



U.S. Department  
of Transportation

**Federal Transit  
Administration**

Administrator

1200 New Jersey Avenue, SE  
Washington, DC 20590

**SEP 09 2016**

Dear Colleague:

The purpose of this letter is to highlight a recent legal opinion issued by the Department of Transportation's (Department) Office of the General Counsel (OGC) regarding station alterations under the Department's Americans with Disabilities Act (ADA) implementing regulations. On May 13, 2016, the OGC issued a legal opinion clarifying that under 49 C.F.R. § 37.43(a)(1) when a public entity undertakes an alteration to an existing facility that could affect the usability of the facility, the public entity must make the alteration accessible to persons with disabilities, including wheelchair users. This requires the public entity to conduct an analysis to determine whether the station can be made accessible to individuals who use wheelchairs through the installation of an elevator or a ramp.

The OGC's opinion goes on to identify the common practice of staircase replacement as an alteration that triggers the need to conduct an accessibility analysis because staircase replacement is tantamount to the renovation, rehabilitation, or reconstruction of an existing facility, as opposed to normal maintenance. Moreover, in a situation where a staircase is being replaced due to concrete deterioration or to make the staircase easier or safer to use, such a staircase replacement also qualifies as an alteration that affects or could affect the usability of the facility or part of the facility. As such, the alteration must be made accessible to the maximum extent feasible. As explained in 49 C.F.R. § 37.43(b), "to the maximum extent feasible" applies to the occasional case where the nature of an existing facility makes it impossible to comply fully with accessibility standards. Even so, in these situations, cost or cost disproportionality is not a factor.

The opinion also holds that the plain language of the ADA and the Department's implementing regulations, federal appellate case law, and the Department of Justice's interpretation of the ADA's legislative history each dictate that costs and cost-disproportionality may be considered by a public entity only under circumstances where a public entity is undertaking an alteration to a primary function area of the facility (e.g., train or bus platforms). Under 49 C.F.R. § 37.43(e), the cost of making an alteration accessible, when triggered by this provision, will be deemed disproportionate when the cost exceeds 20 percent of the cost of the alteration to the primary function area.

A copy of the OGC's legal opinion can found at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/civil-rightsada>. Should you have any questions, please contact John Day of my staff at 202-366-1671 or via email at [john.day@dot.gov](mailto:john.day@dot.gov).

Sincerely yours,

Carolyn Flowers  
Acting Administrator