

FTA

F E D E R A L T R A N S I T A D M I N I S T R A T I O N

Maryland Transit Administration
(MTA Mobility)
Baltimore, Maryland
Paratransit Compliance Review Report

April 2016



U.S. Department of Transportation
Federal Transit Administration

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Executive Summary

Objective and Methodology –

This report reviews MTA Mobility (Mobility), the ADA complementary paratransit service provided by Maryland Transit Administration (MTA), a regional transportation authority that is a division of the Maryland Department of Transportation (MD DOT). Its objective is to verify whether MTA is meeting its obligations under the ADA to provide paratransit as a complement to its fixed route service.

This compliance review included three stages:

1. Preparation: compilation of information covering policies and procedures and interviews with eligible paratransit riders and local disability organizations
2. Site visit: a four-person review team's data analyses supported by on-site observations of how MTA Mobility handles trip requests, scheduling and dispatching, examinations of eligibility applications and related documents (including appeals), and interviews with MTA and contractor employees
3. Analysis and reporting: using site visit data, identification of deficiencies requiring corrective actions and suggestions of effective practices in complementary paratransit service

MTA's ADA Complementary Paratransit program includes the following positive program elements:

Positive Program Elements

- In 2015, MTA Mobility doubled the capacity of its telephone system and increased reservation center staffing to eliminate previous telephone access issues.
- In 2015, MTA Mobility developed customized trip data collection programs for dispatch that group and display critical service factors in real time, thereby enabling operations staff to identify and swiftly address service quality concerns such as prolonged travel time while these are occurring.
- A broad-based service data monitoring program enables MTA Mobility to assess reservation center performance, on-time performance, travel time, vehicle use and productivity, contract-or performance, driver performance, and customer satisfaction on an ongoing basis. With comprehensive data tracking, agency management can resolve issues in real time, identify trends or patterns in service, and plan for future needs.

:

MTA's ADA Complementary Paratransit program has the following administrative deficiencies that are easily correctable to bring the program into compliance with 49 CFR Parts 27 and 37:

Administrative Deficiencies

- MTA Mobility does not uniformly define the point at which an application is "complete", thereby precluding tracking application progress within 21 days. In addition, the agency makes applicants responsible for initiating presumptive eligibility.
- MTA Mobility's website and public information do not effectively communicate the availability of information in accessible formats.

MTA's ADA Complementary Paratransit program has the following substantive deficiencies that need to be addressed to bring the program into compliance with 49 CFR Parts 27 and 37:

Substantive Deficiencies

- The Maryland Office of Administrative Hearings (OAH), a separate agency unrelated to public transportation, administers MTA Mobility's process for appeals of ADA paratransit eligibility and appeals of 30-day service suspensions using formal judicial hearings before an Administrative Law Judge. This policy and process do not afford customers the opportunity for the "informal hearing before a decision maker" which Appendix D to 49 CFR §37.125 requires in the event of an appeal.
- MTA Mobility's eligibility process and determinations do not consistently reflect transit-specific standards for people who are to be determined ADA paratransit eligible as required under 49 CFR §37.123 (e) (1) – (3).
- Eligibility determination letters do not always provide transit-specific reasons for decisions.
- MTA Mobility has not established effective operational policies and procedures to identify, document, and address ADA trip denials and assure that riders do not experience a pattern or practice of them. Avoiding denials means properly planning service, allocating resources, and managing operations in order to meet 100 percent of expected demand.

Please see Section 6 for a discussion of each deficiency. The Summary Table of Compliance Review Findings (following Section 6) lists all findings. Unless otherwise stated, MTA must address all deficiencies within 60 days of receipt of this report.

1. General Information

This chapter provides basic information concerning this compliance review of the Maryland Transit Administration’s ADA complementary paratransit program, known as MTA Mobility. Information on MTA Mobility, the review team, and the dates of the review is presented below.

Grant Recipient:	Maryland Transit Administration (MTA)
City/State:	Baltimore, MD
Grantee Number:	1728
Executive Official:	Paul Comfort, Administrator
On-site Liaison:	Daniel O’Reilly, Project Manager
Report Prepared By:	Milligan and Company, LLC
Dates of On-site Visit:	August 24 – 28, 2015
Review Team Members:	Cynthia Lister, Habibatou Atta, Allison Reed, Kristin Szwajkowski

2. Jurisdiction and Authorities

Public entities that operate fixed route transportation services for the general public are required by the U.S. Department of Transportation (DOT) regulations implementing the Americans with Disabilities Act of 1990 (ADA) to provide ADA complementary paratransit service for persons who, because of their disability, are unable to use the fixed route system. These regulations (49 CFR §§ 27 and 37) include eligibility requirements and service criteria that must be met by ADA complementary paratransit service programs.

The Federal Transit Administration (FTA) is responsible for ensuring compliance with the ADA and the DOT regulations implementing the ADA.

3. Purpose and Objectives

This chapter discusses the purpose and objectives of an FTA ADA complementary paratransit compliance review and the review process.

3.1 Purpose

Pursuant to 49 CFR §§27.19 and 27.123, as part of its oversight efforts, the FTA, through its Office of Civil Rights, conducts periodic reviews of fixed route transit and ADA complementary paratransit services operated by its grantees. Compliance with all applicable requirements of the Americans with Disabilities Act (ADA) of 1990 (42 USC 12101-12213), including DOT ADA regulations, is a condition of eligibility for receiving Federal financial assistance.

3.2 Objectives

The primary objective of this paratransit review is to verify whether a public operator of a fixed-route transit system that benefits from FTA funding is meeting its obligations under the ADA to provide paratransit as a complement to its fixed-route service. This review examines the policies, procedures, and operations of the transit system's ADA complementary paratransit system concerning service provision, including origin-to-destination service; eligibility, including the process used to determine who is eligible for the service; receiving and resolving complaints; and meeting the ADA complementary paratransit service criteria as specified in 49 CFR §37.131.

The review team observed dispatch, reservations, and scheduling operations and analyzed service statistics, basic service records, and operating documents. To verify the accuracy of the public operator's reported information and evaluate its methodology, the review team conducted an independent analysis of sample data. In addition, the review team solicited comments from eligible riders and from local disability organizations.

This report summarizes findings and advisory comments. Findings of deficiency require corrective action and/or additional reporting. Advisory comments are statements detailing recommended or suggested changes to policy or practice to ensure best practices under the ADA.

4. Introduction to MTA Mobility

Maryland Transit Administration (MTA), a regional transportation authority that is a division of the Maryland Department of Transportation (MD DOT), operates public transit services in the Baltimore metropolitan area. MTA provides commuter rail, subway/light rail, fixed route bus, express bus, and ADA complementary paratransit service. According to the National Transit Database, approximately 2,204,000 people live in the MTA service area, which covers approximately 1,800 square miles and includes the City of Baltimore, Baltimore County, and portions of adjoining counties.

MTA operates 730 buses on 51 routes, and 25 commuter bus routes managed by private contractors and overseen by the MTA. All buses are accessible. Bus routes connect with Metro subway and light rail service and MARC commuter rail. A total of 53 light rail cars and 204 subway cars provide Metro subway and light rail service. Light rail service can be accessed using level boarding or mini-high-level platforms; subway cars feature level boarding. MARC rail service areas include Harford County, Maryland; Baltimore City; Washington, D.C.; Brunswick, Maryland; Frederick, Maryland; and Martinsburg, West Virginia. The MARC fleet totals 131 cars.

The MTA website (<http://mta.maryland.gov>) states that for the fourth quarter of Fiscal Year 2015, the agency reported roughly 20 million rides on local buses. Local bus ridership accounts for approximately two thirds of all MTA ridership.

4.1 Introduction to Paratransit Services and Organizational Structure

MTA's ADA complementary paratransit service is called MTA Mobility. MTA Mobility's headquarters is located at 4201 Patterson Avenue in suburban Baltimore, which houses the agency's eligibility determination, reservations, scheduling and dispatch, customer service and administrative functions. This facility can be reached by car, bus, or light rail.

At the time of the onsite review, transportation was provided using a fleet of 504 vehicles owned by MTA and operated and maintained under contract to MTA by First Transit, Inc., MV Transportation, Inc., and TransDev, Inc. (formerly known as Veolia Transportation) at their respective garages. Each contractor is also responsible for its own driver training. Administrative, call center, scheduling and eligibility activities are staffed by MTA Mobility employees, supplemented by contracted physical therapists who conduct functional assessments onsite. Dispatch is performed by First Transit, MV, and Veolia staff, supervised by MTA Mobility employees. For the fourth quarter of Fiscal Year 2015, one-way MTA Mobility trips for the fourth quarter of FY 2015 by eligible passengers totaled 410,551; trips by all passengers (including personal care attendants and companions), 492,101.

MTA's agency website provides fixed route schedules and maps, information about fares and service, rider bulletins, etc. The site emphasizes vehicle, facility, and service accessibility. Information concerning system accessibility and ADA paratransit service is readily found by clicking on the Mobility link. The Mobility section of the website is comprehensive, offering many documents in both pdf and downloadable HTML formats, including an ADA paratransit

application, general eligibility and service information about MTA Mobility, a ride guide for MTA Mobility-eligible customers, and brochures describing conditional eligibility, MTA's accessible services, and the Call-a-Ride subsidized taxi program, described below. This portion of the site also provides contact information for the Citizens Advisory Committee for Accessible Transportation (CACAT), MTA's disability advisory group, and links to other transportation agencies in the region. The MTA website is accessible in text format. The site does not state that MTA Mobility service and eligibility information is available in accessible formats upon request; several materials available for downloading from the site also omit this information.

People found eligible for MTA Mobility service also are eligible to ride MTA fixed route services at no fare, and to use Call-A-Ride at a reduced fare. The latter is a non-ADA taxi program subsidized by MTA.

5. Scope and Methodology

The purpose of this review is to provide FTA with a tool for determining whether a public operator of a fixed-route system is in compliance with the paratransit requirements under DOT ADA regulations. However, the deficiencies identified and findings made in this report are by necessity limited to the information available to and the observations made by the review team at the time of the site visit. A lack of deficiencies in a particular review area does not constitute endorsement or approval of an entity's specific policies, procedures or operations; instead, it simply indicates that no deficiencies in the delivery of service were observed at the time of the review.

The scope of the review and the methodology employed by the review team are described in detail below.

5.1 Scope

This review focused on whether the MTA Mobility ADA paratransit program determines eligibility according to the service criteria specified in 49 CFR §37.123 and 125 of the DOT ADA regulations, without imposing unreasonable administrative burdens on applicants, and operates according to the service criteria specified in 49 CFR §37.131, without capacity constraints prohibited under 49 CFR § 37.131(f). The review examined MTA Mobility's eligibility standards and processes, service area, response time, fares, and hours and days of service, as well as its policies, standards, and procedures for monitoring service provision, including on-time performance, on-board travel time, telephone hold times, and avoiding trip denials and missed trips. The review seeks to ascertain whether service is being provided to eligible individuals within at least the minimum required service area on a next-day basis, during the same hours and days as the fixed-route system, for not more than twice the fixed-route fare for the same trip; whether there are patterns or practices that result in a substantial number of trip limits, trip denials, untimely pickups, and/or trips of excessive length; policies which cause riders to arrive late to appointments; or long telephone hold times, as defined by the transit system's established standards (or typical practices if standards do not exist).

Overall, the complementary paratransit compliance review included the following regulatory requirements:

- Complaint resolution and compliance information (49 CFR §§ 27.13(b) and 27.121(b))
- Nondiscrimination (49 C.F.R. §37.5)
- Service under contract (49 CFR § 37.23) (if applicable)
- Requirement for comparable complementary paratransit service (49 CFR §37.121)
- ADA paratransit eligibility standards (49 CFR §37.123)
- Paratransit eligibility process (49 CFR § 37.125) including:
 - Information availability in accessible formats upon request
 - Eligibility decisions made within 21 days or presumptive eligibility granted pending a decision
 - Written notification of all decisions

- All denials or conditional eligibility determinations completed in writing with specific reasons for the decision
- Administrative appeals process for denials and conditional eligibility determinations
- Reasonable policies for suspending service to eligible riders who establish a pattern or practice of missing trips
- Complementary paratransit service for visitors (49 CFR §37.127)
- Types of service (49 CFR § 37.129)
- Service criteria for complementary paratransit (49 CFR §37.131) including:
 - Service area
 - Response time
 - Fares
 - Trip purpose restrictions
 - Hours and days of service
 - Capacity constraints
- Subscription service (49 CFR § 133)
- Training requirements (49 CFR § 173)

5.2 Methodology

FTA's Office of Civil Rights sent a notification letter dated June 22, 2015 to Paul Comfort, MTA Administrator, confirming the dates of the review and requesting that information be sent to the review team in advance of the on-site visit.

Prior to the on-site visit, the review team examined the following service information:

- MTA Mobility's description of how its ADA complementary paratransit service is structured
- Public information describing MTA Mobility's ADA complementary paratransit service
- MTA Mobility's standards or goals for on-time performance, trip denials, missed trips, paratransit trip length, on-time performance, and telephone hold times

As requested by FTA, MTA Mobility made additional information available during the visit:

- Copies of completed driver manifests for the most recent six-month period
- Service data for the most recent six-month period
- A list of complaints related to capacity issues: trip denials, on-time performance, travel time, and telephone access
- Eligibility data information for the most recent 12-month period
- Work shift assignments for paratransit personnel
- Complementary paratransit fleet roster
- A listing of paratransit employees showing hire and termination dates
- Daily vehicle pull-out records

- Run structure
- Vehicle pre-trip inspection and preventative maintenance forms
- Subscription trips by hour
- Training curricula for each type of complementary paratransit employee
- Procedures for providing information and communication in accessible formats

The on-site review of MTA Mobility's ADA complementary paratransit service took place from August 24 to 28, 2015. The review began with an entrance conference, held at 9 a.m. on Monday, August 24, at MTA Mobility's offices located at 4201 Patterson Avenue, Baltimore, MD. Attending the conference was:

Maryland Transit Administration (MTA)

- Ronald Barnes, Senior Deputy Administrator, representing Paul Comfort, MTA Administrator and CEO
- T. Byron Smith, Esq., MTA Principal Counsel
- Carl Parr, Director, MTA Mobility
- Daniel O'Reilly, Program Manager, MTA Mobility
- Marjorie Nesbitt, Deputy Chief Administrative Officer
- Timothy Palo, Operations Technology
- Sonya Pirtle, Audit Manager
- Rebecca Davis, General Manager, First Transit (MTA contractor)

Milligan and Company, LLC

- Cynthia Lister, Lead Reviewer
- Habibatu Atta, Reviewer
- Allison Reed, Reviewer
- Kristin Szwajkowski, Reviewer

Following the entrance conference, the review team toured the MTA Mobility reservations center, dispatch center, and eligibility unit at 4201 Patterson Avenue. Reviewers then met with MTA Mobility senior managers to discuss the information provided in advance, as well as the information and material that were available on site. MTA Mobility policies and procedures were discussed.

For the remainder of the day, the review team worked at MTA Mobility headquarters. They observed eligibility interviews and functional assessments in process and discussed the process in place at MTA Mobility to record and respond to customer complaints. Some members of the review team met with MTA Mobility managers to discuss the scheduling system's parameters for service area definition and service hours and days. They examined fixed route bus and light rail service hours, days, and service area as compared with ADA paratransit service days, hours and service area. Other members of the review team began peak-hour observations of the trip reservation, scheduling, and dispatching processes. The review team interviewed the head reservations agent and met with reservations agents and schedulers to discuss procedures used to develop the final driver manifests.

On Tuesday, August 25, members of the review team discussed the eligibility process with MTA Mobility staff and gathered eligibility files to examine. They observed in-person interviews and functional assessments being conducted and inspected the computer programs that record certification activity. Other review team members continued observations of the trip reservation, scheduling, and dispatching processes, examined issues of telephone access, and met with reservations agents and schedulers to discuss agency policies and procedures used. The head of operations was interviewed regarding MTA Mobility scheduling policies, procedures, and practices. Other team members interviewed drivers at the first of three contractor sites.

This portion of the review examined agency policies and procedures concerning trip reservations, response time, and negotiation of requested trip times. The review team researched whether there appeared to be a pattern or practice of denying a significant number of trip requests, paying particular attention to MTA Mobility's ability to meet next-day trip requests and whether the agency used any form of trip caps or waiting lists.

On Wednesday, August 26, four members of FTA's Office of Civil Rights shadowed the review team as it continued its observations of MTA Mobility's scheduling and dispatching processes, and interviewed managers regarding dispatching policies, procedures, and technology. The review team also examined eligibility files, observed the performance of functional assessments, and interviewed staff and contractors who conduct assessments. In addition, reviewers continued examining completed driver manifests as a part of the verification of on-time performance, and tabulated MTA Mobility customer comments.

On Thursday, August 27, the review team continued reviewing eligibility determination records, and continued examining completed driver manifests as a part of the verification of MTA Mobility's on-time performance. Subsequently, they conducted driver interviews at the two remaining contractor sites. In addition, members of the review team visited the State of Maryland's Office of Administrative Hearings (OAH) facility in Hunt Valley, MD to observe the handling of four MTA Mobility eligibility appeal hearings scheduled for that morning. The review team also continued to observe dispatch activities and began analysis of on-board travel times.

The review team gathered and analyzed the following information:

- Comments from riders and advocates through telephone interviews and a review of comments and complaints on file at FTA and MTA Mobility
- Reservations policies and performance standards
- Service reports prepared by MTA Mobility showing the number of trips provided and the number of trips denied for the past three years
- Direct observations of the handling of trip requests by reservations agents, and interviews with reservations personnel concerning agency policies and procedures for telephone access, trip requests and capacity denials, and trip negotiation
- Direct observations of the handling of trips by dispatchers, and interviews with dispatch personnel concerning the unit's ability to identify and respond effectively to service issues as these arise

The review team examined fixed route bus and light rail service hours, days, and area as compared with ADA paratransit service days, hours and area, and compared on-board paratransit travel times with those on the fixed route service, with an emphasis on paratransit trips with lengthy travel times. MTA Mobility managers and senior MTA Mobility management were interviewed regarding resources, budgeting, and staffing. The reviewers continued tabulating the various data that had been gathered.

On Friday, August 28, the review team continued to tabulate the various data that had been gathered and prepared for the exit conference.

The exit conference took place at 11 a.m. on Friday, August 28, 2015, at MTA Mobility headquarters located at 4201 Patterson Avenue, Baltimore, MD. Attending the conference was:

Maryland Transit Administration

- Paul Comfort, MTA Administrator and CEO
- Carl Parr, Director, MTA Mobility
- Daniel O'Reilly, Program Manager, MTA Mobility

Federal Transit Administration (FTA), Office of Civil Rights

- Linda Ford, Director, Office of Civil Rights
- John Day, Program Manager for Policy and Technical Assistance
- Dr. Stacie Parkins, Region 3, Civil Rights Officer
- Susan Clark, Equal Opportunity Specialist
- Anita Heard, Equal Opportunity Specialist
- Angela Green, Equal Opportunity Specialist

Milligan and Company, LLC

- Denise Bailey, Principal
- Sandra Swiacki, Director
- Cynthia Lister, Lead Reviewer
- Habibatu Atta, Reviewer
- Allison Reed, Reviewer
- Kristin Sz wajkowski, Reviewer

Following the site visit, a draft report was compiled and transmitted to MTA for comment. See MTA's official response enclosed as Attachment A.

5.3 Stakeholder Interviews

Prior to the on-site review, the review team contacted organizations serving the Greater Baltimore regional disability community. The purpose of this activity was to invite agencies to participate in stakeholder interviews, determine whether service complaints had been filed with MTA Mobility, and identify practices that required further attention and analysis during the review.

The following four organizations were contacted to participate in the stakeholder interviews:

- Ellicott City Dialysis Center, a large dialysis provider in the region;
- The League for People with Disabilities for people with cognitive impairments and seniors;
- Columbia Lighthouse for the Blind (blind/low vision riders): this agency conducts training and rehabilitation for daily life activities within clients' homes; and
- Blind Industries and Services of Maryland (blind/low vision riders).

One representative agreed to participate. One agency initially replied, but then suggested reaching out to multiple contacts within the organization, none of whom responded. Another organization replied that its clients have limited interaction with MTA Mobility through the agency itself, and that staff had only indirect knowledge of transportation use. A fourth agency did not respond to repeated inquiries. Of the three disability community members contacted, two did not respond; a third expressed concerns about MTA Mobility's eligibility process.

The agency representatives were asked questions regarding:

- MTA Mobility eligibility process and appeals;
- service provision, including reservations, telephone hold times and voice mail usage, on-time performance, driver assistance
- trip denials and wait lists;
- administrative burdens including requiring riders to be accompanied by personal care attendants, imposition of user fees or other charges associated with applying to use the service;
- complaints and how these are handled; and
- any feedback regarding visitors using the service.

The participating representative mentioned hearing about the following issues from the agency's clients:

- reservations unit hours: the need for MTA Mobility's call center to stay open more hours to permit riders to schedule trips;
- on-time performance: arriving at designated pickup locations on time or within the pickup window.

Other than the above issues, the representative had not heard any other complaints concerning MTA Mobility service. The principal concern appeared to be the desire for additional MTA Mobility reservations unit hours for their clients to call to schedule rides.

6. Findings and Advisory Comments

This chapter details the findings for each of the areas pertinent to the regulations found in 49 CFR §§ 27 and 37 outlined in the Scope and Methodology section above. For each area, an overview of the relevant regulations and a discussion of the regulations as they apply to MTA Mobility's ADA paratransit system are provided, with corrective actions and a timetable to correct deficiencies for each of the requirements.

Findings are expressed in terms of "deficiency" or "no deficiency." Findings of deficiency denote policies or practices found to be not in compliance with DOT ADA regulations or matters for which FTA requires additional reporting to determine whether an ADA compliance issue exists.

Advisory comments detail recommended or suggested changes to policies or practices to ensure best practices under the ADA or otherwise assist the entity in achieving or maintaining compliance.

6.1 Comparable Paratransit Service

Requirement: Under 49 CFR §37.121, the transit agency operating a fixed route system must provide paratransit service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system.

Discussion: During this compliance review, no deficiencies were found with the requirement to provide comparable paratransit service.

MTA Mobility provides ADA paratransit service that appears to be comparable to MTA's fixed route service in terms of fares, days and hours of service, service area, and response time. Customers have ready access to the MTA trip reservation system and to service and eligibility information, without constraints on capacity or service availability, or restrictions or priorities based on trip purpose. As discussed in later sections of this report, MTA Mobility service exceeds the minimum requirements in some respects.

As of July 1, 2015, there were approximately 25,000 individuals registered for MTA Mobility service. During Fiscal Year 2015, MTA Mobility's eligibility unit processed a total of 10,501 applications, of which 63 percent (6,648) represented new applicants and 37 percent (3,853), recertifying riders. Reviewers observed no evidence that MTA or contracted staff try to steer applicants to other programs or dissuade individuals from applying for ADA paratransit eligibility.

6.2 Paratransit Eligibility Process

Absence of Administrative Burdens

Requirement: Under 49 CFR §37.125, the transit agency must establish an eligibility process for complementary paratransit. The process may not impose unreasonable administrative

burdens on applicants, and, since it is part of the entity's nondiscrimination obligations under §37.5(d), may not involve "user fees" or application fees to the applicant.

Discussion: During this compliance review, no deficiency was found with the requirement to not impose unreasonable administrative burdens on applicants. Findings concerning unreasonable administrative burdens related to the appeals process are discussed later in this report.

MTA Mobility does not impose application fees or charge fares for required trips to participate in the application process. As stated in its information materials and verified by the review team, the agency provides MTA Mobility eligibility-related transportation to applicants free of charge.

Paratransit Eligibility Standards

Requirement: Under 49 CFR §37.123 (e)(1) – (3), the transit agency's eligibility processes, application materials and public information must be comprehensive enough to permit the transit system to determine that the following individuals are ADA paratransit eligible:

Any individual with a disability who is unable, as the result of a physical or mental impairment (including a vision impairment), and without the assistance of another individual (except the operator of a wheelchair or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities

Any individual with a disability who needs the assistance of a wheelchair or other boarding assistance device and is able, with such assistance, to board, ride and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities

Any individual with a disability who has a specific impairment-related condition that prevents the individual from traveling to a boarding location or from a disembarking location

Discussion: During this compliance review, deficiencies were found with the requirements related to paratransit eligibility standards and processes.

Transit agencies' eligibility standards and certification processes, including applications, in-person interviews and functional assessments, and eligibility determination letters, must clearly and specifically reflect the three transit-related bases for ADA paratransit eligibility cited above. MTA Mobility has established appropriate standards for eligibility: The agency's reference manual of written eligibility standards, *MTA Mobility Guidelines for Making Eligibility Determinations*, consists principally of direct quotations from DOT ADA regulatory commentary now part of FTA Circular 4710.1. These standards are grounded in 49 CFR §37.123 (e)(1) – (3).

MTA Mobility also has an eligibility determination process in place. The process includes in-person interviews performed by MTA Mobility staff for all new and recertifying applicants, and additional on-site functional assessments conducted by contracted physical or occupational therapists for approximately 30 percent of these applicants. The agency's communications

describing its eligibility process state that this process is based on functional ability to use public transit.

As part of its on-site review, team members examined MTA Mobility’s public information materials and website information, eligibility materials, certification files and records, and eligibility software; observed intake, interview, and functional assessment activities; and interviewed the manager of the eligibility unit. Based on this information, reviewers concluded that MTA Mobility’s eligibility processes and resulting decisions are inconsistent with the agency’s own written standards and 49 CFR §37.123 (e)(1) – (3).

Reviewers analyzed a random sample of 36 MTA Mobility eligibility files from the period June 1, 2015 to August 20, 2015, with the following determinations:

**MTA Mobility - Eligibility File Review
Random Sample of 36 Files
June 1, 2015 - August 20, 2015**

<i>Determination</i>	Number	Percent
Unconditional	6	17%
Conditional	10	28%
Temporary	3	8%
Ineligible	17	47%

<i>Distribution</i>	Number	Percent
New Applicants	22	61%
Recertification	14	39%

Despite the existence of the agency’s Mobility Guidelines document reflecting the requirements of the DOT ADA regulations, and an application and functional assessment form that address functional abilities in transit-specific terms, it was not always apparent to reviewers that agency and contracted staff understood and used these standards in making eligibility decisions or issuing certification letters. Moreover, failure to adhere to these requirements appears to have been ignored or unrecognized, despite the fact that MTA Mobility had apparently issued its Mobility Guidelines document several months prior to the dates of the files seen by reviewers. No training materials concerning the Mobility Guidelines were made available to the review team.

Examination of these files indicated that rather than directly addressing an individual’s *functional ability to access and use public transit independently* as DOT ADA regulations require, the agency’s certification process appears to devote significant attention to applicants’ performance of tasks of daily living. The files often contained notations, on intake sheets, assessment forms, application, and verification forms, regarding individuals’ personal activities—child care, home tasks, volunteer work—as well as use of public transit and Mobility services. (This conclusion was supported by the fact that reviewers observed eligibility appeals testimony by MTA Mobility personnel who cited non-transit-specific factors.) Some of these

comments later appeared in the statements of conditions of eligibility or denial statements accompanying eligibility determination letters.

In addition, file review indicated that MTA and contracted personnel performing certification activities are at times making determinations based on incomplete applications or inconsistent application of the agency's functional ability standards, and have been basing some eligibility decisions on applicants' level of use or non-use of fixed route, MTA Mobility service, or subsidized Call-A-Ride taxi service--even in cases where a determination might ultimately appear appropriate and logical.

These factors are discussed further in the *Written Eligibility Determinations* section below.

Eligibility Process

Located at street level at MTA Mobility headquarters, the agency's in-house eligibility unit performs certification activities. Contracted therapists conduct functional assessments. Travel training is not offered at present but managers hope to reinstitute the program.

MTA Mobility determines ADA complementary paratransit eligibility using a paper application which includes confirmation by the applicant's designated health professional, an in-person interview (conducted onsite by MTA staff and required for all applicants), functional assessments (for approximately 30 percent of applicants; performed onsite by contract physical and occupational therapists), and, at times, additional information requested from health professionals. When applicants have multiple disabilities, assessments of cognition and/or vision can often be required in addition to the basic initial assessment. Applications can be obtained in person at MTA Mobility headquarters, by telephone request, or by downloading application packets in html format from the MTA website.

New and recertifying applicants are responsible for filling out Part A of the application and arranging for a health or social service professional to complete Part B and if appropriate, Part C, which addresses mental health disabilities. The applicant then calls to schedule an appointment for an interview at MTA Mobility headquarters, with the understanding that a functional assessment may also be required. For this reason, MTA's printed and online information counsels applicants to allow up to four hours for the entire appointment if a functional assessment proves to be necessary. Applicants are to bring their completed application packet to the interview appointment.

MTA Mobility has committed the agency to, whenever possible, a "one-stop process" where, for all but a few applicants, both activities will be completed in one visit. In offering a one-visit process, the agency has also learned that some applicants are unable to commit several hours to this effort, and must return to the agency for a second appointment. A few others (for example, some with vision disabilities) must undergo functional assessments offsite, again requiring a second trip. Nonetheless, reviewers observed that MTA Mobility has succeeded in meeting its commitment.

In addition, approximately one month earlier, the agency had begun accommodating walk-in applicants who had not scheduled an appointment in advance. MTA then found that despite adding staff to process the sizable influx of individuals arriving without appointments, this change resulted in longer wait times for all applicants. At the time of the review, the agency had suspended this practice and was reevaluating its feasibility.

MTA Mobility eligibility specialists conduct the in-person interview, also examining the application materials brought by the applicant. The review team observed these interviews appeared to take approximately 15 to 30 minutes and seemed to focus on verifying personal data and ascertaining the applicant's functional capabilities in daily living. The specialist may then refer the customer for a functional assessment, usually performed onsite within an hour by a contracted assessor. MTA Mobility requires that assessors be licensed physical or occupational therapists. The functional assessments involve ascertaining abilities both inside the office building and on the street, and at the time of the review were observed to take approximately 45 minutes. Assessors use the Physical Functional Abilities Assessment Form (a survey instrument developed by MTA), supplemented by the Tinetti Balance Assessment Tool and the Modified Mini-Mental State (3MS) Test (Version A Australian). For most applicants the initial screening interview is the only portion of Mobility's application process they will undergo—and it is during this interview, reviewers were told, that a decision is made regarding whether the applicant should participate in a functional assessment.

Following the functional assessment, contract assessors must return their completed assessment forms to the MTA Mobility eligibility manager within one week. Reviewers were unable to confirm contract staff compliance with this requirement. The MTA Mobility manager then reviews the assessor's recommendation and assigns an eligibility specialist to draft the determination certification letter, based on the assessor's written comments. The MTA Mobility manager reviews the completed letter before it is issued.

The review team observed that among MTA Mobility staff and managers, and contracted eligibility personnel as well, opinions differed as to when an application is considered complete, triggering the DOT ADA 21-day processing requirement. This issue is discussed further under *Eligibility Determinations Within 21 Days*.

New and recertification applicants use the same application form and undergo the same interview and assessment process. All applications are processed and documented in the same way.

Application Volume; Certification Outcomes

The following table summarizes MTA Mobility eligibility applications and outcomes during the six-month period January 1, 2015 through June 30, 2015.

**MTA Mobility Eligibility Application Outcomes –
Calendar Months January - June, 2015 (Six Months)**

	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	TOTALS	PERCENTAGE
New Applicants	532	530	457	680	522	588	3,309	65%
Recertifications	388	349	312	303	187	282	1,821	35%
TOTAL	920	879	769	983	709	870	5,130	
Conditional	88	66	111	106	77	116	564	11%
Temporary	68	88	61	60	62	54	393	8%
Unconditional	518	629	480	624	485	584	3,320	65%
Denial	246	96	117	193	85	116	853	17%
Total Applications Handled	920	879	769	983	709	870	5,130	

MTA Mobility grants unconditional, conditional, and temporary ADA paratransit eligibility. Unconditional is defined as functionally prevented from independently using fixed route services and therefore eligible for MTA Mobility service for all trips. Conditional eligibility means that an applicant is prevented from independently using fixed route services under certain conditions. Applicants with temporary eligibility may use the service for all trips for a limited period of time. Relatively few applicants (approximately 10 percent) are found conditionally eligible and MTA Mobility does not implement conditional eligibility, instead expecting such individuals to manage their use of service themselves. Although MTA Mobility offers a brochure explaining conditional eligibility (also available on the website), interviews with MTA reservations staff indicated that they were unfamiliar with conditional eligibility and had not received training concerning its handling.

Logical and Thorough Decisions

MTA Mobility eligibility standards, application, and interview and assessment process, include mention of factors such as environmental barriers, endurance/fatigue, and path of travel issues. However, file review indicates that these factors are not uniformly and consistently considered in determining eligibility, and that those making eligibility decisions do not always appear to take into account issues such as the applicant's ability to travel throughout the entire service area, or the impact of architectural barriers or environmental factors such as adverse weather conditions or low light.

During the onsite examination of files, reviewers noted the following decisions that did not appear to apply MTA's own standards: a person who is blind who was found ineligible without explanation of how the individual would be functionally able to travel independently using fixed route throughout the service area and to unfamiliar destinations, or during low light or extreme weather conditions; and an individual with dementia and traumatic brain injury who was found ineligible without explanation of how the individual would be functionally able to travel independently using fixed route throughout the service area and to unfamiliar destinations.

Determinations Not Always Based on Transit-Related Standards

Review of recent MTA Mobility eligibility files and letters, and observation of in-person interviews, functional assessments, and eligibility appeal hearings indicates that at times, MTA Mobility is inappropriately making eligibility determinations based principally on applicants' ability to perform non-transit-related activities such as tasks of daily living (cooking, laundry), volunteer work outside the home, or caring for a two-year-old child. Activities of daily living are routine activities that people tend to do every day without needing assistance. In discussions of functional ability and in eligibility appeals hearing testimony, MTA Mobility managers and therapists repeatedly stated with conviction that "we consider the whole person, it's essential to consider the whole person" and "we look at it [functional ability] holistically". Notes in eligibility files show that eligibility personnel document such factors. Many activities of daily living are transferable to transit use, and do provide useful indications of functional abilities. Nonetheless, in a public transit context, the individual making the determination of eligibility is obliged to follow DOT ADA requirements in considering *functional ability to use and access public transit independently*, and to explain the resulting eligibility decision to the applicant clearly, in writing.

The review team noted eligibility letters stating non-transit-specific factors such as care of a young child, in community activities, and ability to cook and clean house. One letter cited weekly volunteer work at an addiction treatment center. These are not in and of themselves indicative of the functional ability to travel independently, travel throughout the entire service area, or travel at all times and during all weather.

Use or Non-Use of Transit or Subsidized Taxi Service

It is appropriate to consider fixed route usage when making eligibility determinations and MTA Mobility applications query applicants' use of fixed route service. In examining recent eligibility files, reviewers noted that MTA internal paperwork also itemizes applicants' level of use or non-use of fixed route service, MTA Mobility service, and non-ADA Call-A-Ride taxi service, and that these factors appear to influence eligibility decisions. At the same time, staff members also stated to reviewers their opinion that some individuals have applied for MTA Mobility eligibility in order to become eligible for subsidized Call-A-Ride taxi service or reduced fixed route fares, as evidenced by applicants' subsequent non-use of MTA's ADA paratransit services. Review of files and certification letters suggests that at times, eligibility staff have viewed transit or taxi use as evidence that the applicant's disability "does not prevent" his or her use of public transit and as a basis for denial of eligibility.

Using prior transportation ridership (or the absence of use) as a primary basis for denial of eligibility does not comply with DOT ADA regulations *or MTA Mobility written eligibility standards* because it does not consider factors such as:

- ability to travel independently;
- ability to travel throughout the entire service area, including unfamiliar destinations, rather than exclusively to and from one's home;
- ability to travel at all times and under all conditions—for example, during inclement weather, including heat, cold, snow and heavy rain and especially when using a mobility aid.

Basing decisions solely on prior transportation use also does not consider basic disability-related factors impacting applicants' functional abilities such as:

- current functional ability to use fixed route transit independently
- variable or episodic disabilities that impact functional ability to use fixed route use on some days, under certain conditions, but not others.

“Reasonable Person” Standard

In Appendix D to the DOT ADA regulations, the discussion of ADA Paratransit Eligibility Process offers the following guidance for appropriately determining if travel to and from stops and stations is “prevented” or simply “difficult”:

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

MTA Mobility's written eligibility standards discuss the “reasonable person” threshold. Nonetheless, reviewers observed that based on file review it is not clear that the agency's eligibility decisions consistently recognize the impact of snow or heavy rain or architectural barriers on one's ability to use a motorized mobility device, or consider an applicant's ability to travel throughout the service area rather than solely to/from home, a nearby transit stop, or other familiar destinations.

Procedural Flaws

MTA's processing of some applications revealed procedural flaws. Reviewers noted the absence of application check sheets identifying information missing, incomplete, or requiring clarification or follow-up. Section 2 of the application provides professional verification of the applicant's statements in Section 1 regarding his or her functional ability. It must be filled out by the applicant's designated professional. Reviewers found that in many of the applications reviewed, Section 2 was incomplete, often providing minimal information. MTA Mobility's

process does not appear to include returning incomplete applications. In what was described to reviewers as an effort to be as customer-friendly as possible, agency personnel appear to accept applications as-is. The incomplete document, amended at times by MTA eligibility personnel and contracted staff, then served as the basis for in-person interviews, functional assessments and eligibility determinations.

File review revealed that MTA Mobility does not appear to consistently use decision summary sheets in each applicant's file to state the determination and clearly and briefly list the functional abilities specific to the use of fixed route transit services and the supporting information and documentation upon which the decision was based.

Corrective Action Plan and Schedule

Within 60 days of the issuance of the final report, MTA Mobility must provide to the FTA for review:

- revised eligibility determination processes and procedures that reflect DOT ADA requirements and existing agency ADA paratransit eligibility standards;
- revised, transit-specific interview, assessment, and decision summary forms which consider only the applicant's functional ability to access and use public transit independently, and include consideration of factors such as endurance, path of travel, inclement weather, and potential travel throughout the service area.

Accessible Information

Requirement: Under 49 CFR §37.125(b), the transit agency must make all information about the process, materials necessary to apply for eligibility, and notices and determinations concerning eligibility available in accessible formats, either as a rule or upon request.

Discussion: During this compliance review, a deficiency was found with the requirement for accessible information.

MTA Mobility's website and print materials do not effectively and consistently communicate the availability of information in accessible formats upon request. The website includes some brochures and information in both pdf and downloadable HTML formats. However, it does not contain a general notice of the availability of information in accessible formats upon request.

Some, but not all MTA Mobility documents are available in alternate accessible format. A note accompanying the link to download the MTA Mobility application states: *If you have any problem accessing this document, please contact us at 410-764-8181.* On the application itself, the signature pages of Parts B and C contain a notice of the availability of accessible formats, but Part A (to be signed by the applicant) does not. The review team noted that no-show and eligibility-related correspondence to people with vision impairments did not include accessible-format information. Neither the "What is Conditional Eligibility?" or "Mobility Direct" brochures carry an accessible information notice.

Corrective Action Plan and Schedule

Within 60 days of the issuance of the final report, MTA Mobility must provide to the FTA documentation that notices of the availability of information in accessible formats upon request have been added to the agency's website, any downloadable materials it offers, and MTA Mobility information and customer correspondence templates.

Eligibility Determinations or Presumptive Eligibility within 21 Days

Requirement: Under 49 CFR §37.125(c), if the transit agency has not made an eligibility determination on the 21st day following the submission of a complete application, it must treat the applicant as eligible on the 22nd day and have a process in place to provide service to the applicant beginning on the 22nd day and until the eligibility determination has been made. The transit agency's process must communicate the right to this presumptive eligibility to applicants so they are aware of their rights to schedule and use the service, beginning on the 22nd day.

Discussion: During this compliance review, deficiencies were found with the requirements for eligibility determinations and presumptive eligibility.

Deficiencies were found with the requirement that decisions be rendered within 21 days of submission of a completed application. Among MTA Mobility staff and managers, and contracted eligibility personnel as well, opinions differed as to when an application is considered complete, triggering the DOT ADA 21-day processing requirement. Some managers viewed an application as "complete" following the in-person interview and functional assessment, regardless of whether additional information or verification remained to be obtained. Other individuals stated that an application should not be considered complete until all needed documentation and information had been received and recorded. Reviewers noted that MTA Mobility has no written policy establishing when an application is considered complete, and that the agency does not log completion dates or track application progress based on a universally-understood completion date.

In addition, MTA Mobility's communications and website do not always offer the same information about presumptive eligibility, or eligibility appeals. MTA Mobility eligibility information states: *MTA has up to 21 days to make a determination. If a determination has not been made within 21 days, please call Mobility Certification to discuss your right to presumptive eligibility until a decision on your eligibility can be made.* This statement does not establish a point of reference from which applicants can count the 21 days. Moreover, it makes the rider, not MTA, responsible for following up on and obtaining presumptive eligibility. It is MTA's responsibility to notify applicants within 21 days to let them know the application is complete (or not), and it is not incumbent on the applicant to make that call - the agency should be notifying the applicant.

On average, 83 percent of MTA mobility applications examined appeared to have been processed within 21 days after receipt of a completed application. In addition, the review team calculated that within five days of that eligibility decision, only 72 percent of determination letters had been issued to customers. When file review showed that application processing time exceeded 21 days, MTA staff were unable to document that notice of presumptive eligibility had

been provided to customers, and no presumptive eligibility process was made available to reviewers.

Tracking Application Handling

MTA Mobility managers and staff use Trapeze software to record some eligibility-related actions in customer files. Monthly reports document application volume, but managers informed reviewers that the software did not provide in-depth analyses or track application progress against a time line.

Meeting Application Processing Time Requirements; Prompt Notification of Determinations

During the on-site visit, the review team examined a random sample of 36 eligibility files and certification letters where determinations had been made during the period June 1, 2015 to August 20, 2015. The sample included denials and decisions granting unconditional, conditional, and temporary eligibility.

The review of application processing time showed that 19 decisions (53 percent) were made in seven days or less, 30 (83 percent) were made within 21 days, and six decisions (17 percent) were made in 22 to 64 days. For this sample, MTA Mobility rendered eligibility decisions in an average of 12.5 days.

With regard to timely notification, MTA Mobility's stated policy is that eligibility notification must be issued as soon as possible after the determination has been made. Review of dates of certification letters showed that 18 letters (53 percent) were issued on the same day, and eight were issued one to five days following the decision, for a total of 26 letters (72 percent) issued within five days or less. For the remaining 10 (28 percent), one was issued within seven days, six were issued in eight to 14 days, and three in 15 to 32 days after the decision. In one instance the processing time exceeded 21 days, and then the determination letter was issued more than seven days thereafter. For this sample, the length of time involved in issuing notifications following the decisions averaged five days.

Providing Presumptive Eligibility When Required

Application files where processing appeared to exceed 21 days after receipt of a completed application contained no documentation that presumptive eligibility had been provided. Reviewers noted that MTA Mobility's letter templates do not include a sample letter awarding presumptive eligibility in the event that a determination is not made within 21 days of receipt of a completed application. As previously mentioned, copies of a policy or procedures regarding provision of presumptive eligibility were not available.

Corrective Action Plan and Schedule

Within 60 days of the issuance of the final report, MTA Mobility must provide to the FTA for review:

- policy statement, process flow chart, and time line showing an application handling process to identify when an application is complete and assure that, upon receipt of a completed application, decisions are rendered within 21 days, or the transit agency makes

presumptive eligibility available on Day 22 and the applicant is so informed. These processes and materials must also include appropriate provisions for factors such as incomplete applications and requests for supplemental information;

- revised internal application tracking procedures and reports, documenting when an application is considered “complete”, determination made, letter issued, and if/when notification of presumptive eligibility is issued.

Written Eligibility Determinations including Specific Reasons for Denials or Temporary or Conditional Eligibility Determinations

Requirement: Under 49 CFR 37.125(d), determinations of eligibility must be made in writing. If applicants are found to be ineligible, the determination must state the specific reasons for the decision (a mere statement that the applicant has been found to be ineligible is not sufficient). If an individual has been determined to be conditionally or temporarily eligible, the determination must state the conditions under which eligibility is granted and the basis for that determination. Information concerning the applicant’s right to appeal under §37.125(g) must also be provided.

Discussion: During this compliance review, deficiencies were found with the requirement for written eligibility determinations. Based on the data collected, observations made, and information materials, policies, procedures and actions examined during the review, the review team observed in MTA Mobility’s written notices of eligibility the frequent failure to provide transit-based reasons for determinations of temporary or conditional eligibility or denials which are consistent with MTA Mobility’s eligibility standards and the DOT requirements found at 49 CFR §37.123 (e)(1) – (3).

During the on-site review, team members examined MTA Mobility certification files, documents, and computer records; observed interview and assessment activities; and interviewed the manager of MTA Mobility’s eligibility unit.

As previously discussed, reviewers analyzed a random sample of 36 MTA Mobility eligibility determination letters from the period June 1, 2015 to August 20, 2015. Among these letters, six applicants (17 percent) were determined to be unconditionally eligible; 17 (47 percent) were found ineligible. Three (eight percent) were granted temporary and 10 (28 percent), conditional eligibility. Recertification applicants totaled 14 (39 percent) and new applicants, 22 (61 percent).

Analysis of the letters showed the following:

- All letters contained names of transit provider and eligible individual; telephone number of paratransit contact; expiration date for eligibility; and any conditions or limitations on eligibility or notations such as use of a PCA.
- No letters, including one to an applicant identified as someone who is blind, contained a notice of the availability of this information in an alternate accessible format.
- All 30 conditional, temporary, and denial letters (82 percent) informed applicants of the right to appeal.
- No conditional, temporary, or denial letters included a statement that individuals who experience any health changes, or changes in medical equipment that affect their ability

to use public transit, have the option of submitting a new application or seeking early recertification at any time. While not required, including such a notice is an effective practice.

- The three letters granting temporary eligibility (eight percent) did not provide reasons for the limited term of eligibility. Letters awarding temporary eligibility must explain with specifics why someone was made eligible for a shorter period of time.
- Letters often contained spelling or grammatical errors

In addition, all 30 conditional, temporary, and denial letters provided reasons for the decision. However, as discussed earlier in this report, after examining each file, the eligibility determinations reviewed did not always appear logical, thorough, or well-grounded in DOT ADA regulatory requirements. Team members questioned the accuracy and appropriateness of at least five (17 percent) of these decisions. In addition, file review indicated that MTA Mobility personnel performing certification activities are at times making determinations based on incomplete applications, incomplete understanding of regulatory requirements, or inconsistent application of the agency's functional ability standards, transit-related or otherwise, and have been basing some eligibility decisions in large part on applicants' level of use or non-use of fixed route, MTA Mobility service, or subsidized call-a-ride taxi service.

Section 37.125(g) obligates transit agencies to provide riders the opportunity to appeal a determination limiting or denying eligibility. FTA requires transit agencies to include notice of the right to appeal and how to request an appeal in letters communicating decisions that deny or limit eligibility in any way. An optional good practice is to also enclose an appeal request form with determination letters. MTA Mobility eligibility determination letters and suspension notification letters provide attachments regarding the appeal process and enclose an appeal request form.

Corrective Action Plan and Schedule

Within 60 days of the issuance of the final report, MTA Mobility must provide to the FTA for review revised certification letters and letter templates demonstrating that the following elements are included:

- specific, transit-based reasons for determinations of ineligibility, temporary or conditional eligibility, and for any limitations on eligibility including the use of a PCA, which reflect current DOT ADA regulatory requirements and MTA Mobility's written eligibility standards with brief, understandable eligibility appeal information.

Recertification of Eligibility at Reasonable Intervals

Requirement: Under 49 CFR §37.125(f), the transit agency is permitted to require paratransit riders to recertify eligibility at reasonable intervals. As stated in Appendix D, a reasonable interval would be between one and three years.

Discussion: During this compliance review, no deficiencies were found with the recertification of eligibility.

MTA Mobility's eligibility process includes recertification at three-year intervals. The recertification process includes notifying customers by mail 60 days prior to expiration of their eligibility.

The MTA Mobility recertification program parallels the agency's certification process for new applicants. The application form is the same form used for new applicants. The agency policies for processing the completed application, conducting the in-person interview and any functional assessments, making a determination, and issuing the determination letter are the same.

At the time of the review, MTA Mobility managers were discussing the possibility of exceptions to this process when recertifying MTA Mobility riders with unconditional eligibility who are of advanced age or who have, based on verification by their designated professional, a cognitive disability-related condition that will not change or improve over time or with the advent of new technology. In cases such as these, the three-year recertification cycle would be retained but the recertifying rider would be required only to update customer records.

In examining recent eligibility files, review team members found that MTA Mobility certification letters do not state that eligible riders who experience any health changes or changes in medical equipment that affect their ability to use public transit have the option of early recertification at any time.

In reviewing MTA Mobility eligibility data for Fiscal Year 2015, reviewers noted that of a total of 10,501 applications handled, recertifications represented approximately 37 percent (3,853 applications).

As part of its examination of MTA Mobility eligibility policies, standards and procedures, public information, and eligibility documents and computer records, the review team inspected a sampling of files for individuals recently undergoing recertification and recordkeeping for these. They observed no differences in the handling of new and recertification applications. MTA Mobility procedures appear to be implemented consistently whether the applicant is a new applicant or an eligible rider undergoing recertification.

Administrative Appeals Process for Denials or Decisions Granting Conditional or Temporary Eligibility

Requirement: Under 49 CFR §37.125(g), the transit agency must have a process for administering appeals through which individuals who are denied eligibility can obtain review of the denial. The transit agency is permitted to require written notice, within 60 days of its written decision denying or limiting eligibility that the applicant wishes to exercise his or her right to an appeal hearing. The transit agency cannot require the "filing of a written appeal."

The appeal process must include an opportunity for the applicant to be heard and to present information and arguments, with appropriate separation of authority (i.e., a decision by a person not involved with the initial decision to deny or limit eligibility). Appeal decisions must be provided in writing and explain the reasons for denying the appeal. The appeal hearing must be scheduled within a reasonable amount of time, and if a decision has not been made within 30

days of the completion of the appeal process, the appellant must be provided paratransit service from that time until and unless a decision to deny the appeal is issued, as required.

Discussion: During this compliance review, deficiencies were found with the requirements for the administrative appeals process for eligibility. The review team observed that the MTA appeals process contradicts 49 C.F.R. §37.125(g) in a number of ways. The review team examined information materials, recent eligibility files, appeals documentation and hearing transcripts, and observed three eligibility appeal hearings.

Delegation of Appeals Process.

MTA has delegated its appeals process to the Maryland Office of Administrative Hearings (“OAH”). OAH was created as an independent state agency in 1990 by the Maryland Legislature. The OAH website (www.oah.state.md.us) states that the “OAH conducts fair and timely hearings in 500 different case types for over 30 state agencies,” and lists those agencies, which include MD DOT. It notes that OAH administrative hearings are held “before Administrative Law Judges (ALJs), who are independent of the agency whose action is being contested.” The website offers information on foreclosure and mediation processes, how to request a postponement, subpoena, or transcript, and also procedures for filing letters, pleadings, and documents in connection with hearings. The site offers a “frequent questions” section and its tone is clear, professional and informative, but not at all informal—potentially intimidating for a prospective appellant with a disability seeking reconsideration of an ADA paratransit eligibility determination.

When denied paratransit eligibility, or given conditional eligibility, MTA Mobility applicants are provided with a separate form from OAH to begin the appeal process. The form inappropriately asks why the individual wishes to appeal. The MTA appeals process described online informs the appellant that s/he should appear in person at the hearing.

Section 37.125(g) requires that an entity must establish an administrative appeal process through which individuals denied eligibility for complementary paratransit service can obtain a review of the denial. The process must include an opportunity to be heard and to present information and arguments, separation of functions, and written notification of the decision and the reasons for it. Appendix D to Part 37 provides guidance on the requirements of section 37.125(g) and states “the process may not impose unreasonable administrative burdens on applicants” and must provide the individual an opportunity to be heard in an “in-person informal hearing before a decision-maker.” The appellant may waive the in-person hearing and proceed on the basis of written presentations. Appendix D also states that “[w]hile the hearing is intended to be informal, the individual could bring a representative (e.g. someone from an advocacy organization, an attorney).”

MTA advises the appellant that s/he *may* prepare questions and have a lawyer present. MTA does not inform the appellant that MTA will have legal counsel present at the appeal, and it does not advise appellants of the option for a non-attorney representative such as someone from an advocacy organization to represent the appellant. The DOT regulations provide that appellants have the option to waive the hearing and proceed on the basis of written presentations. However, Item 1 in “How to Appeal a Determination”, found on MTA’s website, states: “You should

appear at your hearing.” Item 6 states: “Failure to appear at a scheduled hearing may result in dismissal of appeal.” It appears that the waiver option is not available to MTA appellants, and that they are required to attend the hearing in person or face default dismissal. Reviewers were informed that Maryland legislation permits individuals to waive their right to personally appear and proceed to have the matter decided in their absence; nonetheless, MTA information materials omit mention of this option.

With regard to appellants’ ability to access their file when appealing, 49 C.F.R. §37.125(g) requires that all relevant entity records and personnel be made available to the individual in order to prepare his/her case. Reviewers have been advised that appellants have a right to their entire file under the Maryland Public Information Act and/or through the OAH’s informal discovery process. MTA eligibility staff informed reviewers that MTA will provide documents concerning the appeal before the hearing if requested; Item 2 in MTA’s website document “How to Appeal a Determination” states: “Upon request, the MTA will provide documents related to your appeal in advance of the hearing.” Eligibility staff noted that most appellants receive the documents during the hearing as they are introduced into evidence by MTA’s counsel. No policies or procedures regarding eligibility file handling were provided to reviewers.

MTA Discretion

Under Maryland state law, the delegation of matters to the OAH is not a mandatory function but a function within the discretion of the administrative agency. MTA has the discretion to conduct the appeals hearings under 49 C.F.R. §37.125(g) on its own, with an unbiased decision maker, or delegate the authority to hear the case to OAH. While MTA has exercised its discretion in delegating cases to the OAH, it is legally permissible for MTA to revoke the delegation of authority and conduct its own cases.

Limitation of OAH Powers

Along with its discretionary powers to conduct its own hearings, MTA also has the power to limit the scope of its delegation to OAH and to adopt regulations that allows it to have a final conclusion of law in any appeals case. Thus, the MTA may adopt regulations that conform to the requirements of 49 C.F.R. §37.125(g) and delegate the authority to conduct the hearings under its own adopted regulations to OAH. For example, MTA could adopt regulations that allow for videoconferencing, which is already an option offered by OAH, but not by MTA. It could also forego the representation by an attorney to create a more informal environment, and automatically send appellants documents in advance of the hearing.

Appeals Handling

After receiving applicants’ requests for appeal of eligibility determinations, the OAH schedules a hearing date and time and notifies the appellant and Mobility’s eligibility manager in writing. MTA eligibility staff maintain an appeals log in Excel software, separate from the customer files. MTA Mobility provides appellants with free transportation to and from the hearing site, but has no other communication with appellants concerning the appeal. Staff document this transportation in the customer’s file.

The OAH sends a copy of the administrative law judge's written decision to MTA Mobility. Eligibility staff then enter the appeal outcome in the log. If the OAH changes or reverses an MTA Mobility eligibility decision, staff also document this outcome in the appellant's file and send a revised determination letter reflecting the appellant's new status. Eligibility staff stated that upon receiving an OAH decision of reversal or change, it is their practice to notify the applicant by telephone immediately regarding his or her new eligibility status, pending issuance of the certification letter.

Appeals Hearings

The review team observed the handling of three eligibility appeals hearings. One was removed from the court schedule that morning due to the appellant's having confused the hearing date. The three OAH hearings that occurred were formal judicial hearings held in an administrative courtroom and conducted by an Administrative Law Judge, with testimony, cross-examination, and transcripts. In all cases, Maryland DOT was represented by an Assistant Attorney General. Testimony was presented by MTA Mobility witnesses. These included the individual who was responsible for the initial eligibility determination, who verbally summarized the documents in the appellant's customer file, and an occupational or physical therapist who testified regarding the appellant's functional abilities as recorded in the file. Testimony was also presented by the appellants who, as the judge explained to them, had the right to present written and oral information and arguments and offer witnesses. It was not apparent that appellants fully understood these rights or had prepared for the hearing by developing statements or bringing witnesses and supplemental information. Before and during the proceedings, the ALJ re-stated court procedures in layman's terms to appellants. Nonetheless, despite the fact that the first appellant was represented by counsel from the Maryland Disability Law Center, all three appellants appeared confused by, and unprepared for, the court process.

Reviewers observed that OAH appeared to be scheduling hearings within a month of the date of the request to appeal. At the time of the review, team members were told that OAH was scheduling eight or nine MTA Mobility eligibility hearings at 45-minute intervals on each Thursday and usually also on Tuesdays. This schedule requires the manager of eligibility certification and at least one physical or occupational therapist to be present in court all day, prepared to testify, at least one day each week.

While ensuring fairness and professionalism, the OAH process nonetheless does not appear to afford MTA Mobility applicants the opportunity for their appeal to be heard by individuals who, although familiar with the regulatory criteria for ADA paratransit eligibility, also bring a high level of knowledge about the functional abilities of individuals with disabilities similar to the appellant's; have knowledge of fixed route transit and complementary paratransit policies and service features, to enable them to more accurately determine if appellants can perform all the tasks required to use fixed route services and to understand the differences between use of fixed route transit and complementary paratransit; and have experience with the function and intent of complementary paratransit. In contrast, the reviewers' experience is that most transit agencies' in-house appeal processes strive to include individuals with experience in these areas.

Appeals Outcomes

Based on the review team’s examination of appeals hearing documents and appeals logs, OAH judges consistently rendered written decisions within 30 days of the date of the hearing. Decisions appeared to be based on documents or testimony presented at the hearing. MTA Mobility’s eligibility manager provided a log of appeal activity for June 15 through August 28, 2015, which reviewers tabulated as follows:

MTA Mobility Eligibility Appeals Hearings Scheduled by OAH	
June 15, 2015 through August 28, 2015 (approximately 10 weeks)	
Determination Upheld	16
Determination Overturned	2
Determination Reversed by MTA Prior to Hearing	2
Appeal Withdrawn by Customer	4
"Default": Appellant No-Showed for Hearing; Original Determination Stands	4
Total	28

During this period, 28 appeals were filed and 22 OAH eligibility appeal hearings were held. Four applicants withdrew their appeals. According to MTA Mobility managers, MTA accepts information from appellants in advance of hearings and if the new information changes the original determination, it will reverse the decision of its own volition; this occurred on two occasions. ALJs upheld 16 eligibility determinations. In four instances the appellant did not appear and thus, in conformance with OAH practice, the ALJ ruled that the original determination would stand without notation as to whether supplemental information had been submitted or reviewed. The four “default” decisions and the appeals withdrawn each represent 14 percent of appeals hearings originally scheduled by OAH. ALJs overturned another four determinations (14 percent). ALJs also upheld 16 eligibility determinations, representing 57 percent of all hearings scheduled.

MTA Mobility managers stated that in the event that an appellant requested to reschedule the hearing, “*we always accommodate them.*”

Presumptive Eligibility

Paragraph 6 of the *Mobility/Paratransit Certification Appeals Process*, an MTA document captioned as updated effective April 28, 2015, states: “*Applicants denied recertification will be given presumptive eligibility from the date that the MTA is notified of the Appeal by the Office of Administrative Hearings until 30 days after the hearing date. However, if the decision has not been made within 30 days of the hearing, MTA Mobility will provide Paratransit service to you from that time, until the hearing decision is made.*” Staff was unable to provide documentation of presumptive eligibility procedures or written notification.

Customer Information

Review of files did not confirm that appeal materials are always enclosed with determination letters.

Corrective Action Plan and Schedule

Within 60 days of the issuance of the final report, MTA must revise its hearing process to comply with federal regulations. MTA must provide to the FTA for review:

- a revised eligibility appeal process which provides appellants the opportunity for an in-person informal hearing and furnishes a clear explanation of the appellant's right to present written and oral information and to be accompanied by advocates. This policy shall include appropriate separation of functions, shall permit but not require the appellant's presence, and shall not require a written appeal nor require statement of a reason for appeal;
- internal tracking procedures and reports for eligibility appeals, documenting dates of request, hearing, decision, notification, and provision of presumptive eligibility; and
- revised written and electronic public information materials, and templates for eligibility determination and service suspension letters, to reflect these changes and assure consistent wording across all documents and website information.

Complementary Paratransit for Visitors

Requirement: Under 49 CFR §37.127(d) and (e), paratransit service must be made available to visitors not residing in the jurisdiction(s) served by MTA Mobility for any combination of 21 days during any 365-day period, beginning with the visitor's first use of the service during the 365-day period. The transit system must treat as eligible all visitors who present information that they are eligible for paratransit service in the jurisdiction in which they reside; for those who do not present such documentation, the transit system must accept a certification that they are unable to use fixed-route service. In no case may the transit system require a visitor to apply for or receive eligibility certification from its own paratransit system before providing this service.

Discussion: During this compliance review, no deficiency was found with the requirement for complementary paratransit service for visitors. MTA Mobility provides visitor service. MTA Mobility information materials and the MTA Mobility website explain the availability of visitor service.

MTA Mobility's visitor policy states that 21 calendar days per year of MTA Mobility service will be granted to visitors with a disabling condition as described in DOT ADA regulations. The policy correctly lists the criteria for visitor eligibility. MTA Mobility appears to provide service to visitors on the same basis as it is provided to eligible persons, meaning under all the same conditions and service criteria without distinction.

The review team examined eligibility files and interviewed the eligibility manager about visitor eligibility. Reviewers observed that MTA Mobility's visitor information states that the rider is eligible to use the service for 21 days per calendar year.

6.3 Types of Service

Requirement: Under 49 CFR §37.129(a), the transit agency's ADA complementary paratransit service must be provided on an origin-to-destination basis. The transit agency may determine through its local planning process whether to establish either door-to-door or curb-to-curb service as the basic mode of paratransit service. Where the local planning process establishes curb-to-curb service as the basic paratransit service mode, however, provision must still be made to ensure that the service available to each passenger actually gets the passenger from his or her point of origin to his or her destination point. To meet this origin-to-destination requirement, service may need to be provided to some individuals, or at some locations, in a way that goes beyond curb-to-curb service.

Discussion: During this compliance review, no deficiencies were found with the requirement to provide origin-to-destination service.

MTA Mobility's website and publications state that door to door service is provided--from the door or a designated stop at both the pickup and destination locations, with driver assistance.

Review of driver training materials for all three MTA Mobility providers shows that each organization's training emphasizes passenger assistance and identifies the needs of individuals with various disabilities. The driver training manuals remind operators that service is door-to-door and driver-assisted, repeating the requirement to assist customers to and from the vehicle. All MTA Mobility drivers interviewed by reviewers indicated their awareness of and compliance with MTA Mobility's requirement to provide customers with assistance to and from the vehicle to the door.

In addition to conducting driver and supervisor interviews, verifying the provision of origin-to-destination service involved examining eligibility records and computerized trip records, and observing reservations and dispatch. Observations of dispatch activities did not indicate a failure to provide origin-to-destination service. Team members found at times, drivers furnish hand-to-hand (custodial) service. Reviewers confirmed that MTA Mobility's Trapeze software is not programmed to charge extra fares for door-to-door service or driver assistance.

6.4 Service Criteria for Complementary Paratransit

Requirement: Section 12143(c)(3) of the ADA directed the Secretary of Transportation to establish minimum criteria to establish service criteria to be used when determining whether the service provided by paratransit is comparable to the regular fixed-route system. These criteria are contained in 49 CFR §37.131, and include service area, response time, fares, hours and days of service, and prohibit restrictions on trip purpose and capacity constraints that limit the availability of service to eligible individuals. The review team assessed the transit agency's ADA paratransit system using these criteria as described below:

Service Area

Requirement: Under 49 CFR §37.131(a)(1), all public operators of a fixed-route bus system must provide complementary paratransit service that covers, at a minimum, all areas within a three-quarter-mile radius of all of its bus routes, and within a “core service area” that includes any small areas that may be more than three-quarters of a mile from a bus route, but are otherwise surrounded by served corridors. This includes any areas that cross political boundaries or taxing jurisdictions, but are within a three-quarter-mile radius of a fixed route, unless the public transit agency does not have the legal authority to operate in those areas. 49 CFR 37.131(a)(2) requires that for entities operating a light rail or rapid rail system, the paratransit service area must also include a three-quarter-mile radius around each station, with service provided from points within the service area of one station to points within the service area of another. With regard to jurisdictional boundaries, 49 CFR 37.131(a)(3) states that an entity is not required to provide paratransit service in an area outside the boundaries of the jurisdiction(s) in which it operates, if the entity does not have legal authority to operate in that area, but that the entity shall take “all practicable steps” to provide paratransit service to any part of its service area.

Discussion: During this compliance review, no deficiencies were found with the requirement for service area.

MTA Mobility’s two rider guides, available online, state that the service area covers all locations that are within three-quarters of a mile of MTA bus, subway and light rail service in Baltimore City, Anne Arundel, and Baltimore Counties. MTA Mobility serves all locations inside the service area boundary on the same days and during the same hours as any fixed route service, 365 days a year. MTA Mobility does not limit ADA paratransit service on certain days based on limited fixed route service to an area, thereby exceeding DOT ADA requirements.

MTA’s very large and geographically spread out operating area presents considerable service challenges. In interviews, senior Mobility managers used as an example the fact that a trip from the northernmost point in Baltimore County to southernmost point in Anne Arundel County routinely takes two hours and twenty minutes on fixed route. MTA Mobility’s scheduling software has been programmed to cover service areas extending three-quarters of a mile around each MTA bus route, and each light rail station. During interviews, reservations agents stated they are trained to refer callers wishing to travel outside MTA Mobility’s service area to community transit providers.

The review team examined service area features of Trapeze and reviewed printouts, comparing these with maps showing MTA fixed route service. Reviewers identified no variances regarding DOT ADA paratransit service area requirements.

Response Time

Requirements: Under 49 CFR §37.131(b), the transit agency must schedule and provide paratransit service to any ADA complementary paratransit eligible person at any requested time on a particular day in response to a request for service made the previous day, including during times comparable to normal business hours on a day when the offices are not open before a

service day. Reservations may be taken by reservation agents or by mechanical means. Under 49 CFR §37.131(b)(2), while the transit agency may negotiate pickup times with the rider prior to the trip being scheduled, it cannot require the rider to schedule a trip to begin more than one hour before or after the individual's desired departure time. Any greater deviation would exceed the bounds of comparability. The transit agency must have policies and procedures in place to ensure that schedulers and dispatchers do not adjust the rider's negotiated pickup time or the pickup window without the rider's consent.

Under 49 CFR §37.131(b)(4), if the transit agency proposes to change its reservations system, it shall comply with the public participation requirements equivalent to those of §37.137 (b) and (c). The transit agency may permit advance reservations to be made up to 14 days in advance of an eligible individual's desired trip, subject to the same trip negotiation requirements as next-day trips required under §37.131(b)(2).

Discussion: During this compliance review, a deficiency was found with the response time requirement.

At the time of the review, MTA Mobility did not comply with the regulatory requirement to accept and schedule all eligible ADA paratransit trip requests within one hour before or after the time requested. Reviewers observed eligible trip requests being accommodated outside the one-hour ADA trip negotiation window. In addition, these trips were not recorded or reported as ADA trip denials.

Over a period of three days, the review team observed and documented 98 reservations calls, of which 68 were trip requests. Of the 68 observed trip requests, 60 (88 percent) were scheduled within the one-hour trip negotiation window and eight (11.7 percent) were denied. None of the eight capacity denials were based on appointment times. This matter is discussed further in section 6.4, *No Substantial Number of Trip Denials*. Findings concerning telephone access to the MTA Mobility reservations unit are discussed in section 6.4, *No Operational Patterns or Practices Limiting the Availability of Service*.

Trip Reservations

MTA Mobility's reservations unit accepts trip requests seven days a week, 365 days a year, from 8 a.m. to 7 p.m. on weekdays and, on weekends, 8 a.m. to 5 p.m. Reservations are accepted up to seven days in advance. Since May 2015, Mobility has been extending weekday reservations center evening work hours to enhance telephone access and enable the unit to remain open until 8 p.m.

To place a trip request, riders call the Mobility phone number (410-764-8181 or the free TDD 711 Maryland Relay Service). The MTA Mobility rider's guide states that riders can schedule trips by appointment time or requested pickup time. The guide instructs callers to tell reservations agents if they have to be at a destination by a particular time. The agency accepts requests for next day service until 7 p.m. on weekdays and 5 p.m. on weekends. Same-day reservations are not accepted. MTA Mobility provides both demand and subscription (standing order) reservations; subscription service is offered, subject to availability, to customers who travel to and from the same locations on a consistent basis.

Each reservation station contains a telephone and computer terminal. All trips are scheduled with a 30-minute arrival window (0/+30). The rider's guide describes this as "*30 minutes after your scheduled ready (pickup) time*".

With regard to performance statistics: MTA Mobility managers informed reviewers that historically the agency has monitored the average hold (queue) length for all calls into the call center. In the last two years, Mobility has transitioned to monitoring the rate at which calls are answered on a timely basis. Its Average Speed of Answer goals are now to answer 95 percent of calls within three minutes and 99 percent within five minutes. Mobility invested several million dollars in its new telephone system, which went live in January 2015. Capacity was doubled. Mobility now can accommodate 160 calls in the queue if necessary, and is adding more reservations staff. Managers stated that the new system has enabled Mobility to improve its average hold time by 31 percent, and its rate of timely answering by over 50 percent.

MTA Mobility's reservations training materials outline procedures to be used in taking trip request calls. To minimize error, call-takers follow an established script in taking calls and entering data into the Trapeze reservations database. The script covers the following: Name of call-taker with an opening greeting; confirmation of rider identification number, name and address; request for pickup day and time and destination, or for appointment time when rider must reach a destination by an established time; negotiation of alternative pickup time if the first requested time is not available; and inquiry regarding a traveling companion, PCA, or equipment (e.g., wheelchair, cane, service animal). After each trip is entered into the scheduling system and confirmed, the agent reviews the details of that trip with the rider and ends with a reminder about the 30-minute pickup window.

MTA Mobility defines a denial as any trip offered more than one hour before or after the requested pickup time. As stated in the rider's guide, MTA Mobility's goal is to have zero capacity denials. "No trip requests are to be denied."

Review team members observed that approximately 85 percent of trips were scheduled using a pickup time, and approximately 15 percent for an appointment time. In negotiating trip times and confirming trip information with customers, reservations agents were observed to follow the required script and appeared pleasant and professional in communicating with callers.

Although MTA Mobility posts no capacity denials, it should be noted that during three days of observations the review team documented eight instances where reservations agents offered a pickup time outside the one-hour ADA trip negotiation window. In each case, the rider accepted the trip. The agent did not record the trip as a capacity denial, although MTA Mobility policy requires this.

MTA Mobility Reservations Observations - Unrecorded Trip Denials

Call Type	Trip Date	Days Ahead	P/U Requested	P/U Offered	P/U Accepted
R	8/27/15	1	11:00 AM	9:47 AM	9:47 AM
R	8/27/15	1	10:00 AM	8:46 AM	8:46 AM
R	8/27/15	1	12:00 PM	10:37 AM	10:37 AM
R	8/28/15	2	9:30 AM	8:12 AM	8:12 AM
R	8/31/15	5	11:00 AM	9:55 AM	9:55 AM
R	8/31/15	5	8:30 AM	6:54 AM	6:54 AM
R	9/1/15	6	9:15 AM	8:01 AM	8:01 AM
R	9/2/15	7	11:00 AM	9:40 AM	9:40 AM

*** Any calls that were not related to scheduling a ride were classified as "Other". These included calls that were terminated by the rider, customer service calls, ride status calls, and a call that occurred after the scheduling window for next day service closed.**

Scheduling

MTA Mobility uses Trapeze scheduling software. Trapeze uses trip reservation and schedule information, automated vehicle locator units (AVLs) that utilize a geographic information system (GIS), and mobile data terminals (MDTs). The trip reservation and schedule information is maintained in the system database and is used to schedule and track trip assignment and performance. The GIS component is used to geographically display information on computer monitors. The GIS displays information (trip origins and destinations and vectors linking the two) for requested trips. The GIS component also identifies vehicles by location using input from global positioning system (GPS) transmitters in each vehicle. Each MTA Mobility vehicle is equipped with a MDT, which is used to dispatch trips and for the driver to report trip performance information.

Trapeze assigns MTA Mobility trips to vehicles automatically. The software seeks out the nearest vehicle to the customer's trip origin using the zone (region) system and GPS information on vehicle locations to assign trips. The system will seek a vehicle for a trip within the region. If the automated system does not succeed in identifying a vehicle, the schedulers manually assign the trip. The scheduler reviews trip requests, looking for opportunities to assign multiple trips to one vehicle (multi-load). Late in the afternoon on the day before service, the next-day scheduling process commences with a review of trip requests and vehicle locations. Some trips will be moved from one vehicle to another, working within the pickup window. However, the unit's rule is that negotiated times must not be changed. The scheduler runs exception reports to identify all trips of 60 minutes in length or longer. The process includes "optimization" and final review. Throughout the scheduling process, MTA Mobility does not appear to alter pickup or drop-off times beyond the 0/+30 minute pickup window communicated to the rider at the time the trip time was negotiated and entered in the system.

The review team observed MTA Mobility reservations, scheduling, and dispatch activities and conducted an independent analysis of next-day reservation availability based on three days’ observations of the reservations unit.

The review team’s independent analysis of 68 observed reservations calls showed the following with regard to trip reservation availability matched to how many days ahead reservations were requested:

MTA Mobility Reservations Call Outcomes and Days Ahead							
Days In Advance	# Trips Scheduled	% of Res. Calls	Call Back/Schedule Later	Denial	Offered Trip Refused	Other	Grand Total
1	33	77%	0	3	0	7	43
2	16	37%	0	1	0	1	18
3	4	9%	0	0	0	1	5
4	0	0%	0	0	0	0	0
5	1	2%	0	2	0	0	3
6	3	7%	0	1	0	1	5
7	3	7%	0	1	0	0	4
8	0	0%	0	0	0	0	0
9	0	0%	0	0	0	1	1
Total	60	76%	0	8	0	11	79

Reviewers noted that 36 (53 percent) of the 68 total observed trip request calls were for next-day trips, and that the next largest body of trip requests (17 or 25 percent) were for two days ahead. Of the eight (11.7 percent) observed trip requests that agents accommodated outside the allowable one-hour ADA trip negotiation window (identified here as denials), three were for next-day requests.

Corrective Action Plan and Schedule

Within 60 days of the issuance of the final report, MTA Mobility must comply with the regulatory requirement to accept and schedule all ADA paratransit trip requests with origins and destinations within the paratransit service area from eligible riders within one hour before or after the time requested, and must begin documenting its daily compliance with this requirement.

Within 60 days of the issuance of the final report, MTA Mobility must provide to the FTA for review the following items:

- a written plan of action and implementation schedule showing steps MTA Mobility will take to accommodate all eligible trip requests, re-train staff, and achieve effective tracking, monitoring and oversight of ADA paratransit reservations activities;

- written reservations policies and procedures documents, including revised scripts for reservations agents, with effective date, outlining procedures to be followed in receiving, documenting and scheduling all eligible trip requests within one hour before or after the requested time; and
- corrective measures being taken to assure that managers, reservations staff and supervisors understand this requirement and that compliance is monitored and enforced.

Fares

Requirement: Under 49 CFR §37.131(c), ADA paratransit fares must be no more than twice the fixed route fare for the same trip at the same time of day on the fixed route system, excluding discounts. The transit agency must allow eligible riders to travel with at least one companion with additional companions accommodated on a space-available basis. If the passenger is accompanied by a personal care attendant (PCA), the transit system must provide service to one companion in addition to the PCA. Companions pay the same fare as the eligible rider; no fare may be charged for a PCA.

Discussion: During this compliance review, no deficiencies were found with the requirements for paratransit fares.

MTA uses a flat fare system, charging a single price for transportation on fixed route bus or light rail regardless of the length of the trip or distance travelled. Effective June 25, 2015, the Maryland legislature raised both fixed route and ADA paratransit fares (the first increase in a decade) and also mandated fare increases in the future at two-year intervals. At the time of the review, the MTA Mobility base fare had been raised by five cents to \$1.90, while the base fare for fixed route service was \$1.70. MTA Mobility fares are payable in cash or using pre-purchased tickets or passes which can be purchased in person or ordered using the agency website.

The MTA Mobility rider's guide and website state that eligible customers may bring a PCA with them on their trip, who will ride free of charge, and that companions pay the regular Mobility fare. No fees or fares are charged for door-to-door service, service animals, or eligibility or appeal-related trips. The Trapeze software has been programmed to display fares on manifests. The review team compared fares shown on manifests with MTA Mobility's published fare policies. No discrepancies were found.

No Trip Purpose Restrictions

Requirement: Under 49 CFR §37.131(d), there can be no restrictions or priorities based on trip purpose. When a user reserves a trip, the entity will need to know the origin, destination, time of travel, and how many people are traveling. The entity does not need to know why the person is traveling, and should not even ask.

Discussion: During this compliance review, no deficiencies were found with the requirements regarding trip purpose restrictions.

MTA Mobility's stated policy regarding issues of trip purpose restrictions is that the service operates without trip prioritization and serves all trip purposes. Public information materials do not mention trip purpose, nor do they cite any prioritization or restriction on service to eligible riders related to trip purpose.

During observations of reservation and scheduling practices, the review team identified no inquiries about trip purpose and no indications of trip prioritization. The script reservations agents are required to follow does not ask callers, "*What is the purpose of this trip?*"

In reviewing certification letters and eligibility materials, team members found no trip purpose-based determinations. Reviewers found no evidence of prioritizing application processing based on trip purpose.

Hours and Days of Service

Requirement: Section 37.131(e) of the DOT ADA regulations requires that the ADA complementary paratransit service be available during the same hours and days as the fixed route service. This means that if a trip can be taken between two points on the entity's fixed route system at a specific time of day, it must also be able to be taken on paratransit. It also means that the service area may change depending upon the time of day or day of the week, when certain routes or areas may not be served. This requirement applies on a route-by-route basis. For example, an area that has fixed route bus service on weekdays but not weekends must have ADA complementary paratransit service (provide trips) on weekdays but not necessarily on weekends; an area that has bus service from 5 a.m. until 9 p.m. must have ADA complementary paratransit service, at minimum, from 5 a.m. until 9 p.m.

Discussion: During this compliance review, no deficiencies were found with the requirements for hours and days of service.

MTA Mobility makes ADA complementary paratransit service available to eligible riders during the same hours and days that MTA operates fixed route service. Information provided to the public states that it is MTA Mobility's policy to provide service during all days and hours of its fixed route bus and subway/light rail service. Mobility schedules trips every day of the year, 24 hours a day.

MTA Mobility uses Trapeze scheduling software. Review of manifests, observation of reservations agents, and discussions with reservations and dispatch managers confirmed that when requested, MTA Mobility trips are available at any time of the day or night. In addition, when reviewers compared MTA Mobility service hours as advertised to the public, and displayed within the scheduling software, no differences were noted. No discrepancies were found with regard to availability of service in the early morning and late evening hours or on weekdays as opposed to weekends.

Absence of Capacity Constraints

Requirement: Under 49 CFR §37.131(f), the transit agency may not limit the availability of complementary paratransit service to ADA paratransit eligible individuals by any of the following: restrictions on the number of trips an individual will be provided; waiting lists for access to the service; or any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons. Such patterns or practices include, but are not limited to, substantial numbers of significantly untimely pickups for initial or return trips, substantial numbers of trip denials or missed trips, or substantial numbers of trips with excessive trip lengths.

Discussion: During this compliance review, deficiencies were found with capacity constraint requirements. A finding concerning operational patterns or practices that significantly limit the availability of service to ADA paratransit eligible persons is presented later in this report.

No Restrictions on the Number of Trips Provided to an Eligible Individual

Requirement: Under 49 CFR §37.131(f)(1), the transit agency may not impose restrictions on the number of trips that will be provided to an eligible rider.

Discussion: During this compliance review, no deficiencies were found with the requirements for no restrictions on the number of trips provided.

MTA Mobility's stated policy regarding service use is that service is provided with zero capacity denials of eligible trip requests, and without limits on the number of trips an individual may take. The script reservations agents are required to follow in handling trip requests does not mention the number of trips an individual may take, or the number of reservations that can be made during one phone call.

During observations of Mobility's reservations, scheduling and dispatch units, the review team found no indications of trip limits, or the presence of any policy, formal or informal, capping or restricting the number of trips an individual may take. Team members listened while callers requested and received one-way and round-trip reservations for travel the next day or following week, but also multiple trips during a single day.

Reviewers questioned management and reservations agents about an entry on the MTA Mobility website which states: *How many reservations can I make?* The website's response is, *You are limited to six one way or three round trip reservations per telephone call.* Mobility managers replied that this "per telephone call" provision was added before the call center's capacity was enlarged, and is no longer enforced. Riders may place as many reservations as they wish, but to give customers equal telephone access, callers were encouraged to accomplish this by making several phone calls rather than remaining on the line for prolonged periods of time. During interviews with reservations agents and supervisors, they stated that MTA Mobility does not permit caps on trip frequency, trip volume, or number of reservations per phone call.

In reviewing certification letters, team members found no references to frequency of travel. Likewise, eligibility files showed no evidence of priority being given to a particular trip purpose, disability, agency, or location.

No Waiting List for Access to the Service

Requirement: Under 49 CFR §37.131(f)(2), the transit agency is prohibited from establishing policies or engaging in practices and/or procedures which establish waiting list(s) for accessing the service.¹

Discussion: During this compliance review, no deficiencies were found with the requirement for no waiting list(s) for non-subscription service.

As part of its zero capacity denials policy, MTA Mobility policy requires that all eligible requests must be accommodated. If a trip request is difficult to fit into the schedule using the Trapeze software, agents have been instructed to book the trip for the time requested. The trip is then placed in the “unscheduled” file for manual scheduling by schedulers. MTA Mobility’s written procedures state that all unscheduled trips are required to be scheduled. Schedulers are prohibited from violating negotiated trip times by moving rides outside the 30-minute pickup window. To verify appropriate handling of such trips, team members observed the batching process performed by schedulers, discussed processing of unscheduled trips with staff performing batching procedures, and viewed computer screens. Based on this information, interviews with schedulers and reservations personnel, and independent review of computerized scheduling and reservations records, reviewers concluded that MTA Mobility’s handling of manually scheduled trips does not appear to represent the use of prohibited wait lists.

No Substantial Numbers of Significantly Untimely Pickups for Initial or Return Trips

Requirement: Under 49 CFR §37.131(f)(3)(i)(A), the transit agency must provide ADA paratransit service without any substantial numbers of significantly untimely pickups for initial or return trips.

Discussion: During this compliance review, no deficiencies were found with the on-time performance requirements.

MTA Mobility riders can schedule trips by appointment time or requested pickup time. Approximately 15 percent of trip reservation requests observed by reviewers were requested using appointment times; 85 percent of requests observed cited pickup times.

MTA Mobility’s stated on-time performance standards are as follows: “A trip is considered on time if the vehicle arrives within 30 minutes of the scheduled pick-up time (ready time). Mobility’s 2015 on-time performance standard is required to exceed 90 percent. The agency has

¹ Under §37.133(c), waiting lists may only be established for participation in subscription service that may be offered as part of the transit agency’s paratransit system.

established incentives for contractors for service exceeding 92 percent.” MTA Mobility has not established an on-time performance standard for trips scheduled according to appointment times.

MTA Mobility: Reported On-Time Performance Calendar Year 2015

Month	On-time %	Early	Within 30 min window	On Time*	Total Trips	Late**
Jan-15	89.72%	285	109,915	110,200	122,831	12,631
Feb-15	84.60%	172	95,531	95,703	113,122	17,419
Mar-15	84.30%	247	111,594	111,841	132,676	20,835
Apr-15	87.98%	335	121,348	121,683	138,307	16,624
May-15	86.38%	279	116,309	116,588	134,976	18,388
Jun-15	90.33%	286	123,701	123,987	137,264	13,277
Jul-15	93.65%	292	129,830	130,122	138,941	8,819
Aug-15	93.76%	233	102,762	102,995	109,989	6,994
<p>On-time* “On-time” equals the totals of On Time and Early trips. “Late” totals the categories of 0-15, 16-30, 31-60, 61-90, Late** 91+ mins late</p>						

With regard to on-time performance, MTA Mobility’s online rider’s guide states: *The driver has 30 minutes after your scheduled ready time to pick you up. For example, if your ready time is 7:00 a.m., the vehicle may arrive up to 7:30 a.m. until it is considered late. If the driver is not at your location within 30 minutes after your ready time, please call the MTA Mobility/Paratransit service at 410-764-8181.*

Through dispatch observation, trip verification, and manifest analysis, the review team independently cross-checked the above on-time performance data, which had been generated by Trapeze. MTA Mobility’s data appeared valid. At the time of the review, MTA Mobility was able to document noticeable gains in meeting its on-time performance standards for pickups during June, July and August, 2015.

Reviewers then selected a base sample of approximately 15 randomly selected trips per month from the six-month period January through June 2015. The sample included individuals using wheelchairs as well as ambulatory riders, trips scheduled from appointment time as well as pick-

up time, and travel within and between suburban areas and the City of Baltimore provided by all three MTA Mobility providers. Approximately half the trips examined were morning trips; the remainder took place in the afternoon. The following table shows the results of this analysis.

<p>Calculated On-time Performance: MTA Mobility Results of a Random Sampling of Performed Trips January - June 2015</p>
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Total trips in Sample	90	100%
<u>Times</u>	<u>Number of pickups</u>	<u>Percent</u>
Exactly On time	2	2%
<i>After the Negotiated P/U Time (On Time)</i>		
In Window (0/+30)	56	62%
<i>Before the Negotiated P/U Time (Early)</i>		
1-15 minutes early	16	18%
16-30 minutes early	2	2%
On time, in window or early	76	84%
<i>Beyond the Window (Late)</i>		
1-15 minutes late	8	8%
16-30 minutes late	4	4%
>30 minutes late	2	2%
<i>Very early</i>		
>30 minutes early	2	2%
Late, or very early	14	15%

With regard to early pickups and early vehicle arrivals, MTA Mobility’s website rider’s guide states: *If your ride arrives early, you are not obligated to board the vehicle before your scheduled time. However, you may do so if you wish.* This analysis considers vehicles arriving at the pickup site earlier than 30 minutes before the negotiated pickup time as an undesirably early pickup. Excluding the two 30-minutes-plus pickups from the on-time category yields a total of 76 on-time pickups, representing 84 percent of the pickups in the sample. Adding the two very early pickups raises performance for the sampled trips to 78 on time out of 90 trips (87 percent).

Reviewers noted that in this sample, individuals using wheelchairs experienced approximately the same level of on-time performance as did riders who were ambulatory. In addition, no geographic clustering was evident.

At the time of the review, Mobility’s new management shared documentation showing exceptional improvement in on-time performance over the past six months with reviewers and

visiting FTA officials. These individuals also examined newly-developed dispatch software that was having a measurable impact in resolving on-time performance and trip length issues. Several days of documented dispatch observations by the review team appeared to confirm service improvement. The review team's analysis of on-time performance examined 90 trips from January through June 2015; however, marked improvement in on-time performance became evident in June 2015 and has continued.

No Substantial Numbers of Trip Denials or Missed Trips

Requirement: Under 49 CFR §37.131(f)(3)(i)(B), the transit agency must provide ADA paratransit service without substantial numbers of trip denials or transit agency missed trips. A denial occurs whenever a transit system is unable to provide a trip on a next-day basis as requested by an eligible passenger between points within the paratransit service area, at a time when the fixed-route system is operating, subject to the limitations on trip time negotiation. Under 49 CFR §37.131(b) of the DOT ADA regulations, the transit system may negotiate pickup times with a passenger, but cannot require the passenger to schedule a trip to begin more than one hour before or after his or her desired departure time. If the trip cannot be arranged within this timeframe, a denial has occurred whether or not the passenger accepts a departure time of more than one hour earlier or later. In addition, when a denied trip makes a subsequent requested trip impossible, as could occur in the case of an individual taking a round trip to and from a specific location, two trips have been denied.

Discussion: During this compliance review, a deficiency was found with the requirements that ADA paratransit service be provided without substantial numbers of trip denials or missed trips.

In MTA Mobility's public information and written and verbal service policies and in discussions with managers, the agency states that its policy is zero capacity denials. The agency defines an ADA trip denial as any inability to accommodate (schedule) an ADA-eligible trip request within one hour before or after the requested time.

To meet its obligations under the DOT ADA regulations, MTA Mobility must count the following incidents as ADA trip denials, whether during reservations or scheduling:

- If the next-day ADA paratransit trip cannot be provided at all.
- If the rider *accepts* a pickup time more than one hour before or after the requested time.
- If the rider *refuses* a pickup time more than one hour before or after the requested time.
- If only one leg of a round trip can be reserved and the customer declines to make the trip, *two trips* have been denied. If only one leg of a round trip can be reserved and the customer accepts the trip, *one trip* has been denied.

Reviewers noted that MTA Mobility staff were not recording ADA trip denials when someone accepted or refused a pickup time more than one hour before or after the requested time, when a round trip could not be reserved, or when only one leg of a round trip could be reserved. During a three day observation period the review team documented eight occasions (11.7 percent of observed trip requests) where reservations agents accommodated trip requests outside the one-

hour ADA trip negotiation window without recording these trips as denials. These instances are addressed earlier in this report under Response Time, and in Item 12 in the Summary Table of Compliance Review Findings following Section 6 which also provides a corrective action plan and schedule..

The following table summarizes MTA Mobility trips requested, scheduled, provided, and denied for the period January through June 2015, as reported by MTA.

Analysis of MTA Mobility Trip Request Outcomes for a Six Month Period

January to July 2015								
	Jan. 2015	Feb. 2015	Mar. 2015	Apr. 2015	May-2015	June-2015	Total	%
Trips Requested	183,388	171,551	196,400	194,124	187,481	188,083	1,121,027	100%
Denied	0	0	0	0	0	0	0	0%
Scheduled	151,340	142,590	166,561	163,647	157,758	160,210	942,106	100%
Completed	122,827	113,128	132,680	138,310	134,977	137,264	779,186	90%

ADA Trip Denials

MTA Mobility defines an ADA trip denial as any requested ADA-eligible trip which MTA Mobility does not schedule within one hour before or after the requested pickup time. MTA Mobility’s goal, standard and recorded performance is zero capacity denials. In interviews, MTA Mobility managers stated that MTA Mobility schedules all eligible requested trips, and that most scheduled times are close to the requested time. They added that MTA Mobility has not denied any eligible trip requests; however, the review team’s observations contradicted this assertion.

Staff training clearly defines reservations agents’ responsibilities under DOT ADA regulations and explains the consequences of any failure to accommodate an ADA-eligible trip request. In responding to trip requests, reservations agents are required to follow a script to assure compliance with the zero capacity denials policy, maintain consistency, provide all required information, and complete reservations in a timely fashion. MTA Mobility managers said the agency monitors and enforces staff compliance with this policy through ongoing scrutiny of reservations activity by reservations and scheduling supervisors, including remote listening to phone calls and recordings of call center phones. Any customer complaint alleging MTA Mobility failure to accommodate an eligible trip request would be immediately investigated, they said.

The review team observed MTA Mobility’s reservations unit activities over a three-day period. Team members interviewed reservations staff and supervisors concerning adequacy of training, ADA understanding, data entry and coding procedures, and MTA Mobility’s trip denial policy. The review team independently analyzed sample data, and compared results with data provided by MTA Mobility. As shown below, a total of 98 calls were observed, of which 68 were reservations requests. Sixty (88 percent) of these trip requests were scheduled within the one-

hour ADA trip negotiation window. Eight (11.7 percent) were not, and thus are listed as trip denials in this report.

Observations of MTA Mobility Reservations Calls

Types of Calls Observed	Total
Cancellation	9
Other*	18
Reservation	68
General questions	3
Total	98

“Other” includes calls that were terminated by the rider, customer service calls, ride status calls, and a call that occurred after the scheduling window for next day service closed. Any calls that were not related to scheduling a ride were classified as “Other”.

Trip Request Outcomes	Total
Call Back + Schedule Later	0
Denied	8
Other*	30
Scheduled	60
Refused by Rider	0
Total	98

*Any calls that were not related to scheduling a ride were classified as “Other” in this table.

During observations of the MTA reservation center taking place over a three-day period, the review team observed and documented eight instances (11.7 percent of observed trip requests) when a caller was offered, and accepted, a pickup time more than one hour before or after the requested time and the action was not recorded as a capacity denial.

Missed Trips

MTA Mobility policy classifies missed trips as trips that are cancelled or no-showed after the end of the customer’s pickup window. No-shows disputed by customers are also included in this category. This policy appears to classify missed trips as any scheduled trip not provided due to factors beyond the rider’s control. Customers are not penalized for such trips. MTA Mobility’s stated goal is zero missed trips. During an interview, the MTA Mobility project manager stated that he tracks the missed trip percentage through frequent review of operations data.

MTA Mobility's practice is that any attempted pickup after the pickup window ends that does not result in a trip (the rider may have left the pickup location, or canceled or refused the ride) must be coded as a "missed trip." Reviewers' discussions with drivers, dispatchers and management confirmed this point: if a vehicle does not arrive within the pickup window, the customer has no obligation to wait for the vehicle and must not be assessed a no-show or late cancellation.

Review team members analyzed a sample week of trip records that were coded as "no-shows" and "cancellations" to determine if these had been properly coded, or if they were in fact missed trips that were not the rider's fault and should have been coded differently. Using the software documentation provided, the review team compared the date and time with the pickup window of each trip request. As discussed below in Section 6.6, *No-Shows*, coding of most trips in the sample appeared appropriate. The team discovered that the coding for several trips that upon initial review appeared incorrect had already been changed from no-shows to missed trips by MTA Mobility staff in response to requests from riders.

Analysis of agency data showed missed trips accounting for 1.83 percent of total scheduled rides with no evident geographic pattern.

No Substantial Numbers of Trips with Excessive Trip Lengths

Requirement: Under 49 CFR §37.131(f)(3)(i)(C), the transit agency must provide ADA paratransit service without substantial numbers of trips with excessive trip lengths.

Comparability is based on the length of time required to make a similar trip between the same two points using the fixed route system, including time spent traveling to and from a boarding point and waiting for the fixed route vehicle to arrive. FTA recommends basing paratransit travel time on the comparable fixed route travel time calculated using the agency's trip planner, plus 20-30 minutes to allow for a reasonable estimate of time spent walking to and from a bus stop, waiting for the bus to arrive, and making any necessary transfers from one vehicle to another.

Discussion: During this compliance review, no deficiencies were found with the requirements that ADA paratransit service be provided without substantial numbers of trips with excessive trip lengths.

In terms of service provision, MTA's very large and geographically spread out operating area presents considerable challenges. Mobility's operating environment includes urban and suburban areas where very high traffic volumes and highway delays are the norm. In interviews, senior managers stated that two-hour Mobility trips are not uncommon. For example, a trip from the northernmost point in Baltimore County to southernmost point in Anne Arundel County routinely takes two hours and twenty minutes on fixed route. FTA's pre-review information request asks that the agency define its *"travel time standards, including maximum travel time (if applicable) (what travel time is considered comparable to fixed route and what travel time is*

considered too long? What are the goals for the percentages of trips to be provided within the standards?)” Mobility replied: *“Travel time on Mobility is expected not to exceed comparable Fixed Route itineraries at the same time of day and day of week. An On-Board-Time factor of 1.25 is used to compare MTA Google Trip Itineraries to trips performed on paratransit. Mobility’s goal is to provide in excess of 95% of Mobility trips within this threshold.”* MTA Mobility rider’s guide informs riders that all trips are scheduled with the expectation that travel time will not significantly exceed comparable fixed route itineraries at the same time of day.

MTA Mobility routinely generates and reviews trip duration data. Mobility then monitors ADA paratransit scheduling closely to minimize long trips. While on site, reviewers observed that Mobility managers and schedulers appeared to be aware of which trips were likely to involve long travel times. They observed scheduling staff searching for trips of potentially excessive length. During interviews, schedulers and the scheduling supervisor confirmed it is their daily practice during final review and optimization to run long trip length reports to identify trips exceeding 60 minutes in length and whenever possible, move trips and adjust run schedules and vehicle assignments to reduce travel times before closing the next day’s schedule. In interviews, MTA Mobility senior managers informed the review team that as a comparative service monitoring measure, they analyze trip data on an annual basis using standards of both 1.25 and 1.5 times fixed route travel time to verify that the system is not providing unreasonably long trips.

Reviewers observed and agency managers confirmed that Mobility’s Trapeze software is set in the dispatch parameter for on-board times of 60 minutes for most trips, and that on-board violations are identified and calculated accordingly. This software has been programmed to reflect a maximum time on board of no more than two hours, representing the agency’s absolute ceiling for trip length. MTA stated that the two-hour setting is necessary because trips of this duration are available on the MTA system. The agency added that having a shorter “MAX OBT w/out TRANSFERS” (maximum On Board Time Without Transfers) would limit or even eliminate legitimate booking solutions for long paratransit trip requests. This setting is among the lengthiest travel time standards identified nationally.

MTA Mobility managers provided a great deal of ridership information to the review team for analysis. The review team worked with this data in an effort to identify any possible patterns that might suggest that certain riders, sections of the service area, or users of mobility equipment were being disadvantaged. To determine if there were a substantial number of significantly long trips relative to trips made on MTA Mobility’s fixed route system, reviewers identified for analysis 14 randomly selected MTA Mobility trips of more than 60 minutes in length from a list of over 100 such trips performed during the six-month period January 1 through July 1, 2015. The review team used operator manifests to determine actual MTA Mobility travel times for those trips. Reviewers then compared the sample trips with the same journey taken on fixed route service, using MTA’s Google trip planner, with walk and wait times included in the fixed route comparison. Finally, to establish whether MTA Mobility was meeting its own trip length measure, the review team compared the sample trips with the same journey using fixed route service and the agency’s 1.25 On Board Time Factor multiplier.

When the sample’s Mobility trip durations were compared directly with fixed route trips, including walk and wait times, 57.2 percent (8 trips) were no more than 15 minutes longer than comparable fixed route itineraries. Using a threshold of no more than 30 minutes longer yielded a total of nine of the 14 sample trips (64.3 percent).

Fourteen sample MTA Mobility trips (January – July 2015) compared for trip length with fixed route travel time plus an allowance for walk and wait times:

DIRECT COMPARISON	# Trips	%	USING MTA MULTIPLIER OF 1.25 X FIXED ROUTE TRAVEL TIME	# Trips	%
Mobility trip faster than fixed route	4	28.6%	Mobility trip shorter than 1.25 agency multiplier	2	14.3%
Mobility trip 1-15 mins longer	4	28.6%	Mobility trip met 1.25 multiplier	5	35.7%
Mobility trip 16-30 mins longer	1	7.1%	Mobility trip longer than 1.25 multiplier by less than additional 5 mins	2	14.3%
Mobility trip 30+ mins longer	5	35.7%	Mobility trip longer than 1.25 multiplier by 6 to 30 mins	1	7.1%
			Mobility trip longer than 1.25 multiplier by 31 to 40 mins	3	21.4%
			Mobility trip longer than 1.25 multiplier by 41+ mins	1	7.1%

None of the 14 sample trips appeared to have been prolonged excessively by accident, incident, traffic, or other factors. The trips were provided by all three transportation contractors, and involved travel both in and outside Baltimore City. Some trips were taken by wheelchair users, some not. Time of day and day of the week did not appear to play a major role.

Reviewers observed a number of ongoing preventive and corrective measures being taken by MTA Mobility personnel and supervisors in an effort to reduce the amount of time customers spend on vehicles, and the number of late trips. The agency has recently taken the additional step of installing a new computer screen array in each dispatch pod. This software is programmed to identify “hot spots” in service operating now. The program searches for and displays for dispatchers only those current trips where some aspect of service is about to become an issue—vehicle running very late, a customer too long on the vehicle, overly long dwell time, a series of lateness that is suddenly having a domino effect. As observed by FTA staff on August 26 and 28, enhancing the potential to identify and track problem areas in real time strengthens dispatchers’ ability to intervene and mitigate the effects of trips that may be delayed. MTA Mobility developed this powerful new diagnostic tool in-house and installed it shortly before the onsite review.

No Operational Patterns or Practices Limiting the Availability of Service to ADA Eligible People

Requirement: This section also prohibits any operational patterns or practices that significantly limit availability of service to ADA eligible people. Examples of such operational patterns or practices include insufficient capacity to take reservations, long telephone hold times, and untimely drop-offs for appointments.

Discussion: During this compliance review, no deficiencies were found with the requirements that ADA paratransit service be provided without the use of any operational patterns or practices that significantly limit the availability of service.

MTA Mobility Telephone System

MTA Mobility's new telephone system and equipment appear to be effective in preventing long queue times in the reservations call center much of the time.

MTA Mobility's telephone system transitioned to new service effective January 24, 2015 after undergoing a multi-million-dollar upgrade which doubled capacity. The Unify (formerly Siemens) system with Verizon circuits appears to have sufficient capacity to handle incoming reservations calls. Added lines and new equipment serve reservations, scheduling, dispatch, customer service, and eligibility. System components include an automated call distribution (ACD) system and a digital recording system. The telephone system provides supervisor, recording, reporting, and remote access features permitting managers to audit and monitor calls, and to retrieve for customer service and quality control purposes previous calls that have been stored digitally. MTA Mobility's new phone system also permits the use of recorded information and rider education announcements.

The Mobility reservations center's published hours of operation are from 8 a.m. to 7 p.m. on weekdays and, on weekends, from 8 a.m. to 5 p.m. However, at the time of the review, the unit was remaining open until 8 p.m. on weekdays to accommodate customers. In addition to supervisors, staffing includes approximately 50 full and part-time reservations agents. MTA Mobility plans to add workers to an eventual total of 59.

MTA Mobility has established minimum performance standards for reservations and dispatch calls:

- Average time in queue for calls made to the reservations or dispatch units shall not exceed 60 seconds.
- Ninety-five percent of all reservations and dispatch calls shall be answered within three minutes.
- Ninety-nine percent of all reservations and dispatch calls shall be answered within five minutes.

These performance standards are not measured over hourly periods. It should be noted that FTA discourages the use of performance standards based on *average* hold times over a defined period because doing so can mask poor performance at certain times. If using average hold times,

however, it is important to narrow the period within which the averages are calculated. Measuring averages over an entire day, week, or month can obscure any issues. FTA recommends measuring averages over hourly periods. The standard using average hold times would then be set as a minimum percentage (e.g., X percent) of hours for which the average hold times are shorter than one threshold (e.g., 1 minute), and a second (higher) percentage (e.g., Y percent) of hours for which the average hold times are shorter than a second (higher) threshold (e.g., 3 minutes).

MTA Mobility monitors staff and contractor compliance with its telephone standards and policies hourly, daily, and weekly for the reservations center and dispatch unit. MTA reservations supervisors are responsible for tracking and monitoring queue lengths and numbers of calls in queue against the standard, using ACD data. In addition to ongoing real-time call monitoring, supervisors are now required to audit a minimum of 15 completed calls each week. Supervisors are responsible to intervene whenever calls in queue begin to accumulate, and if necessary can use staff from other units to supplement reservations staff. At the time of the review, an LED wall display in the reservations unit showed continuously updated real-time telephone usage data for the reservations, dispatch, and customer service units, identifying all lines in use, call lengths, numbers of calls in queue, queue lengths, and other data.

MTA Mobility's reservations unit is staffed by MTA employees. The unit uses part-time employees to adjust the workload to avoid a pattern or practice of significantly long hold times. Reviewers noted that peak staffing levels for reservations agents appeared to attempt to match peak times for incoming calls.

In August 2015, as part of the pre-review process, the review team conducted and documented 31 test calls to the MTA Mobility reservation unit using a computer program to provide exact telephone data. These calls were placed during morning, midday, and late afternoon reservations hours, weekdays Monday through Friday. Based on the sampling, 97 percent of the reviewers' calls went into the queue and were answered. Reviewers encountered one busy signal, representing three percent of the sample, which occurred on Friday at 11:43 a.m. The test calls were tabulated as follows:

MTA Mobility Reservations Unit - Pre-Review Test Calls (August 2015)

	Total Number of Calls	Busy Signal	Call Answered	Call Abandoned	Went into Queue?	Hold Time <60 secs	Hold Time 60-90 secs	Hold Time >90 secs	Secondary Hold Time (hr:min:sec)
Monday	3	0	3	0	3	3	0	0	0:00:00
Tuesday	5	0	5	0	5	5	0	0	0:00:00
Wednesday	6	0	6	0	6	6	0	0	0:00:00
Thursday	9	0	9	0	9	7	0	2	0:00:00
Friday	8	1	7	0	7	4	1	2	0:00:00
TOTALS	31	1	30	0	30	25	1	4	0
						83%	3%	13%	

The review team found that 83 percent of the 30 successful test calls were answered in less than 60 seconds. The average length of time in queue observed before the call was answered by an agent was calculated at 37 seconds, while the shortest queue time was three seconds. None of the 30 successful calls were placed on a secondary hold (occurs when a call is answered, an individual identifies the call center and asks the caller to please hold/wait).

Reviewers then analyzed reservations unit phone data from a sample week in June 2015, and compared this information with the test call results:

MTA Mobility Telephone Activity – Sample Week June 22-26, 2015
Reservations Unit

	Monday 6/22/2015	Tuesday 6/23/2015	Wednesday 6/24/2015	Thursday 6/25/2015	Friday 6/26/2015
Total Calls Received	2,141	1,966	1,850	1,693	1,693
Calls Answered	2,059	1,879	1,802	1,677	1,501
Calls Abandoned	81	86	46	15	192
Abandon rate	3.8%	4.4%	2.5%	0.9%	11.3%
Avg queue time (mins:sec)	0:00:45	0:00:52	0:00:31	0:00:15	0:01:46
Answer rate	96.2%	95.6%	97.4%	99.1%	88.7%

The August test call that encountered a busy signal occurred on a Friday. Reviewers noticed that in analyzing the June sample data from the new system, the longest queue time and highest abandoned calls rates identified were found to occur on Friday, with the second longest queue and abandon rates occurring on Tuesday.

Reviewers noted that for reservations, as also observed in pre-review calls, the data above showed longer queue times on Fridays.

Vehicle Fleet and Vehicle Availability

MTA Mobility owns and provides the vehicles for its three contracted transportation providers. The table shows the distribution. The present MTA Mobility fleet of 504 vehicles (total provided by MTA Mobility during the onsite review) has an average age of approximately 4.7 years. The agency is expecting delivery of over 100 new lift-equipped vans in November, 2015.

MTA Mobility Fleet Composition as of July 2015		
	Sedans	Lift Vans
First Transit	46	126
MV	42	119
Transdev (former Veolia)	41	130
TOTALS	129	375

In the MTA Mobility budget process, the specific number of vehicles to be provided is determined by projected passenger trips and vehicle productivity. The agency has prepared a capital budget forecast for fiscal year 2015 and forward that includes replacing aging MTA Mobility vehicles, and fleet expansion.

To determine if there were sufficient vehicles available to cover scheduled runs, and an adequate supply of spare vehicles, the review team examined MTA Mobility's run structure, consolidated daily operations reports, and daily vehicle availability records for January through July, 2015. With the agency's program manager and recently appointed executive director, they reviewed agency analyses of maximum active vehicle use. These individuals confirmed that to meet weekday peak pullout, between 380 and 391 vehicles, plus spares, is currently needed. On Tuesdays and Wednesdays, the maximum weekday pullout requires 391 and 390 vehicles respectively. These analyses showed that MTA Mobility currently appears to have on hand sufficient vehicles to always cover the number of runs created.

Driver Availability

MTA Mobility's contracts with its three transportation providers require that runs be covered or financial disincentives will be imposed. Together, the contractors employ a workforce of approximately 465 full and part-time drivers. To ascertain the availability of a workforce sufficient to cover scheduled runs and sufficient backup on the day of service so that contractors need not resort to covering driver absences using supervisors as emergency drivers, the review team selected a sample week.

Reviewers analyzed MTA Mobility records for the month of June 2015, and obtained data regarding driver availability and run coverage. These records show the number of runs assigned each day, the open runs due to driver call-outs, and the spare and standby/“extra board” drivers available to cover open runs that day. With the assistance of spare and extra-board drivers no runs were documented as uncovered during that week. This data suggests that using spare and extra-board drivers, the three MTA Mobility providers are able to cover their assigned runs.

Planning; Capital and Operating Budgeting

MTA managers stated that over the three-year period analyzed, the MTA has continued to plan and budget to meet all demand for ADA paratransit service. Nonetheless, given that MTA Mobility reservations agents were observed not recording all ADA trip denials, reviewers examined agency planning and budgeting efforts and discussed the availability of resources in the future. MTA Mobility has planned for a ridership increase of approximately six percent, or 113,500 additional trips provided, in FY2016.

MTA Mobility: Budget Information				
	Operating		Capital	
	Actual	Budgeted	Actual	Budgeted
FY10	\$55,310,097	\$55,669,608	\$6,119,000	\$6,190,000
FY11	\$59,695,436	\$59,246,970	\$3,750,000	\$5,396,000
FY12	\$67,343,663	\$59,663,742	\$6,238,000	\$6,836,000
FY13	\$77,025,552	\$60,383,603	\$2,935,000	\$2,919,000
FY14	\$72,280,043	\$61,189,194	\$2,116,000	\$6,387,000
FY15	\$73,833,381	\$78,428,137	\$5,913,442	\$5,300,000
				\$7,054,000

Reviewers met with MTA Mobility’s program manager and executive director to examine the process used to plan and budget for Mobility services each year. MTA Mobility estimates future ridership after reviewing recent ridership levels, then develops cost estimates for the next year’s purchased transportation, operating, and capital needs. The review team was able to verify that the MTA budgets and plans to meet all ADA paratransit demand, and that long-range planning recognizes MTA Mobility’s need to upgrade technology and communications equipment as well as to add vehicles.

MTA Mobility: Three-Year Ridership Data FY13 - FY15			
	FY2013	FY2014	FY2015
Trips requested	1,949,242	2,064,947	2,238,696
Trips scheduled	n/a	1,785,480	1,887,653
Trips completed (registered riders)	1,448,794	1,523,774	1,588,427
Trips completed (all passengers)	1,651,170	1,781,085	1,892,901
Percentage growth		8%	6%

6.5 Subscription Service

Requirement: Under 49 CFR §37.133, transit agencies are permitted (but not required) to provide subscription service (pre-arranged trips at a particular time not requiring individual trip reservations for each trip). If provided, however, subscription service may not comprise more than 50 percent of the available trips at any given time unless the system is experiencing no capacity constraints.

Discussion: During this compliance review, no deficiencies were found with the requirements concerning the provision of subscription trips.

MTA Mobility offers subscription service (standing orders) to riders making frequent, similar trips of any kind. During interviews, MTA Mobility managers stated that subscription service represents approximately 35 percent of weekday ridership; reviewers confirmed this fact. To be eligible for subscription service, a trip must recur at least once each week on the same day, between the same locations and at the same time. The on-line rider's guide reminds users that MTA Mobility automatically cancels subscription trips on major holidays. If a ride is needed, the customer must call and book it.

The above regulation stipulates that if the system is experiencing capacity constraints, subscription service may not comprise more than 50 percent of the available trips at any given time. The review team examined trip manifests and discussed with Mobility schedulers and management the scheduling of demand and subscription trips. Reviewers verified that as documented in MTA Mobility's data, subscription service does not appear to absorb more than 50 percent of the number of trips available at a given time of day.

6.6 Reasonable Policies for Proposed Service Suspensions for Missing Scheduled Trips and the Right to Appeal

Requirement: Section 37.125(h) of the DOT ADA regulations states that transit agencies “may establish an administrative process to suspend, for a reasonable period of time, the provision of complementary paratransit service to ADA eligible individuals who establish a pattern or practice of missing scheduled trips.” FTA has permitted transit systems to regard late cancellations as no-shows if and only if they have the same operational effect on the system as a no-show, generally less than one to two hours of the scheduled trip time.

Under 49 CFR §37.125(h)(1), trips missed by riders for reasons beyond their control, including trips missed due to operator or transit system error, must not form the transit agency’s basis for determining that such a pattern or practice exists. The transit agency’s policies must therefore distinguish between no-shows that are within the rider’s control and those that are not, and propose sanctions only on the basis of the former. In order to establish whether a rider has engaged in a pattern or practice of missing scheduled trips, the transit agency must also account for a passenger’s frequency of use. The appeals process required under §37.125(g) must be available to an individual on whom sanctions have been imposed, and the sanction must be stayed pending the outcome of the appeal.

Discussion: During this compliance review, no deficiencies were found with the requirements concerning the transit agency’s no-show and late cancellation policies.

MTA Mobility’s written policies for no-shows and for service suspensions are reasonable with regard to the preliminary steps to be taken before penalties are imposed, meet the regulatory requirement that a pattern or practice of abuse of service must first be established, and appear to comply with 49 CFR §37.125(g) or (h). The agency website and written policies acknowledge frequency of travel, describe the phased process for identifying and communicating with riders concerning no-shows, and state the lengths of all proposed suspensions. The policies are consistent with information provided in the rider’s guide and in communications with customers, and with agency practices.

However, MTA Mobility’s maximum service suspension period is 30 days and whenever this action is proposed, the appeal is to be heard by a separate state agency unrelated to public transportation that uses formal judicial hearings before an Administrative Law Judge (ALJ). As with its eligibility appeals process, MTA has delegated its 30-day suspension appeals process to the Maryland Office of Administrative Hearings (OAH). MTA’s policies and processes for service suspension appeals do not appear to fully comply with DOT ADA regulatory requirements in that this process does not afford appellants the opportunity for the informal hearing before a qualified decision maker, appropriate representation, separation of function, or other protections which 49 CFR §37.125 and Appendix D to this Section require in the event of a service suspension appeal. This issue is fully discussed earlier in this report in Section 6.2, *Administrative Appeals Process*.

No-show Definitions; Process; and Practices

Concerning no-shows and service suspensions and appeals, the review team examined written policies and procedures, public information, letters, documentation and electronic files. In addition, reviewers interviewed the MTA Mobility operations manager. Mobility's No-Show policy features these provisions:

You are subject to the No-Show penalties if you cancel your rides late and/or fail to show up for 30% of your scheduled trips during a month.

A No-Show will be added to a Mobility passenger's record when the following situation(s) occur:

- *A passenger is not at the pick-up point within five (5) minutes after the vehicle arrives within the scheduled pick-up window.*
- *A passenger cancels a ride less than two (2) hours before the scheduled pick-up time.*
- *A passenger chooses not to ride after the vehicle arrives within the scheduled pick-up window.*

The website continues: *If you have a No-Show or cancel late for reasons beyond your control (for example, a sudden illness or hospitalization) please contact Mobility at 410-764-8181 and select Option 8 as soon as possible to provide an explanation. Any customer who receives a No-Show designation will be notified of such in writing. You will have the opportunity to appeal any No-Show on your record.*

MTA Mobility's website devotes considerable space to the agency's No-Show/Late Cancellation policy. The policy for service suspensions due to rider no-shows states that circumstances outside the customer's control will be evaluated in determining if a "no-show" is the customer's responsibility and individuals will be informed that they have the opportunity to dispute no-shows, request that these be researched and reversed, and appeal proposed suspensions. Mobility has established a phased, multi-stage process for alerting and communicating with no-show violators before imposing sanctions:

- A warning letter is issued after the first violation.
- A final warning letter is issued after the second violation.
- After the third violation riders are notified of a seven day suspension of service.
- After the fourth and fifth violations, seven day suspensions of service are again imposed.
- After the sixth violation riders are notified of a 30- day suspension of service.

In addition, it appears to be MTA Mobility's practice to reach out to the customer, inform them of the opportunity to appeal, provide information about the process, and reverse challenged no-shows upon request.

A review of files for 26 proposed recent service suspensions due to no-shows documented the appropriate use of the phased process. In addition, team members were able to verify that the communications in each file were accurate, complete, and contained the required information.

Accurate Identification of Customer No-Shows by MTA

MTA Mobility staff told the review team that it is the agency’s practice to validate everything that is charged as a no-show. If the provider misclassifies the trip, MTA changes it. This is performed on a daily basis.

To identify instances where customers might be penalized for no-shows that were in fact missed trips (the providing carrier’s responsibility) and ascertain if this appears to be a frequent occurrence, reviewers examined 40 randomly selected June 2015 MTA Mobility trips where customer no-shows had been issued. Examining manifests, comparing computer documentation, and calculating times, team members confirmed that 36 coding were correct, and four incorrect. Subsequently they learned that two of the four no-shows had already been rescinded and the riders would not be penalized for these.

Summary of Recent MTA Trips Coded as No-Shows

June 2015

No-show description	Total	%	W/I Pick up Window	%	Arrived >30 Minutes after Negotiated Time (Late)	%	Arrived Before Negotiated Time (Early)	%	Coded Correctly	%	Wait time Req't Met	%
<i>Cancel at door</i>	7	18%	4	14%	1	20%	2	0%	5	14%	6	16%
<i>Cancelled / missed trip</i>	5	13%	1	4%	4	80%	0	0%	4	11%	5	13%
<i>Customer no-show</i>	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
<i>No-show - missed trip</i>	28	70%	23	82%	0	0%	5	0%	27	75%	27	71%
<i>Not there</i>	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Total	40	100%	28	100%	5	100%	7	0%	36	100%	38	100%
%	100%		70%		13%		18%		90%		95%	

6.7 Complaint Resolution and Compliance Information

Requirements: Under §27.13(b), the transit agency must have administrative procedures in place that incorporate appropriate due process standards and provide for the prompt and

equitable resolution of complaints. Under §27.121(b), the transit agency must keep all complaints of noncompliance on file for one year and a record of all such complaints (which may be in summary form) for five years.

Discussion: During this compliance review, no deficiencies were found with the requirement to resolve complaints promptly and equitably and keep summaries and records of complaints on file. An advisory comment, however, is made regarding this requirement: while requirements to respond to complainants are not included in the DOT ADA regulations, it is a common and effective practice for a transit provider to respond to complainants and for transit providers to investigate allegations to ensure that all DOT ADA requirements are being met.

MTA Mobility reported a total of 1,675 customer complaints for January 1, 2015 through June 30, 2015, representing a complaint rate of 3.9 complaints per thousand trips performed. The review team analyzed all MTA Mobility customer complaints filed during this six month period and found that on-time performance accounted for an average of 36 percent of all complaints, and missed trips and disputed no-shows, 25 percent. No complaints concerning trip length, telephone access or service denials were identified. Issues not classed as capacity constraints, including vehicle operation and condition, Mobility staff or driver lack of professionalism, and quality of trip experience, accounted for an average of 39 percent of the total complaints received.

MTA Mobility Customer Comments January 1, 2015 to June 30, 2015
Summarized by Month

	Jan-15		Feb-15		Mar-15		Apr-15		May-15		Jun-15	
Total complaints	362		478		565		563		518		524	
Capacity constraint-related complaints	198		306		383		338		312		288	
<i>No-Show Disputes</i>	115	32%	119	25%	131	23%	132	23%	119	23%	138	26%
<i>Lengthy Trips</i>	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
<i>On-Time Performance</i>	83	23%	187	39%	252	45%	206	37%	193	37%	150	29%
<i>Telephone Access</i>	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
<i>Service Denials</i>	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
% constraint-related	55%		64%		68%		60%		60%		55%	
Non-constraint-related*	164		172		182		225		206		236	
% non-constraint-related	45%		36%		32%		40%		40%		45%	
Total trips performed	122,831		113,122		132,676		138,307		134,976		137,264	
Complaints per 1000 trips performed	2.9		4.2		4.3		4.1		3.8		3.8	

***NOTE: Non-capacity constraint-related complaints can include: Driver: lack of professionalism, use of cell phone, lost or unfamiliar with facility or area; cancel late/at door; staff lack of professionalism; vehicle appearance, cleanliness, etc.; vehicle operation, waiting with engine running, vehicle blocking exit/entry, reported incident or accident; vehicle choice (would prefer taxi); ride comfort (heating, air conditioning, choice of route, bumpy trip); complaints about other customers, lost items, etc.**

MTA Mobility's policies and procedures for complaint receipt, documentation, distribution, investigation, and follow up provide for prompt and equitable resolution. Riders may call, e-mail, write, or fax MTA Mobility customer service with commendations, complaints or questions. Staff enters the report in Mobility's database for tracking, and forwards the complaint to the appropriate office for processing, with copies to management. MTA Mobility contracts require that providers conduct a thorough investigation and respond in a manner that is to the agency's satisfaction. The responsible party must address complaints classed as "medium" or "low" within seven days of receipt. Complaints classed as "high" (typically traffic- or safety-related) require immediate investigation by a safety supervisor, who pulls the vehicle and driver from service but can return either to service. MTA Mobility management reviews complaint records, tracks timeliness of investigations, and monitors responses and complaint clearance. MTA Mobility compiles monthly and quarterly service quality reports on commendations and complaints for the MTA citizens advisory committee (CACAT).

Reviewers verified that MTA Mobility complies with DOT requirements to retain complaint records for one year and complaint summaries for five years. MTA Mobility managers informed

reviewers that MTA Mobility holds ADA paratransit complaints in its computer system indefinitely.

6.8 Nondiscrimination

Requirement: Under 49 CFR 37.5, the transit agency is prohibited from discriminating against an individual with a disability in connection with the provision of transportation service, or denying any individual with a disability the opportunity to use the transportation services it provides to the general public. Discriminatory practices include and are not limited to requiring the use of alternate transportation services, requiring persons with disabilities to be accompanied by an attendant, imposing user fees or special charges upon people with disabilities and requiring people with disabilities to use designated priority seating.

Discussion: During this compliance review, no deficiencies were found with denying service to people with disabilities on the basis of disability, including and not limited to: requiring persons with disabilities to use ADA paratransit instead of the fixed-route system, requiring paratransit-eligible riders and potential applicants to use other special transportation services rather than the ADA paratransit service (such as may be operated by social and/or human-services agencies); requiring persons with disabilities to travel with PCAs; or imposing user fees or special charges upon people with disabilities and requiring people with disabilities to use designated priority seating.

Review team members examined MTA Mobility's Rider's Guide, website, and other service information; carrier contracts; and procedures and training manuals for eligibility, reservations, scheduling, dispatch, and customer service personnel. These materials were compared with service and eligibility data and information gathered during on-site observations, meetings, interviews, and vehicle and facility inspections. Reviewers identified no discrepancies between MTA Mobility's published policies and standards concerning discrimination against persons with disabilities in connection with the provision of transportation and the procedures and practices followed by MTA Mobility managers and personnel. No evidence suggested that persons with disabilities were being steered to alternate transportation services during eligibility, reservations, or other processes, and there were no indications that eligible riders were being required to be accompanied by an attendant.

MTA's disability advisory group, CACAT (Citizens Advisory Committee for Accessible Transportation), meets monthly. Representing seniors, people with disabilities, and advocates, CACAT advises MTA about programs and services, both paratransit and fixed route, affecting persons with disabilities using MTA. Service improvement is the stated goal and public participation is encouraged. Minutes are posted on CACAT's website at <http://mta.maryland.gov/cacat>.

6.9 Training Requirements

Requirement: Under 49 CFR §173, each public or private entity which operates a fixed route or demand responsive system shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities.

Discussion: During this compliance review, no deficiencies were found with the training requirements. An advisory comment, however, is made regarding this requirement. In the presence of the review team and FTA staff, two MTA senior managers acknowledged that additional training of eligibility staff and contracted personnel was needed. Based on the review team's observations and examination of eligibility files, to ensure best practices under the ADA, it is recommended that MTA Mobility undertake refresher training for eligibility staff and contracted personnel concerning DOT ADA regulations and guidance and MTA Mobility's written eligibility standards.

MTA Mobility Reservations and Eligibility Staff and Managers; Contracted Eligibility Personnel

With regard to staff training, MTA Mobility requires that reservations, scheduling, customer service, and dispatch personnel receive disability awareness and communication training as well as instruction in agency policies and procedures and training in using Trapeze and telephone equipment. In the eligibility unit, reviewers were told by staff that training for MTA personnel is performed in-house, including training for the eligibility specialists and their managers who conduct in-person interviews with applicants, review applications for completeness, and compose eligibility certification letters. Reviewers were informed that the contracted physical and occupational therapists, who conduct MTA's functional assessments, receive program orientation from the lead therapist.

Driver Training

MTA Mobility contracts require the agency's three transportation providers to furnish their own driver manuals and training, the content of which must be pre-approved by MTA Mobility. The contracts stipulate that a minimum of 110 hours of driver training shall be provided, and that training shall be to proficiency. Classroom training occupies approximately 40 hours, with another 40 hours behind the wheel, 20 hours of accompanied driving (in-service training supervised by a certified trainer), known as "cadet training", and 10 hours of skills training. Classroom training includes disability awareness and communication, passenger assistance techniques (includes securing mobility devices), passenger relations; vehicle, radio and communications familiarity, defensive driving, operating rules, safety, accident prevention, and other topics. Ongoing operator training includes one hour per month (12 hours per year) of safety training; post-accident training (up to four hours as needed); refresher training, both as part of complaint response, and whenever new equipment or technology is introduced; and remedial training conducted on an as-needed basis for drivers who have safety, accident prevention, and/or passenger relations issue. MTA Mobility documents successful completion of driver training as part of its driver performance files.

The review team examined carrier contracts, driver training materials, procedures and manuals, interviewed one trainer, and visited the three contractor garages. Driver training content and materials appeared to meet DOT ADA regulatory requirements regarding training to proficiency, as appropriate to assigned duties, respectful treatment of individuals with disabilities, and safely operating equipment such as lifts.

In addition to operations managers from MTA Mobility and contractor operations, reviewers interviewed three new and longtime drivers from each of the three contractors, for a total of nine individuals. Using a standard set of questions, drivers were interviewed in private as they finished their runs or went on break. Three questions directly concerned training and vehicle condition; others asked about schedules and dispatch support, and verified driver understanding of MTA Mobility policies and procedures implementing DOT ADA regulatory requirements.

Reviewers observed the following:

- All drivers were familiar with the on-time pickup window, saying that it was from the negotiated pickup time to 30-minutes afterward.
- When asked about pickup times being altered, drivers said that riders rarely or never indicated that the pickup times they had negotiated on the phone differed from what was on the manifest.
- When asked if and how often they ran late (outside the on-time window), drivers said seldom under normal circumstances. Several said they try to run early.
- In response to questioning about the schedules and whether these are too tight, too loose, or about right, almost all said they found the schedules about right or a little tight. Several drivers volunteered that schedules were improving in recent months. Some mentioned that when dispatchers added trips to their route (add-ons), it made the schedule tighter.
- All drivers demonstrated a good understanding of the procedures to follow when a rider appears to have no-showed.
- All drivers demonstrated that they understood what origin-to-destination service involves. All stated that providing assistance is required, and that all MTA Mobility service is door to door or hand to hand. Several mentioned that they had received special training in how to assist customers with vision impairments.

Drivers stated that refresher training is typically provided when new vehicles or new equipment arrive; monthly as part of safety training; or as follow-up or disciplinary action after a complaint or incident. Several mentioned annual driver recertification.

6.10 Service Under Contract with a Private Entity

Requirements: Under 49 CFR §37.23, the transit agency must ensure that any private entity with which it has entered into a contract or other arrangement to provide ADA paratransit service meets all the obligations of the DOT ADA regulations, including those for service provision and vehicle acquisition, that the transit agency would be required to meet, if it provided the service directly.

The transit agency must have policies and procedures in place to monitor the performance of its contractor(s) and ensure that these requirements are met. The transit agency is not permitted to neglect monitoring or to limit its monitoring to the terms and conditions of its contract or other arrangement with the private entity or entities.

Discussion: During this compliance review, no deficiencies were found with regard to ADA compliance issues for contracted ADA complementary paratransit service, including and not limited to service provision, and with how MTA Mobility communicates, oversees and/or manages its obligations concerning contracted personnel with respect to the agency's eligibility and appeals processes and standards, applicants and potential applicants.

The review team observed that MTA Mobility has comprehensive oversight mechanisms in place to track, monitor, and manage contractors' service provision, to communicate MTA's expectations, and to impose sanctions for nonperformance.

The review team met with Mobility's senior management to discuss how MTA Mobility manages the services provided by its transportation contractors. Reviewers discussed the measures MTA Mobility takes to provide effective oversight and contract management, and to maintain contractor performance, service provision, and ongoing control over use of assets. MTA Mobility conducts ongoing verification, monitoring, and contractor oversight using electronic information and documents, reports and other data generated. On an ongoing basis, AVL data verifies that drivers are on-site; contracted street supervisors conduct field monitoring and unannounced ride checks, and follow up on reports of driver activity phoned in by motorists. Managers stated they believe it is essential to actively use and cross-check computer-generated data rather than relying on its reports unquestioningly. Senior management appears skilled in using new technologies and Trapeze software modules, and in developing user-defined report programs to analyze every aspect of operations. MTA Mobility's project manager provided copies of reports developed in-house to monitor service activity and vehicle performance, to validate on-time performance reporting and assess liquidated damages for nonperformance, and verify no-shows, late cancellations and missed trips.

After service has been provided, MTA Mobility managers analyze daily, weekly, and monthly service performance reports. Individual contractor meetings take place monthly or more often if service issues arise. Periodically MTA Mobility conducts a longitudinal customer satisfaction survey and reviews results with contractors.

Reviewers also observed that on the day of service, MTA Mobility managers now are able to track on-time performance, trip length, and vehicle delays using recently developed real-time

data collection and reporting programs displayed on dispatch center monitors. This information changes constantly as service fluctuates. The agency believes these programs represent a potentially powerful instrument for identifying and resolving service issues in real-time, as they arise.

6.11 Service Provided by Another Public Entity

Requirement: 49 CFR Part 37 applies to any public entity that provides designated public transportation or intercity or commuter rail transportation. Under 49 CFR §37.21(b), for entities receiving Federal financial assistance from the DOT, compliance with the applicable requirements of Part 37 is a condition of section 504 of the Rehabilitation Act of 1973 and of receiving financial assistance. Where a transit agency relies on another public entity to provide paratransit service on its behalf, the transit agency remains responsible for meeting the requirements of 49 CFR Part 37. In other words, the transit agency must ensure that the service provided on its behalf meets all of the requirements that the transit agency would be required to meet, if the transit agency provided the service directly. The transit agency must have policies and procedures in place to monitor the performance of such service to ensure that these requirements are met; the transit agency is not permitted to defer to the public entity operating the service.

Discussion: No other public entities provide service on behalf of MTA's ADA complementary paratransit service.

6.12 Coordination of Service

Requirement: Under 49 CFR §37.139(g), public transit operators are required to address efforts to coordinate service with other fixed route operators with overlapping or contiguous service areas or jurisdictions when developing their complementary paratransit plans. Coordination is an ongoing process; while these efforts are likely to have evolved over time, it is expected that such transit systems will have a mechanism in place to ensure that paratransit riders have an ability to make interjurisdictional trips on a comparable basis to individuals using the fixed-route system.

Discussion: During this compliance review, no deficiencies were found with regard to the transit agency's efforts to coordinate service with other fixed route operators with overlapping or contiguous service areas or jurisdictions.

The review team examined MTA Mobility's website and published materials, and interviewed MTA Mobility managers and staff. The MTA system design provides and publicizes opportunities for fixed route and ADA paratransit riders to connect with neighboring systems using its transit centers, subway/light rail stations, and commuter rail stations located at or near the borders of its service area, and with DC and Virginia transit systems.

In interviews, MTA Mobility management informed reviewers that their service transports a few Howard County residents. These individuals are dropped off at a location served by both MTA Mobility and the Howard County local transit service. Customers are responsible for arranging their own transportation with each service.

In addition, MTA Mobility connects to the following neighboring transportation agencies that adjoin its service areas. At times these services connect from MTA stations.

- Carroll County Transit
- Harford County Transit
- Prince Georges County Transit
- Montgomery County Department of Transportation Ride On
- Washington County Transit
- Frederick County Transit

MTA Mobility's printed maps and website provide contact information for each service.

In addition, MTA partners with the Central Maryland Transportation Alliance (CMTA), a coalition of area business and nonprofit leaders dedicated to improving travel efficiency within Central Maryland – Anne Arundel, Baltimore, Carroll, Harford, & Howard Counties, and Baltimore City.

Concerning the degree of coordination, MTA Mobility managers informed reviewers that whether on fixed route or ADA paratransit, changing to another system is not formally coordinated, does not feature through-service or through-ticketing, and does not involve accompanied transfers or hand-to-hand service. Riders desiring to transfer to another system are responsible for making their own reservations with each system, if a reservation is required, and pay separate fares for their trips on each system.

Summary Table of Compliance Review Findings

Item	Requirement of 49 CFR Parts 27 or 37	Reference	Site Visit Finding Deficiency/ No deficiency or advisory comment	Description of Findings	Suggested Corrective Action	Response Days/Date
6.1 Comparable Paratransit Service						
1	Comparable paratransit service	37.121	ND			
6.2 Paratransit Eligibility Process						
2	Absence of administrative burden	37.125 & 37.5	ND			
3	Paratransit eligibility standards	37.123 (e)(1)-(3)	D	Deficiencies were found with the requirement that transit agencies' eligibility process must address an individual's <i>functional ability independently to access and use public transit</i> .	Provide to the FTA for review: <ul style="list-style-type: none"> revised eligibility determination processes and procedures that reflect DOT ADA requirements and existing MTA Mobility ADA paratransit eligibility standards; revised, transit-specific interview, assessment, and decision summary forms which weigh only the applicant's functional ability to access and use public transit independently, and include consideration of factors such as endurance, path of travel, inclement weather, and potential travel throughout the service area. 	Within 60 days of the issuance of the final report
4	Accessible information	37.125(b)	D	A deficiency was found with the accessible information requirement. MTA Mobility's website and print materials do not effectively communicate the availability of information in accessible formats upon request.	Provide to the FTA documentation that notices of the availability of information in accessible formats upon request have been added to website, downloadable materials it offers, and MTA Mobility information.	Within 60 days of the issuance of the final report

5	Eligibility determinations within 21 days	37.125(c)	D	<p>Deficiencies were found with the requirement that decisions be rendered within 21 days of submission of a completed application. MTA Mobility’s policy regarding when an application is considered complete is not clear; the agency does not track application progress based on a universally-understood completion date; MTA Mobility places responsibility for initiating presumptive eligibility on the applicant. Applications reviewed contained several for which decisions appeared not to have been rendered within 21 days of submission of a completed application. In such cases, staff were unable to document that notice of presumptive eligibility had been provided to customers.</p>	<p>Provide to the FTA for review:</p> <ul style="list-style-type: none"> • policy statement, process flow chart, and time line showing application handling process to identify when an application is complete and assure that, upon receipt of a completed application, decisions are rendered within 21 days, or presumptive eligibility is made available on Day 22 and the applicant is so informed. These processes and materials must also include appropriate provisions for factors such as incomplete applications, requests for supplemental information, etc. • revised internal application tracking procedures and reports, documenting when an application is declared “complete”, determination made, letter issued, if/when notification of presumptive eligibility is issued, etc. 	Within 60 days of the issuance of the final report
6	Written eligibility determinations including specific reasons for denials or temporary or conditional	37.125(d)(e)	D	<p>Deficiencies were found with the requirement for written eligibility determinations. File review showed that MTA Mobility’s certification letters finding applicants ineligible, or conditionally or temporarily eligible, did not always provide brief, readily understandable, transit-specific reasons for this decision. At times, letters and file entries also:</p> <ul style="list-style-type: none"> • indicated that eligibility staff do not always use MTA Mobility’s written eligibility standards. • referenced applicants’ performance of tasks of daily living or community activities. • indicated that applicants’ level of use or non-use of fixed route, MTA Mobility service, or non-ADA call-a-ride taxi service might have represented the sole 	<p>Provide to the FTA for review revised certification letters and letter templates demonstrating that the following elements are included:</p> <ul style="list-style-type: none"> • specific, transit-based reasons for determinations of ineligibility, temporary or conditional eligibility, and for any limitations on eligibility including the use of a PCA, which reflect current DOT ADA regulatory guidance and MTA Mobility’s written eligibility standards with brief, understandable eligibility appeal information. 	Within 60 days of the issuance of the final report

				<p>basis for the eligibility decision. Letters omitted appeal deadline information, instead referring to enclosures.</p> <p>Letters often contained spelling and grammar errors.</p>		
7	Recertification of eligibility at reasonable intervals	35.125(f)	ND			
8	Administrative appeals process for denials and grants of conditional and temporary eligibility and unreasonable administrative burdens in appeals	37.125(g)	D	<p>Deficiencies were found with the requirements for the administrative appeals process for eligibility. MTA Mobility has delegated its responsibility for appeals of eligibility and 30-day service suspensions to Maryland Office of Administrative Hearings (OAH). OAH policies and procedures do not afford customers the opportunity for an informal hearing or meet other requirements spelled out in 49 CFR §37.125 and Appendix D to this Section.</p>	<p>MTA must revise its hearing process to comply with federal regulations. MTA must provide to the FTA for review:</p> <ul style="list-style-type: none"> • a revised eligibility appeal process which offers appellants the opportunity for an in-person informal hearing, and provides a clear explanation of the appellant's right to present written and oral information and to be accompanied by advocates. This policy shall include appropriate separation of functions, shall permit but not require the appellant's presence, and shall not require a written appeal nor statement of a reason for appeal; • internal tracking procedures and reports for eligibility appeals, documenting dates of request, hearing, decision, notification, and provision of presumptive eligibility; and • revised written and electronic public information materials, and templates for eligibility determination and service suspension letters, to reflect these changes and assure consistent wording across all documents and website information. 	<p>Within 60 days of the issuance of the final report</p>

9	Complementary paratransit for visitors	37.127	ND			
6.3 Types of Service						
10	Types of service	37.129	ND			
6.4 Service Criteria for Complementary Paratransit						
11	Service area	37.131(a)	ND			
12	Response time	37.131(b)	D	A deficiency was found with the requirements for response time. The review team documented eight occasions when MTA Mobility reservations agents did not comply with the regulatory requirement to accept and schedule all eligible ADA paratransit trip requests within one hour before or after the time requested. The agents accommodated trip requests outside the one-hour ADA negotiation window and did not record the trips as capacity denials. The agency's stated policy is "zero trip denials" and its reports list no capacity denials.	<p>MTA Mobility must comply with the regulatory requirement to accept and schedule all eligible ADA paratransit trip requests within one hour before or after the time requested and must also begin documenting its daily compliance with this requirement.</p> <p>MTA Mobility must provide to the FTA for review the following items:</p> <ul style="list-style-type: none"> • a written plan of action and implementation schedule showing steps MTA Mobility will take to accommodate all eligible trip requests, re-train staff, and achieve effective tracking, monitoring and oversight of ADA paratransit reservations activities; • written reservations policies and procedures documents, including revised scripts for reservations agents, with effective date, outlining procedures to be followed in receiving, documenting and scheduling all eligible trip requests within one hour before or after the requested time; and • corrective measures being taken to assure that managers, reservations staff and supervisors understand this requirement and that compliance is monitored and enforced. 	<p>Within 60 days of the issuance of the final report</p> <p>Within 60 days of the issuance of the final report</p>
13	Fares	37.131(c)	ND			

14	No trip purpose restrictions	37.131(d)	ND		
15	Hours and days of service	37.131(e)	ND		
16	Absence of capacity constraints	37.131(f)	D	Deficiencies regarding trip denials were addressed earlier in the report and in Item 12 in this table.	
17	No restrictions on the number of trips provided to an individual	37.131(f)(1)	ND		
18	No waiting list for access to the service	37.131(f) (2)	ND		
19	No substantial numbers of significantly untimely pickups for initial or return trips	37.131(f)(3)(i)(A)	ND		
20	No substantial numbers of trip denials or missed trips	37.131(f)(3)(i)(B) 37.131(3)(1)(B)	D	Deficiencies regarding trip denials were addressed earlier in the report and in Item 12 in this table.	Within 60 days of the issuance of the final report
21	No substantial numbers of trips with excessive trip lengths	37.131(f)(3)(i)(C)	ND		
22	No operational patterns or practices significantly limiting service availability	37.131(f)	ND		
6.5 Subscription Service					
23	Subscription Service	37.133	ND		
6.6 Reasonable Policies for Proposed Service Suspensions for Missing Scheduled Trips and the Right to Appeal					
24	No-show, late cancel and reasonable service	37.125(h) (1)-(3)	ND	Addressed earlier in the report and in Item 8 in this table.	

	suspension & appeal policies					
6.7 Complaint Resolution and Compliance Information						
25	Complaint Resolution & Compliance Information	27.13(b) & 27.121	ND			
6.8 Nondiscrimination						
26	Non-discrimination	37.5	ND			
6.9 Training Requirements						
27	Training	37.173	Advisory Comment		To ensure best practices under the ADA, it is recommended that MTA Mobility undertake refresher training for eligibility staff and contracted personnel concerning DOT ADA regulations and guidance and MTA Mobility's written eligibility standards.	
6.10 Service Under Contract with a Private Entity (if applicable)						
28	Service under Contract	37.23	ND			
6.11 Service Provided by Another Public Entity (if applicable)						
29	Service provided by another public entity	37.21(b)	N/A			
6.12 Coordination of Service						
30	Coordination of service	27.139(g)	ND			

ATTACHMENT A



**Maryland Transit
Administration**

**Official Response to the Federal Transit
Administration's Draft Paratransit
December 2015 Compliance Review
Report**

Paul Comfort, Esq.

Administrator

Maryland Transit Administration

January 15, 2016

Introduction

The MTA's response to the FTA's draft report is below. This response follows the draft report's order of issues presented and is broken down by the sections contained in the draft report.

Section 4 Introduction to MTA Mobility

The audit team incorrectly stated that MTA's subway and light rail operates twenty-four hours per day, seven days per week. In fact, the subway operates only between approximately 5 a.m. and 12:30 a.m. weekdays and 6 a.m. to 12:30 a.m. on weekends. The light rail operates approximately 4 a.m. to 1:30 a.m. weekdays, 4:30 a.m. to 1:30 a.m. Saturdays, and 10 a.m. to 10 p.m. on Sundays.

Section 4.1 Introduction to Paratransit Services and Organizational Structure

The FTA's draft report incorrectly characterizes the accessibility of the MTA Mobility headquarters by stating "This facility can be reached by car, or by using MTA's Owings Mills light rail line with a 10-minute walk from nearby accessible Reisterstown Plaza station." The MTA Mobility headquarters located at 4201 Patterson Avenue, in Baltimore Maryland, is accessible not just by car and subway as incorrectly noted in the report, but also by the fixed route bus system. A bus stop is conveniently located directly in front of the office. Additionally, the report fails to mention that MTA, while not required, offers Mobility service to applicants for their certification in-person appointments free of charge.

In addition, the audit team incorrectly noted the Mobility fleet consists of 461 vehicles. The correct number of the Mobility's fleet is 483 vehicles.

The audit team also incorrectly over reported the number of trips provided by Mobility in the fourth quarter of Fiscal Year 2015 by over 200,000 trips. The report states "the agency reported approximately 650,000 one-way MTA Mobility trips." The correct number is 410,551.

5.2 Methodology

The audit team misspelled the name of the MTA Audit Manager. The correct spelling is Sonya Pirtle.

6.2 Paratransit Eligibility Process

None

Paratransit Eligibility Standards

In this section, the report starts with the overly broad and unsupported conclusion that “MTA Mobility’s eligibility processes and resulting decisions are inconsistent with the agency’s own written standards and 49 C.F.R. § 37.123(e)(1)-(3).” The review team could not possibly have reviewed every decision or even reasonably determined every decision is inconsistent with the eligibility standards. Even disagreement with some or many of the small number of files reviewed by the audit team cannot come close to a statistically supportable conclusion that its decisions fail to satisfy the regulatory requirements. In addition to this broad overstatement, the audit team erroneously read the regulatory requirements as further explained below.

First, the audit team begins its explanation with a statement that it found “little evidence”¹ that eligibility specialists and occupational therapists consulted the three standards prior to making eligibility decisions or issuing letters. Due to the full accessibility of MTA’s fixed route fleet, staff truly only needs to apply and understand the two standards included in 49 C.F.R. § 37.123(e)(1) and (3). The finding that decisions were not based on the standards of the regulations is dismaying because these individuals work full-time assessing individuals under the standards included in the regulations. Eligibility specialists and occupational therapist working in paratransit eligibility full-time can and do remember and understand these standards without a need to consult either the regulations or training materials when *each* decision is made. That the audit team did not witness in their three days of observation full-time staff reading from the manual or regulations while making determinations – after having been trained on application of these standards – is not determinative of whether the regulations are being followed. MTA personnel understand the appropriate inquiry must relate to an applicant’s ability to use fixed route transit vehicles and travel to boarding locations and from disembarking locations. MTA Mobility personnel also understand that certification may be conditional or temporary. The audit team has not identified one file in its report in which an improper eligibility determination was made.

Second, the audit team writes that “rather than directly addressing an individual’s functional ability to access and use public transit independently as DOT ADA regulations require, the agency’s certification process appears to devote significant attention to applicants’ performance of tasks of daily living.” The audit team appears to fundamentally misunderstand that functional abilities do not change solely when using public transportation. The MTA cannot agree. First only the very first part of the assessment focuses on tasks of daily living. Moreover, this information can be significant in determining whether a person is able to access the fixed route. For example, if a person is able to climb up and down many stairs in one’s home, it is likely this person is able to climb steps or curbs to access a bus or train. An individual who spends several hours standing in a kitchen or elsewhere unaided is likely to be able to stand 10 or

¹ This type of unsupported finding, is repeated throughout the report and blends with the failure of the audit team to base its conclusions on established facts. The team presumed a deficiency while conceding the evidence was inconclusive. This requires MTA to prove a negative in responding to the allegation.

20 minutes to wait for a bus, as the same function is required for both. Though MTA is not disputing the finding that written eligibility determinations can be improved to better explain the connection between tasks of daily living and transit use, it does not follow, and is factually incorrect to state or infer that MTA is not considering the tasks necessary to transit use in its eligibility process. The holistic approach adopted and considered by eligibility professionals and MTA's licensed occupational therapists, review an individual's actual functional abilities to perform the tasks necessary for transit use and base their decisions on functional abilities in a manner consistent with the regulations. Nothing in 49 C.F.R. § 37.123 prohibits assessment of individuals functional abilities applicable and transferrable to the ability to independently access and use public transit. The audit team's assumption that MTA is making an assessment of anything other than an individual's ability to perform transit-related tasks is factually inaccurate. Further, the report ignores that a review of the tasks of daily living is but one of many factors that are looked at, and is by no means a sole basis or factor used in making eligibility determinations. Nothing in 49 C.F.R. § 37.123 prohibits assessment of individuals functional abilities applicable and transferrable to the ability to independently access and use public transit. If such inquiry was prohibited, a transit entity could never assess an individual who has never used public transit before.

Similarly, the audit team stated that MTA is basing eligibility decisions on the level of use or non-use of fixed route, Mobility service, and Call-A-Ride taxi service. Again, the report ignores the very important fact that use, or non-use of the fixed route or other alternatives to the fixed route, is but one factor of the many used to make eligibility determinations. These are direct inquiries into an individual's actual travel habits. This inquiry is related to determining transportation skills and abilities as demonstrated by an applicant's actual behavior. Further, this finding contradicts the previous assertion that MTA should focus on transportation abilities, instead of the physical capability to perform transit tasks. Though certainly not dispositive standing alone, a person's individual travel habits gives the best picture of their functional abilities and should be an essential part of eligibility review and not prohibited from inquiry. Certainly, the failure to use Mobility during a prior certification period would not automatically mean the individual is using fixed route. On the other hand, a pattern of high Mobility usage during the winter months would support a finding of conditional eligibility during cold weather. At the very least, a lack of paratransit use supports further inquiry into how an individual has been traveling and the functional ability the individual displays using alternative transportation modes. The report includes no facts showing that a certification decision considering an applicant's transportation habits was inaccurate. Without any such explanation, MTA must conclude this finding is based on a mistaken understanding of regulatory requirements or of the inquiry MTA conducts regarding transit abilities.

Finally, the audit team states that personnel are making determinations based on an "incomplete understanding of regulatory requirements," but failed to elicit even a single example for MTA to base any response to the finding. Though the draft report states (without any factual support) that the use of personal care attendants was misunderstood, MTA does not know what occurred so it can either research the issue or accept the conclusion. The MTA, therefore, requests that the final report provide the factual basis for making this serious allegation.

Eligibility Process

The audit team finds that “one or more functional assessments” may be required of applicants. The MTA only requires one functional assessment of applicants. The audit team maybe confusing situations where an additional cognitive assessment was performed. The audit team is factually incorrect if it is under the belief that some applicants must complete more than one functional assessment.

Logical and Thorough Decisions

The findings state that those making Mobility determinations “do not appear” to take into account travel throughout the entire service area, architectural barriers, or environmental factors. The report again fails to present any example by which MTA can respond to this finding. The audit team seems to conclude such factors are not considered without any evidence. As stated, MTA accepts the finding that written eligibility decisions could be improved to better explain the basis of decisions. But, MTA rejects any assertion without specific evidence that its personnel are not considering the standards included in 49 C.F.R. Part 37. Even a well-written determination cannot explain every single potential fact bearing on use of transit. That an architectural or environmental factor was not discussed in the determination does not provide any proof that staff did not consider these issues in making the determination. Though MTA does not contest the need for improvement in the drafting of eligibility decisions, the report includes no facts that would support a finding that MTA is not applying proper standards in its eligibility decisions. If the audit team cannot support its conclusion that decisions are based on something other than the applicable regulations with facts, this alleged deficiency should be withdrawn to extent it finds MTA is applying incorrect eligibility requirements.

Determinations Not Always Based on Transit-Related Standards

As stated above, the audit team fundamentally misunderstands the connection between an individual’s functional ability to perform general physical tasks and the connection with the functional ability to perform the same physical task during transit use. Occupational therapists have specific medical training in making functional determinations based on an individual’s daily routine. For example, caring for a two-year-old child requires bending, lifting, walking, mental acuity to monitor the child’s behavior, and other physical, functional capabilities. These functional capabilities directly touch on the analysis of whether an individual can stand at a bus stop, carry and comport him/herself in public, and lift a grocery bag while using fixed route buses. The assessment should include further inquiry into the particular activity, such as special limits (such as in the case of childcare, merely monitoring the child in a room with another individual available to perform the more physical tasks normally associated with childcare). Nonetheless, the occupational therapists engaged in these inquiries have medical training related to determining functional skills by analyzing the daily tasks an individual undertakes. The audit team has no factual basis to conclude that these inquiries are not focused on determining whether an individual has the physical capabilities to independently perform transit-related tasks.

Further, by qualifying its finding with the term “at times,” the team fails to distinguish between a single decision that is subject to a different opinion and a systemic failure to apply the standards included in 49 C.F.R. § 37.123(e). The audit team should clarify the basis for its broad

conclusion and support its conclusion with facts showing more than a small number of difficult, or even, erroneous determinations.

Use or Non-Use of Transit or Subsidized Taxi Service

The audit team notes that an individual's use and non-use of certain transportation modes "can influence eligibility decisions." As stated, an individual's functional ability to use transportation modes is one of the best indicators of their transportation capabilities. There is no violation of the applicable regulatory standards if an individual's actual transportation habits "influence" eligibility decisions about transportation capabilities. The audit team does not appear to understand the value of reviewing an individual's transportation habits in determining transportation capabilities. The audit team has, therefore, inaccurately read the standards included in the federal regulations in its finding that consideration and evaluation of transportation use violates the federal rule.

The inquiry, of course, does not end with either the history of use or non-use of any particular transportation mode. Transportation history may "influence" decisions. Regardless, the audit team did not identify a single situation where consideration of transportation habits resulted in an inaccurate determination. Though MTA does not dispute the finding that it can improve its written explanations of how a particular fact was used in making a determination, MTA completely disputes any factual determination that decisions were made solely on one particular piece of information, such as history of paratransit or fixed route use. MTA collects various pieces of information for the purpose of making a full evaluation of transit capabilities. As the audit team notes, Mobility makes decisions based on a holistic view of an individual's transportation history, functional capabilities as displayed in their daily activities, and the medical information reported by the applicant and his or her health care provider. The regulations do not require MTA to blind itself to pertinent information available as part of the whole case file. This finding should be withdrawn as factually unsupported and inconsistent with the federal regulations.

"Reasonable Person" Standard

The audit team finds that it is "not clear" based on its file review that eligibility personnel consider the reasonable person standard included in Appendix D. This is insufficient to support a deficiency if the team could not make a determination. If the team has specific information showing that the standard has not been correctly applied, such information should be explained so MTA may adequately respond. The audit team should clarify the factual basis for making this conclusion or withdraw the finding.

Procedural Flaws

None

Accessible Information

The report neglects to note that accessible information is available in braille, large print, and electronic formats (including compact disc, audio recording, or qualified reader).

Eligibility Determinations or Presumptive Eligibility within 21 Days

The audit team has misquoted the regulatory authority on presumptive eligibility in writing that “[T]he regulation makes the rider, not MTA, responsible for following up on and obtaining presumptive eligibility, whereas the regulations are clear that awarding presumptive eligibility and notifying applicants of their right to it is the responsibility of the transit agency.” This requirement is absent from both the terms of 49 C.F.R. § 37.125(c) and the Appendix. The regulation only requires the individual to have service on the same terms as certified individuals on the 22nd day. Certified individuals must call to request rides. Further, it would be incumbent upon a presumptively eligible rider to request a ride on the 22nd day and the rider would need to contact the agency in order to do so. The audit report notes that MTA notifies applicants on its written application that he or she will receive presumptive eligibility following 21 days. The application states this rule in two places, including the very first page. This is sufficient notice. The audit report is factually inaccurate in stating that MTA fails to notify individuals of their right to presumptive eligibility.

Further, the report quotes from “MTA Mobility eligibility information” the notice it provides to riders of their right to presumptive eligibility. Without any further explanation, it then states that communications and the website “do not always offer the same information.” The MTA cannot respond to this statement because the report does not include any evidence of what different information is offered or explain any alleged inconsistency.

Finally, the audit includes no evidence that service was refused to any applicant whose determination was not issued 21 days after the completed application. Any finding that MTA has violated anyone’s rights should be withdrawn. The audit team cites no evidence that this has occurred.

Tracking Application Handling

The audit report states that some managers informed the audit team that an application is complete following the in-person interview and functional assessment. This is a correct statement regarding the date of completion for an application at MTA and consistent with 49 C.F.R. § 37.125(c) and the Appendix. This rule is included in MTA training materials for its eligibility staff. Then the report states, without any explanation, that other staff members had conflicting views of this interpretation. The MTA cannot respond or otherwise explain such a conflict because the team did not state how staff members differed. The final report should clarify how personnel stated this requirement differently.

Meeting Application Processing Time Requirements; Prompt Notification of Determinations

None

Providing Presumptive Eligibility When Required

The audit team notes that files included “no documentation” that presumptive eligibility had been provided. The audit team reports no evidence that any applicant requested and was refused a trip during the period of presumptive eligibility. The audit team reported that MTA includes notification of the right to presumptive eligibility on the 22nd day after completing the application process. Therefore, the team has no evidence to support any deficiency with this requirement. This finding should be withdrawn.

Written Eligibility Determinations including Specific Reasons for Denials or Temporary or Conditional Eligibility Determinations

The team notes that determination letters lack specific information about the appeal process and instead reference enclosures. The enclosure (a full sheet of explanatory information on the page following the written determination) includes all information necessary regarding the appeal process. The finding that appeal information is not provided is factually incorrect. Further, there is no requirement included in the 49 C.F.R. § 37.125 that the appeal determination letter itself include appeal information. For that matter, the regulations do not require a transit entity to include information in a determination letter regarding the appeal process at all. *See* 49 C.F.R. § 37.125(e) and Appendix D. In the corrective actions, the audit teams writes that the letters do not include the deadline for filing appeals, which is, again, factually erroneous. The explanation of the appeal process included in the letters informs the applicant of the number of days he or she has to appeal the decision. The audit team has misapplied the terms of 49 C.F.R. § 37.125 and in any event, erroneously concluded as a factual matter that MTA does not explain appeal rights.

In addition, the team states that it questioned the appropriateness of “at least five” of these decisions. The MTA objects to the team’s identification of five decisions as questionable, but refusing to find the remaining decisions (83 percent) appropriate or at very least supportable under the regulatory requirements. This language demonstrates that the team is refusing to appropriately acknowledge the high rate of agreement with MTA’s decision making. The use of the “at least” language indicates that the team injected an unnecessary degree of doubt in the decision making when it could only find five decisions “question[able].” Agreement with 83 percent of the decisions reviewed does not indicate a systemic issue requiring corrective action.

Similarly, the MTA disputes the factual conclusion that its decisions are “at times” making determinations based on incomplete applications², incomplete understanding of regulatory requirements, or inconsistent application of functional ability standards, and have been basing some decisions on the use or non-use of transportation modes. As previously stated, the MTA disputes the finding that reliance upon physical functional abilities and actual transportation habits inappropriately evaluates the eligibility criteria. The report, however, includes no information illustrating how the decisions were inappropriate based on information

² MTA will not dispute its customer friendly practice of assisting applicants when information was omitted from Part A of the application which is for customers to complete. The alternative would be for MTA to II discontinue this assistance to applicants and reject applications without all information included

collected for the case file. Therefore, the MTA cannot fully respond to the conclusion. Further, by qualifying its determination with the language “at times,” the audit team has not established any substantial or systemic pattern of inappropriate decision making. The audit team could only identify five cases in which it wrote the decision could be “questioned.” The report lacks any facts to support a conclusion that MTA personnel do not understand the regulatory requirements or apply them consistently. As reasonable minds may disagree about the conclusion in particular cases, review of MTA personnel’s judgment is best left to the appeal process where completely independent review of this judgment is available.

Need for Personal Care Attendant (PCA)

None

Recertification of Eligibility at Reasonable Intervals

None

Administrative Appeals Process for Denials or Decisions Granting Conditional or Temporary Eligibility

The report notes that the administrative appeals process “contradicts 49 C.F.R. § 37.125(g) in a number of ways,” but fails to cite any rules published by DOT that have been violated. The regulations require agencies to establish an administrative process for review of eligibility denials and disciplinary suspensions. 49 C.F.R. § 37.125(g), (h)(3). This process must include the opportunity to be heard, present information and arguments, separation of functions, and a written notice of the decision and the reasons for it. 49 C.F.R. § 37.125(g)(2). The report does not dispute that the OAH process provides an in-person hearing before a full-time administrative law judges with no connection to MTA. There is further no dispute in the report that the ALJ hears any information and arguments presented by the applicant and issues a written decision on the issue presented. The OAH process fully comports with any interpretation of the language included in the cited regulation. To the extent the audit team made this finding without any basis in the language of the rule it purports to analyze, the report is factually erroneous and requires correction in the final report. The audit team has applied purported standards that have not been published by U.S. Department of Transportation.

In explaining the appeals process for disciplinary cases only³, the Appendix states:

The entity would provide the individual an opportunity to be heard (i.e., an in-person informal hearing before a decisionmaker) as well as to present written and oral information and arguments. All relevant entity records and personnel would be made available to the individual, and other persons could testify ... While the hearing is intended to be informal, the individual could bring a representative (e.g., someone from an advocacy organization, an attorney).

³ Though the regulations only describe a single process that is to be used in both eligibility and suspension cases, the Appendix includes a different explanation for the eligibility and suspension processes. These explanations are consistent.

This describes the OAH hearing process precisely. There are no rules of evidence or requirement for representation by attorneys. The applicant may speak in plain language to the administrative law judge why he or she believes an eligibility decision is incorrect. Though the individual could bring an attorney to present a formal legal case, there is no such requirement in the OAH process. The applicant may informally explain his or her position to the administrative judge. Though the hearings rooms are similarly to a courtroom, OAH conducts hearings without any strict procedural or evidentiary rules. These proceedings are explained to applicants by the administrative judge in laymen's terms both before and during the proceedings, as the audit report notes. The procedure would be identical if the case was held around a conference table. The report is factually wrong in its finding that the OAH process does not comport with the actual rules included in 49 C.F.R. § 37.125(g) and (h)(3).

In addition, the audit team found that the process "inappropriately asks why the individual wishes to appeal." There is no requirement in the regulations or appendix that prohibits an individual from explaining the reasons they are appealing. In any event, the document being discussed is a docketing sheet that merely documents the nature of the hearing request. The blank requesting information on the reason for the appeal is not required to be completed. Further, the report indicates that MTA does not provide a telephone or video conference option to appellants. This is simply factually inaccurate. The OAH rules specifically provide for telephone and video hearings. Code of Maryland Administrative Regulations ("COMAR") 28.02.01.20B, C⁴. The report also notes the OAH hearing location is in the Baltimore County suburbs, which is located within the MTA paratransit service area convenient by car, light rail, and fixed route bus. In fact, the hearing office includes ample free parking, unavailable at many downtown Baltimore locations. The report notes that while MTA provides transportation to applicants for hearings, witnesses may have a difficult time traveling to the hearing. As stated, not only is that factually inaccurate, the regulations include no specific requirements for hearings to be located in a place most convenient for appellant's witnesses. Given the breadth of the MTA service area, it is impossible for a location to be convenient to everyone. The report failed to cite any evidence that applicants, or any witness they want to appear, has been discouraged from attending hearings.

The report indicates that MTA has not adopted regulations that would require OAH to conduct MTA's appeals process in compliance with 49 C.F.R. § 37.125(g). The audit team does not appear to understand the Maryland statutory framework. As the audit team noted, these delegations are "within the discretion of the administrative agency," p. 29. MTA may delegate the hearing to OAH administratively. There is no requirement for regulations to be promulgated to effectuate the delegation. Md. Code Ann., State Gov't § 10-205(a). Further, hearings at OAH are governed by the federal law applicable where such rules govern the conduct of hearings. COMAR 28.02.01.01D. The team's conclusions regarding this process have no basis in Maryland administrative law. Finally, the report team does not allege that Administrative Law Judges are not conducting hearings in compliance with any term included in 49 C.F.R. § 37.125(g) or (h)(3), only that MTA maintains no regulations separate from the applicable federal rules. MTA is not required to maintain separate regulations if the federal rules in 49 C.F.R. Part

⁴ The report further states on page 30 that video conferencing is offered by OAH, but not MTA. The OAH hearing regulations govern the conduct of MTA hearings delegated to OAH. COMAR 28.02.01.01A.

37 govern the proceeding. The audit team has no factual or legal basis to conclude the hearings fail to satisfy the regulatory requirements, under either federal or State law.

Contrary to the audit team's findings, MTA does provide an informal hearing at OAH without any unreasonable administrative burdens. To appeal, an individual completes a one-page form with their contact information and the nature of hearing being requested. The individual then schedules transportation to and from the hearing at no charge (upon request), which MTA provides to all applicants. During the hearing, the individual may present arguments, documents, witnesses, or written information to the administrative law judge. This may be done without representation or by an attorney in whatever informal fashion the applicant prefers. The audit team does not and cannot factually support its conclusion that this process imposes any unreasonable burden on the applicant.

Though an individual who requests a hearing and fails to appear without any explanation may have their appeal dismissed, this is permissible contrary to the conclusions of the audit team. The Appendix specifically provides that in the case of a suspension hearing, if an individual does not respond to notice, an entity may make a default finding. Further, the audit team incorrectly wrote that OAH does not provide for waiving personal appearance at the hearing. Under COMAR 28.02.01.20D, a party may waive their right to personally appear and proceed to have the matter decided in their absence.

In addition, appellants have a right to their entire file under the Maryland Public Information Act and/or through the OAH's informal discovery process. *See* COMAR 28.02.01.13A. But no such formal requests are required. In any event, the majority of information in the file was received from the appellant and should be in the appellant's possession. All documents are presented to the applicant at the hearing. There is no need to automatically provide this information when the appellant expresses no interest in reviewing it. Any conclusion that documents are unavailable to applicants is factually erroneous and not supported in the report.

The MTA takes umbrage to the audit team's unsupported conclusion that administrative law judges are not "knowledgeable concerning the specifics of DOT ADA complementary paratransit regulatory requirements, disability issues, or public transit accessibility." OAH administrative decision makers are licensed Maryland attorneys familiar with a wide range of regulatory frameworks on both the State and federal levels. They have been trained in the requirements of 49 C.F.R. §§ 37.123, 37.125. The audit team appears to be alleging the ALJs are not qualified to apply the standards included in the federal regulations. The team could level the same charge against a federal judge in an ADA lawsuit as federal judges have the same qualification standards as ALJs who are experienced attorneys. The team made no findings that would indicate that the ALJs were improperly applying the regulations or unable to understand the relevant inquiry. In fact, the team could not describe a single decision (despite having several case files) where ALJs did anything inappropriate, unprofessional, and sufficient to establish them as uninformed. The MTA requests that the audit team's allegation that ALJs are not "informed decision maker[s]" be deleted from the final report as lacking all factual basis.

Finally, the audit team incorrectly concluded that on two occasions, ALJ overturned determinations prior to the hearing based on information submitted by the appellant. This is false. MTA accepts information from appellants in advance of hearings and if the new information changes the original determination, it will reverse the decision of its own volition. This renders the hearing unnecessary. This is what occurred in this two instances cited by the audit team. The team was factually wrong that ALJs overturned decisions prior to the hearing.

Complementary Paratransit for Visitors

None

6.3 Types of Service

None

6.4 Service Criteria for Complementary Paratransit

Service Area

None

Response Time

The MTA disputes the factual basis of the audit team's determination that MTA denied trips and failed to record them as trip denials. The audit team reported observing eight instances over three days of observations where an agent offered a customer a trip beyond one hour of their request and the customer accepted the trip on each occasion. Without more detail about these calls, MTA cannot adequately respond to the allegation. Nonetheless, the federal regulations state that a transit entity "shall not require" a customer to "schedule a trip to begin more than one hour before or after" the desired time. 49 C.F.R. § 37.131(b)(2). Further, the Appendix explains that an entity may not "insist" on scheduling a trip an hour beyond the time the individual wants to travel. The only evidence described by the audit team is that MTA offered one trip time and the individuals accepted it. This failed to show that one trip was the only option available to the customer or that the negotiation process was complete. The customer may have preferred this time over another within the negotiation threshold. If this time was not acceptable, another time could have been offered. In such cases, MTA has neither "required" nor "insisted" the applicant accept a trip outside the regulatory boundaries. There is insufficient evidence in the report to conclude any capacity issue or denial of service.

Further, the report is unclear whether the trip times requested by the customer were an appointment time or a pickup time. If the customer requested a ride for an appointment time, the audit team miscalculated the negotiation window authorized by 49 C.F.R. S 37.131(b)(2). The regulations are very clear that agencies may negotiate the "pickup" or "desired departure" time with the customer. If the customer requested an appointment time, a trip offer occurring more than one hour before the appointment would not violate the negotiation rule because the reasonable pickup time would occur at a time prior to the appointment. It should be noted that each of the purported trip denials reported included

an offer more than one hour before the reported request time. These results would be consistent with negotiation of a pickup time in anticipation of an appointment.

Additionally, the accuracy of these purported trip denials is seriously undermined by the circumstances under which they occurred. On page 38, the audit team reports that out of the eight trips scheduled outside the one hour variance, only three were for next day trip requests. That means five of these trips were requested more than 24 hours before the trip was to take place. Though MTA may receive numerous requests for the same time requiring negotiation the day before service⁵, capacity cannot explain such a trip offer several days prior to service. This is especially pronounced on four of the trips that were requested five, six, and seven days prior to the trip. At these times, no more than 11 percent of capacity would have been requested. It is equally illogical that in the 8 examples reported that reservationist would move the Customers Time to a new time outside the negotiation window whereby 6 of the 8 times that resulted were in hours of higher trip demand. Reasonable consideration of the reported times would have resulted in questioning their validity before the team left the field.

Additionally, no such observations were reported on two of the three days where the audit team reported making observations of the reservation center. Though the narrative of the report implies widespread occurrences by stating that “over three days of observations the review team documented eight instances,” review of the chart indicates through the length of time between the trip date and days ahead of service date that each of these observations occurred on the same day of observation and not the other two.

The MTA requests all information on these purported trip denials to determine what actually occurred. As explained and demonstrated, absolutely no capacity issue explains the audit team’s alleged findings. MTA cannot adequately respond to this inquiry without information explaining the audit’s observation. Given the various issues with the audit teams alleged finding, MTA rejects the conclusion that it issued any trip denials and request that the audit team provide information to support this serious allegation or remove it from the final report.

Scheduling

The chart on page 38 states that 59 trips were reviewed, but the body of the narrative states that 60 trips calls were reviewed. Also, a statement is made at the end of page 37; “all manifests are electronic; no paper manifests are used”. This is not what occurs at Mobility. Operators are dispatched with paper manifests and record data on paper and in their mobile data computers (MDC’s). This is a common practice. Add-on sheets are also used for trip changes. Paper manifests are reconciled to Trapeze records by each provider such as when events are

⁵ The audit report notes on Page 42 that reservation agents accept trip requests at the time desired if the scheduling software indicates no times are available. The trip is placed in the unscheduled file and accommodated through manual scheduling. The schedulers are able to place the trip on vehicles without violating the prohibition of moving the time more than 30 minutes. The audit team found no deficiency in this practice or an inability to accommodate the unscheduled trip requests entered.

performed after the operator departs a location before entering MDC information. Sample Paper Manifests were supplied as part of documents requested and submitted July 15th, 2015 attachment 4 Sample Manifests; three samples for each provider. The review team further notes in multiple locations in their report that manifests were reviewed by the team. *See pp. 12, 39, 40, 41, 44, 49, 56 and 59* (specifically stated on p. 59 "Examining manifests, comparing computer documentation, and calculating times,"

Fares

None

No Trip Purpose Restrictions

None

Hours and Days of Service

None

Absence of Capacity Constraints

See below.

No Restrictions on the Number of Trips Provided to an Eligible Individual

None

No Waiting List for Access to the Service

None

No Substantial Numbers of Significantly Untimely Pickups for Initial or Return Trips

The MTA disputes the basis for the conclusion that MTA had a substantial number of significantly untimely trips. First, it should be noted that the on-time performance rate of MTA's paratransit service far exceeds the requirement that it be comparable to the fixed route. This is demonstrated by the fact that the paratransit on-time performance rate consistently exceeded the on-time performance rate for MTA's fixed route system for every month during the review period. Paratransit outperformed fixed route by between 5 percent in March 2015 and 13 percent in April and May 2015. By any standard of comparability, paratransit riders experience superior on-time performance to the fixed route. Under 49 C.F.R. § 37.121(a), MTA's obligation is to perform paratransit "comparable to the level of service provided to individuals without disabilities who use the fixed route system." As the U.S. DOT opined, the regulations are intended to provide individuals with disabilities with "the same mass transportation service opportunities everyone else gets, whether they be good, bad, or mediocre." 56 FR 45584-01. The audit team's finding that MTA has not established a performance standard for trips scheduled

according to appointment time is also without merit as there is no regulatory requirement that such a standard be established. On-time performance expectations that exceed the fixed route should not form the basis for any finding of a compliance deficiency under U.S. DOT's own guidance on the regulations when they were originally published in 1991.

MTA disputes the factual conclusion that either an 84 percent (excluding early rides⁶) or 87 percent (including early rides) on-time trips evidences any unlawful capacity issue. Neither the regulations themselves nor the Appendix establish any minimum standard for on-time performance. Therefore, the audit team has not established how exceeding 80 percent on-time performance constitutes a substantial number of untimely trips. In addition, MTA disputes the factual basis that the trips identified by the audit were, in fact, significantly untimely. The audit team's own data says that of the mere 15 percent of late or very early trips, eight percent of these were less than 15 minutes late. Only two of these trips (*under* 2 percent) were more than 30 minutes late. If the trips more than 30 minutes late were arbitrarily categorized as significantly untimely for the sake of argument, the audit team should not have factually concluded this constitutes a substantial number of significantly untimely trips and certainly not to deduce that it represents an unlawful capacity constraint.

MTA, not the federal regulations, established the aspirational goal of providing 90 percent of trips are performed on time. The audit team should not inappropriately rely on this goal without any regulatory guidance on minimum satisfactory on-time performance. MTA should not be cited as deficient for not meeting an aspirational goal that exceeds the federal requirements. Such a practice will discourage transit entities from setting higher than minimum standards of performance for its customers. If eight out of 10 trips are on time, most others less than 15 minutes late, and on a rare occasion receive a trip more than fifteen minutes late, MTA is more than meeting the transportation needs of its paratransit customers and the regulatory requirements of comparable service. The findings regarding untimely trips should be withdrawn as lacking any basis in the very data the audit team reports.

No Substantial Numbers of Trip Denials or Missed Trips

ADA Trip Denials

The audit team has misquoted and misapplied the standards regarding trip negotiation to find MTA engages in trip denials in violation of the regulation. Under 49 C.F.R. § 37.131(b)(2), an agency may not "require" an individual to take a trip more than one hour before or after their desired trip time. The Appendix further explains that an agency may not "insist" a customer do this. Instead of applying these standards, the audit team apparently rewrote the rule to state a trip denial occurs anytime an individual "accepts" a pickup time outside the window. This finding is contrary to the rule published by U.S. DOT to be applied by FTA.

⁶ Scheduling sometimes leads vehicles to arrive early. The vehicle could be parked in any location, but arriving at the destination provides customers an option he or she otherwise would not have. As the audit team wrote, no one is required to take a trip before their scheduled time. The audit team reported no evidence of operators pressuring customers to take trips before their pickup was due. Using these trips to artificially lower MTA's on-time performance is not justified.

The audit team included no facts that would support a conclusion that MTA either required or insisted an individual take a trip outside the parameters. Further, on page 38, the audit team noted that MTA has adequate procedures in place to accommodate trips at the time desired when scheduling software queues are full. There is no evidence MTA lacked the capacity to accommodate the trip or refused anyone's requested pickup time. As stated above, the MTA disputes five of the eight reported observations of trip reservations outside the window because of the circumstances under which they occurred. MTA adamantly maintains that it does not deny trips, as the audit team quoted MTA officials as reporting.

In light of this, the audit team is correct that MTA did not report any trip denials because it has procedures in place to ensure this does not occur. The audit team notes that staff training clearly defines the requirement to schedule within one hour and the consequences if the trip cannot be accommodated. Staff follow a script to ensure no trip denials occur, as the report notes. The team reviewed and approved of the procedures in place, (see page 38) that ensure trips are accommodated as requested and even scheduling software requires a trip to remain unscheduled at the time of reservation. This finding should be withdrawn unless the audit team can produce evidence that MTA refused or insisted that an individual take a trip more than one hour outside the regulatory timeframe.

Even if the team had properly applied the rules included in § 37.131(b)(2), the audit report includes no evidence that the number of occasions where customers accept trips outside the window (eight trips over three days in which an average of between 4,000 and 5,000 trips were scheduled daily) constituted a substantial number sufficient to support a violation of the regulation. The team did not report any data that would show these eight trips (all but two of which were scheduled within 20 minutes of the window, see chart page 37) constituted a substantial number of trip denials sufficient to support a violation of the regulations. The audit team failed to produce factual evidence to support neither a violation of the negotiation rule nor a substantial number of such violations. Even if these observations are correct, it is evidence of nothing more than a training issue with a small number of employees. This finding should be withdrawn as factually unsupported.

Missed Trips

The audit team has misreported MTA plans to include a missed trips standard in the next provider contracts. No such plans exist at this time.

No Substantial Numbers of Trips with Excessive Trip Lengths

The audit team appears to fundamentally misunderstand MTA's scheduling functions and cites no evidence of inordinately long trips as compared to fixed route travel time. The audit team notes that MTA routinely generates and reviews trip duration data to minimize long trips. In fact, the team observed MTA's daily operations where schedulers and manager comb through trip schedules to eliminate and reassign trips that potentially may exceed one hour. Where such trips are identified, MTA adjusts the run schedules to ensure the travel time is reduced before

vehicles leave to transport customers. In addition, prior to the team arriving, MTA had upgraded its system to allow it to track problem areas in real time alleviate trips that may be delayed.

The team reported that MTA has established a scheduling software standard of two hours for maximum time and notes that this time is “unreasonably lengthy.” The team, however, failed to recognize that certain trips may exceed two hours due to the vast service area MTA covers. For example, a trip from the northern most point in Baltimore County to southernmost point in Anne Arundel County routinely takes two hours and twenty minutes on fixed route. A paratransit trip would be comparable. The two-hour setting is necessary because trips of this duration are available on the MTA system. Having a shorter ‘MAX OBT w/out TRANSFERS’ (maximum On Board Time Without Transfers) would limit or even eliminate legitimate booking solutions for long paratransit trips requests. In light of this fact, the audit team’s objection to this setting is baseless.

Within this framework, the audit team reached the factually unsupported conclusion that MTA has a capacity constraint as evidenced by excessive trip lengths. First, the audit team notes that FTA recommends basing comparable travel time on the comparable fixed route trip plus 20-30 minutes.⁷ The audit team then proceeds to reject this standard in favor of the On-Board Time Factor, which is a software booking parameter, not the standard for excessive trips. Service delivery of booked trips in the dispatch functions is monitored under the On Board Time table supplied to the review team under its request #11 Scheduling Parameters/ #11 TrapezePASS_System Settings. In the dispatch parameter, the maximum on-board time is 60 minutes for most trips and on-board violations are calculated accordingly. Even so, the audit team also incorrectly noted the time factor as 1.26. The parameter is 1.25. Further, MTA analyzes trip data on an annual basis using both the 1.25 and 1.5 standards to ensure the system is not providing unreasonably long trips. The MTA provided the audit team with this annual report using these settings, but the audit team failed to report anything regarding MTA’s use of the 1.5 setting. This should be corrected in the final report and its factual determinations adjusted accordingly if FTA is judging MTA’s compliance with the FTA regulations by software settings.

In any event, the audit team requested a list of 100 trips over a six month period that were more than 60 minutes in length. The analysis should be rejected as factually flawed from the very beginning based on the audit team’s method. The audit team decided only to review trips that were already among the lengthier trips MTA provides. This was not a representative sample. Further, the group then selected only 14 of these trips to analyze based on the MTA software parameter of 1.25[6]. The report then found of these 14 abnormal trips, the software parameter was only met on nine of these trips. On this alone, the review team concluded MTA had substantial numbers of trips with excessive trip lengths and therefore, capacity constraints. The audit report indicates no analysis was performed regarding whether these few abnormal trips constituted a substantial number of trips overall that were not comparable to fixed route travel.

Most astonishing, the audit team (after selecting an abnormally lengthy trip sample) made the factual conclusion that “none of the 14 sample trips appears to have been prolonged

⁷ Though this may be an FTA recommendation, it should be noted this standard is not a requirement under the federal rules. The federal rules only require trips to be comparable to fixed route.

excessively by accident, incident, traffic, or other factors.” The team presented no evidence to support this conclusion. In fact, due to their selection of a group of longer trips, the opposite is more probable. The team did not even present the dates of the trips analyzed so MTA could determine if weather or other factors contributed to a delay. This finding was based on a small number from a purposefully selected sample of abnormal trips to find the system, overall, has a substantial number of trips with excessive lengths. Even if 100 trips were analyzed, it would not be a statistically significant sample to reach any overall conclusions about the comparability of trip lengths MTA delivers. The finding should be withdrawn.

No Operational Patterns or Practices Limiting the Availability of Service to ADA Eligible People

Telephone System

The team correctly noted the telephone system is effective in preventing long queue times in the reservations call center, but then identified a single day of the week to presume a capacity constraint⁸ based solely on the conclusion that performance on two Fridays was lower than other days during only two weeks reviewed. This finding, standing alone, does not constitute an operational pattern limiting service to ADA customers. The audit team found during August test calls that all calls were answered aside from one single busy signal. The audit team did not report being placed on hold for any significant time, not even longer than the three minute answer goal maintained by MTA. When the team looked at a sample week in June, it found that the average time calls were answered to be 1 minute and 46 seconds on the Friday identified. Even assuming some customers were placed on hold twice this amount of time, this establishes that MTA was answering almost all calls in less than four minutes. Though the abandoned call rate appeared higher than normal, it cannot be explained by customers being placed on hold for an unreasonable amount of time. The only explanation is that individuals chose not to wait on average 1 minute and 46 seconds for staff to answer. This cannot be attributed to any capacity constraint on the availability of reservation to MTA customers. This finding should be withdrawn as lacking the factual support required to find a capacity constraint. An average hold time of 1 minute and 46 seconds during the busiest period observed is in no way an unreasonably long hold time, let alone the basis to allege a capacity constraint, and certainly not a regulatory deficiency.

Vehicle Fleet and Vehicle Availability

None

Driver Availability

None

⁸ The audit report does not specifically state that the performance constituted a capacity constraint. Nonetheless, the team ordered corrective actions to improve this performance. If there was not a capacity constraint, the team would have no basis in the regulations or other lawful authority to order improvements.

Planning: Capital and Operating Budgeting

As stated above in *Trip Denials*, the MTA disputes any finding that it engaged in trip denials. Further, if on eight or even a small number of other occasions reservation agents offered trips within a few minutes of the one hour window, this would not logically require any change to MTA's capital and operating budgeting.

6.5 Subscription Service

The MTA again rejects the conclusion that MTA has engaged in capacity denials. In any event, the team failed to collect any data to show that if its observations were true, that these constituted a statistically significant number of denials such that MTA is in violation of any regulatory requirement.

6.6 Reasonable Policies for Proposed Service Suspensions for Missing Scheduled Trips and the Right to Appeal.

The audit team has misread the applicable regulations related to the appeal process for customer no shows. As stated in the above section on eligibility appeals, customers are permitted a hearing before an impartial administrative law judge. The customer may present their case and arguments informally with or without the assistance of an attorney. Rather than "formal judicial hearings" with rules of evidence and formal procedure, the Office of Administrative Hearings conducts flexible hearings where unrepresented litigants may present their disagreement with MTA informally without an attorney. Further, administrative law judges are more than qualified to hear appeals related to whether MTA has appropriately applied its policies related to disciplinary suspensions. These judges maintain the same qualifications as federal judges, who the audit team is unlikely to find "unqualified" to consider rules promulgated in the Code of Federal Regulations. The audit team identified not a single regulation that is not satisfied by the OAH hearing process and lacks all basis to conclude MTA has failed to satisfy the regulatory requirements to present customers with the opportunity to be heard.

The audit team has further misread the applicable regulations in determining MTA "inappropriately blends appeals for both service suspensions and eligibility." The team is factually inaccurate in concluding the processes are "blended" because MTA maintains separate policy documents to govern the separate types of cases. Regardless, the regulation regarding suspensions provides that the appeal process available in eligibility cases (§ 37.131(g)) "is available to an individual on whom sanctions have been imposed." 49 C.F.R. § 37.125(h)(3). The regulations specifically state that the *same process is to be used in both types of cases*.⁹ Further, the audit team writes that using a single policy fails to "make clear the critical differences between these two types of appeal and the protections for riders that each process must contain." The audit team is factually wrong that MTA maintains only one policy. Still, at

⁹ The MTA acknowledges that the Appendix does state that suspension cases should be informal and that there is no similar language about formality in the Appendix when eligibility hearings are described. If the two processes are indeed supposed to be different, the audit team again misquoted the regulations by applying this description of formality to the eligibility process in its findings on the appeal process.

least under the terms of the regulation, *Part 37 requires the same process to be used in both types of cases*. The audit team was unable to identify any process that is required for suspensions that is different for eligibility cases or would create a violation of the regulations. Therefore, its very logic is flawed and should be withdrawn as without factual or legal support.

6.7 Complaint Resolution and Compliance Information

None

6.8 Nondiscrimination

None

6.9 Training Requirements

Where appropriate, the MTA accepts that further training should be conducted on certain aspects of system management. Nonetheless, the MTA disputes the audit team's findings that are inconsistent with the regulations and Appendix. These disagreements are noted in this response. Where the failure to train is, in effect, a disagreement over regulatory requirements, this finding is inappropriate.

6.10 Service Under Contract with a Private Entity

The audit team notes that MTA has comprehensive mechanisms to oversee contractor's compliance. The MTA disputes the audit team's interpretation of several requirements and the factual basis for the audit team's conclusions. Where there is a dispute regarding regulatory requirements, this does not equate to a failure to monitor contractors. The audit team has not identified any failure to monitor compliance. This finding should be withdrawn as duplicative of other findings. There is no factual basis to conclude MTA's monitoring system is flawed.

6.11 Service Provided by Another Public Entity

None

6.12 Coordination of Service

None