on the Promise*.<sup>212</sup> The report summarized agency activities that support *Olmstead*'s goal of community integration, identified barriers in government programs that are impeding full implementation of *Olmstead*, and proposed more than 400 solutions aimed at removing these barriers.<sup>213</sup> According to a 2004 Progress Report on the President's New Freedom Initiative, the following federal activities are specifically related to promoting de-institutionalization:<sup>214</sup>

#### **i. Department of Health and Human Services (HHS)**

In October 2002, HHS established the Office on Disability to address the coordination of disability policies and programs across HHS agencies. HHS's Centers for Medicare and Medicaid Services (CMS) had awarded nearly \$200 million since 2001 under the Real Choice Systems Change Grants for Community Living, which has the goal of enabling people with disabilities to reside in their communities and participate more fully in community life. Since 2003, CMS funded \$12 million in demonstration grants to improve the direct service community workforce, which enables state and community-based providers to test new strategies for recruiting, training, and retaining direct service workers.

Since 2001, HHS's Administration on Aging supported family caregivers through the National Family Caregiver Support Program with over \$400 million to states and tribal governments to develop multi-faceted systems of support to extend the caregiving efforts of families, friends, and neighbors.

#### **ii. Department of Justice (DOJ)**

DOJ evaluates residential placements, in each investigation of healthcare facilities, under the Civil Rights of Institutionalized Persons Act (CRIPA) in light of the ADA's requirement that services be provided to residents in the most integrated setting appropriate to their needs. DOJ has issued letters of finding citing violations of *Olmstead* involving four facilities for people with

developmental disabilities, six nursing homes, and the children's unit of a psychiatric hospital. DOJ has worked with officials in several states to help states and other jurisdictions provide community-based services to people who are currently residing in publicly-operated institutions.

### **iii. Department of Labor (DOL)**

In September 2003, the Department of Labor's Office of Disability Employment Policy, and its Center for Faith-Based and Community Initiatives, awarded \$500,000 to eight recipients to provide home modifications as a means of expanding the community integration of people with disabilities, particularly those seeking employment.

In 2005, the President's proposed federal expenditures to promote community integration initiative included:

- \$1.75 billion through fiscal year (FY) 2009 for the "Money Follows the Individual Rebalancing Demonstration," with \$350 million targeted for FY 2005. This demonstration would assist states in re-balancing long-term care systems to support cost-effective choices between institutional and community options, including financing Medicaid services for individuals who move from institutions to the community;
- \$327 million through FY 2009, with \$18 million for FY 2005, to fund three demonstrations that promote home and community-based care alternatives. Two of the demonstrations provide respite care services for caregivers of adults with disabilities or long-term illness, and children with substantial disabilities. Another demonstration provides community-based care alternatives for children who are currently residing in psychiatric residential treatment facilities;
- \$102 million through FY 2009, with \$17 million in FY 2005, to continue Medicaid eligibility for spouses of people with disabilities who return to work. Under current law, people with disabilities might be discouraged from returning to work because the income they earn could jeopardize their spouse's Medicaid eligibility. This proposal would extend to the spouse the same Medicaid coverage protection now offered to the worker with a disability;

- \$40 million to continue the Real Choice Systems Change Grants Program, including nearly \$3 million to continue the demonstration program being administered by CMS to promote the recruiting, training, and retention of direct service workers.<sup>215</sup>

Federal Medicaid spending on home and community-based waiver services has grown exponentially, from 37 percent in 1992 to 66 percent in 2001. In 1992, 15 percent of all long-term care spending went to home and community-based care waiver benefits, while by 2002 that figure had risen to 30 percent.<sup>216</sup>

While the Federal Government's commitment to these new initiatives has been welcomed in the disability community, it has been criticized on two counts: (1) a lack of an overall national policy framework for community integration of people with disabilities, and (2) inadequate stimulation of change in the long-term care system to eliminate unnecessary institutionalization of people with disabilities.<sup>217</sup>

#### **b. State *Olmstead* Initiatives**

The Supreme Court suggested that states demonstrate compliance with the *Olmstead* decision by producing formal plans for increasing community integration. *Olmstead* directs states to make "reasonable modifications" in programs and activities. Modifications that would "fundamentally alter" the nature of services, programs or activities are not required. As a result, the Federal Government encourages states to plan for reforms not only in the health arena, but also in transportation, housing, education and other social supports that can help people with disabilities live in the community.

Because Medicaid is the primary funding source for long-term care and covers a large number of people with disabilities, many states focused their initial efforts on how *Olmstead* affects Medicaid budgets. More than 35 percent of all Medicaid spending goes to long-term care services. Institutions get the lion's share, about 71 percent in 2001. Many refer to this lopsided distribution as the "institutional bias." Medicaid waivers are necessary to allow services in the home and in communities. Although every state has a variety of waivers to provide community-based services,<sup>218</sup> the majority of funds continues to be directed at nursing homes or other

institutional settings.<sup>219</sup> Every state also allows home health care in at least some circumstances.<sup>220</sup> However, 20 states do not cover personal care services.<sup>221</sup>

As of 2004, 29 states had issued *Olmstead*-related plans or reports. Many of these plans rely on Medicaid community service options, in combination with resources from other programs, to achieve the types of community programs that make it possible for people with disabilities to live and work in their own communities.<sup>222</sup>

The definition of an *Olmstead* plan is not clear-cut and states have developed alternative approaches to *Olmstead* planning.<sup>223</sup> Some states have developed specific strategies for implementation over a number of years. Others identified key priorities for immediate action. Still others set out broad policy recommendations. Many plans anticipate frequent amendments.<sup>224</sup>

Some states have displayed little specific strategic work in this area. One study reports three state strategies to address *Olmstead* compliance: legislative action (policy and budgetary mechanisms for moving money around the system); market-based approaches (consumer information to enable choice and create demand for Home and Community-Based Services (HCBS)); and fiscal and programmatic linkages (e.g., improving coordination between services and increasing HCBS capacity).<sup>225</sup>

The focus of state plans has been to:

- Help people make the transition from institutions into the community;
- Promote affordable and accessible housing;
- Improve the recruitment and retention of direct care workers;
- Provide information and referral as well as family-centered assessments;
- Allow funding to follow the individual rather than the providers;
- Reduce the waiting lists for home and community-based services;
- Increase employment opportunities for people with disabilities;

- Enhance data collection activities and systems;
- Increase accessible transportation options;
- Ensure quality of care based on outcomes.<sup>226</sup>

NCD’s 2003 Olmstead Report found, in part, the following regarding state plans:

- Plans do not consistently provide for opportunities for life in the most integrated setting as people with disabilities define “the most integrated setting”;
- The majority of states have not planned to identify or provide community placement to all institutionalized persons who do not oppose community placement;
- Few plans identify systemic barriers to community placement or state action steps to remove them and few plans contain timelines and targets for community placement;
- State budgets often do not reflect *Olmstead* planning goals.<sup>227</sup>

Medicaid coverage of nursing home services is mandatory. However, coverage of most community-based services is optional. To address this institutional bias, states such as Texas are allowing funds that are devoted to the care of institutional residents to follow them into the community.<sup>228</sup> Specifically, sources in 25 states—Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Washington and Wisconsin—described efforts to shift more people from nursing homes and “intermediate care facilities for the mentally retarded” (ICF/MRs) into the community or to divert people from unnecessary institutional placements during the hospital discharge planning process.<sup>229</sup>

Many of these states are helping people make the transition by giving allowances to fund the move and housing fees and by providing assistance through case managers. Florida is implementing three pilot nursing home transition programs with the goal of moving 1,200 people during FY 2003–2004 and allowing Medicaid funding to follow the person. Pennsylvania is developing a three-county pilot project to streamline Medicaid waiver eligibility to divert people



from nursing homes. Wisconsin received a systems change grant to move about 200 people with developmental disabilities out of institutions.<sup>230</sup>

According to a report by the National Conference of State Legislatures, since 2001, state budget restrictions have delayed implementation of *Olmstead* efforts. Although community-based services are estimated to be less costly than institutional services in the long term, during the transition from institution to community-based programs, expansion of services is required. Thus, without adequate additional funding, and facing overall budget shortfalls, states have not succeeded in implementing their *Olmstead* plans. As a result, numerous lawsuits have been filed to enforce *Olmstead* obligations.<sup>231</sup>

However, progress has been made. In April 2005, there were 16,094 nursing homes in the United States, down from 16,516 in December 2002. The U.S. Department of Health and Human Services reports that nearly 1.399 million people were in nursing homes in the first quarter of 2006, and over 297,000 (21 percent) of them expressed a preference to live in the community.<sup>232</sup> This number is down from the fourth quarter of 2002, when 1.43 million people were in nursing homes.<sup>233</sup>

Only six years have passed since the *Olmstead* decision requiring states to emphasize community integration. As of 2002, the Government Accountability Office estimated that there were at minimum 1.8 million people with disabilities being served in institutional settings, including 1.6 million individuals in nursing facilities, 106,000 individuals in institutions for people with developmental disabilities, and 57,000 individuals in state and local facilities for individuals with mental illness.<sup>234</sup> Since the *Olmstead* decision, state and Federal Government agencies have been changing their systems to facilitate community integration. The effects of these changes have not yet resulted in substantial numbers of people with disabilities leaving institutions, and courts have not been willing to push states to move more quickly. However, the *Olmstead* decision holds great promise for people with disabilities, particularly those with mental illness or intellectual disabilities, who want to become more integrated into their local communities.

### 3. Input from People with Disabilities

Survey respondents indicated that *Olmstead* has not yet been effectively implemented to a degree sufficient to meet the needs of people with disabilities. The Bazelon Center for Mental Health Law issued this statement on the fifth anniversary of the *Olmstead* decision:

- “While many Americans with disabilities have made progress since the *Olmstead* ruling, people with mental illnesses have been largely left behind in efforts to implement the decision. Most states are enacting *Olmstead* reforms at a snail’s pace, defying the spirit of the ruling and preventing Americans with mental illnesses from participating in their communities.
- Rhetoric has far outstripped action to promote community services for people with mental illnesses. States are quick to trumpet their limited efforts to implement *Olmstead*, but these have produced little actual movement of people with mental illnesses into integrated community settings.
- Budget pressures have closed psychiatric hospitals across the country, but few appropriate community services have been adequately funded to help people with mental illnesses live successfully in the community. Instead, states have ‘transinstitutionalized’ people with mental illnesses to settings as outmoded, isolating and inappropriate as the facilities they were meant to replace. Increasing numbers of people with psychiatric disabilities now find themselves in large board and care homes, ‘adult homes,’ nursing homes, and other institution-like settings. Thousands wind up in jail or prison because chronically underfunded community mental health systems fail to provide meaningful support.
- Where real progress has occurred, it is largely because states have been sued. Five years after *Olmstead* and 14 years after enactment of the Americans with Disabilities Act, litigation should be unnecessary. Yet it remains the single most effective way to combat the persistent segregation of people with mental illnesses.”<sup>235</sup>

*Olmstead* was discussed extensively in the Savannah public forum, which was attended by advocates who are involved daily in promoting *Olmstead* implementation. One was the lead attorney for “L.C.” in *Olmstead v. L.C.* These participants suggested that many people with

disabilities, particularly those with developmental disabilities or mental illness, are not benefiting from *Olmstead*.

I don't mean to say that lots of people aren't moving out of institutions into the community; they are. And I don't mean to say that we're stuck in the legal sense because we're definitely moving toward a better development of legal rights in this country for people with disabilities.

But I do mean to say that the people I encounter on a daily basis are, if not in as bad a shape—they may in some cases be in worse shape because staffing is bad, treatment is bad, professionals are not particularly competent in many cases, and there's a very limited understanding among institutional staff, still, about the rights of the people they are serving. There is very little understanding that they have a right to apply for all these community-based services. The institutional staff doesn't know that. They have no clue.<sup>236</sup>

These advocates endorsed the “Money Follows the Person” concept, which has been proposed in the Senate by Sen. Tom Harkin (D-IA) and as a budgeted demonstration project by the Bush Administration. Under this bill, the Medicaid money paid by states and the Federal Government would follow a person with a disability from an institution into the community. The legislation would provide 100 percent federal reimbursement for the community services that individuals need during the first year after they move out of a nursing home or similar facility. After that first year, individuals would remain in the community, and states would receive their regular Medicaid match for their services.

The breakdown of the community-based programs is due to not enough money being attached to be able to develop real supports that are going to give people the services they need .... Maybe attaching the money to the individual will expedite those things. When a person has money they get a service, so maybe that's the key, to make sure that each individual has enough funding to be able to meet their needs in a person-centered way. That's an idea to think about, and something that would work a lot better if you started doing something like that, rather than setting up granting agencies all over the place,

where they don't meet the needs of the individual, but they meet the needs of the system.<sup>237</sup>

## **B. Recommendations – Independent Living**

- Congress should increase Medicaid support for community-based treatment settings;
- Congress should pass and fully fund the Money Follows the Person Act;<sup>238</sup> and Medicaid Community-Based Attendant Services and Supports Act;<sup>239</sup>
- Congress should require states to expeditiously complete effective *Olmstead* plans, consistent with HHS guidance;
- The Department of Health and Human Services should require states to fund personal care services when needed to allow a person with a disability to remain in their community;
- The Departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Justice, and Labor, and Equal Employment Opportunity Commission, working with state and local governments and community agencies should implement local initiatives to extend the integration mandate to housing, education, transportation, employment, and other areas affecting people with disabilities;
- The Department of Justice should increase and target enforcement of the Civil Rights of Institutionalized Persons Act on requiring effective deinstitutionalization efforts and publishing creative and effective programs to provide community-based services;
- The Department of Labor's program funding home modifications should be significantly expanded to allow people with disabilities and the elderly to live in their communities;
- The Departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Justice, and Labor, and Equal Employment Opportunity Commission, should work with disability communities and others to develop an overall national policy framework for community integration of people with disabilities;
- The Department of Health and Human Services should study systems of long-term care and long-term care insurance to eliminate unnecessary institutionalization of people with disabilities and aging people.

## **IV. Economic Self-Sufficiency**

People with disabilities traditionally have relied on government benefits and charity for survival, and Congress found, when passing the ADA, that as a group, people with disabilities occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally. Economic self-sufficiency, for purposes of this study, is defined as financial security for people with disabilities, which is achieved by education, employment, and asset accumulation. Availability of appropriate health care and insurance coverage are additional aspects of economic self-sufficiency.

There is no direct evidence to suggest that Americans with disabilities are becoming more economically self-sufficient. Improvements in areas such as education, reasonable accommodations on the job, and improvements in access to public transportation, factors that might be expected to contribute to economic self-sufficiency in the long run, give some reason for optimism, and warrant further study. The education gap between people with disabilities and people without disabilities is shrinking and people with disabilities are attending postsecondary institutions in record numbers, but their graduation rates lag behind their counterparts without disabilities. Educational supports and services for students with disabilities are now available at most of the nation's 3,000 postsecondary institutions. There is evidence that people with disabilities are experiencing less discrimination on the job, but they are not experiencing increases in hiring. People with disabilities rarely win ADA employment discrimination cases. The percentage of people with disabilities living in poverty has not decreased since passage of the ADA—a disappointing finding that many attribute to Social Security rules that trap people into living at poverty levels in order to retain essential medical supports and services.<sup>240</sup>

### **A. Financial Assets and Insurance**

#### **1. Financial Assets**

NCD was unable to discover a comprehensive and reliable source of information on the financial assets of people with disabilities. However, as research at the Burton Blatt Institute (<http://bbi.syr.edu>) and by others shows, it is generally understood that limited access to financial

assets is one of the challenges facing many Americans with disabilities. Additionally, significant disparities exist between the financial resources of people with disabilities and people without disabilities.

In 2006, the U.S. Bureau of the Census data indicated that approximately one in every five Americans with a disability (19 percent) live in poverty, three times the percentage of people without disabilities living in poverty.<sup>241</sup> Twenty-six percent of Americans with severe disabilities live in poverty.<sup>242</sup> The 2000 N.O.D./Harris Survey of Americans with Disabilities indicated 28 percent of people with severe disabilities lived in poverty, as compared to 8.3 percent of people with no disability.<sup>243</sup> In 1990, before implementation of the ADA, 19 percent of people with disabilities lived in poverty—exactly the same percentage as in 2006.

NCD currently has a financial incentives study underway that will investigate the extent to which people with disabilities have access to financial assets, such as savings, investments, and loans, the disparity between the financial assets of people with disabilities and people without disabilities, and the costs and availability of health insurance coverage and benefits for people with disabilities. NCD believes that this Financial Incentives study will provide much-needed information for the development of strategies to improve economic self-sufficiency for people with disabilities.<sup>244</sup>

Banks and financial institutions have responded to pressure to make their services accessible to people with disabilities. Numerous lawsuits and structured settlement negotiations have resulted in Citibank, Wells Fargo, Bank of America, Fleet Bank, Sovereign Bank, Citizens Bank, Chase/Bank One, First Union Bank (now Wachovia), Union Bank of California, Washington Mutual, and LaSalle Bank installing talking ATMs, providing statements in accessible formats, and increasing accessibility of their Web sites to screen readers for people with vision impairments. American Express has also agreed to provide statements and other written materials in braille and other formats for credit card customers.<sup>245</sup> Current estimates indicate that over 50,000 talking ATMs are available at banks across the country.<sup>246</sup>

## **2. Health Insurance**

Who receives health care services and how much service is obtained depends on one's health care coverage, or health insurance, which is, unfortunately for people with disabilities, intertwined with employment. Either an individual is able to work full-time at one employer long enough to qualify for employer-based health insurance (EBHI), or an individual must be assessed as totally unable to work, thereby qualifying for public health coverage. Those between these two extremes, where people with disabilities are likely to find themselves, have difficulty obtaining health coverage, threatening their access to health care, risking a deterioration of their health conditions, and further limiting their ability to work. Almost one of every five working age people with disabilities lacks health insurance. Even people with disabilities who are employed are less likely to have health insurance than workers without disabilities. Among full-time employees, for example, 65 percent of those with disabilities had EBHI, compared to 74 percent of those without disabilities.<sup>247</sup>

People with disabilities and people without disabilities are equally likely to be covered by some form of health insurance (88 percent – 91 percent).<sup>248</sup> However, most of the people with disabilities covered (56 percent) are covered by Medicaid or Medicare, while most people without disabilities are covered by private insurance (78 percent). These differences in the sources of coverage are significant and may explain why people with disabilities are significantly more likely to go without needed medical care than people without disabilities (18 percent versus 7 percent).

## **B. Higher Education**

### **1. ADA Requirements**

Postsecondary schools must ensure that the programs they offer, including extracurricular activities and avenues of communication, are accessible to students with disabilities. State colleges and universities must ensure “program access”<sup>249</sup> under Title II, while private colleges must ensure readily achievable barrier removal under Title III.<sup>250</sup> Under both titles of the ADA, such access is to be supported through the provision of “reasonable modifications” to policies, practices and procedures<sup>251</sup> and “auxiliary aids and services.”<sup>252</sup>

Academic adjustments may include classroom and testing modifications, such as extra time on examinations, provision of materials in alternative formats, and ensuring physical accessibility of classrooms and labs. Auxiliary aids and services include practices that create access to information for people with sensory impairments, such as providing sign language interpreters for students who are deaf and readers for students who are blind.

## **2. Relevant Data**

The education gap between people with disabilities and people without disabilities is shrinking and people with disabilities are attending postsecondary institutions in record numbers. Although people with disabilities remain twice as likely to drop out of high school as people without disabilities (21 percent versus 10 percent),<sup>253</sup> the number of postsecondary students reporting a disability has increased dramatically since the passage of the ADA.<sup>254</sup> The proportion of first-time, full-time students with disabilities attending colleges and universities tripled between 1978 and 1994, from 2.6 percent to 9.2 percent.<sup>255</sup> By 1998, the full range of students with disabilities (i.e., part-time students and students enrolled in graduate programs) had risen to 10.5 percent of the postsecondary student population.<sup>256</sup>

In a 2000 report, the National Council on Disability stated that as many as 17 percent of all students attending higher education programs in the United States were identified as having a disability. Learning disabilities are the most common type of disability reported by college students. Further, more than one-half of all the students with disabilities who enroll in postsecondary education completed their program of study. Within five years of starting postsecondary education, 41 percent of students with disabilities reported they had earned a degree or credential, and another 12 percent remained enrolled in their course of study.<sup>257</sup>

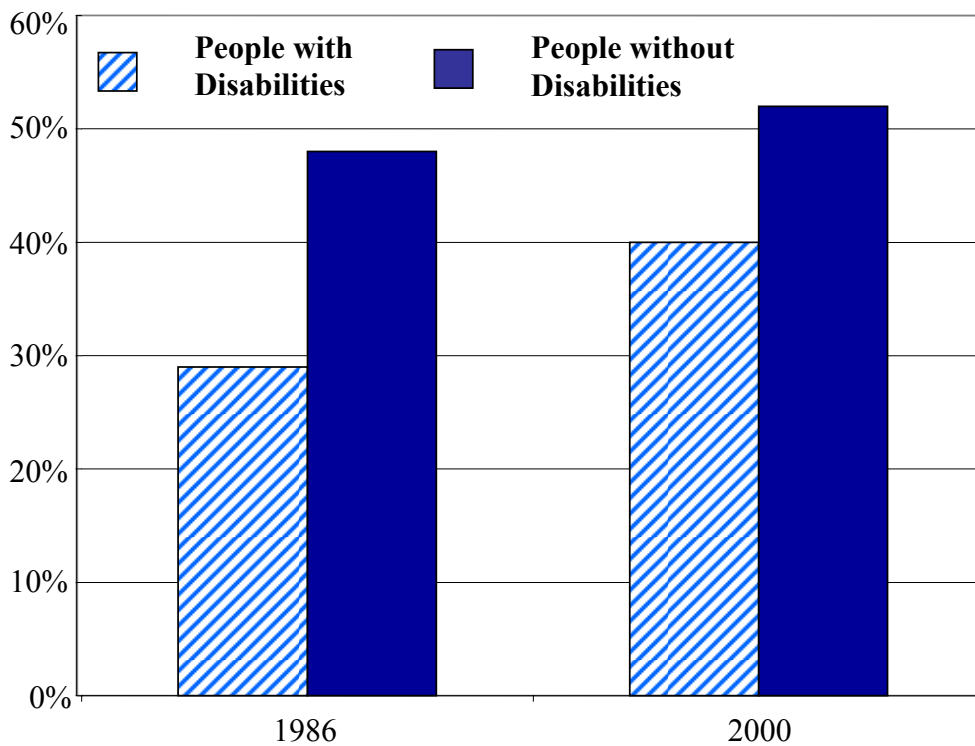
The 2004 N.O.D./Harris Survey confirms that people with disabilities are participating in higher education at higher rates than before the ADA (see Figure F). 40 percent of people with disabilities received some college or a degree (compared to 52 percent of people without disabilities) in 2004. In 1986, only 29 percent of people with disabilities were attempting college (compared to 48 percent of people without disabilities). Thus, the gap between people with disabilities and people without disabilities attending college has narrowed from 19 percentage



points to 12 percentage points. However, people with disabilities are earning degrees at the same rate (14 percent) as in 1986.<sup>258</sup>

While people with disabilities are now enjoying greater access to education than before the ADA, there has been some decrease in the percentage attending college (from 49 percent attending at least some college in 1998 to 40 percent in 2004). This tracks a similar decrease in college attendance among people without disabilities.

**Figure F: College Attendance of People With and Without Disabilities**



Major higher education testing agencies have been sued over testing accommodations for people with disabilities and, as a result, have improved the provision of accommodations. In 2001, in response to a lawsuit, the Educational Testing Service, which administers the GRE, SAT, GMAT, and other tests, agreed to stop “flagging” tests taken with accommodations.<sup>259</sup> In 2002, the U.S. Department of Justice reached a settlement agreement with the Law School Admissions Council to ensure provision of accommodations on the LSAT for students with physical and communication disabilities.<sup>260</sup> These changes among the “gatekeepers” to higher education have allowed more students with disabilities to pursue undergraduate and advanced degrees.

Though variable in quantity and quality, educational supports and services for students with disabilities are now available at most of the nation's 3000 postsecondary institutions.<sup>261</sup> A recent decision by the Ninth Circuit Court of Appeals may have made it more difficult for students with learning disabilities to obtain accommodations in higher education. In *Wong v. Regents of the University of California*,<sup>262</sup> the court found that a student with a learning impairment who was seeking accommodations in medical school was not "substantially limited" in the major life activity of learning and, therefore, was not protected by the ADA. The court found that, although he had been identified as having a learning disability as a child, because the student had succeeded in school (both with and without accommodations), he was not substantially limited in learning as compared to most people in the general population in their activities of daily living. The court found that the standard was not to compare the student's learning ability to other students in school, but to compare it to what most people do in their daily activities. Because the student in this case was able to read and learn as well as most people need to in their daily living activities, although not as well as a medical student needs to, he was considered to not be protected by the ADA.<sup>263</sup>

This interpretation of the ADA may be making it difficult for students with learning disabilities to obtain accommodations in higher education, because their success in education may be evidence against them and because the abilities required for success in higher education will not be the standard of comparison for determining substantial limitation.

### **3. Input from People with Disabilities**

Testimony from people with disabilities repeatedly emphasized the positive impact of greater access to higher education.<sup>264</sup>

I am blind since age twelve, born 1949. I graduated from our local, Labette Community College with honors in 2004. ADA very much helped to make it possible. First I was encouraged by state workers from Social Security Disability Services of Kansas. My instructors at the college were aware of ADA and its rules and provided needed reading for me, a blind person. The college was accessible, elevator, ramps, handicapped rest rooms, and teachers to read my exams or provide visuals and tutoring.<sup>265</sup>

## **C. Employment**

The effects of the ADA on employment can be assessed on two levels: Hiring and On-the-Job Accommodations. The ADA's effects on these two areas differ substantially.

### **1. Hiring**

#### **a. ADA Requirements**

Title I of the ADA prohibits disability discrimination in hiring and application processes.<sup>266</sup> Thus, employers may not reject qualified applicants because of their disabilities or their need for reasonable accommodations and may not adopt qualification standards that unnecessarily exclude people with disabilities.<sup>267</sup>

#### **b. Relevant Data**

According to the 2004 N.O.D./Harris Survey, just over one-third (35 percent) of people ages 18–64 with disabilities are employed compared to more than three-quarters of those without disabilities.<sup>268</sup> These figures have not changed from those reported in the comparable 1986 poll.<sup>269</sup> In fact, the percentage of people with disabilities who were working dropped from 1994 to 2000 to as low as 29 percent.<sup>270</sup> Additionally, the 2004 poll showed that people with disabilities are nearly three times as likely as people without disabilities (26 percent versus 9 percent) to have a household income of \$15,000 or less.<sup>271</sup> In 1986, 50 percent of people had a household income of \$15,000 or less (compared to 25 percent of people without disabilities).

Some researchers have gone so far as to suggest that the ADA caused employment declines for people with disabilities, but this conclusion has not been supported by empirical study.<sup>272</sup> Our environmental scan suggests that employment rates for people with disabilities have been mixed since the passage of the ADA. One author argues that:

A closer look at the employment measures suggests that the overall rate of employment may not be the best measure of job opportunities, because it includes many people unlikely to acquire jobs regardless of any improvement in employer attitudes or workplace accessibility. A larger proportion of working-age adults with disabilities are

not oriented toward participation in the labor force, either because they consider themselves unable to work or because they are engaged in other activities. That proportion has been growing—a disturbing development requiring closer scrutiny. But, when we leave this group [out of] statistics—when we consider only those people with disabilities who are able and available to work—we obtain what we believe to be a truer indication of changes in employer practices with regard to workers and job applicants with disabilities. When we do so, the picture brightens considerably. We find that employment opportunities improved significantly for people with disabilities—or, at least, for some people with disabilities—during the decade following the passage of the ADA.<sup>273</sup>

In an ADA Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary on September 13, 2006, Professor Robert Burgdorf Jr., a leading ADA scholar, posited that, because Supreme Court decisions have so restricted the use of Title I of the ADA, it is impossible to know whether it would be effective, if ever implemented, in improving employment opportunities for people with disabilities.

The ADA is a civil rights law. Even if implemented, the employment provisions of the ADA do not have the ability to eliminate the deep structural barriers to employment that people with disabilities face:

The ADA's antidiscrimination requirement can prevent an employer from refusing to hire a qualified person simply because the person has a disability, and the ADA's accommodation requirement can force the employer to make some changes in facilities or job tasks to enable individuals with disabilities to perform particular jobs. But those mandates do not require the employer to provide in-home personal-assistance service or transportation to enable an individual with a disability to get to work, nor do they require the employer to provide the individual with health insurance coverage that is as adequate as he or she can receive through Medicaid. The solutions to these problems require more than simply mandating that individual employers cease discriminating and provide

accommodations; they require more direct and sustained government interventions such as the public funding and provision of benefits.<sup>274</sup>

Unfortunately, there is a paucity of data on many questions regarding the employment of people with disabilities. NCD has an initiative underway to address the vacuum of research-based evidence and practices on the employment problems facing people with disabilities. NCD currently is conducting an “Employment Study” that will include an assertive and systematic review of both public and private policies and initiatives aimed at understanding the causes of underemployment and unemployment of people with disabilities and improving the employment of people with disabilities.

Incentives for employing people with disabilities warrant further study. For example, the Work Opportunity Tax Credit is a tax credit available to employers who employ people with disabilities and other disadvantaged groups. It does not appear that employers are taking advantage of this credit by hiring people with disabilities. In 1999, approximately 1 out of 790 and 1 out of 3,450 individuals with business affiliations reported the Work Opportunity Tax Credit on their returns, accounting for approximately \$254 million.<sup>275</sup> The Department of Justice sent newsletters on tax incentives to over seven million businesses in 2002–2003.<sup>276</sup> Nevertheless, a 2003 study by the Society of Human Resource Management found that only 16 percent of surveyed businesses had ever used the Work Opportunity Tax Credit.<sup>277</sup>

A 2003 survey of 501 employers found that one-fourth (26 percent) of employers said that their company employs at least one worker with a mental or physical disability.<sup>278</sup>

Research on corporate culture and disability indicates that “researchers, policymakers, business leaders, and the disability community must engage in meaningful dialogue about the examination of disability rights law and policy in general, and the implications of the Americans with Disabilities Act (ADA) of 1990 for people with disabilities and their families and employers in particular.”<sup>279</sup> They must also be cognizant of who Title I covers, particularly given the changing coverage as a result of various Supreme Court decisions.

A 2003 survey of 501 employers found that 49 percent of employers have made recruiting and interviewing locations accessible, but only 12 percent have changed the format of job applications to make them more accessible, or changed the tests or evaluations used in hiring or promotion. In all instances, larger firms are more likely than smaller firms to have made changes to their business practices to accommodate and recruit workers with disabilities.<sup>280</sup>

A 2004 N.O.D./Harris Survey confirms that people with disabilities continue to have difficulty breaking into the job market. Although the frequency of other types of job discrimination decreased from 1994 to 2004, the frequency of being denied a job interview remained stable. In 1994, approximately 29 percent of respondents who had experienced job discrimination reported being denied an interview because of their disability or health problem. In 2004, 27 percent reported being denied an interview.<sup>281</sup>

Although people with disabilities are seeking higher education, they do not appear to be benefiting from that education in terms of greater employment opportunities. The 2004 N.O.D./Harris Survey indicates that higher education does not correlate to employment for people with disabilities to the degree that it does for people without disabilities. Thus, while 82 percent of people without disabilities who have college degrees are employed full- or part-time, only 54 percent of college graduates with disabilities are employed. To some extent, this may reflect higher ages of respondents with disabilities, 17 percent of whom were retired, as compared to 3 percent of respondents without disabilities who were retired.<sup>282</sup> Education among people with disabilities also does not appear to correlate to higher income levels. 50 percent of college graduates with disabilities earned \$50,000 or less per year, while only 28 percent of graduates without disabilities earned \$50,000 or less. At the \$50,000–\$75,000 range, the percentage of graduates with and without disabilities was approximately equal (23 percent – 24 percent). Graduates with disabilities were much less likely to be earning at the higher levels (>\$75,000) than graduates without disabilities (16 percent versus 38 percent).<sup>283</sup>

### **c. Input from Employers**

Employers reported that businesses generally do not track the number of their employees with disabilities.<sup>284</sup> Because of the ADA prohibitions on pre-employment and post-employment

inquiries into disability, and the requirements of confidentiality of disability-related information, employers are discouraged, if not actually prohibited, from collecting and reporting such information. This makes it difficult to assess the progress of people with disabilities in employment, particularly of those who are successfully employed. It is likely that this fact is skewing the data on employment of people with disabilities, as employed people with disabilities are less likely to have the time to participate in surveys, forums, and meetings about disability and employment. Moreover, this inability to count and brag about hiring people with disabilities may be counterproductive to the goal of increasing employment.

Employers consistently commented that they had made significant changes to their employment application processes to make them more accessible to people with disabilities.<sup>285</sup> They also commented that the vagueness of the definitions of “person with a disability” and “reasonable accommodation” made compliance more difficult than it should be.<sup>286</sup>

#### **d. Input from People with Disabilities**

In the focus groups, public forums and e-mail responses, nearly half of those who addressed employment concerns suggested they had been discriminated against by employers. Across the board, the discrimination was believed to occur at the hiring stage. People with disabilities believed they had been turned down for jobs because of employers’ attitudes toward disabilities—an action difficult to prove in an employment discrimination case.

If the ADA has improved employment opportunities I would like to see the evidence. In my experience seeking employment with a visible disability I found employers uncomfortable with my situation. Although I was well-qualified for the positions I was never able to get past the initial interview nor was there any level of follow-up on the part of the companies. I believe that employers view the ADA as adversarial to their role.<sup>287</sup>

This view is consistent with the data indicating that hiring of people with disabilities has not increased since passage of the ADA. The hiring stage of the employment process is the most difficult to address under the ADA, as an applicant with a disability will rarely be told the

reasons he or she was not hired. Employers, who are discouraged by the ADA from counting employees with disabilities, cannot effectively publicize any positive hiring efforts they make.

Financial incentives for hiring people with disabilities have not been sufficient incentive to improve hiring of people with disabilities. NCD's ongoing Financial Incentives Study is investigating this issue. Although many government programs are directed at improving the employment rates of people with disabilities (e.g., health care, education, vocational rehabilitation, transportation subsidies, housing, and other areas) either directly, indirectly, or through specialized services, resources or environmental access, little is known about the extent, utilization, or impact that these financial incentives have on the everyday lives of people with disabilities. Financial incentives can be in many forms, including tax credits (e.g., for employees with disability-related work expenses or for employers) or the removal of disincentives to work. Financial incentives may be directed at people with disabilities who are seeking employment, for employees with disabilities, and for employers who hire people with disabilities; this will be considered along with some non-tax incentives for daily living that are of particular interest to people with disabilities. While many financial incentives have traditionally focused on improving employment, NCD will look at financial incentives in the broader context of self-sufficiency and integration into the larger society.

The Financial Incentives Study will:

- Identify factors that influence the use of financial incentives by employers, employees, and potential employees who are people with disabilities;
- Assess what is needed to increase the use of incentives and/or create new incentives;
- Examine the potential role of financial incentives with respect to aspects of living that affect obtaining and maintaining meaningful employment (e.g., affordable and accessible assistive technology, housing, transportation, health care, personal assistance, and other supports);
- Analyze the different approaches to financial incentives in selected states;
- Prepare a cost-benefit economic analysis model for employers.



## **2. Reasonable Accommodation and Promotion**

### **a. ADA Requirements**

Title I of the ADA requires employers to make reasonable accommodations to the known physical or mental disabilities of employees.<sup>288</sup> Reasonable accommodations can include making facilities accessible to employees with disabilities, job restructuring, reassignment to vacant positions, modification or acquisition of accessible equipment, adjustment of training materials, provision of interpreters and readers, and other accommodations.<sup>289</sup>

### **b. Relevant Data**

It appears that, once a person with a disability is hired, he or she is less likely to experience employment discrimination and is more likely to receive reasonable accommodations, if needed, than before the ADA. The ADA has similar positive effects for people who acquire their disabilities while they are employed.

According to a 1995 Harris Survey of employers, 80 percent of executives of large companies reported that the cost of accommodating people with disabilities had increased only a little or not at all. Only seven percent reported a large increase. Sixty-six percent of the executives reported no increase in litigation, and only 14 percent saw “a little” increase. The number of companies that had actually made accommodations had increased. In a 1986 survey of employers, Harris found that 51 percent of corporations surveyed had made some accommodations.<sup>290</sup> In 1995, the figure had risen to 81 percent.<sup>291</sup>

In the 2003 Harris Survey of 501 employers, which included small employers, only 40 percent provided training of any kind to their employees regarding working with or providing accommodations to people with disabilities. Further, only 34 percent of companies with 5–24 workers provided training to their employees in this area. Fifty-two percent of larger companies employing more than 25 workers provided training.<sup>292</sup>

Little empirical evidence is available to understand employers’ decisions to provide accommodations. One line of study explores employee and employer factors associated with decisions to accommodate. The analyses are based on nationwide data from interviews with

employers who contacted the Job Accommodation Network (JAN) concerning workplace accommodations.<sup>293</sup> The data was derived from more than 1,000 interviews that took place between 2004 and 2005 with employers who consulted JAN regarding employee accommodations. The majority of interviews concerned accommodating a current employee. More than three-fourths (82.4 percent) of these consultations focused on retaining an employee and an additional 1.8 percent concerned promoting a current employee.<sup>294</sup> Accommodation inquiries about job applicants made up a small percentage of the sample (4.6 percent), as did inquiries about hiring new employees (1.6 percent).<sup>295</sup> A few inquiries involved company-wide issues. For more than half of the consultations, workplace accommodations were made subsequent to the consultation with JAN. Of the 540 employers who provided feedback, accommodations had been made (or were pending implementation) in 55.2 percent of the consultations.<sup>296</sup> The most common reason reported for not making an accommodation involved a determination by the company that it was not required under the ADA or any other law (58.5 percent).<sup>297</sup>

Accommodations were most likely to be made for employees who were considered to have a substantial limitation of a major life activity. Accommodations were made in 61.2 percent of the 402 consultations for employees with substantial limitations.<sup>298</sup> Accommodations were made in 42.6 percent of cases for employees whom the employer considered not to have a substantial limitation.<sup>299</sup> Whether an accommodation was made was significantly related to the employer's ratings of the employee's ability to work *with* accommodations.<sup>300</sup>

The researchers also analyzed employer reports of costs and benefits associated with providing the accommodations. Cost and benefit data were available only in those situations in which the employer had decided to provide the accommodation. Of the respondents who made an accommodation, 226 were able to provide the actual or estimated direct cost of the accommodation.<sup>301</sup>

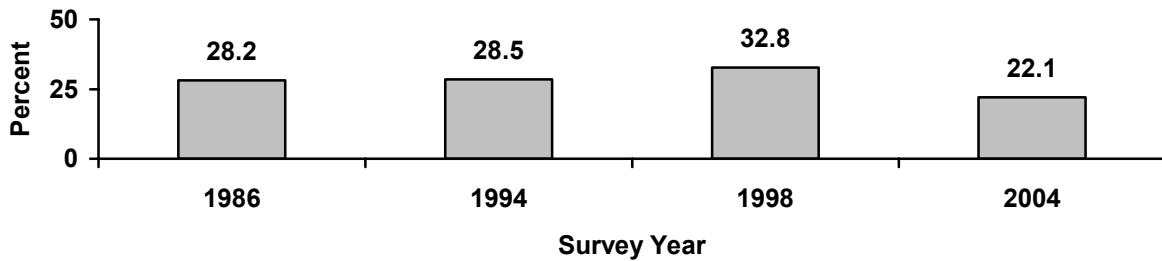
Forty-nine percent of the accommodations made had no cost. Almost all employers reported that providing the accommodation benefited the company by allowing it to retain (91.6 percent) and/or promote (11.3 percent) a qualified employee.<sup>302</sup> Other direct benefits reported included

eliminating the cost of training a new employee (59.5 percent), saving on worker's compensation or insurance costs (43.0 percent), increasing the accommodated worker's productivity (76.7 percent), improving the accommodated worker's attendance (53.3 percent), and increasing the diversity of the company (41.4 percent).<sup>303</sup>

The study's core findings include: (1) Current employees with substantial limitations of major life activities are substantially more likely to receive accommodations, compared to those without substantial limitations; (2) Employers are more likely to provide accommodations for employees whose work-related limitations are mitigated by effective accommodations; (3) Accommodations for employees without substantial limitations cost less than those provided to employees with substantial limitations; and (4) Overall, accommodation costs are low and benefits are relatively high.<sup>304</sup>

According to the 2004 N.O.D./Harris Survey, fewer people with disabilities are experiencing on-the-job employment discrimination (see Figure G). A major purpose of the ADA is to eliminate discrimination against people with disabilities in employment. In 2004, fewer respondents with disabilities, who were working full- or part-time, reported experiencing employment discrimination than in 1986, and there was an even greater decrease in people with disabilities reporting employment discrimination than in 1998. In 1986, for instance, 28.2 percent of Harris Poll respondents with disabilities who were employed reported that they had encountered job discrimination because of their disability or health problem. In 1998, one third (32.8 percent) of those surveyed reported experiencing job discrimination and this rate fell substantially by 2004 to 22.1 percent.

**Figure G: Harris Poll Respondents with Disabilities Working Full- or Part-Time Who Report Experiencing Employment Discrimination**



In regard to promoting employees with disabilities, the Harris surveys have found that respondents in 2004 were less likely to have been denied a promotion than in earlier years. More than one in four (24.6 percent) respondents in 1994 who had experienced job discrimination reported being denied a promotion because of their disability. By 2004, this had been reduced to less than one in five (16.7 percent) (see Table D).<sup>305</sup>

**Table D: Type of Employment Discrimination Due to Disability**

Type of Employment Discrimination	Percentage of Employed Participants		
	1994	1998	2004
Refused an interview	28.8%	23.7%	26.9%
Refused a job	61.4%	59.3%	30.8%
Denied a promotion	24.6%	29.3%	16.7%
Given less responsibility than co-workers	37.3%	39.0%	14.1%
Paid less than co-workers	18.6%	32.8%	12.8%
Denied health insurance	23.3%	31.7%	3.8%
Denied other work related benefits	22.4%	23.3%	6.4%

Compared to their 1994 cohorts, 2004 employed respondents were significantly less likely to have been refused a job, given less responsibility than co-workers, or been denied health insurance or other work benefits because of their disability. In 1994, 61.4 percent of respondents who had experienced job discrimination reported being denied a job because of their disability. In 2004, only 30.8 percent reported having been denied a job. In 1994, more than two out of three respondents (37.3 percent) who had experienced job discrimination reported that they had been given less responsibility than their co-workers. Significantly fewer similar respondents in 2004, 14.1 percent, reported this experience. In 1994, of participants who had experienced job discrimination, 23.3 percent reported being denied health insurance, and 22.4 percent reported being denied other work-related benefits. In 2004, only 3.8 percent were denied health insurance, and 6.4 percent were denied other work-related benefits.

### **c. Input from People with Disabilities and Employers**

One company noted they had made changes in their policies as a result of the ADA, even though they had been viewing it as a diversity issue for 30 years prior to the ADA. They noted that the ADA brought more disability to the forefront as a key initiative for managers, hiring, conversation in the company, and for employees. That company indicated that it had great impact on their organization or culture based on the breadth and intent of the ADA, and that the ADA brought things to the next level of consciousness, that next step of diversity or affirmative action in some people's organization. And, they noted it gave access to potential hiring of individuals that maybe they had not considered to the same degree before and it obviously changed directions and areas of recruiting individuals.

Another employer said, in general, they believed the Act had a positive influence on their organization, allowing them to develop credibility with employees in responding to requests for accommodations, reinforcing from their advertising that they complied both with the letter and the spirit of the law. They indicated it gave them an opportunity to display that, in fact, that's the way they operate their business, that it's a positive any time that they can display our commitments to employees and give something to reinforce other messages about commitment to employees.

One employer discussed accommodations that involve some type of technology or access accommodation, and shared that they had set up a team at their headquarters for assistive technology that works on technical or access accommodations of the organization. They set that team up to insure that technology accommodations were compatible with their other technology platforms, because local managers didn't have sufficient information to incorporate seamlessly with their existing technology platform. They found as a result that they received much better pricing and much more accommodation for future technology changes, noting also that the process works very smoothly, and that it's very responsive to their technology accommodation needs.

One company indicated they have a localized accommodation process, but a centralized appeal process if accommodations are denied, to ensure people consistently receive the accommodations they need and are entitled to under the law. Two employers indicated they have teams to assess accommodation needs and determine the best way to meet the request for reasonable accommodations after an assessment of the individual, job, environment, and other factors related to that individual's ability to do the job in the work location.

One employer stated that of the reasonable accommodation requests she receives, "probably 70 percent of the requests I see, the person isn't actually disabled."<sup>306</sup> Another equated reasonable accommodation with preferential treatment.<sup>307</sup>

In our focus groups with people with disabilities, one individual discussed making a request for a reasonable accommodation, which he received after putting the request in a letter.<sup>308</sup> Another participant said that he knew a person who had received extensive accommodations, which he believes she would not have gotten without the ADA.<sup>309</sup>

The majority of public forum participants with disabilities who made comments about reasonable accommodations said employers were not doing enough to provide them. E-mail writers were more evenly split, with 51 percent saying they had received an accommodation from an employer.

### 3. Lawsuits

Private lawsuits under Title I of the ADA are rarely decided in favor of people with disabilities. The scholarship on Title I ADA court cases is voluminous. Our environmental scan found that the overwhelming majority of articles, 79 percent, were pessimistic or negative about the impact of Title I of the ADA on the employment prospects of people with disabilities. Three main reasons are given by scholars for the law's perceived failure: adverse rulings by the Supreme Court as well as by many lower courts; the limits of antidiscrimination law in changing the broader problems faced by people with disabilities; and the limitations of the "accommodation mandate."<sup>310</sup>

Many scholars say the restrictive Supreme Court ADA decisions make it harder for people with disabilities to prove that they have disabilities, bolster the defenses that can be used by those accused of discrimination, and limit the damages and legal costs that can be collected by those whose complaints are upheld.<sup>311</sup> The National Council on Disability issued a report in 2003 cataloguing the Court's negative impact on lower court decisions.<sup>312</sup> In December 2004, NCD published *Righting the ADA*, which analyzed the Supreme Court's ADA decisions severely restricting the ADA protections available to applicants and employees with disabilities.<sup>313</sup> This Report includes draft legislative language which would restore ADA protections for people with disabilities who experience employment discrimination.

The American Bar Association has conducted a number of studies on Title I ADA court cases and most recently (2003) found that in 97.3 percent of Title I cases, the employer won.<sup>314</sup> The Equal Employment Opportunity Commission (EEOC), which enforces Title I, reports that in FY 2004 the agency received 15,376 charges of disability discrimination, resolved 16,949 disability discrimination charges and recovered \$47.7 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation). These rates have dropped during the last several years. For instance, in FY 1998, EEOC resolved 23,324 charges, and recovered \$53.7 in monetary benefits.<sup>315</sup> These drop-offs in recent years could be attributed to people with disabilities experiencing less discrimination by employers, the discouragement of filings because employers normally win Title I cases, the narrowing of the ADA by the courts, or to a combination of the three factors.

Some scholars argue that these figures regarding the success (or lack thereof) of disability employment lawsuits are not reflective of the actual impact of the ADA. The vast majority of claims are resolved prior to any litigation and, people with disabilities appear to have been more successful at obtaining reasonable accommodations and fair treatment on the job than before the ADA.<sup>316</sup>

## **D. Recommendations – Economic Self-Sufficiency**

- The Department of Education should work with colleges, universities, and public schools to enhance the effectiveness of supports, such as preparing students to better negotiate their supports and services, assisting students with coordinating and managing supports and services, and facilitating the use of technology in education and employment;
- The Department of Education should improve coordination of services between the educational system and the vocational rehabilitation system, particularly as regards funding for services and assistive technology;
- Disability organizations, and research and policy centers focused on economic empowerment for people with disabilities such as the Burton Blatt Institute, should work with philanthropists and federal and state government agencies to improve availability of scholarship, tuition waiver, and loan repayment programs for students and adults with disabilities who wish to pursue higher education;
- Congress should extend and expand the Mental Health Parity Act to ensure that people with mental health disabilities are able to secure treatment;
- The National Institute on Disability and Rehabilitation and Research should study insurance coverage issues that prevent people with disabilities from accessing private insurance;
- The Equal Employment Opportunity Commission, the Department of Labor, and National Institute on Disability and Rehabilitation and Research should place immediate priority on increasing the hiring of people with disabilities, through:
  - Study the reasons employers are not hiring people with disabilities;
  - Conduct confidential surveys of hiring practices;



- Improve job placement services for people with disabilities and programs to assist employers to recruit individuals with disabilities;
- Improve positive incentives and tax breaks for hiring people with disabilities;
- Eliminate Social Security and Medicaid regulations that discourage people with disabilities from working;
- Assistance with research and purchase of accessible equipment;
- DOJ and EEOC should conduct testing of business hiring practices to identify discriminatory hiring practices and pursue enforcement actions.



## Summary of Findings

Most people with disabilities who participated in the public forums, focus groups, and information requests report the ADA has had a significant positive impact on their lives. This was also true of the participants in the 2004 Harris Survey, in response to which most people with disabilities reported improvement in quality of life since passage of the ADA. According to the 2000 Harris Poll of Americans with Disabilities, more than 60 percent of people with disabilities perceived significant improvements in public facility access, personal quality of life, and public attitudes.

The most significant improvements appear to have occurred in telecommunications, transportation, and access to public accommodations. However, the lack of access to information resulted in the perception by many people who are blind or visually impaired that the ADA was not achieving its goals.

People with disabilities have mixed perceptions about the improvement of accessibility to state and local governments, and the absence of any ongoing tracking of access improvements by state and local governments makes it difficult to assess progress in this area. While access to public transportation, public sidewalks, and voting has increased, due in part to the active enforcement efforts of DOJ, independent living remains elusive for many because of the slow progress of governments in shifting from an institutional bias to home and community-based health care.

Strides are being made in access to, and participation in, higher education for people with disabilities. However, people with disabilities lag behind their nondisabled peers in graduation rates and post-college job success.

While some gains are seen in employment, particularly for people who become disabled while already in a job, obtaining a job when one has a visible disability remains difficult, and the percentage of people with disabilities living in poverty virtually is the same as before the ADA was implemented. Significant disparities exist in access to health insurance and health care for people with disabilities, as compared to people without disabilities—even when comparing

workers with disabilities and workers without disabilities. While little data exist on the financial assets of people with disabilities, economic self-sufficiency remains elusive for too many people with disabilities.

## **Summary of Recommendations**

Based on these findings, this report makes the following recommendations:

### **General Recommendations**

Federal agencies should fund and implement state-by-state surveys of people with disabilities, based on the N.O.D./Harris Surveys using statistically significant survey populations and distinguishing among rural and urban communities, minority communities, and high, middle, and low income communities.

### **Equality of Opportunity – Transportation**

- Congress should expand accessibility requirements for rail services beyond key stations;
- The Department of Transportation should conduct extensive training and outreach for public transit providers regarding maintenance and stop announcements;
- The Department of Transportation should work with state and local governments and taxi providers to develop and publicize effective incentives for private taxi providers to offer accessible vehicles;
- The Department of Transportation should conduct extensive training and outreach for public and private transportation services regarding service animals and increase high-profile enforcement actions by the Departments of Justice and Transportation;
- The Department of Transportation should work with paratransit providers, state and local governments, transportation experts, and representatives of disability and aging communities to explore paratransit options such as more subscription service, more flexible services, and other ideas to close the expectation gap and increase usability of paratransit for riders with disabilities;
- The Department of Transportation should study and test options for providing transportation services to people with disabilities in rural areas.

## **Equality of Opportunity – Sidewalks and Curb Ramps**

- The Department of Justice should promulgate ADA regulations for public rights-of-way as soon as possible;
- The Department of Transportation should increase funding for making public rights-of-way accessible, including sidewalk access, curb ramp installation, and accessible street crossings;
- The Department of Justice should develop and disseminate guidelines for the prioritization of curb ramp installations, so that the most needed and useful curb ramps are installed first.

## **Equality of Opportunity – Public Accommodations**

- The National Institute on Disability and Rehabilitation Research should conduct a survey of businesses, perhaps through the chambers of commerce or small business associations, to determine the degree to which businesses have instituted readily achievable barrier removal efforts, and provide guidance to Congress on adequately funding the Department of Justice to enforce this part of the statute;
- The Department of Justice and National Institute on Disability and Rehabilitation Research should provide expert, individualized, low-cost technical assistance and consulting to small businesses. The ADA and IT Centers and local offices of the National Disability Rights Network are possible agencies to carry out this effort;
- The Department of Justice should expand its Project Civic Access to increase enforcement in local areas by reviewing businesses in identified localities;
- Congress should require states to submit their building codes for access certification by the DOJ;
- The U.S. Access Board and Department of Justice should continue coordination with model building code agencies;
- The Department of Justice should increase enforcement and education regarding how to serve customers with visual and hearing impairments, particularly as it pertains to Web access and use of TTYs and relay services;

- DOJ should require Web sites of places of public accommodations and commercial facilities to comply with federal Web accessibility standards;
- The Department of Justice and National Institute on Disability and Rehabilitation Research should develop technical assistance materials regarding what people with disabilities and businesses should expect of existing buildings of various sizes years after passage of the ADA.

### **Equality of Opportunity – Accessibility of Telecommunications**

- The Department of Justice should publish information for businesses about how TRS works, how to use it, and the legal obligation to use it. The ADA and IT Centers could be funded to provide this information;
- The Federal Communications Commission should establish standards to encourage the continued development of Video Relay Services.

### **Full Participation – State and Local Government Services**

- The Department of Justice and other federal agencies should focus on enforcing the ADA obligations of government agencies;
- Federal agencies should use initiatives such as Project Civic Access to increase ADA compliance at the state and local levels;
- The Department of Justice should use targeted, high-profile litigation on particularly important issues, such as access to courts, medical care, and education to increase state and local ADA compliance.

### **Full Participation – Voting**

- The Department of Justice should immediately implement the Help America Vote Act requiring installation of electronic voting equipment;

- The National Institute on Disability and Rehabilitation Research should study and publish the involvement of people with disabilities in civic opportunities, such as government office;
- The National Organization on Disability should encourage state and local governments to emphasize involvement of the disability community as part of their diversity efforts and provide technical assistance to help government agencies reach out to people with disabilities.

## **Community Integration**

- Congress should increase Medicaid support for community-based treatment settings;
- Congress should pass and fully fund the Money Follows the Person Act,<sup>317</sup> and Medicaid Community-Based Attendant Services and Supports Act;<sup>318</sup>
- Congress should require states to expeditiously complete effective *Olmstead* plans, consistent with HHS guidance;
- The Department of Health and Human Services should require states to fund personal care services when needed to allow a person with a disability to remain in their community;
- The Departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Justice, and Labor, and Equal Employment Opportunity Commission, working with state and local governments and community agencies should implement local initiatives to extend the integration mandate to housing, education, transportation, employment, and other areas affecting people with disabilities;
- The Department of Justice should increase and target enforcement of the Civil Rights of Institutionalized Persons Act on requiring effective deinstitutionalization efforts and publishing creative and effective programs to provide community-based services;
- The Department of Labor's program funding home modifications should be significantly expanded to allow people with disabilities and the elderly to live in their communities;
- The Departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Justice, and Labor, and Equal Employment Opportunity Commission, should work with disability communities and others to develop an overall national policy framework for community integration of people with disabilities;



- The Department of Health and Human Services should study systems of long-term care and long-term care insurance to eliminate unnecessary institutionalization of people with disabilities and aging people.

## **Economic Self-Sufficiency**

- The Department of Education should work with colleges, universities, and public schools to enhance the effectiveness of supports, such as preparing students to better negotiate their supports and services, assisting students with coordinating and managing supports and services, and facilitating the use of technology in education and employment;
- The Department of Education should improve coordination of services between the educational system and the vocational rehabilitation system, particularly as regards funding for services and assistive technology;
- Disability organizations should work with philanthropists and federal and state government agencies to improve availability of scholarship, tuition waiver, and loan repayment programs for students and adults with disabilities who wish to pursue higher education;
- Congress should extend and expand the Mental Health Parity Act to ensure that people with mental health disabilities are able to secure treatment;
- The National Institute on Disability and Rehabilitation Research should study insurance coverage issues that prevent people with disabilities from accessing private insurance;
- The Equal Employment Opportunity Commission and National Institute on Disability and Rehabilitation Research should place immediate priority on increasing the hiring of people with disabilities.



## Conclusion

The Americans with Disabilities Act has fulfilled much of its promise. Today's world is a better place for many people with disabilities because of the ADA. People with disabilities have greater access to the goods and services provided by their local communities, businesses, and states and municipalities than they did before 1990. Public transit systems are more accessible to people with disabilities, although problems remain for rural residents with disabilities, paratransit users, and bus riders with visual impairments. The telecommunications title of the ADA has been invaluable in connecting people with hearing and/or speech impairments with the hearing world. More and more young people with disabilities are going to college than before the ADA, which may be the best solution to the high unemployment and low income rates in the disability community.

The *Olmstead* decision, when fully implemented, could go a long way to promoting the goals of full participation and independent living for people with disabilities, especially those with mental illnesses or cognitive disabilities. Time and again, people in the focus groups, interviews and public forums, and through e-mail told us that funding, understanding, and enforcement were the keys to making the ADA work better. There are yet many miles and a long march to go before the full promise of the ADA will be realized. But there is no doubt this country is on the road to that vision of justice that Justin Dart and thousands of other Americans with disabilities started us on 16 years ago.



## **Appendix A: Blue Ribbon Panel**

- *Chair of Blue Ribbon Panel*—Peter Blanck, Chairman, The Burton Blatt Institute, and University Professor, Syracuse University

### **Panel Members**

- Paul Baker, Director of Research Center for Advanced Communications, Georgia Institute of Technology
- Robert Herman, Advocacy Attorney, Paralyzed Veterans of America
- Eve Hill, Executive Director, Disability Rights Legal Center, and Visiting Associate Professor of Law, Loyola Marymount University
- Carmen Jones, Founder and President, Solutions Marketing Group
- Doug Kruse, Professor of Human Resource Management, Rutgers University, and Research Associate, National Bureau of Economic Research
- Ken McGill, Director, Office of Employment Support Programs, Social Security Administration
- Steve Mendelsohn, Executive Director, Project Rebirth
- Ken Nakata, Director of Disability Initiatives and Government Compliance, BayFirst Solutions
- Lisa Schur, Assistant Professor of Labor Studies and Employment Relations, Rutgers University
- Michael Stein, Cabell Research Professor of Law, College of William & Mary



## **Appendix B: Methodology**

### **Environmental Scans**

A comprehensive environmental scan was completed to collect documents discussing the impact, positive or negative, that the ADA has had on the lives of people with disabilities and on the greater society. The project researchers gathered approximately 500 documents from a range of sources. The documents collected included journal articles from the social science and legal disciplines, settlement agreements from the Department of Justice's Web site, case law summaries, e-mails from NCD's "Call for Comments," transcripts from public forums held in five locations around the United States, and targeted interviews with key federal agency officials and nonprofit organization affiliates. The data collected was periodically updated and a coding scheme was developed to categorize the nature and content of data sources.

The project team cataloged the reports, journal articles, books, other documents published or posted to relevant federal agency and non-profit organization Web sites, and the "testimony related documents" from NCD's "Call for Comments," public forums, and Blanck & Associates' requests for comments and targeted interviews.

For the testimony related documents, short submissions, such as e-mail, were entered in their entirety into the database. The submissions received from the "Request for Comments" were lengthy, and thus, abstracted and entered into the database.

In selecting documents for collection, the primary question was "Does the document describe or discuss the impact of the ADA, beyond merely repeating the law in a more user friendly format?"

### **Environmental Scan Research Steps**

1. Researchers conducted an extensive search of the Web for documents related to the ADA. Particular attention was given to organizations that represented stakeholders from the business community and their publications.

2. In addition, researchers identified an additional list of federal agencies and disability organizations, including stakeholders and scholars who have studied ADA implementation and visited their Web sites, conducting the same scan as above (see step 1).
3. To supplement the data collection, researchers included relevant documents collected on two concurrent projects addressing ADA implementation that were not identified in steps 1 or 2 above. These two projects included:
  - a. A search for all empirical studies of the ADA, published between 1990–2005, in law and social science journals.
  - b. A search for all law review and social science review articles that had been published regarding the ADA since December 2003 (gathered originally for the purpose of updating the Blanck, Hill, Siegel, & Waterstone (2004) disability law casebook<sup>319</sup>).
4. Researchers conducted a scan for academic and other scholarly books that referenced “Americans with Disabilities Act” in the title. These books were located using the online SUMMIT catalog at Syracuse University and the Lexis and Westlaw commercial publication Web sites.
5. Additionally, researchers visited the following Web sites and collected any new documents not identified during steps 1–3. These included:
  - The Burton Blatt Institute Web site (publications by BBI staff).<sup>320</sup>
  - The Web sites of relevant BBI national partners.<sup>321</sup>
  - The ADA Portal – a collection of documents available from the Disability Business Technical Assistance Centers (DBTACs).<sup>322</sup>
  - The Social Science Research Network Web site (post-December 2003 articles).<sup>323</sup>
6. Other Notes: Disability organization Web sites were visited. Summaries of the Supreme Court cases decided pursuant to all Titles of the ADA were collected using the summaries available from *Findlaw* as the abstract.



7. With some relevant topics, it was difficult to distinguish the ADA impact from the impact of other legislation or policy decisions. This was especially true in the area of housing. For instance, the *Olmstead* community integration mandate overlaps with housing issues under the Fair Housing Act Amendments.

## **Focus Groups**

Project staff conducted nine focus groups, seven for people with disabilities and two for employers. Each group consisted of fewer than ten individuals. Focus groups for people with disabilities were organized for the following disability populations: developmental disabilities, learning disabilities, psychiatric disabilities, mobility disabilities, hearing disabilities, and vision disabilities. The focus group for people who are deaf or hard of hearing was conducted in Washington, DC. All of the other focus groups were conducted by telephone and included individuals from all regions of the country.

Key topics for the focus groups of people with disabilities were based on the overarching goals of the ADA:

- Equality of opportunity – patterns and examples of access provided to people with disabilities to transportation, business, and government goods and services;
- Full participation – patterns and examples of inclusion of people with disabilities in community activities, including political participation;
- Independent living – patterns and examples of how individuals have been able to exercise control over their lives, choosing among acceptable options without undue control by others;
- Economic self-sufficiency – patterns and examples of how people with disabilities have gained greater access to education and employment opportunities and related economic benefits.

Key topics for employer focus groups were:

- experiences hiring people with disabilities;

- experiences employing people with disabilities;
- experiences providing reasonable accommodations for employees with disabilities.

## **Public Forums**

Five day-long public forums were held in the following cities: Iowa City, Iowa; Los Angeles, California; Houston, Texas; Savannah, Georgia; and Washington, DC. Participants were people with disabilities, their family members, disability advocates, as well as employers and representatives of local, state, and federal agencies. People were asked to provide testimony about how the ADA had impacted their lives in terms of telecommunications access, transportation, education, employment opportunities, access to goods and services provided by state and local governments, and access to public accommodations operated by private entities.

The publicity for the forums resulted in 112 e-mail statements from people with disabilities who could not attend the forums. These comments were also included in the database for analysis, and are reflected in the findings.

## **Interviews**

One-on-one interviews were conducted with 24 individuals representing federal agencies that implement or enforce the ADA, as well as with officials of state and local governments, private and public agencies that provide services to people with disabilities, business and trade associations, and disability organizations whose constituencies were not represented by the focus groups. Questions asked of participants were related to the four broad goals of the ADA, but each interview focused on the unique perspective of the agency or association represented.

## **Appendix C: Mission of the National Council on Disability**

### **Overview and purpose**

The National Council on Disability (NCD) is an independent federal agency with 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The purpose of NCD is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities regardless of the nature or significance of the disability and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

### **Specific duties**

The current statutory mandate of NCD includes the following:

- Reviewing and evaluating, on a continuing basis, policies, programs, practices, and procedures concerning individuals with disabilities conducted or assisted by federal departments and agencies, including programs established or assisted under the Rehabilitation Act of 1973, as amended, or under the Developmental Disabilities Assistance and Bill of Rights Act, as well as all statutes and regulations pertaining to federal programs that assist such individuals with disabilities, to assess the effectiveness of such policies, programs, practices, procedures, statutes, and regulations in meeting the needs of individuals with disabilities.
- Reviewing and evaluating, on a continuing basis, new and emerging disability policy issues affecting individuals with disabilities in the Federal Government, at the state and local government levels, and in the private sector, including the need for and coordination of adult services, access to personal assistance services, school reform efforts and the impact of such efforts on individuals with disabilities, access to health care, and policies that act as disincentives for individuals to seek and retain employment.
- Making recommendations to the President, Congress, the Secretary of Education, the director of the National Institute on Disability and Rehabilitation Research, and other officials of

federal agencies about ways to better promote equal opportunity, economic self-sufficiency, independent living, and inclusion and integration into all aspects of society for Americans with disabilities.

- Providing Congress, on a continuing basis, with advice, recommendations, legislative proposals, and any additional information that NCD or Congress deems appropriate.
- Gathering information about the implementation, effectiveness, and impact of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 12101 et seq.).
- Advising the President, Congress, the commissioner of the Rehabilitation Services Administration, the assistant secretary for Special Education and Rehabilitative Services within the Department of Education, and the director of the National Institute on Disability and Rehabilitation Research on the development of the programs to be carried out under the Rehabilitation Act of 1973, as amended.
- Providing advice to the commissioner of the Rehabilitation Services Administration with respect to the policies and conduct of the administration.
- Making recommendations to the director of the National Institute on Disability and Rehabilitation Research on ways to improve research, service, administration, and the collection, dissemination, and implementation of research findings affecting people with disabilities.
- Providing advice regarding priorities for the activities of the Interagency Disability Coordinating Council and reviewing the recommendations of this council for legislative and administrative changes to ensure that such recommendations are consistent with NCD's purpose of promoting the full integration, independence, and productivity of individuals with disabilities.

Preparing and submitting to the President and Congress an annual report titled *National Disability Policy: A Progress Report*.

## **International**

In 1995, NCD was designated by the Department of State to be the U.S. government's official contact point for disability issues. Specifically, NCD interacts with the special rapporteur of the United Nations Commission for Social Development on disability matters.

## **Consumers served and current activities**

Although many government agencies deal with issues and programs affecting people with disabilities, NCD is the only federal agency charged with addressing, analyzing, and making recommendations on issues of public policy that affect people with disabilities regardless of age, disability type, perceived employment potential, economic need, specific functional ability, veteran status, or other individual circumstance. NCD recognizes its unique opportunity to facilitate independent living, community integration, and employment opportunities for people with disabilities by ensuring an informed and coordinated approach to addressing the concerns of people with disabilities and eliminating barriers to their active participation in community and family life.

NCD plays a major role in developing disability policy in America. In fact, NCD originally proposed what eventually became ADA. NCD's present list of key issues includes improving personal assistance services, promoting health care reform, including students with disabilities in high-quality programs in typical neighborhood schools, promoting equal employment and community housing opportunities, monitoring the implementation of ADA, improving assistive technology, and ensuring that people with disabilities who are members of diverse cultures fully participate in society.

## **Statutory history**

NCD was established in 1978 as an advisory board within the Department of Education (P.L. 95-602). The Rehabilitation Act Amendments of 1984 (P.L. 98-221) transformed NCD into an independent agency.



## Endnotes

---

<sup>1</sup> Money Follows the Person Act of 2005, H.R. 3063, 109th Cong. (1 Sess. 2006).

<sup>2</sup> H.R. 910, 109<sup>th</sup> Cong.

<sup>3</sup> Okla. Disability Law Ctr., Justin Dart at ADA Eleventh Anniversary, *Protection & Advocacy*, Sept. 2001, at <http://home.flash.net/~odlcokc/9-01nl.htm>.

<sup>4</sup> See Peter Blanck & Michael Millender, Before Disability Civil Rights: Civil War Pensions and the Politics of Disability in America, 52 *Ala. L. Rev.* 1 (2000) (referenced throughout this section); see also Matthew Sanders, History of Civil War Pension Laws, in *R.W. Fogel, Public Use Tape on the Aging of Veterans of the Union Army: Surgeons' Certificates, 1860-1940: Data User's Manual* 213 (1999).

<sup>5</sup> Sanders, *supra* note 4. For an overview, see also Peter Blanck et al., *Disability Civil Rights Law and Policy* (2004).

<sup>6</sup> Harlan Hahn, Accommodations and the ADA: Unreasonable Bias or Biased Reasoning?, *Berkeley Journal of Employment and Labor Law*, 21 *Berkeley J. Emp. & Lab. L.* 166 (2000).

<sup>7</sup> K. D. Seelman, Employment of individuals with disabilities: Opportunities and challenges: The best of times/the worst of times (July 17, 2000. Paper presented at Employment and Disability Policy Summer Institute, Cornell University, Ithaca, NY; Richard K. Scotch & Kay Schriener, Disability as Human Variation: Implications for Policy, 549 *Annals Am. Acad. Pol. & Soc. Sci.* 148 (1997).

<sup>8</sup> Nat'l Council Disability (NCD, 1996). *Achieving independence: The challenge for the 21<sup>st</sup> century: A decade of progress in disability policy: Setting an agenda for the future*. Washington, D.C.: National Council on Disability.

<sup>9</sup> 42 U.S.C. § 12101(a)(2), 42 U.S.C. § 12101(a)(7) (2000).

<sup>10</sup> *Id.* § 12101(a)(8).

<sup>11</sup> Prior to the ADA, the International Center for the Disabled (ICD) contracted with Louis Harris and Associates in 1986 to survey Americans with disabilities about their lives and the obstacles they faced. Louis Harris and Associates conducted telephone interviews with 1000 individuals aged 16 and over. Post-ADA, the National Organization on Disability (N.O.D.) contracted with Louis Harris and Associates to complete similar national surveys of approximately 1000 individuals with disabilities in 1994, 1998, 2000 and 2004. Although the surveys differed somewhat over time, many questions remained the same and, for others, structured response “foils” could be used to create similar questions. The findings herein are the first time these survey questions and data were reviewed across time. Two of these questions focus directly on the ADA—awareness of the ADA, and its perceived impact. The other questions serve as indicators of ADA influences (e.g., experiences of job discrimination).

<sup>12</sup> NCD E-mail Call for Comments, submitted comments on May 10, 2005.

<sup>13</sup> Nat'l Org. Disability, 2000 *National Organization on Disability/Harris Survey of Americans with Disabilities* tbl. 22C (2000) [hereinafter N.O.D. 2000], <http://www.N.O.D..org/index.cfm?fuseaction=Page.viewPage&pageID=31>.

<sup>14</sup> Nat'l Org. Disability, 2004 *National Organization on Disability/Harris Survey of Americans with Disabilities* 88 (2004) [hereinafter N.O.D. 2004], <http://www.N.O.D..org/index.cfm?fuseaction=Page.viewPage&pageID=31>; Nat'l Org. Disability, 1986 *National Organization on Disability/Harris Survey of Disabled Americans* 20 (1986) [hereinafter N.O.D. 1986], <http://www.N.O.D..org/index.cfm?fuseaction=Page.viewPage&pageID=31>.

<sup>15</sup> N.O.D. 2004, *supra* note 14, at tbl. 10A.

<sup>16</sup> N.O.D. 1986, *supra* note 14, at tbl. 5.

<sup>17</sup> NCD E-mail Call for Comments, submitted comments in 2005.

<sup>18</sup> NCD E-mail Call for Comments, submitted comments on April 29, 2005.

<sup>19</sup> *Id.*

<sup>20</sup> Bernard Barker, People First of Georgia, Georgia Public Forum, April 13, 2005; Theresa Brenner, Savannah Association for the Blind, Georgia Public Forum, April 13, 2005; Bart Brophy, LIFE, Inc., Georgia Public Forum, April 13, 2005; Kate Gainer, GDA Consulting Group in Atlanta, Georgia Public Forum, April 13, 2005; NCD E-mail Call for Comments, submitted comments on May 6, 2005; Interview on March 9, 2005; Jean Idarosa, Chatham Area Transit, Georgia Public Forum, April 13, 2005; Terri Lance, Advocate with United Cerebral Palsy of Los Angeles, Ventura, and Santa Barbara Counties, California Public Forum, March 29, 2005; Blanck & Associates Mailing, submitted comments on May 11, 2006; Berlin Vargas, California Public Forum, March 29, 2005.

- 
- <sup>21</sup> Nat'l Council Disability, *The Current State of Transportation for People with Disabilities in the United States* (2005), [http://www.ncd.gov/newsroom/publications/2005/current\\_state.htm](http://www.ncd.gov/newsroom/publications/2005/current_state.htm).
- <sup>22</sup> Gwendolyn Hall Ross, California Public Forum, March 29, 2005.
- <sup>23</sup> N.O.D. 2004, *supra* note 14, at 67.
- <sup>24</sup> N.O.D. 1986, *supra* note 14, at tbl. 28.
- <sup>25</sup> NCD E-mail Call for Comments, submitted comments on April 28, 2005; NCD E-mail Call for Comments, submitted comments on May 10, 2005; NCD E-mail Call for Comments, submitted comments on May 11, 2005.
- <sup>26</sup> NCD E-mail Call for Comments, submitted comments in 2005.
- <sup>27</sup> Brenner, *supra* note 20; Brophy, *supra* note 20; NCD E-mail Call for Comments, *supra* note 20.
- <sup>28</sup> NCD E-mail Call for Comments, *supra* note 17.
- <sup>29</sup> NCD E-mail Call for Comments, submitted comments on May 5, 2005.
- <sup>30</sup> Econ. Res. Serv., U.S. Dep't Agric., *Rural Transportation at a Glance* (2005), [http://www.ers.usda.gov/publications/AIB795/AIB795\\_lowres.pdf](http://www.ers.usda.gov/publications/AIB795/AIB795_lowres.pdf).
- <sup>31</sup> *Id.* at 4.
- <sup>32</sup> 49 C.F.R. § 37.79–83 (2005).
- <sup>33</sup> *Id.* § 37.93.
- <sup>34</sup> *Id.* § 37.55.
- <sup>35</sup> *Id.* § 37.93.
- <sup>36</sup> Nat'l Council Disability, *supra* note 21.
- <sup>37</sup> Bureau Transp. Statistics, U.S. Dep't Transp., *ADA—Accessible Rail Transit Stations by Agency* tbl. 1-9 (Feb. 2006), [http://www.bts.gov/publications/national\\_transportation\\_statistics/html/table\\_01\\_09.html](http://www.bts.gov/publications/national_transportation_statistics/html/table_01_09.html).
- <sup>38</sup> Commuter rail systems included in the report are San Jose, CA; San Diego, CA; San Francisco, CA; Los Angeles, CA; New Haven, CT; Miami, FL; Chicago, IL (2 systems); Boston, MA; Baltimore, MD; New York, NY (3 systems); the state of Pennsylvania; Philadelphia, PA; Dallas, TX; Ft. Worth, TX; Washington, DC; Seattle, WA. Light rail systems included in the report are: Los Angeles County, CA; San Francisco, CA; Washington, DC; Sacramento, CA; San Diego, CA; San Jose, CA; Denver, CO; Tampa-St. Petersburg, FL; New Orleans, LA; Boston, MA; Baltimore, MD; Detroit, MI; St. Louis, MO; Newark, NJ; Buffalo, NY; Cleveland, OH; Portland, OR; Pittsburg, PA; Philadelphia, PA; Memphis, TN; Dallas, TX; Galveston, TX; Houston, TX; Salt Lake City, UT; Seattle, WA (2 systems); Kenosha, WI.
- <sup>39</sup> Bureau Transp. Statistics, *supra* note 37.
- <sup>40</sup> *Id.*
- <sup>41</sup> *Id.*
- <sup>42</sup> Am. Pub. Transp. Ass'n, *Accessible Vehicles by Mode* (2006), <https://www.apta.com/research/stats/vehicles/vehacc.cfm>.
- <sup>43</sup> E-mail received on June 8, 2005; Spina Bifida Ass'n of Am., *Travel With a Disability: Easier than Ever* (2001), [http://www.sbaa.org/site/PageServer?pagename=ASB\\_travel](http://www.sbaa.org/site/PageServer?pagename=ASB_travel).
- <sup>44</sup> Spina Bifida Ass'n. Am., *supra* note 43.
- <sup>45</sup> 49 C.F.R. § 37.61 (2005) (public transportation programs and activities in existing facilities).
- <sup>46</sup> *Id.* § 37.41–43 (construction of transportation facilities by public entities).
- <sup>47</sup> *Id.* § 37.71–75.
- <sup>48</sup> *Id.* § 35.160.
- <sup>49</sup> Fed. Transit Auth., U.S. Dep't Transp., *2003 National Transit Summaries and Trends* (2003), [http://www.ntdprogram.com/NTD/NTST/2003/PDFFiles/2003%20National%20Transit%20Summaries%20and%20Trends%20\(NTST\).pdf](http://www.ntdprogram.com/NTD/NTST/2003/PDFFiles/2003%20National%20Transit%20Summaries%20and%20Trends%20(NTST).pdf).
- <sup>50</sup> Fed. Transit Auth., U.S. Dep't of Transp., *Strategic Plan, Strategic Goal Two: Mobility and Access* tbl. 2 (Aug. 15, 2003) available at [http://www.fta.dot.gov/transit\\_data\\_info/reports\\_publications/publications/strategic\\_plan/8898\\_8914\\_ENG\\_HTML.htm](http://www.fta.dot.gov/transit_data_info/reports_publications/publications/strategic_plan/8898_8914_ENG_HTML.htm).



- 
- <sup>51</sup> Fed. Highway Admin., U.S. Dep't Transp., *Transportation Accessibility—Departmental Performance Measures and Goals, Highway Trust Fund Financial Report for Fiscal Year 2004*, (June 30, 2005), available at [http://www.fhwa.dot.gov/reports/htffy04/mda\\_06\\_09.htm](http://www.fhwa.dot.gov/reports/htffy04/mda_06_09.htm).
- <sup>52</sup> *Id.*
- <sup>53</sup> Fed. Transit Auth., *supra* note 49.
- <sup>54</sup> Bureau Transp. Statistics, *National Transportation Statistics*, at P15 (Feb. 2006), [http://www.bts.gov/publications/national\\_transportation\\_statistics/excel/table\\_01\\_08.xls](http://www.bts.gov/publications/national_transportation_statistics/excel/table_01_08.xls).
- <sup>55</sup> Am. Pub. Transp. Ass'n, *Accessible Vehicles by Mode, 2006*, <https://www.apta.com/research/stats/vehicles/vehacc.cfm>.
- <sup>56</sup> Civil Rights Div., U.S. Dep't Justice, ADA Enforcement, *Enforcing the ADA: A Status Report from the Department of Justice October–December 2005*, issue no. 4, <http://www.ada.gov/octdec05.htm>.
- <sup>57</sup> *Id.*
- <sup>58</sup> Econ. Res. Serv., U.S. Dep't Agric., *Rural Transportation at a Glance* (Jan. 2005), available at [http://www.ers.usda.gov/publications/AIB795/AIB795\\_lowres.pdf](http://www.ers.usda.gov/publications/AIB795/AIB795_lowres.pdf).
- <sup>59</sup> Nat'l Council Disability, *supra* note 21.
- <sup>60</sup> 49 C.F.R. § 37.121 (2005).
- <sup>61</sup> Nat'l Council Disability, *National Disability Policy: A Progress Report* (December 2001–December 2002) [http://www.ncd.gov/newsroom/publications/2003/progressreport\\_final.htm](http://www.ncd.gov/newsroom/publications/2003/progressreport_final.htm).
- <sup>62</sup> Nat'l Council Disability, *Id.*
- <sup>63</sup> *Flores v. Access Servs. Inc.*, SACV 03-820 JVS (Anx) (S.D. Cal. 2004), [http://www.asila.org/\\_pdf/Agenda169.doc](http://www.asila.org/_pdf/Agenda169.doc).
- <sup>64</sup> Access Servs., *Performance Evaluation of Access Paratransit, First Annual Report, Access Services* (2005), [http://www.asila.org/\\_pdf/FILE\\_pdf\\_20050908\\_083730.pdf](http://www.asila.org/_pdf/FILE_pdf_20050908_083730.pdf).
- <sup>65</sup> Access Servs., *Access Services Annual Report 2004 – 05* (2005), [http://www.asila.org/\\_files/FILE\\_pdf\\_20050126\\_143056.pdf](http://www.asila.org/_files/FILE_pdf_20050126_143056.pdf).
- <sup>66</sup> See Gary Pub. Transp., *Compliance Review Report*, Gary, IN, at 16 (Nov. 2005), [http://www.fta.dot.gov/documents/GPTC\\_Final\\_Report\\_051121.doc](http://www.fta.dot.gov/documents/GPTC_Final_Report_051121.doc); Letter of Findings Regarding Access Services Inc., Los Angeles, CA (Oct. 2000), [http://www.fta.dot.gov/transit\\_data\\_info/transit\\_info\\_for\\_riders\\_with\\_disabilities/ada\\_information/letters\\_of\\_finding/10122\\_10145\\_ENG\\_HTML.htm](http://www.fta.dot.gov/transit_data_info/transit_info_for_riders_with_disabilities/ada_information/letters_of_finding/10122_10145_ENG_HTML.htm).
- <sup>67</sup> Focus Group Participant, Feb. 28, 2005.
- <sup>68</sup> NCD E-mail Call for Comments, *supra* note 18; NCD E-mail Call for Comments, *supra* note 17.
- <sup>69</sup> Gainer, *supra* note 20.
- <sup>70</sup> David Wilder, Los Angeles Public Forum, Mar. 29, 2005.
- <sup>71</sup> Barker, *supra* note 20; Brenner, *supra* note 20; Blanck and Associates Mailing, submitted comments on May 19, 2006; Amy Tangkeatkomjar, Georgia Public Forum, Apr. 13, 2005; Maggie Zepeda, Goodwill Industries, California Public Forum, Mar. 29, 2005.
- <sup>72</sup> NCD E-mail Call for Comments, *supra* note 25; NCD E-mail Call for Comments, *supra* note 25.
- <sup>73</sup> U.S. Dep't Justice, *Settlement Agreement under the Americans with Disabilities Act between the United States of America and Greyhound Lines, Inc.* (1999) <http://www.usdoj.gov/crt/ada/greyhnd.htm>. Attempts to interview a Greyhound official for this study were not successful.
- <sup>74</sup> *Id.*
- <sup>75</sup> U.S. Dep't of Justice, *Guide for Passengers: Accessible Bus Service Under the Greyhound Agreement* (1999), <http://www.usdoj.gov/crt/ada/greyfact.htm>.
- <sup>76</sup> 49 C.F.R. § 37.29(c) (2005).
- <sup>77</sup> *Id.* § 37.29(b).
- <sup>78</sup> *Id.*
- <sup>79</sup> Hal Morgan, Taxicab, Limousine and Paratransit Association, *Accessible Taxicabs*, <http://www.ctaa.org/pubs/taxi.asp>.
- <sup>80</sup> *Id.*

- 
- <sup>81</sup> *Id.*
- <sup>82</sup> *Id.*
- <sup>83</sup> *Id.*
- <sup>84</sup> *Id.*
- <sup>85</sup> *Id.*
- <sup>86</sup> Andy Humm, 12,000 NYC Taxis; Five Are Accessible, *Gotham Gazette*, May 2004, <http://www.gothamgazette.com/article//20040507/3/970>.
- <sup>87</sup> Morgan, *supra* note 79.
- <sup>88</sup> *Handy v. LATaxi Cooperative*, CV-99-2172-SVW (Central Dist. Cal. 1999) (Los Angeles taxis and guide dog users); Press Release, Memphis Ctr. Indep. Living, Individual Asserts Civil Rights in Federal Court (Apr. 20, 1998), <http://www.mcil.org/mcil/news/newsr19.htm> (Memphis taxis and guide dog users).
- <sup>89</sup> Wheelchair Users Take Taxi Fight to Federal Court, *KUTV.com*, Mar. 5, 2006, [http://kutv.com/topstories/local\\_story\\_064192404.html](http://kutv.com/topstories/local_story_064192404.html) (Utah taxis refusing to pick up wheelchair users).
- <sup>90</sup> Marj Schneider, Georgia Public Forum, Apr. 13, 2005.
- <sup>91</sup> 28 C.F.R. § 35.149–150 (2005).
- <sup>92</sup> *Id.* § 35.151.
- <sup>93</sup> *Barden v. City of Sacramento*, 225 F.3d 1073 (9th Cir. 2002).
- <sup>94</sup> Nat’l Council Disability, *The Current State of Transportation for People with Disabilities in the United States*, (2005), [http://www.ncd.gov/newsroom/publications/2005/current\\_state.htm](http://www.ncd.gov/newsroom/publications/2005/current_state.htm).
- <sup>95</sup> 28 C.F.R. § 35.150(d)(2).
- <sup>96</sup> *Id.* § 35.151(e).
- <sup>97</sup> *Kinney v. Yerusalim*, 9 F.3d 1067 (3d Cir. 1993).
- <sup>98</sup> Mitch Pomerantz, ADA compliance officer for the City of Los Angeles, Testimony given at U.S. Access Board Regional Meeting, Portland, Oregon, June 23, 2002.
- <sup>99</sup> John Cameron, City Civil Design Engineer City of Memphis, Tennessee, Testimony given at U.S. Access Board Regional Meeting, Portland, Oregon, June 23, 2002.
- <sup>100</sup> Culver City Pub. Works Dep’t, *Sidewalk Corners Ramp Up* (July 2003), <http://www.culvercity.org/uploads/reports/July2003PWNews.pdf>.
- <sup>101</sup> U.S. Dep’t Justice, *Enforcing the ADA*, (Jan.–Mar. 2006), <http://www.ada.gov/statrpt.htm>.
- <sup>102</sup> Donna Fredericksen, E. Paralyzed Veterans Am., *City Will Make 158 Thousand Street Corners Accessible to Wheelchair Users* (Sept. 12, 2002).
- <sup>103</sup> Civil Rights Div., *supra* note 56.
- <sup>104</sup> *Disabled Chicagoans Sue over Curb Ramps*, ABC News (Oct. 4, 2005), <http://abcnews.go.com/US/LegalCenter/wireStory?id=1182184&CMP=OTC-RSSFeeds0312>.
- <sup>105</sup> Dep’t Pub. Works, City & County S.F., *Proposed \$208 Million G.O. Bond for Street Resurfacing, Pedestrian Safety & Access Improvements* (Apr. 2005), <http://www.ci.sf.ca.us/site/uploadedfiles/sfdpw/director/2005%20Street%20Bond%20Report-Rev.pdf>.
- <sup>106</sup> David Waite, City Promises Quicker Action on Wheelchair Ramps, *Honolulu Advertiser*, Oct. 26, 2001, <http://the.honoluluadvertiser.com/article/2001/Oct/26/In11a.html>.
- <sup>107</sup> Dep’t Pub. Works, *supra* note 105.
- <sup>108</sup> *Id.*
- <sup>109</sup> *Id.*
- <sup>110</sup> 28 C.F.R. § 36.304 (2005).
- <sup>111</sup> *Id.* §36.401.
- <sup>112</sup> *Id.* §36.402–403.
- <sup>113</sup> N.O.D. 2000, *supra* note 13, at tbl. 22C.
- <sup>114</sup> N.O.D. 2004, *supra* note 14, at exhibit 3; N.O.D. 1986, *supra* note 14, at 38.
- <sup>115</sup> NCD E-mail Call for Comments, submitted comments on Apr. 27, 2005.
- <sup>116</sup> Interview on Apr. 8, 2005.

- 
- <sup>117</sup> U.S. Gen. Accounting Office, *Americans with Disabilities Act, Effects of the Law on Access to Goods and Services* (June 1994).
- <sup>118</sup> Stephen Kaye, Disability Statistics Abstract, No 21, H (May 1998), [http://dsc.ucsf.edu/publication.php?pub\\_id=7](http://dsc.ucsf.edu/publication.php?pub_id=7).
- <sup>119</sup> U.S. Gen. Accounting Office, *Business Tax Incentives: Incentives to Employ Workers with Disabilities Receive Limited Use and Have an Uncertain Impact GA0-03-39*, at 18 (Dec. 2002), <http://www.gao.gov/new.items/d0339.pdf>.
- <sup>120</sup> Ctr. Accessible Soc’y, *Employers Know Little about Tax Credits, Says Study*, Apr. 29, 2003, <http://www.accessiblesociety.org/topics/economics-employment/shrmstudy.html>.
- <sup>121</sup> Civil Rights Div., U.S. Dep’t Justice, ADA Enforcement, *Enforcing the ADA: A Status Report from the Department of Justice January–March 2006*, issue no. 1, <http://www.ada.gov/janmar06.htm>.
- <sup>122</sup> Civil Rights Div., *supra* note 56.
- <sup>123</sup> Civil Rights Div., U.S. Dep’t Justice, ADA Enforcement, *Enforcing the ADA: A Status Report from the Department of Justice April–June 2002*, issue no. 2, <http://www.ada.gov/aprjun02.pdf>.
- <sup>124</sup> Civil Rights Div., U.S. Dep’t Justice, ADA Enforcement, *Enforcing the ADA: A Status Report from the Department of Justice April–June 2005*, issue no. 2, <http://www.ada.gov/aprjun05prt.pdf>.
- <sup>125</sup> Civil Rights Div., U.S. Dep’t Justice, ADA Enforcement, *Enforcing the ADA: A Status Report from the Department of Justice October 2004–March 2005*, issue no. 1 <http://www.ada.gov/oct04mar05.htm>.
- <sup>126</sup> Civil Rights Div., U.S. Dep’t Justice, ADA Enforcement, *Enforcing the ADA: A Status Report from the Department of Justice July–Sept. 2003*, issue no. 3, <http://www.ada.gov/julsep03.htm>.
- <sup>127</sup> Civil Rights Div., *supra* note 121.
- <sup>128</sup> Interview in 2005.
- <sup>129</sup> Focus Group Participants, on Feb. 28, 2005.
- <sup>130</sup> NCD E-mail Call for Comments, submitted comments on May 11, 2005.
- <sup>131</sup> NCD E-mail Call for Comments, submitted comments on May 5, 2005.
- <sup>132</sup> Terri Lance, United Cerebral Palsy of Los Angeles, Ventura and Santa Barbara County, California Public Forum, Mar. 29, 2005; Hugh Hallenberg, California Public Forum, Mar. 29, 2005.
- <sup>133</sup> NCD E-mail Call for Comments, submitted comments on May 4, 2005.
- <sup>134</sup> NCD E-mail Call for Comments, submitted comments on May 3, 2005.
- <sup>135</sup> NCD E-mail Call for Comments, submitted comments on Apr. 30, 2005.
- <sup>136</sup> NCD E-mail Call for Comments, submitted comments on Apr. 28, 2005.
- <sup>137</sup> NCD E-mail Call for Comments, submitted comments on May 11, 2005.
- <sup>138</sup> NCD E-mail Call for Comments, *supra* note 130.
- <sup>139</sup> NCD E-mail Call for Comments, submitted comments on Apr. 30, 2006.
- <sup>140</sup> Gainer, *supra* note 20.
- <sup>141</sup> 28 C.F.R. §36.303 (2005).
- <sup>142</sup> *Id.*
- <sup>143</sup> *Id.* § 36.303(d) & (e).
- <sup>144</sup> *Id.* § 36.302(c).
- <sup>145</sup> Civil Rights Div., U.S. Dep’t Justice, *ADA Homepage*, <http://www.ada.gov/settlemt.htm>. Settlement agreements between medical facilities and the United States include Greater Southeast Community Hospital, Norwegian American Hospital, Fairview Health Services, Parkway Hospital, Silver Hill Hospital, Ravenswood Hospital, St. Luke’s Hospital, Davis Hospital, Perinatal Associates, Connecticut hospitals, and Maine Medical Center.
- <sup>146</sup> Nat’l Ass’n Deaf, *Deaf Child Third to Sue Maryland Hospital for Discrimination*, May 1997 (Prince George’s Hospital Center, MD), <http://www.nad.org/site/pp.asp?c=foINKQMBF&b=186212>; Nat’l Ass’n Deaf, *Doctors Agree to Provide Interpreting Services for Deaf Family Members*, Nov. 1999 (Perinatal Associates, P.C., OR.), <http://www.nad.org/site/pp.asp?c=foINKQMBF&b=178006>.
- <sup>147</sup> Civil Rights Div., *supra* note 145. Settlement agreements between hotels and the U.S. include agreements with Holiday Inn-Huntington Beach, CA; Holiday Inn-Conroe, TX; Holiday Inn-Scottsdale, AZ; Holiday Inn-Alton, IL;

---

Holiday Inn-Austin, TX; Holiday Inn-Metairie, LA; Kingston Ramada Inn; Ramada Inn-S. El Monte, CA; Holiday Inn-Marietta, GA; Holiday Inn-Tucson, AZ; Holiday Inn-Chateau LeMoyne, LA; Holiday Inn-Montgomery, AL; Holiday Inn-San Francisco, CA; Ramada Inn-Virginia Beach, VA; Holiday Inn-Independence, OH; Hotel Harrington.

<sup>148</sup> Civil Rights Div., *supra* note 121 (McDonalds, City Cab Co.); Civil Rights Div., *supra* note 122 (Broadway Grocery); Civil Rights Div., *supra* note 124 (Ramada Hotel, Dallas).

<sup>149</sup> Curtis Humphries, Nordia Relay, California Public Forum, Mar. 29, 2005.

<sup>150</sup> Renee Miller, Greater Los Angeles Agency on Deafness, California Public Forum, Mar. 29, 2005.

<sup>151</sup> NCD E-mail Call for Comments, submitted comments on Apr. 29, 2005.

<sup>152</sup> Michigan Developmental Disabilities Council, Blanck and Associates Mailing, submitted comments on June 1, 2006; Wayne Lake, Texas Public Forum, Apr. 8, 2005; Robert Warner, SAB, Georgia Public Forum, April 13, 2005; Montana Independent Living Project, Blanck and Associates Mailing, submitted comments on May 2, 2006;

<sup>153</sup> *National Federation of the Blind, Inc v. AOL Time Warner, Inc.*, (Civil Action No 99-12303 (D. Mass.) complaint filed November 16, 1999), (parties reached settlement resulting in voluntary dismissal); *Hooks v. OKBridge, Inc.* (Civ. No. 99-50891, unpublished 5th Cir. August 21, 2000); *Access Now Inc. v. Southwest Airlines Co.*, 227 F. Supp. 2d 1317 (S.D.Fla.) (2002).

<sup>154</sup> 29 U.S.C. § 794d (2000).

<sup>155</sup> 47 U.S.C. § 225 (2000).

<sup>156</sup> *National Video Relay Service Coalition Comments on Speed of Answer Requirement for VRS*, <http://www.nad.org/atf/cf/{A2A94BC9-2744-4E84-852F-D8C3380D0B12}/NVRSCSpeedOfAnswerComm%2018%20.pdf>.

<sup>157</sup> 47 U.S.C. § 225(b).

<sup>158</sup> In fact, since TRS services are maintained by the states, no national figures were available on the number of relay calls nationwide until the Federal Communications Commission (FCC), which enforces Title IV, began requiring states and telecommunications relay services providers to submit their annual consumer complaint log summaries in 2002.

<sup>159</sup> Nat'l Exchange Carrier Ass'n, *Relay Service Minutes—2003 and 2004 Actual* (2005).

<sup>160</sup> Fed. Communications Comm'n, *Consumer & Governmental Affairs Bureau Reminds States and Telecommunications Relay Services (TRS) Providers that the Annual Summary of Consumer Complaints Concerning TRS Is Due Thursday, July 1, 2004: Public Notice DA 04-1599* (June 2, 2004).

<sup>161</sup> Phil Kaplan, Self Help for Hard of Hearing People, California Public Forum, Mar. 29, 2005.

<sup>162</sup> Carol Collier, Coordinator for Services for Deaf and Hard of Hearing Students, University of Iowa, Iowa Public Forum, Mar. 25, 2005.

<sup>163</sup> NCD E-mail Call for Comments, submitted comments on May 1, 2005.

<sup>164</sup> NCD E-mail Call for Comments, submitted comments on May 5, 2005.

<sup>165</sup> NCD E-mail Call for Comments, submitted comments on May 2, 2005.

<sup>166</sup> 42 U.S.C. § 12132 (2000).

<sup>167</sup> 28 C.F. R. § 35.160(b)(1) (2005).

<sup>168</sup> *Id.* § 35.150(a).

<sup>169</sup> *Id.* § 35.150(c) & (d).

<sup>170</sup> *Id.* § 35.151.

<sup>171</sup> David Pfeiffer & Joan Finn, *The Americans with Disabilities Act: An Examination of Compliance by State, Territorial, and Local Governments in the USA*, 12 *Disability & Soc'y* 753, 753–73 (1997).

<sup>172</sup> *Id.*

<sup>173</sup> Civil Rights Div., *supra* note 121.

<sup>174</sup> U.S. Department of Justice, interviewed by e-mail on May 25, 2005.

<sup>175</sup> Civil Rights Div., U.S. Dep't Justice, *Project Civic Access Fact Sheet*, U.S. Department of Justice (Mar. 30, 2006), <http://www.usdoj.gov/crt/ada/civicfac.htm>.

- 
- <sup>176</sup> Court Consulting Servs. Div., Nat'l Ctr. State Courts, *Enforcement Activities Under the Americans with Disabilities Act Title II: Programs, Services and Activities of State and Local Courts, 1994–2004* (2004), [http://www.ncsconline.org/WC/Publications/CS\\_AmeDis\\_EnforcementSect1.pdf](http://www.ncsconline.org/WC/Publications/CS_AmeDis_EnforcementSect1.pdf).
- <sup>177</sup> U.S. Dep't Justice, Access for All: Five Years of Progress, A Report from the Department of Justice on Enforcement of the Americans with Disabilities Act (2006), available at <http://www.usdoj.gov/crt/ada/5yearadarpt/fiveyearada1.htm>
- <sup>178</sup> *Tennessee v. Lane*, 541 U.S. 509 (2004).
- <sup>179</sup> *Miles v. County of Los Angeles*, No. CV-02-03932 DT (JTLx).
- <sup>180</sup> Press Release, Judicial Council Cal., Chief Justice Urges New Judgeships, Upgraded Courthouses in California (Feb. 28, 2006), at 2, <http://www.courtinfo.ca.gov/presscenter/newsreleases/NR20-06.PDF>.
- <sup>181</sup> Associated Press, Oregon to Survey Courthouses for Accessibility for Disabled, *News-Rev.*, Jan. 15, 2004, <http://www.newsreview.info/apps/pbcs.dll/article?AID=/20040115/NEWS/101150023>; State Bar Ariz., *2005 Courthouse Accessibility Survey* (2006), <http://www.azbar.org/LegalResources/TF/2005CourthouseSurvey.cfm>.
- <sup>182</sup> Courthouse Access Advisory Committee, U.S. Access Bd., *Courthouse Access Advisory Committee*, <http://www.access-board.gov/caac/index.htm> (last visited July 14, 2006).
- <sup>183</sup> *Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001).
- <sup>184</sup> *Tennessee v. Lane*, 541 U.S. 509 (2004).
- <sup>185</sup> *Ferguson v. City of Phoenix*, 157 F.2d 668, 674 (9th Cir. 1998); cf. *Barnes v. Gorman*, 536 U.S. 181, 186–87 (2002).
- <sup>186</sup> ADAPT, NCD E-mail Call for Comments, submitted comments on May 3, 2005.
- <sup>187</sup> NCD E-mail Call for comments, *supra* note 135.
- <sup>188</sup> NCD E-mail Call for Comments, submitted comments on Apr. 29, 2005.
- <sup>189</sup> NCD E-mail Call for Comments, submitted comments on Apr. 29, 2005.
- <sup>190</sup> NCD E-mail Call for Comments, submitted comments on May 9, 2005.
- <sup>191</sup> 42 U.S.C. § 1973aa-6 (2000).
- <sup>192</sup> Letter to Ms. Arlys Ward, Executive Director, City & County of Denver Election Commission, from Stewart B. Oneglia, Chief, Coordination & Review Section, Civil Rights Div., U.S. Dep't Justice (Sept. 30, 1993), [www.usdoj.gov/crt/foia/cltr103.txt](http://www.usdoj.gov/crt/foia/cltr103.txt).
- <sup>193</sup> Olegario D. Cantos VII, Special Assistant to the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, interviewed by e-mail on May 25, 2005.
- <sup>194</sup> Pub. L. No. 107-252, 116 Stat. 1666 (2002).
- <sup>195</sup> U.S. Gen Accounting Office, *Voters with Disabilities: Access to Polling Places and Alternative Voting Methods GAO-02-107* (Oct. 2001), <http://www.gao.gov/new.items/d02107.pdf>
- <sup>196</sup> *Id.*
- <sup>197</sup> Elizabeth Schneider, Am. Ass'n People with Disabilities, New Machines Allow More with Disabilities to Vote—If They Can Access the Polling Place (Nov. 18, 2004), <http://www.aapd.com/dvpmain/pollaccess/newmachines.html>.
- <sup>198</sup> *Id.*; Heather J. Carlson, Missouri Polling Places Pose Barriers for Disabled Voters, *Jefferson City News Trib.*, Mar. 12, 2005, [http://www.newstribune.com/articles/2005/03/12/news\\_state/0312050006.prt](http://www.newstribune.com/articles/2005/03/12/news_state/0312050006.prt)
- <sup>199</sup> Fla. Dep't State, *2003 Report on Polling Place Accessibility Pursuant to Section 17, Chapter 2002-281 Laws of Florida* (2004), <http://election.dos.state.fl.us/reports/pdf/PollingPlaceAccess.pdf>.
- <sup>200</sup> Make Voting Accessible to All, *Deseret Morning News*, Oct. 8, 2005, <http://deseretnews.com/dn/view/0,1249,615156214,00.html>.
- <sup>201</sup> Survey Identifies Indiana Polling Place Accessibility Concerns, *On Target*, Apr. 2005, <http://www.in.gov/gpcpd/ontarget/april05.html>
- <sup>202</sup> Schneider, *supra* note 197.
- <sup>203</sup> For example, New York was sued by the DOJ for its failure to comply with HAVA and still plans to offer electronic voting in only some of its polling places in 2006. Mark Humbert, *State Files Voting Plan with Court*, Apr. 10, 2006, <http://www.aapd.com/News/votingissues/060421nycompliance.htm>.

- 
- <sup>204</sup> Am. Ass'n People Disabilities, *State Census Disability Numbers and Voting Turnout*, <http://www.aapd.com/dvpmain/elreform/census.html>.
- <sup>205</sup> Nat'l Org. Disability, "2004 Presidential Candidates Speak Out on Disability Issues" <http://www.N.O.D..org/election2004.html>.
- <sup>206</sup> Kansas - [http://www.independenceinc.org/alerts/state\\_candidate\\_positions.htm](http://www.independenceinc.org/alerts/state_candidate_positions.htm); Rochester - <http://mhcrochester.org/Articles/November%202005%20Newsletter.pdf>; Washington - <http://students.washington.edu/dasa/candidate-guide-2004.html>.
- <sup>207</sup> Focus Group Participant in Indiana, March 11, 2005.
- <sup>208</sup> <http://www.dol.gov/odep/state/state.htm>.
- <sup>209</sup> *Olmstead v. L.C.*, 527 U.S. 581 (1999).
- <sup>210</sup> Peter Blanck, et al., *Disability Civil Rights Law and Policy*, at 11-14 (2004).
- <sup>211</sup> *Id.* at 11-16.
- <sup>212</sup> U.S. Dep't Health & Human Servs., *Delivering on the Promise—Report of Federal Agencies' Actions to Eliminate Barriers and Promote Community Integration* (Mar. 25, 2002), <http://www.hhs.gov/news/press/2002pres/20020325.html>.
- <sup>213</sup> U.S. Dep't Health & Human Servs., *Compilation of Individual Federal Agency Reports of Action to Eliminate Barriers and Promote Community Integration* (2002), <http://www.hhs.gov/newfreedom/final/>.
- <sup>214</sup> White House, *New Freedom Initiative: A Progress Report* (2004), <http://www.whitehouse.gov/infocus/newfreedom/>.
- <sup>215</sup> *Id.*
- <sup>216</sup> Kaiser Comm'n Medicaid & Uninsured, Henry J. Kaiser Family Found., *Olmstead at Five: Assessing the Impact* (June 2004), available at <http://www.kff.org/medicaid/upload/Olmstead-at-Five-Assessing-the-Impact.pdf>.
- <sup>217</sup> Nat'l Council Disability, *Olmstead: Reclaiming Institutionalized Lives* (2003), <http://www.ncd.gov/newsroom/publications/2003/reclaimlives.htm>.
- <sup>218</sup> Kaiser Comm'n Medicaid & Uninsured, Henry J. Kaiser Family Found., *Medicaid Benefits: Online Database, Benefits by Service: Home and Community Based Services Waiver* (Oct. 2004), <http://www.kff.org/medicaid/benefits/service.jsp?yr=2&cat=1&nt=on&sv=41&so=0&tg>.
- <sup>219</sup> Johanna M. Donlin, Moving Ahead with *Olmstead*: To Comply with the Americans with Disabilities Act, States Are Working Hard to Find Community Placements for People with Disabilities, *State Legislatures*, Mar. 1, 2003, at 28.
- <sup>220</sup> Kaiser Comm'n Medicaid & Uninsured, Henry J. Kaiser Family Found., *Medicaid Benefits: Online Database, Benefits by Service: Home Health Services* (Oct. 2004), <http://www.kff.org/medicaid/benefits/service.jsp?yr=2&cat=1&nt=on&sv=12&so=0&tg=0>.
- <sup>221</sup> *Id.*
- <sup>222</sup> Dep't Health Pol'y, George Washington Univ. Med. Ctr., *Olmstead at Five: Assessing the Impact* (2004), <http://www.kff.org/medicaid/upload/Olmstead-at-Five-Assessing-the-Impact.pdf>.
- <sup>223</sup> Nat'l Conference State Legislatures, *The States' Response to the Olmstead Decision: How Are States Complying?: A 2003 Update* (Feb. 2004), <http://www.ncsl.org/programs/health/forum/olmsreport.htm>.
- <sup>224</sup> *Id.* at 7.
- <sup>225</sup> Ctrs. Medicare & Medicaid Servs., U.S. Dep't Health & Human Servs., *Money Follows the Person and Balancing Long-Term Care Systems: State Examples* (2003), <http://www.cms.hhs.gov/PromisingPractices/Downloads/mfp92903.pdf>.
- <sup>226</sup> Nat'l Conference State Legislatures, *supra* note 2231.
- <sup>227</sup> Nat'l Council Disability, *supra* note 217.
- <sup>228</sup> Dep't Health Pol'y, *supra* note 222, at 21.
- <sup>229</sup> Nat'l Conference State Legislatures, *supra* note 2231.
- <sup>230</sup> *Id.*
- <sup>231</sup> U.S. Gen. Accountability Office, *Long-Term Care: Implications of Supreme Court's Olmstead Decision Are Still Unfolding* (2004), <http://www.gao.gov/new.items/d011167t.pdf>.

- 
- <sup>232</sup> Ctrs. Medicare & Medicaid Servs., U.S. Dep't Health & Human Servs., *MDS Active Resident Count Report: March 31, 2006*, <http://www3.cms.hhs.gov/apps/mds/rescnt.asp?date=14>.
- <sup>233</sup> *Id.*
- <sup>234</sup> U.S. Gen. Accountability Office, *supra* note 231.
- <sup>235</sup> Bazelon Ctr. Mental Health Law, *Legal Advocate Cites Ongoing Segregation on Eve of Olmstead Anniversary*, June 21, 2004, <http://www.bazelon.org/newsroom/archive/2004/6-21-04olmstead.htm>.
- <sup>236</sup> Susan Jamieson, Atlanta Legal Aid Attorney, Georgia Public Forum, April 13, 2005.
- <sup>237</sup> Yvette Hester, Georgia Protection and Advocacy for People with Mental Illnesses, Georgia Public Forum, April 13, 2005.
- <sup>238</sup> Money Follows the Person Act of 2005, H.R. 3063, 109th Cong. (1 Sess. 2006).
- <sup>239</sup> H.R. 910, 109<sup>th</sup> Cong. (1<sup>st</sup> Session).
- <sup>240</sup> Frank Bowe, Disability in America (2006), at [http://people.hofstra.edu/faculty/frank\\_g\\_bowe/disabilityNew/disabilty\\_exec\\_summary.html](http://people.hofstra.edu/faculty/frank_g_bowe/disabilityNew/disabilty_exec_summary.html).
- <sup>241</sup> U.S. Bureau of the Census (2006) (SIPP).
- <sup>242</sup> *Id.*
- <sup>243</sup> Robert Rudney, The Other World of Disability: Mobilizing Non-Severely Disabled Americans (Jan. 2, 2003), at <http://www.N.O.D.org/index.cfm?fuseaction=page.viewPage&pageID=1430&N.O.D.eID=1&FeatureID=1040&redirected=1&CFID=10442324&CFTOKEN=98382727>.
- <sup>244</sup> Nat'l Council Disability, National Council on Disability Announces New Financial Incentives Study (Mar. 31, 2005), at <http://www.ncd.gov/newsroom/news/2005/a05-481.htm>.
- <sup>245</sup> Am. Express, American Express Announces the Availability of braille and Large Print Card Statements for Persons with Vision Impairments (June 9, 2005), at <http://home3.americanexpress.com/corp/pc/2005/braille.asp>
- <sup>246</sup> E-mail from Lainey Feingold, received October 6, 2006.
- <sup>247</sup> Lisa A. Shcur, Dead End Jobs or a Path to Economic Well-Being? The Consequences of Non-Standard Work Among People with Disabilities, 20 *Behav. Scis. & L.* 601, 601–620.
- <sup>248</sup> *Id.* ch. 5, tbl. 5B.
- <sup>249</sup> 28 C.F.R. § 35.150(a) (2005).
- <sup>250</sup> *Id.* § 36.304.
- <sup>251</sup> *Id.* §§ 35.130(b)(7), 36.302.
- <sup>252</sup> *Id.* §§ 35.160(b)(1); § 36.3.
- <sup>253</sup> N.O.D. 2004, *supra* note 14.
- <sup>254</sup> Nat'l Ctr. Educ. Statistics, U.S. Dep't Educ., *Students with Disabilities in Postsecondary Education: A Profile of Preparation, Participation, and Outcomes* (June 1999), <http://nces.ed.gov/pubs99/1999187.pdf>.
- <sup>255</sup> Cathy Henderson, Am. Council Educ., *College Freshmen with Disabilities: A Biennial Statistical Profile, EC 307 573* (1999), [http://eric.ed.gov/ERICDocs/data/ericdocs2/content\\_storage\\_01/0000000b/80/10/a2/d2.pdf](http://eric.ed.gov/ERICDocs/data/ericdocs2/content_storage_01/0000000b/80/10/a2/d2.pdf)
- <sup>256</sup> Anna H. Gajar, *Postsecondary Education*, in *Beyond High School Transition from School to Work* 385–405 (F. Rusch & J. Chadsey eds., 1998).
- <sup>257</sup> Nat'l Ctr. Educ. Statistics, U.S. Dep't Educ., *An Institutional Perspective on Students with Disabilities in Postsecondary Education* (1999), <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=1999046>.
- <sup>258</sup> N.O.D. 2004, *supra* note 14, at 50; N.O.D. 1986, *supra* note 14, at tbl. 7.
- <sup>259</sup> Agency to Stop Flagging Exams of Students with Disabilities, *CNNfyi.com*, Feb. 8, 2001, <http://archives.cnn.com/2001/fyi/teachers.ednews/02/08/flagged.tests.ap/>.
- <sup>260</sup> U.S. Dep't Justice, Settlement Agreement Between the United States of America and The Law School Admission Council, Inc. (Feb. 2, 2002), <http://www.ada.gov/lSac.htm>.
- <sup>261</sup> Robert Stodden, et al., *Services, Supports and Accommodations for Individuals with Disabilities: An Analysis across Secondary Education, Postsecondary Education and Employment* (unpublished manuscript, 2002).
- <sup>262</sup> 379 F.3d 1097 (9<sup>th</sup> Cir. 2004).
- <sup>263</sup> *Id.* at 1108–10.

- 
- <sup>264</sup> Focus Group Participant, on Feb. 23, 2005; Wyoming Independent Living Rehab, Focus Group Participant, on Feb. 28, 2005.
- <sup>265</sup> NCD E-mail Call for Comments, submitted comments on May 3, 2005.
- <sup>266</sup> 42 U.S.C. § 12112(a) (2000). For a comprehensive review, see Peter Blanck et al., *Disability Civil Rights Law and Policy* (2004).
- <sup>267</sup> *Id.* § 12112(b)(6).
- <sup>268</sup> N.O.D. 2004, *supra* note 14, at tbl. 2A.
- <sup>269</sup> N.O.D. 1986, *supra* note 14, at 48 & tbl. 20.
- <sup>270</sup> N.O.D. 2004, *supra* note 14, at tbl. 2E.
- <sup>271</sup> *Id.* at tbl. 3A.
- <sup>272</sup> Andrew J. Houtenville & Richard V. Burkhauser, *Research Brief: Did the Employment of People with Disabilities Decline in the 1990s, and Was the ADA Responsible?* (Aug. 2004), [http://www.ilr.cornell.edu/edi/publications/RB\\_EmpDecline.pdf](http://www.ilr.cornell.edu/edi/publications/RB_EmpDecline.pdf). See also David C. Stapleton & Richard V. Burkhauser, *The Decline in Employment of People with Disabilities: A Policy Puzzle* (W.E. Upjohn Institute for Employment Research, 2003, 448 pages).
- <sup>273</sup> H. Stephen Kaye, *Improved Employment Opportunities for People with Disabilities: Disability Statistics Report 17* (U.S. Dep't Educ. 2003).
- <sup>274</sup> Samuel R. Bagenstos, *The Future of Disability Law*, 114 *Yale L. J.* 1, 1 n.2 (2004).
- <sup>275</sup> U.S. Gen. Accounting Office, *supra* note 119.
- <sup>276</sup> White House, *supra* note 214.
- <sup>277</sup> Ctr. Accessible Soc'y, *supra* note 120.
- <sup>278</sup> K.A. Dixon, et al., Heldrich Ctr. Workforce Dev., *Restricted Access: A Survey of Employers About People with Disabilities and Lowering Barriers to Work* (Mar. 2003), <http://www.heldrich.rutgers.edu/Resources/Publication/89/WorkTrendsXIVRestrictedAccessFinalReport.pdf>.
- <sup>279</sup> Peter Blanck & Helen Schartz, *Special Issue: Corporate Culture and Disability*, 23 *Behavioral Scis. & Law* 1 (2005).
- <sup>280</sup> Dixon, et al., *supra* note 278.
- <sup>281</sup> N.O.D. 2004, *supra* note 14.
- <sup>282</sup> N.O.D. 2004, *supra* note 14, at tbl. 2C.
- <sup>283</sup> *Id.* at tbl. 3C
- <sup>284</sup> Xerox Corporation, Focus Group Participant, Mar. 9, 2006; Allstate Insurance Company, Focus Group Participant, on Mar. 9, 2005.
- <sup>285</sup> Allstate Insurance Company, Focus Group Participant, on March 9, 2005 (Document # 999); see also notes accompanying *supra* note 284.
- <sup>286</sup> See notes accompanying *supra* note 285.
- <sup>287</sup> NCD E-mail Call for Comments, submitted comments on May 4, 2005.
- <sup>288</sup> 42 U.S.C. § 12111(8); 29 C.F.R. pt. 1630 app, § 1630.1(c)(2).
- <sup>289</sup> 42 U.S.C. § 12112(b)(5)(B).
- <sup>290</sup> N.O.D. 1986, *supra* note 14.
- <sup>291</sup> N.O.D. 2000, *supra* note 13.
- <sup>292</sup> Dixon, et al., *supra* note 278.
- <sup>293</sup> See Helen Schartz, DJ Hendricks, and Peter Blanck, *Workplace Accommodations: Empirical Study of Current Employees*, 75 *Miss. L. J.* 1 (2006); Helen Schartz, DJ Hendricks, and Peter Blanck, *Workplace Accommodations: Evidence-Based Outcomes*, *Work*, 15:22 (2006).
- <sup>294</sup> *Id.* at 2.
- <sup>295</sup> *Id.*
- <sup>296</sup> *Id.*
- <sup>297</sup> *Id.*
- <sup>298</sup> *Id.*



- 
- <sup>299</sup> Schartz, et al., *supra* note 293.
- <sup>300</sup> *Id.* at 3.
- <sup>301</sup> *Id.*
- <sup>302</sup> *Id.*
- <sup>303</sup> *Id.*
- <sup>304</sup> *Id.* at 3–4.
- <sup>305</sup> Peter Blanck & Associates, *Secondary Analysis of National Surveys of Americans with Disabilities* (2005).
- <sup>306</sup> Employer focus group participant, Mar. 9, 2005.
- <sup>307</sup> *Id.*
- <sup>308</sup> Focus group participant, Mar. 4, 2005.
- <sup>309</sup> Focus group participant, Feb. 18, 2005.
- <sup>310</sup> Michael E. Waterstone, The Untold Story of the Rest of the Americans with Disabilities Act, 58 *Vanderbilt L. Rev.* 1807 (2005).
- <sup>311</sup> See generally Nat'l Council Disability, Policy Brief Series: Righting the ADA (2003), <http://www.ncd.gov/newsroom/publications/2003/policybrief.htm>.
- <sup>312</sup> *Id.*
- <sup>313</sup> [http://www.ncd.gov/newsroom/publications/2004/righting\\_ada.htm](http://www.ncd.gov/newsroom/publications/2004/righting_ada.htm)
- <sup>314</sup> ABA Special Feature, 2003 Employment Decisions Under the ADA Title I—Survey Update, 28 *Mental & Physical Disability L. Rep.* 319 (2004).
- <sup>315</sup> U.S. Equal Emp. Opportunity Comm'n, *Americans with Disabilities Act of 1990 (ADA) Charges: FY 1992—FY 2005* (2006), <http://www.eeoc.gov/stats/ada-charges.html>.
- <sup>316</sup> Peter D. Blanck & Mollie W. Marti, Genetic Discrimination and the Employment Provisions of the Americans With Disabilities Act: Emerging Legal, Empirical, and Policy Implications, 14 *Behavioral Scis. & Law* 411, 429 (1996).
- <sup>317</sup> Money Follows the Person Act of 2005, H.R. 3063, 109th Cong. (1 Sess. 2006).
- <sup>318</sup> H.R. 910, 109<sup>th</sup> Cong.
- <sup>319</sup> Peter Blanck, et al., *Disability Civil Rights Law and Policy: Cases and Materials* (2005).
- <sup>320</sup> Burton Blatt Inst., *Publications* (2006), <http://bbi.syr.edu/publications/>.
- <sup>321</sup> Burton Blatt Inst., *Collaboration* (2006), <http://bbi.syr.edu/collaboration>. These include: the Center for Health Services Research and Policy (George Washington University), the Center for Personal Assistance Services (University of California, San Francisco), the Center for the Study and Advancement of Disability Policy (Washington, D.C.), the Disability Research Institute (University of Illinois at Urbana-Champaign), the Disability Rights Legal Center, the Disability Statistics Center (University of California, San Francisco), the Independent Living Research Utilization, the Job Accommodation Network (West Virginia University), the Program for Disability Research (Rutgers, The State University of New Jersey), and The Institute for Rehabilitation and Research.
- <sup>322</sup> ADA & IT Technical Assistance Ctrs., ADA Document Portal, at <http://adaportal.org/>.
- <sup>323</sup> Social Sci. Res. Network, *SSRN eLibrary* (2006), <http://www.ssrn.com/>.

---