
Implementation of the Americans with Disabilities Act: Challenges, Best Practices, and New Opportunities for Success



National Council on Disability
July 26, 2007

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

Implementation of the Americans with Disabilities Act: Challenges, Best Practices, and New Opportunities for Success

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National Council on Disability

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

Letter of Transmittal

July 26, 2007

The President
The White House
Washington, DC 20500

Dear Mr. President:

The National Council on Disability (NCD) is charged with gathering information about the implementation, effectiveness, and impact of the Americans with Disabilities Act (ADA). In keeping with this requirement, I submit this new report, entitled *Implementation of the ADA: Challenges, Best Practices, and New Opportunities for Success*. This report reflects the experiences and ideas of ADA stakeholders from around the country, including small and large businesses, employers, judges and legal professionals, governmental entities, and individuals with disabilities, concerning ADA implementation. Through this extensive stakeholder input, NCD learned of the many strategies for ADA implementation that have been successful, as well as obstacles that are preventing ADA implementation.

One important finding is that meaningful ADA implementation is both possible and practicable. Some effective ADA implementation practices were identified that can serve as models and that illustrate how diverse covered entities are going about making the promise of the ADA a reality. However, in many areas, the ADA remains unimplemented, and gaps in information, knowledge, and interest in complying with the ADA still exist. Therefore, this study also focused on understanding why certain sectors of our society have made little progress in ADA implementation and on developing recommendations to address those implementation gaps.

The ADA implementation report contains extensive recommendations for improving ADA implementation, and NCD remains committed to working with the Administration, Congress, and the public to achieve the promise of the ADA for all Americans—the elimination of disability-based discrimination in all aspects of society.

Sincerely,

John R. Vaughn
Chairperson

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Executive Summary

Introduction

The Americans with Disabilities Act (ADA) has been a catalyst for significant progress in bringing about equality of opportunity for people with disabilities. It has spurred increased architectural accessibility, particularly in newly constructed buildings and facilities, an increase in accessible fixed-route public transportation in most locales, and readily available telecommunications services for people who are deaf or hard of hearing. Some effective responses to certain implementation issues can be considered best practices and can serve as models.

The other side of the picture depicts areas where it has been very difficult to bring about full or even partial implementation of the law by covered entities, and where a gap in expectations between people with disabilities and covered entities remains or has even widened. These intractable pockets of resistance to implementation exist under various titles of the ADA and can be either specific or broad in their scope. One example in the area of transportation is that stop announcements on public fixed-route bus systems remain inconsistent. A broader example under Title III is the ongoing widespread lack of implementation among such small businesses as restaurants, hotels, medical offices, and retail establishments.

Without minimizing the successes that have been achieved since the ADA's enactment in 1990, it is evident that progress cannot continue without addressing the underlying reasons some areas remain intractable and where the law has been implemented either sporadically or not at all. On one level, underlying factors such as a lack of appropriate and consistently available information and education about the ADA, cost concerns, and limited enforcement underlie virtually all the problem areas. On a deeper level, however, intractability in any given area or on any given issue seems to occur when these factors interact with one another and augment the already powerful stereotype that people with disabilities are fundamentally and deeply incapable and, of necessity, live lives that are separate from the rest of the population.

This is exemplified by indifferent voluntary compliance by smaller Title III entities with narrower profit margins when their concern about the potential cost of access combines with a perceived lack of information, uncertainty about achieving technical ADA compliance, and inadequate Federal Government enforcement. The prevalence of businesses operating in inaccessible buildings and not accommodating patrons makes it difficult for people with disabilities to go out and about, and participate and function in their communities. This, in turn, fuels widespread lack of awareness about disability in general and fosters a lack of knowledge about the extent to which disability is pervasive in the communities that businesses and other entities serve. Such lack of awareness perpetuates the view that people with disabilities do not represent a potential customer or client base and the attitude that “I don’t have customers who need accommodation.”

The same deeply embedded stereotype arguably is behind limitations placed on the law by decisions handed down by the U.S. Supreme Court. The ADA has produced mixed results in employment, in part because the Court has narrowed the definition of disability, thus denying civil rights protections to some people with disabilities who encounter workplace discrimination or who could increase their work performance with an accommodation. These cases, in combination with another Supreme Court decision that has placed limits on the circumstances under which attorneys can recover fees when they represent clients in discrimination cases under Title III of the ADA, has made it more difficult for people with disabilities to obtain representation, curtailing a major enforcement tool of the law.

While the recommendations that ultimately arose out of a national ADA stakeholder dialogue, research, and identified best practices might differ in detail and in target audience, they all seek to or actually do redress one or more of the underlying factors impeding implementation of the law. Taken together, the recommendations advocate for increasing the ready availability of ADA information, education, and technical assistance to all covered entities and people with disabilities; creating financial incentives and developing cost-sharing measures; or strengthening federal and private enforcement measures.

Disability community stakeholders recognized the need to break the cycle created by false assumptions and gaps in information, perceived implementation costs, and weak enforcement that perpetuates areas that have been intractable to implementation. The ADA's goal of promoting full community participation cannot be achieved without eliminating the perception that people with disabilities are a wholly separate group that exists functionally, practically, and conceptually apart from the rest of the population. The great attraction of the paradigm, referred to by some as *universality* and closely aligned with the movement for universal design, is that it envisions a physical, social, and economic environment that is designed for the entire range of human function, and this ideal transcends virtually every aspect of ADA implementation.

Many stakeholders recognized the active interface between the media and public perception, especially when stereotypes are involved. Moreover, public perception of the ADA has been greatly influenced by negative media portrayals that generally misrepresent the intent of the law and that recently have focused on the motives of individuals who bring multiple access lawsuits, rather than on the impact of successful ADA implementation. The disability community and other stakeholders recognized that this longstanding problem calls for a robust and creative strategy that will change the direction of reporting on the ADA and will use the media to correct rather than perpetuate stereotypes.

Key ADA Implementation Issues

Title I – Employment

In addition to the negative impact of the U.S. Supreme Court rulings that narrowed the definition of disability, the right to reasonable accommodation in the workplace has not been consistently understood or honored by either employers or the courts. Providing reasonable accommodations for applicants and employees with disabilities should become a standard and ordinary cost of doing business. Decisions about accommodations should not rest with a departmental level manager who is concerned about cost overruns. Rather, businesses should adopt an accommodation policy that sets forth the steps

required to request an accommodation and establishes an entity-wide fund that can be used to pay for accommodations and related costs.

A crucial, unmet need related to ADA Title I implementation is ongoing, targeted training for employers on all aspects of Title I of the ADA, as well as disability awareness for employers at all levels. People with disabilities require similar training in order to know their employment rights and to advocate successfully for themselves.

The movement for flexibility in the workplace brings people with disabilities to the center of the discussion in which the workplace needs of all employees are taken into account. The ADA establishes the principle of reasonable accommodation, which can serve as both a guide and the moral authority for developing methods to support the needs of workers with and without disabilities.

The Internal Revenue Service (IRS) and other federal agencies concerned with implementation of the ADA should launch a new educational campaign that informs businesses about the financial incentives and tax credits associated with hiring individuals with disabilities. This information should be widely disseminated in tax filing information and through other channels.

Titles II and III – Public and Private Transportation

While public transportation has achieved significant levels of accessibility, ongoing implementation issues include lack of sufficient resources for ADA transportation enforcement and lack of funding and resources for ADA implementation at the local level. A systemic organizational challenge is the need for ongoing transit staff training on ADA requirements for all modalities, and a focus on good customer service. To achieve meaningful implementation, disability access must be integrated into all the components of large transit organizations.

Increasing demands for ADA paratransit is creating new implementation challenges, including concerns that strict eligibility assessments may be inadvertently discouraging riders from trying the fixed-route system for fear of losing paratransit eligibility. Other problems include poor access to transportation in rural areas, lack of accessibility to

privately operated over-the-road buses, accommodating oversized wheelchairs, stop announcements on fixed-route bus systems, ensuring that the gap between the train car and the platform does not exceed ADA specifications, elevator maintenance, and the need for adequate securement devices.

Title III – Public Accommodations

Significant problems remain in achieving meaningful implementation of the ADA by small businesses. The Department of Justice (DOJ) and others have created and disseminated extensive technical assistance materials designed to help businesses comply with the law, yet businesses indicate that they do not know where to go for reliable information about the ADA. Businesses express frustration that they cannot know with certainty what the ADA requires of them, and they resent that they might be sued without being informed beforehand about accessibility and other ADA problems. Furthermore, many have difficulty equating access with discrimination. On the other hand, people with disabilities think that widespread and ongoing lack of access to many small businesses is indefensible 16 years after enactment of the law. They interpret the lack of compliance to mean that businesses do not recognize or value people with disabilities as bona fide customers or clients.

Poor implementation stems in part from the limited federal enforcement role established in the ADA. DOJ is not *required* to enforce every Title III complaint it receives; thus, as a practical matter, people with disabilities have only two methods available to them to achieve Title III compliance by small businesses: They can file a private lawsuit or request that the business voluntarily take steps that are readily achievable to make its facility accessible.

While businesses indicate that they would comply with the ADA if they were informed about access and other problems, the experience of many people with disabilities is that their initial requests for barrier removal are met with misunderstanding, condescension, or hostility, or are simply ignored. Organized efforts by the disability and small business community to educate businesses and request voluntary compliance have also been met with indifference. For example, 18 months after such a collaborative effort began in San

Francisco, less than 3 percent of 2,200 businesses that were offered information and assistance responded, and less than 0.02 percent requested grants that were offered by the group for accessibility surveys or modification planning. The group was forced to conclude that litigation achieved greater compliance with state and federal law and greater accessibility than a nonlitigious collaborative approach.

Practically speaking, however, many people with disabilities do not have the resources to file private lawsuits. Most private attorneys lack adequate knowledge about the ADA, and the U.S. Supreme Court has created strong disincentives by limiting the circumstances under which attorney fees can be recovered in ADA cases. As a result, Title III is overwhelmingly *underenforced* in most of the country. During 2005, 1,383 disability rights cases were filed in federal courts, including cases brought under Titles II, III, and IV of the ADA, as well as cases brought under the Individuals with Disabilities Education Act (IDEA). This is hardly a national “flood” of litigation, as the media suggest, especially in the face of acknowledged widespread noncompliance with the readily achievable barrier-removal provisions of the ADA.

Class action lawsuits against larger entities such as retail department store chains have been among the more successful cases of Title III litigation since the class action tool inherently tends to spread risk and potential relief among an entire class of plaintiffs. Unfortunately, the past few years also have brought problems in Title III class action lawsuits through the use of an overly expansive class definition of affected people with disabilities who were not adequately represented; the overbroad release of access claims under both federal and state laws, which foreclosed future litigation for years; and the binding of class members to architectural access standards that were below the undisputed minimum standards established in the ADA Accessibility Guidelines (ADAAG). These problems highlight the need for greater education and training for disability rights attorneys working in Title III, and for developing efficient ways to monitor against potential abuse and collusion in the use of national and regional Title III class actions.

Widespread Title III compliance cannot be achieved without business and public outreach, a visible and efficient administrative enforcement procedure, the wide

availability of qualified accessibility expertise, and economic incentives such as tax and other credits.

Title IV – Telecommunications

Title IV has a financing mechanism that allows companies that are charged with providing telecommunications relay services (TRS) to benefit financially from the provision of these services. Since Title IV first went into effect in July 1993, relay consumers and telephone companies have enjoyed a cooperative relationship that has fostered innovative technologies and high service standards. These innovations and improved standards have been authorized by the Federal Communications Commission (FCC), the agency that bears responsibility for implementing Title IV. Recently, increased competition among companies entering the interstate relay business—many of which are not traditional telephone companies—has provided added stimulus for improving and enhancing relay products. Open rulemaking proceedings on every facet of relay services have provided extensive and unparalleled opportunities for consumers and providers to provide input on their needs and objectives, and have resulted in rulings that have enabled relay services to evolve along with the rapid pace of modern technologies.

Despite the considerable success of relay services, some implementation issues remain in the areas of training and awareness, funding, and service quality. Many potential relay users still are unaware of the existence of relay services or have not received training on how to use them, and there is a lack of knowledge about the availability and use of relay services. Some businesses and governmental agencies refuse to use relay services to exchange confidential information.

The traditional funding base is in jeopardy, as more services are provided over the Internet and there are no low-income subsidies for broadband access. Most state equipment distribution programs do not provide funding for the devices required to use high-tech relay services and there is no funding mechanism to reimburse providers for the technical customer support needed to operate video equipment used with Video Relay Service (VRS). Interpreter shortages in many communities impede the effective provision of VRS.

No federal standards exist that assess the skills of communication assistants (CAs) and interpreters who provide Internet-based text and video relay services, and previous oversight mechanisms employed by the states do not work for Internet-based relay services. New TRS delivery methods that are Internet-based need the same level of oversight on the federal level as exists for traditional TRS on the state level. Furthermore, state relay services vary considerably in quality.

Examples of ADA Best Practices

Well-established ADA best practices illustrate that successful implementation is both possible and practicable, and serve as models for other covered entities. The following models also directly address at least one of the underlying issues or stereotypes behind intractable implementation areas. They range from an aggressive top-down commitment to recognizing people with disabilities as a desirable market share, to a simple elimination of the pay discrepancy between transportation employees who work with people with disabilities and employees who work with the nondisabled population, to an intermediate agency that fills the information/education and technical assistance gap between employees and employers. The following examples meet specific structural and procedural criteria, and the entities engaging in the practice collect and publish quantitative outcome data that reveals the practical benefit for people with disabilities.

- Microtel Inns & Suites, the chain of newly constructed budget/economy hotels, offers ADAAG-compliant sleeping rooms, strong advertising, and significant staff training for franchise operators on serving customers with disabilities. The company reported gains in its 2004 bookings for ADA room nights across all distribution channels by nearly 275 percent over the previous year. In addition, net revenues for ADA room nights increased by more than 260 percent.
- Resolving discrepancies in pay between paratransit and fixed-route drivers resolves some of the chronic difficulties that persist in paratransit service, such as high driver turnover. Tri-Delta Transit in Antioch, California, made this change in the late 1990s and lowered paratransit driver turnover by 50 percent. In Wenatchee, Washington, Link Transit's average operator has driven for 10 years, compared with most paratransit systems, which have turnover of around 50 percent per year. This longevity

has resulted in skilled drivers who rarely get lost, know nearly all their passengers, and operate at high productivity.

- The Job Accommodation Network (JAN) is a service of the Office of Disability Employment Policy (ODEP) of the U.S. Department of Labor (DOL). JAN's mission is to facilitate the employment and retention of workers with disabilities by providing employers, employment providers, people with disabilities, their family members, and other interested parties with information on job accommodations, self-employment and small business opportunities, and related subjects. In a recent evaluation, JAN customers reported that implementation of worksite accommodations would significantly reduce the individual's level of limitation due to the disability. Further, JAN customers reported having made highly effective accommodations at very little or no cost.

Key Recommendations

A complete list of ADA implementation recommendations for specific audiences can be found in Appendix F.

Recommendations for Congress

- Congress must enact legislation that reverses the Supreme Court decisions narrowing the definition of disability so individuals with disabilities who were intended to be covered by the law are again eligible to use it to challenge discrimination.
- Congress must enact legislation that effects a statutory repair of *Buckhannon*'s condition of a "judicially sanctioned" change in the parties' relationship for the recovery of attorney fees under Title III, so that attorney fee-shifting rules will apply if a Title III plaintiff or would-be plaintiff has been the catalyst for a public accommodation's coming into compliance with its Title III obligations.
- Congress must make compensatory damages available under Title III.
- Congress must establish a statutory minimum damages amount for the denial of access rights under Title III.

- Congress must provide specific funding and a mandate to DOJ and all technical assistance organizations, such as the ADA & IT Technical Assistance Centers, for outreach to chambers of commerce, Rotary Clubs, and other small business organizations, especially those serving rural areas and smaller towns. The assistance and cooperation of these business associations, as well as any local disability advocacy groups that work with small businesses, is needed to accurately inform businesses of their obligation to comply with Title III, to disseminate technical resource information, and to help lower the level of tension and fear in the business community.
- Congress must provide additional resources for enforcement of the ADA transportation provisions.

Recommendations for Federal Agencies

- The Equal Employment Opportunity Commission (EEOC), DOL, Small Business Administration (SBA), and other federal agencies concerned with employment of people with disabilities should acknowledge the substantial need for ADA training by employers at all levels and should join forces to create a campaign that responds to this need.
- Key federal agencies that are charged with a role in enforcement of the ADA should join in a collaborative effort to fund a substantial nationwide ADA training initiative for people with disabilities.
- The EEOC, DOL, SBA, and other federal agencies concerned with employment of people with disabilities; business trade and membership organizations such as regional chambers of commerce and Society for Human Resource Management (SHRM); and disability organizations should collaborate on development and dissemination of model policies for establishing entity-wide funding mechanisms that can be used by divisions, departments, and cost centers to pay for accommodations.
- Key federal agencies charged with a role in enforcement of the ADA—for example, EEOC, DOJ, and the Departments of Health and Human Services (HHS), DOED, and Housing and Urban Development (HUD)—should establish a center of excellence either within their agency or through a qualified contractor. Each center’s mission would be to conduct research and collect information about effective methods of ADA

implementation related to the agency's sphere of concern, rigorously evaluate those methods to determine their quantifiable impact on people with disabilities, and report and widely disseminate results that can serve as models.

- DOJ should devote substantially more resources and time to investigation of Title III complaints, especially those regarding small businesses, in light of widespread noncompliance by these covered entities.
- Key federal agencies charged with a role in enforcement of the ADA, disability organizations, and other leaders and experts in accessibility should partner with entities such as the National Association of State Fire Marshals, city departments of health, mortgage and construction lenders, and associations of city and county government to identify legislative, regulatory, and other methods to embed ADA information, incentives, and, where appropriate, penalties, in their interactions with Title III covered entities.
- ADA federal enforcement and allied agencies—for example, the Access Board and the National Institute on Disability and Rehabilitation Research (NIDRR)—should join forces to commission research (e.g., focus groups, surveys, interviews) designed to elicit structured responses from a variety of Title III entities about the extent to which specific technical assistance and informational materials that are currently available from DOJ and others provide the ADA implementation guidance they seek, and, as appropriate, make specific recommendations for content, formats, and distribution mechanisms that would meet their needs.
- The FCC should accelerate approval for new relay technologies and should establish clear guidelines to govern new technologies at the time they are approved.
- The FCC must include Internet-based providers among the categories of companies that must contribute to state and interstate relay support in order to ensure the viability of relay funding and to distribute costs fairly among all subscribers of communication services.

Recommendations for Legal Advocates

- Continue monitoring for litigation abuse, but also explore strengthening the current system by creating the possibility of recovering attorney fees for raising reasonable objections to national and regional class action settlements.
- Develop ways to link the disability class action notice that is sent to state and federal officials to the actual notice that is sent to cross-disability legal groups and to Protection and Advocacy agencies in all affected states.
- Educate the judiciary concerning the need for vigilance on national ADA class action settlements that would allow public accommodations to avoid or water down ADAAG requirements and broadly bind an overinclusive class of people with disabilities to a settlement that gives many of them inadequate or no relief.

Recommendation for Collaboration Among Businesses, the Disability Community, and Professional Organizations and Associations

- As a condition of ongoing licensing, everyone involved in design, construction, engineering, landscape architecture, architecture, and city planning should be required to take universal design courses that include explanations of the ADAAG and access codes and standards, and these courses should be offered through continuing education programs. Sponsorship should be provided by state and national professional organizations such as the Building Officials and Code Administrators International, Inc., known as the International Code Council (ICC), and the American Institute of Architects (AIA).

Recommendation for Business Organizations and Associations

- Leading business associations such as the U.S. Chamber of Commerce and the Council of Better Business Bureaus should endorse and support a new ADA education project with their members. This would involve notifying members about the ADA through mailings, providing information on their respective Web sites and at conferences and regional and national meetings, and informing them that the organization has the capacity to distribute ADA implementation materials published by DOJ and other federal agencies.

Recommendation for Disability Community Organizations and Advocates

- The leaders of local independent living centers and other disability organizations should seek out leaders in culturally diverse neighborhoods to hold discussions on ADA implementation and to understand the needs of citizens and businesses. The objective is to inform leaders about the benefits of the ADA and build partnerships that provide mutual benefit for the disability and culturally diverse communities. The goals are for local leaders to demonstrate that the ADA can be implemented in a meaningful way in their communities, to promote implementation, and to serve as a model for others.

Introduction

I. Background

This report on implementation of the 1990 Americans with Disabilities Act (ADA), part of a research and policy initiative of the National Council on Disability (NCD), responds to the NCD statutory responsibility to foster effective enforcement and implementation of the ADA. The report presents the views and opinions of diverse stakeholders about ADA implementation challenges and issues, and their recommendations for improvement. It contains analyses of issues and concerns that have arisen in recent years concerning ADA litigation—particularly as a tool for implementing Title III, the provision of the law that applies to public accommodations and commercial facilities—and the outcomes of judicial focus groups. The report also presents examples of best ADA practices that illustrate methods some covered entities are using to implement the law that have demonstrated lasting, positive, and measurable results for people with disabilities. Finally, the report offers an analysis of public education about the ADA and preliminary strategies for increasing public awareness about the ADA.

In 1984, Congress established NCD as an independent federal agency and charged it with reviewing federal laws, regulations, programs, and policies affecting people with disabilities and with making recommendations to the President, Congress, officials of

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

NCD first proposed a broad civil rights law for people with disabilities and drafted the initial ADA legislation, which was published in the 1988 NCD report entitled *On the Threshold of Independence*. In 1995, NCD issued a report entitled *Voices of Freedom: America Speaks Out on the ADA* that presented testimony gathered from individuals with disabilities all across the country. The report concluded that, although the ADA was relatively new and not yet fully implemented, it had begun to bring about dramatic improvements in the lives of people with disabilities. In 2000, NCD published *Promises to Keep: A Decade of Federal Enforcement of the Americans with Disabilities Act*, which described a variety of weaknesses in the federal enforcement of the ADA and presented recommendations to correct these deficiencies.

Since 2000, NCD has focused on identifying problems or gaps in ADA implementation and understanding factors that either enhance or impede ADA implementation. The 2003–2004 NCD initiative, *Righting the ADA*, analyzed the effects of unfavorable U.S. Supreme Court interpretations in ADA cases and developed legislative recommendations for restoring the ADA to its original intent. As part of the initiative, NCD published a series of policy briefs analyzing the Supreme Court’s ADA decisions, subsequent lower court rulings, and media coverage. In the final report, entitled *Righting the ADA*, NCD summarized these analyses and made recommendations for restoring the rights and protections the ADA was intended to provide.

In 2005, NCD undertook an ADA Impact Study that sought to develop an understanding of the successes the ADA has achieved and the problems that remain, from the perspective of diverse stakeholders. This study, taken together with previous research conducted by NCD, revealed that much more needs to be done to achieve the full promise of the ADA. People with disabilities report ongoing problems obtaining accommodations in the workplace and a reticence among businesses that are open to the public to comply voluntarily with the law, thus perpetuating the exclusion of customers with disabilities. Despite widespread dissemination of extensive technical assistance materials that

describe in detail the rights the ADA affords and methods for complying, many individuals and covered entities still do not understand the requirements of the law. Many businesses report that they are unable to determine when they are in compliance. Some businesses and programs covered by the ADA are unfamiliar with the relay service or how to use it, or the need to provide information in accessible formats to ensure effective communication.

Furthermore, certain litigation issues are thought to have a negative impact on ADA implementation. Some class action cases fail to protect adequately the interests of the class at large. The defendants in a number of ADA Title III lawsuits and administrative settlements have not followed through with agreed-upon accessibility improvements. Moreover, the media have produced numerous negative reports that perpetuate the perception that certain individuals and their attorneys are making a career out of suing establishments for ADA violations by filing ADA lawsuits over minor accessibility problems.

Against this backdrop, NCD initiated the ADA Implementation Study to develop a deeper understanding of issues and problems that impede implementation, and to identify solutions. Activities included the following:

- Bringing together diverse ADA stakeholders and engaging them in a dialogue that would result in recommendations on how to improve the implementation of the ADA and how to make the goals of the ADA a reality for individuals with disabilities.
- Identifying ADA implementation best practices that could serve as models to illustrate how some entities are achieving effective implementation.
- Studying the implementation benefits, outcomes, and challenges that have derived from various ADA litigation activities, particularly as they relate to Title III of the ADA, and making recommendations for addressing any identified problems.
- Evaluating information and outreach methods used to inform the public about the ADA from the viewpoint of diverse stakeholders, and developing strategies for promoting awareness about the ADA, including the development of a prototype public relations campaign.

II. Purpose and Scope of the Report

The purpose of this report is to present the outcomes from the following activities:

A. Stakeholder Dialogues

The report presents the outcomes of 10 stakeholder dialogues conducted in various locations around the country. Two-hundred eighty-two individuals with diverse interests and viewpoints participated in these dialogues, meeting to discuss ADA implementation issues and challenges, recommend strategies to improve implementation, suggest additional needed research, and identify methods to increase and improve public awareness and public education about the ADA.

Stakeholders met in groups that focused on implementation issues related to the specific subjects of the ADA. Groups composed solely of disability community participants also met to discuss implementation of the ADA as a whole, with an emphasis on rural implementation issues and concerns, and perspectives of stakeholders from diverse cultures.

B. ADA Best Practices

Research was conducted to identify ADA best practices that illustrate how effective implementation can have a lasting and measurable impact on individuals with disabilities, and could serve as models. Practices were sought that relate to the requirements of the law, educate people about those requirements, or enhance systems, infrastructures, and technologies that bear directly on practical aspects of implementation (for example, Internet and computer accessibility) as well as on the spirit of the ADA (practices that encompass, for example, universal design principles).

C. Legal Research

The impetus for the legal research component of the report arose out of concerns brought by various ADA stakeholders about specific aspects of litigation under the ADA. One major area of concern is problematic national class action settlements that are

characterized by extremely wide class definitions, an overly broad release of plaintiff rights (including state law claims), physical accessibility requirements that fall below the Americans with Disabilities Act Accessibility Guidelines (ADAAG) standards, and insufficient monitoring. The other major area of concern focuses on private individual plaintiffs and plaintiff attorneys who bring successive lawsuits alleging the same or similar accessibility complaints primarily against small businesses in existing buildings. The businesses tend to settle for excessive attorney fees and ultimately fail to make the required accessibility changes. It is important to note that both areas of concern arise almost exclusively under Title III of the ADA, and both are prompted primarily by concerns about the potential for abuse of the private right of action available as an enforcement tool under Title III.

The parameters of each area of concern were identified and the underlying issues analyzed to determine what created the potential for abuse. Some of these underlying issues are inherent in any private right of action, which of necessity relies to some extent on the professional integrity of both plaintiff and defendant attorneys, but fundamental aspects of how Title III compliance has or has not been achieved and enforced over the past sixteen years may also raise significant issues. The research in this section looked at how allegations of abuse and the underlying issues have had an impact within the disability community and on wider public perceptions of the ADA. Finally, this section includes a brief discussion of potential legal solutions for dealing with the underlying causes and the potential for abuse.

D. Judicial Focus Groups

The dearth of research into the judiciary's knowledge of, experience with, and attitudes concerning litigation brought under the ADA prompted us to convene judicial focus groups. Judges play a significant role in ADA enforcement and constitute a key stakeholder group for achieving compliance with the law. While the attorneys in any particular case bear primary responsibility for bringing correct law and jurisprudence before the court, the judiciary's acceptance of the ADA as a broad civil rights law and its willingness to connect that right to the details of physical accessibility requirements is critical. As a federal law, the ADA is primarily understood to be within the compass of

federal courts, but state judges may also encounter ADA claims when they are joined with, for instance, state disability law claims. This project therefore sought out the opinions of judges concerning not only ADA litigation but also ADA enforcement, compliance, and overall goals.

E. Public Awareness and Public Education

The report presents the outcomes of a comprehensive assessment of the state of the art in public information campaigns and analyzes existing awareness of the ADA and the ADA “information environment.” A prototype for an ADA public relations campaign is presented in Part 3.

III. Report Structure

The report begins with an **Executive Summary**, which presents findings and recommendations, followed by this section, the **Introduction**, which provides background, and the purpose, scope, and structure of the report. **Part 1** presents key outcomes from stakeholder dialogues on employment, public and private transportation, public accommodations, and telecommunications, as well as from dialogues that were conducted with members of the disability community. These outcomes include key ADA issues and concerns that stakeholders identified as well as recommendations for improving implementation. Part 1 also presents the outcomes of judicial focus groups conducted with state court judges, topics for further research identified by stakeholders, and effective ADA implementation practices. **Part 2** presents a detailed analysis of legal and enforcement tools. **Part 3** presents a prototype public information campaign aimed at increasing small business awareness of Title III of the ADA.

The **Conclusion** follows Part 3. The report also contains appendices that include the names of attorneys who participated in discussions related to legal enforcement of the ADA, a list of stakeholder dialogue participants, the judicial focus group methodology, a sample structured negotiations settlement agreement, a table listing existing ADA public awareness and information materials, and a summary of ADA implementation recommendations for specific audiences.

PART 1. Stakeholder Observations and Effective ADA Implementation Practices

Introduction

In the years since its enactment, the extent to which people with disabilities perceive that the 1990 Americans with Disabilities Act has been effective in challenging discrimination and eliminating architectural, communication, and policy barriers reflects the combined impact of federal enforcement, private litigation, and disability community advocacy and education.

However, persistent problems in ADA implementation remain for people with disabilities. Among these are ongoing difficulty obtaining accommodations in the workplace and poor voluntary implementation by small businesses that are open to the public, which has perpetuated the exclusion of customers with disabilities. Despite widespread dissemination of extensive technical assistance materials by the U.S. Department of Justice (DOJ) and others—materials that describe in detail the rights afforded by the ADA and methods for complying—many individuals and covered entities still do not understand the requirements of the law.

Against this backdrop, the National Council on Disability (NCD) initiated an ADA implementation study to develop a deeper understanding of implementation issues and problems, and identify solutions.

Part 1 presents the outcomes of 10 stakeholder dialogues conducted in various locations around the country. Two-hundred eighty-two individuals with diverse interests and viewpoints participated in these dialogues. Stakeholders met in groups that focused on implementation issues related to specific sections of the ADA. Groups composed solely of disability community participants also met to discuss implementation of the ADA as a whole, with an emphasis on rural implementation issues and concerns, and perspectives of stakeholders from diverse cultures. Also presented are the outcomes of judicial focus

groups conducted with state court judges who met to discuss their awareness of disability rights laws and to identify potential learning opportunities.

Part 1 also presents outcomes from research to identify ADA best practices that illustrate how effective implementation can have a lasting and measurable impact on individuals with disabilities, and can serve as models.

I. Stakeholder Observations

A. Employment (Title I)¹

1. Key Implementation Issues and Discussion

Stakeholders who participated in discussions related to ADA Title I implementation acknowledged that issues related to employment of people with disabilities are complex and can include, for example, the extent to which employees with disabilities have equal educational opportunities, access to transportation, health care, appropriate assistive technology, adequate support services such as personal assistance services, sign language interpreters, volunteer employment opportunities, and job internships.

Stakeholder observations, insights, and recommendations reflect various perspectives about how these issues interrelate and their combined impact on employment opportunities and outcomes for people with disabilities. These observations also reflect stakeholder perceptions about the continued prevalence and impact of disability stigma and misinformation, and the lack of ADA information. Their recommendations identify methods for improving implementation of the ADA and for advancing the broader goals of employment, equal opportunity, and community integration that are the purposes of the law.

Legal Issues

Disability community, advocacy, and attorney stakeholders pointed to the narrowing of the definition of disability in the courts as a central ADA Title I implementation problem. They noted that some employers are applying the restrictive definition of disability when

an employee requests an accommodation; thus, some people are not eligible to request the accommodation under the law even though they have an impairment that substantially limits a major life activity. Attorney stakeholders specifically noted that the narrowed definition limits use of the administrative and judicial remedies available to people with disabilities who think they have experienced employment discrimination.

Several employer stakeholders said that the “regarded as” prong of the ADA disability definition presented some problems from the employer standpoint because it unfairly protects job seekers. Specifically, their concern centered on the fact that individuals with past records of certain disabilities, including psychiatric disabilities and substance abuse, could not be excluded from employment on the basis of the employer’s past negative experience with an employee who had one of these disabilities. Others noted that they thought it difficult to establish that discrimination has taken place when an individual’s employment status is “at will”—that is, when an employee can be fired with or without cause—even though employers are barred from terminating an employee on the basis of protected factors such as race, sex, national origin, or disability.

Several disability community stakeholders observed that, from their perspective, some employers craft job descriptions specifically to eliminate people with certain disabilities from consideration and to avoid potential workers’ compensation liability.

Many employer stakeholders mentioned the overlap and interrelationship between the ADA and the Family Medical Leave Act (FMLA). For example, some reported that it can be difficult to determine when leave days should be counted as a reasonable accommodation under the ADA or as leave under FMLA, and they noted that it can be both complex and time-consuming to determine the correct answer.

Employer stakeholders said they think the EEOC should provide specific answers concerning their legal liability so they know where they stand.

Limits of the Diversity Model

Several attorney stakeholders commented that they think the traditional civil rights model—which embodies the principle of nondiscrimination based on race, religion, national origin, and sex—does not adequately embrace the reasonable accommodation model in the workplace. They stated that they think it is more important to have an overarching policy and process that helps all employees work efficiently and fit in rather than a model that requires people with disabilities to identify themselves as having a disability in order to secure the help and support they need to work and function effectively. This approach, which is the procedure set forth in the ADA to determine whether an individual is entitled to request a reasonable accommodation, can lead employers to “count” people who do not necessarily have significant impairments in order to show that the company employs people with disabilities. They noted that, in their experience, the reasonable accommodation model does not necessarily lead to hiring people with more significant disabilities.

Flexible Workplace Culture

Diverse stakeholders discussed the need to envision different ways work can be accomplished. Some noted that this shift is especially important because many workplaces blur the traditional eight-hour workday, tacitly or explicitly requiring that employees be either readily available or on call. Attorneys and representatives of state and local governments and organizations that serve people with disabilities discussed the importance of advocating for and promoting a flexible workplace culture that acknowledges that all employees have personal and family needs that require a certain amount of flexibility. Providing methods to accommodate all workers encourages employee loyalty, employment satisfaction, and higher performance. Some referred to this flexibility as “naturalizing” accommodation.

Attorney stakeholders mentioned that laws in several states contain definitions of disability that are more expansive than the definition found in the ADA, even before judicial decisions restricted who is considered to have a disability under the statute. They said that in these states a trend is developing among some employers who are

emphasizing meeting an employee's accommodation needs first, rather than spending time and effort to determine whether the person meets the strict definition of disability. Several suggested that this approach recognizes the value and positive impact of workplace flexibility, and can and should be a starting place for the creation of policies that could lead to best practices.

Attitudes and Perceptions

Diverse disability community stakeholders discussed extensively the prevalence of disability stereotyping and paternalism, especially when it comes to hiring for entry-level jobs. In particular, people with psychiatric disabilities, they said, face profound problems gaining entry to the workforce. Several disability community participants said they thought some employers think that people with disabilities are “damaged goods” but they have to hire them anyway.

Many disability community stakeholders mentioned that they think employers still fear the ADA and the potential for the “floodgates effect”; that is, that once they have accommodated one employee with a disability, other employees will also request accommodation. They mentioned that smaller employers, in particular, continue to think that they cannot fire a person with a disability once the person has been hired.

Several attorneys and people from disability service organizations mentioned that the culture of an organization can dictate the extent to which the ADA is implemented successfully. When organizations allow a certain amount of flexibility as a general rule, accommodating workers with disabilities appears to be easier and more successful. Organizations that have more rigid cultures—such as law firms, for example—find it much harder to accommodate employees, especially if the accommodations require flexible work schedules or time off. They also observed that they think it is difficult for employers to expend the time and effort required to identify and acquire appropriate accommodations for people with disabilities when the workforce as a whole is working longer and harder than in the past.

Diverse stakeholders engaged in significant discussion about their perception that some people with disabilities do not have adequate communication and negotiation skills and, therefore, cannot advocate successfully for themselves when they require an accommodation or need to find a different way to do a particular job. Several employers and service providers stated that they think it is the responsibility of the applicant with a disability to demonstrate how he or she will fit in with the culture of the workplace and dispel employer fears about the perceived burden of providing an accommodation.

Diverse stakeholders discussed their perception that people with disabilities have poor motivation and expectations related to work. Some observed that probably the most important reason people with disabilities think they cannot strive for employment is that they fear they will lose certain essential government benefits, such as income support, health care coverage, personal assistance services, and affordable housing. This fear is a powerful disincentive to employment for people with disabilities, even though the Ticket to Work and Work Incentives Improvement Act of 1999 and its Ticket to Work Program were created to address some of these problems. The perceived and real impact of the loss of these benefits—and the difficulty people encounter when they attempt to reinstate them when a job ends—represents a survival risk and a central reason some people with disabilities do not seek employment.

Employer-sponsored health insurance can present significant cost and coverage concerns for both employers and people with disabilities. Some insurance plans cap payments for durable medical equipment, which includes items such as wheelchairs, crutches, braces, and ventilators; in effect, making coverage for these items unavailable. Mental health services are limited by most policies, and frequently only prescription drugs that are included on an approved list are covered by a plan. Several disability community stakeholders pointed out that under these conditions, many working people with disabilities do not have access even to partial help to pay for life-sustaining assistive devices and prescription drugs, while limited mental health services can result in crises leading to job loss for people with psychiatric disabilities.

Some employers also noted that employer health care premiums can rise significantly when a covered employee requires expensive care for a serious injury or illness.

Some employers and service providers suggested that it is important to recognize the need for a “fit” between the employee and the work environment. They noted that people with certain disabilities might not be a match with certain work cultures because of their disability. Some stakeholders observed that this is a reality of the world of work and should be openly acknowledged so that employment matches are more likely to succeed. They said that those involved in job training, placement, and employment advocacy for people with disabilities should attempt to determine when a match is likely to be appropriate and when it is likely to fail. Other community stakeholders suggested that while cultural fit is, indeed, an employment factor for many workplaces, it should not be used to justify disability-based discrimination.

Various employer and community stakeholders noted that disability stigma prevents some people from identifying themselves as having a disability even when they might require an accommodation. Such people fear that identifying themselves as having a disability will trigger a negative response from an employer. They are willing to risk performing poorly on the job because they lack a needed accommodation rather than risk negative retaliation if they disclose their disability. Older workers who are reentering the workforce are especially likely to engage in this behavior.

Several advocacy and service provider stakeholders observed that, from their perspective, some companies that recruit candidates for certain jobs on behalf of employers simply do not treat an individual with a disability as a bona fide prospect, regardless of the person’s qualifications. It appears that these companies often do not pass on the applicant’s résumé or promote the individual with their clients. Several disability community participants noted that they thought this practice was fairly common because employers fundamentally do not want to hire someone with a disability for a position at the level at which professional recruiters become involved.

Information, Education, and Training

Significant discussion took place about the need to increase ADA training at all levels of business and management. Diverse stakeholders observed that smaller businesses simply do not know how the ADA’s employment provisions apply to them. In larger companies,

human resources personnel (who generally understand the intent of the ADA) require ongoing training to stay up to date, and require information about how to manage the overlap between ADA, FMLA, and state workers' compensation programs.

Some advocacy and service provider stakeholders reported that they had been successful in persuading employers to hire people with disabilities by combining basic ADA education with disability awareness, which they think helps dispel employer fear and uncertainty, and affords an opportunity to demonstrate that certain benefits can be derived from hiring individuals with disabilities. Some community stakeholders said that such nonthreatening intermediaries helped pave the way by providing an opportunity for prospective employers to express their fears and concerns, and to obtain information in a safe environment. Others noted that the need for intermediaries to assist people with disabilities attain employment demonstrates the extent to which myths and fears about disability are still prevalent among some employers.

Many diverse stakeholders mentioned that youth with disabilities are not adequately prepared to enter the workforce. They noted that preparation goes beyond an adequate formal education to include real-world opportunities for internships and volunteer positions that will expose young people to the expectations and practices of the workplace. Youth also require intensive job preparedness training that includes interviewing and résumé-preparation skills, knowledge of ADA rights and responsibilities, awareness of workplace culture, and methods to solve practical problems such as transportation and acquisition of assistive technology. Mentoring opportunities were cited as particularly important for youth with disabilities, and various stakeholders suggested that more effort is required to ensure that people with disabilities have opportunities to participate in job and career mentoring programs.

Similarly, employer and service provider stakeholders noted that some people with disabilities find it especially difficult to find work because they are seeking entry-level work, which is in short supply. Furthermore, people with disabilities who are seeking entry-level jobs find that it is even more difficult to secure those positions if they require expensive accommodations.

Others mentioned that while they think it is effective to demonstrate the consequences when an employer fails to provide an accommodation, employers also need to perceive a benefit to the operation of their organization when they comply with the ADA. In addition to the value of a qualified employee joining or remaining in their workforce, employers need to be informed about practical incentives such as tax credits and other financial incentives that are available when they hire and accommodate a worker with a disability. Service providers and community stakeholders observed that employers are still unaware of the various incentives available, or think that the process of taking advantage of the incentive is too time-consuming and complex.

Another theme that emerged from stakeholder discussions is the importance of conveying the message to employers that people with disabilities can fill jobs when there are labor shortages. This point was made by diverse stakeholders who think that people with disabilities represent an untapped labor pool and that employers should be educated about this underutilized resource.

Accommodation Issues

Much discussion focused on the perception of some disability community and service providers that some employers continue to deny accommodations because the cost is not covered in their departmental or cost-center budget allocation, suggesting that the company or entity as a whole does not provide funds for accommodation that are available organization-wide. Some larger public and private employer stakeholders noted that their organizations have established entity-wide accommodation funds, which help departmental supervisors provide needed accommodations while relieving their concern about budget shortfalls that could be caused in part by the cost of an accommodation. Most stakeholders acknowledged that this approach calls for significant upper echelon commitment and leadership; however, when implemented, it can be the most effective method to address funding concerns for many medium to large businesses and other entities.

Employer stakeholders mentioned that they thought one of the more difficult accommodation problems they face concerns employees with disabilities who are

frequently absent from work. While certain employees are permitted to use paid leave as an accommodation, their absence from the workplace sometimes creates problems for other employees and can impede production. These stakeholders observed and discussed the conflict between their ADA obligations and their desire to help a valued worker, and the need to accomplish specific tasks in a timely manner.

Service providers and disability community stakeholders noted that some employers agree to provide certain accommodations, such as sign language interpreters, but fail to follow through. This failure puts deaf and hard-of-hearing employees at a significant disadvantage when they need to participate in meetings or other job-related activities, where effective communication is essential and the inability to participate fully threatens their job performance.

Various employer stakeholders expressed concern about the time it takes to determine which accommodation might be effective for an employee with a disability and the effort required to acquire the accommodation and arrange for payment. From the perspective of these stakeholders, this expenditure of their time represents a nonreimbursable cost and, therefore, lost revenue.

Several community stakeholders mentioned some creative ways in which revenue is being generated by local governments to pay for accommodations. In one example, parking fines levied when a driver parks illegally in a space designated for drivers with disabilities go into an accommodation pool that departments of city government can draw from.

Various service providers and community stakeholders discussed specific employment concerns related to people with some psychiatric disabilities. Some said they think it is very difficult for people with psychiatric disabilities to find work if they disclose their disability in order to request an accommodation. Others noted that accommodating people with such disabilities in the workplace can sometimes present significant challenges. Several people mentioned that employees who acquire physical disabilities while on the job can be reassigned relatively easily to other jobs upon their return to work, especially if they work for a large entity. On the other hand, they observed that

there appears to be significantly less such flexibility when people who experience a mental disability while on the job attempt to return to work.

Lack of Collaboration

From the viewpoint of various diverse stakeholders, state and federal agencies do not collaborate effectively to promote employment of people with disabilities. Similarly, many stakeholders observed that they think there are many opportunities for collaboration among nonprofit organizations, state and local governments, and representatives from the private sector, yet insufficient collaboration takes place. Furthermore, when models of collaboration are developed, they are difficult to sustain, according to some.

In particular, service provider and community stakeholders noted that there appears to be little or no collaboration and model project development among local, state, and Federal Government agencies and departments concerned with employment of people with disabilities, organizations of people with disabilities, and Internet job boards such as Monster, HotJobs, and others of similar size and scope. Many stakeholders think that significant potential exists to increase employer awareness about the ADA as well as to broaden employment opportunities for people with disabilities through creative collaborations with these entities.

Several employer stakeholders observed that in larger organizations communication between human resources and legal departments tends to be minimal. Others observed that communication among human resources, line supervisors, and upper level supervisors and directors can also be weak. While human resources staff likely will be aware of the key requirements of the ADA as it relates to employees within their organization, the details of the ADA often do not necessarily reach managers and others who direct hiring, firing, and other decisions concerning employee benefits, accommodations, work assignments, and workplace flexibility.

2. Key Stakeholder Recommendations

Implementation Issue: The U.S. Supreme Court has narrowed the definition of disability, thus barring many people with disabilities from being eligible to use the ADA when they encounter employment discrimination.

Recommendation: Congress should enact legislation that reverses the Supreme Court decisions narrowing the definition of disability so individuals with disabilities who were intended to be covered by the law are again eligible to use it to challenge discrimination.

Implementation Issue: Finding ways to use the principle of job accommodation as a method to promote the concept of a flexible workplace.

Diverse stakeholders observed that a more flexible workplace brings people with disabilities to the center of the discussion in which the workplace needs of all employees are taken into account. Because of the increased demands on most workers and the blurring of the lines that have traditionally defined work, workplace flexibility is gaining attention and currency. The ADA establishes the principle of reasonable accommodation, which can serve as both a guide and the moral authority for developing methods to support the needs of workers with and without disabilities. Stakeholders also observed a relationship between workplace flexibility and principles of universal design, which encourages the creation of systems that foster ease of participation by as many people as possible, thus strengthening the case for work environments that meet the needs of many. The following recommendations derive from an extensive discussion among diverse stakeholders about the benefits of flexibility to workers with disabilities and others.

Recommendation: Accreditation bodies such as the Association to Advance Collegiate Schools of Business should require as a condition for accreditation of management and business programs, course content or courses that explore the principle of workplace flexibility—and the reason such flexibility is beneficial to employers and employees alike—and that introduce the concept of reasonable accommodation for people with disabilities as a template for workplace flexibility.

Recommendation: Workplace Flexibility 2010—an initiative of Georgetown University Law Center that supports the development of a comprehensive national policy on workplace flexibility at the federal, state, and local levels—should increase attention to the concerns facing workers with disabilities.

One goal of the initiative is to identify ways in which the workplace can be restructured to meet the needs of an increasingly diverse workforce. While the campaign recognizes that the reasonable accommodation provisions of the ADA establish methods for workplace flexibility and that issues of concern to people with disabilities must be included in the dialogue, the initiative thus far has emphasized the changing needs of families and older workers. At this critical juncture, as the initiative gathers momentum, it is critical that issues of concern to people with disabilities be fully included. The initiative holds the potential to integrate job accommodations in the workplace as an accepted and routine practice and also to demonstrate that such flexibility can benefit all workers and employers.

Implementation Issue: People with disabilities do not know their rights under the ADA and, therefore, cannot advocate successfully for these rights in all aspects of the employment process.

Various stakeholders observed that job seekers with disabilities require training and orientation on topics such as job preparedness, interviewing skills development, résumé preparation, and tools for conducting prospective employer research. They also noted that in addition to these more traditional areas of training, it is equally important for job seekers and employees with disabilities alike to be aware of and understand their employment rights under the ADA so they can advocate successfully for themselves during the job search process and in the workplace. The following recommendations respond to this identified need.

Recommendation: The Equal Employment Opportunity Commission (EEOC) should develop partnerships with public agencies such as Employment Development Departments, U.S. Department of Labor (DOL) One-Stop Career Centers, state departments of rehabilitation, and national, state, and local disability organizations to

develop training modules and deliver targeted training to job seekers and employees with disabilities. Modules should be developed that recognize and respond to the specific and unique needs of subgroups of people with disabilities, such as youth, workers seeking entry-level employment, reentering workers, older workers, and individuals who are changing careers. Training should enable people with disabilities to understand their ADA employment rights and should promote skills and methods whereby they can use this information to advocate for themselves successfully during all aspects of the job search, as well as in the workplace. Training should be offered as an ongoing service of the collaborating agencies and organizations.

Recommendation: The Office of Disability Employment Policy (ODEP) of DOL should collaborate with leaders in the field of mentoring—such as the National Mentoring Partnership and Netmentors—to identify methods to ensure that youth with disabilities are fully included and accommodated in all mentoring programs and that mentoring program staff receive appropriate ADA training and information to ensure that they have the capacity to meet the needs of youth with disabilities.²

Implementation Issue: There is a lack of ongoing ADA training and education, and disability awareness, for employers at all levels.

From the perspective of diverse stakeholders, the greatest needs related to ADA Title I implementation are ongoing, targeted training for employers on all aspects of Title I of the ADA, as well as disability awareness for employers at all levels. The stakeholders acknowledged the efforts by federal, state, and local government and by business volunteers to improve employment opportunities for people with disabilities, but think that these efforts have fallen short by not including ongoing ADA training for employers.

Specifically, various stakeholders said that business associations and membership organizations must become involved in ongoing ADA training and education because employers, especially business owners, prefer to obtain information from organizations that they perceive represent their interests. The stakeholders also suggested that the Federal Government should step up its efforts to create and disseminate training materials aimed at specific industries and businesses, and strengthen relationships with business

leaders to foster commitments that ensure that training is ongoing and embedded in their respective operations. Likewise, the Federal Government should step up its efforts to provide technical assistance to employers using the highly effective Job Accommodation Network as a model.

Stakeholders identified specific ideas and methods for creating training opportunities and delivering training; these are presented in the following recommendations.

Recommendation: The EEOC, DOL, Small Business Administration (SBA), and other federal agencies concerned with employment of people with disabilities should acknowledge the substantial need for ADA training by employers at all levels and should join forces to create a campaign that responds to this need. Such an initiative must have adequate financial resources and the commitment of key federal agency, business, and industry leaders, associations, and trade unions. The goal would be to foster commitment to systematic, nationwide, annual ADA and disability awareness training for boards of directors, management and human resources staff, union stewards and representatives, and others involved in the hiring and retention of workers. The initiative could be launched in concert with an existing public awareness campaign focused on promoting workplace diversity that includes employees with disabilities.

The initiative should develop training modules that

- are targeted to specific industries (for example, health care, hospitality, manufacturing);
- contain a complete package of substantive ADA information and materials, handouts, and multimedia resources;
- contain materials and recommendations for presenting updates throughout the year that can be delivered by e-mail, Web site referral, and newsletters, and that can be integrated with other ongoing training provided by the employer or union;
- are easily obtained from a Web site; and
- are available in alternative formats.

Recommendation: The U.S. Chamber of Commerce, state and local chambers, fraternal organizations such as Rotary International and Lions Clubs, and national trade and membership associations such as the Society for Human Resource Management (SHRM) should proactively disseminate information to their members and partners about the ADA and employment generally, and specifically should announce, promote, and disseminate training modules developed in response to the annual ADA training initiative previously discussed.

Recommendation: Trade union leaders should proactively disseminate information to representatives and stewards about the ADA and employment generally, and specifically should announce, promote, and disseminate training modules developed in response to the annual ADA training initiative previously discussed. Unions should be encouraged to promote training at worksites where they represent workers in order to build capacity to solve problems and prevent them from escalating.

Recommendation: The U.S. Chamber of Commerce, regional and local chambers, and national trade and membership associations such as SHRM should proactively include people with disabilities as members of the diversity community in all informational and promotional materials, including podcasts, listservs, and other relevant online discussions of topics with broad interest to the business community.

Recommendation: The SBA should establish partnerships with disability organizations and institutions of higher education to develop and add an ADA Title I training course to its roster of free online courses for small businesses. The SBA should sponsor local and regional ADA Title I trainings as an ongoing element of its national training seminars for small businesses.

Recommendation: The SBA should identify methods to ensure that participants in the SCORE project—retired executives who advise small businesses—possess adequate knowledge of the employment provisions of the ADA and incorporate this knowledge and information when they consult with small business owners and executives.

Recommendation: Accreditation bodies such as the Association to Advance Collegiate Schools of Business should require as a condition for accreditation that a disability curriculum module be incorporated in professional training programs related to business administration, leadership, and management. The module should contain elements on the requirements of Title I of the ADA, disability awareness, and the inclusion of people with disabilities in discussions of workplace diversity.

Recommendation: ODEP should identify methods to promote the message that people with disabilities represent a significant pool of available labor that can be drawn upon to fill jobs when there are labor shortages.

Recommendation: ODEP should consider new ways to expand advertising and promotion of the services of the Job Accommodation Network (JAN) and to educate employers about the availability of the service. ODEP also should ensure that funding for JAN meets the demand for its services.

Recommendation: The Government Accountability Office (GAO) should update its 2002 tax credit study (which was based on 1999 business tax returns) to determine whether businesses have increased their use of the tax credits and other incentives related to hiring individuals with disabilities. On the basis of the study results, the Internal Revenue Service (IRS)—in consultation with relevant federal agencies, businesses, and disability community representatives—should make recommendations to NCD and Congress for changes in the tax credit system, which could include increasing the credits as an incentive to improve employment opportunities for people with disabilities.

Recommendation: The IRS and other federal agencies concerned with implementation of the ADA should launch an educational campaign that informs businesses about the financial incentives and tax credits associated with hiring individuals with disabilities. This information should be widely disseminated in tax filing information and through other channels to small and large business networks, the U.S. Chamber of Commerce, local and regional chambers, online sources, unions, and disability organizations.

Recommendation: The National Conference of State Legislators should work with national disability organizations and employers to develop and adopt a position that urges members to propose state legislation that would require anyone who either receives a promotion or accepts a job requiring supervision of others to undergo mandatory training on the ADA, just as certain states currently require such training on sexual harassment.³

Recommendation: When businesses apply for a new license, or renewal of an existing business license, they should receive basic information about the ADA and where to obtain additional information.

Recommendation: The EEOC should step up its efforts to ensure that business partners in the Youth at Work program proactively identify, reach out to, and include youth with disabilities in all their activities.

Implementation Issue: Providing job accommodations is not perceived as a standard and ordinary cost of doing business.

Stakeholders discussed the need for employers to perceive that providing reasonable accommodations for applicants and employees with disabilities is a standard and ordinary cost of doing business. Decisions about whether an accommodation will be provided should not rest with a departmental-level manager who is concerned about cost overruns. Rather, businesses should adopt an accommodation policy that sets forth the steps required to request an accommodation and establish an entity-wide fund that can be used to pay for accommodations and related costs. Title II entity representatives also suggested methods to generate funds for accommodation. The following recommendations summarize these suggestions.

Recommendation: The EEOC, DOL, SBA, and other federal agencies concerned with employment of people with disabilities; business trade and membership organizations such as regional chambers of commerce and SHRM; and disability organizations should collaborate to develop and disseminate model policies for establishing entity-wide funding mechanisms that can be used by divisions, departments, and cost centers to pay for accommodations. These models should include provisions for compensating

managers for the time they spend identifying and acquiring accommodations, so that time allocations for these tasks can be calculated accurately and factored into long-range financial planning. These models should promote the principle that providing accommodations is a standard and ordinary cost of doing business.

Recommendation: Cities and counties should consider placing into an accommodation pool the funds from fines collected when people park illegally in spaces designated for drivers with disabilities.

- **Collaboration**

Stakeholders discussed methods to broaden employment opportunities for people with disabilities through creative collaboration with Internet job boards such as Monster and HotJobs. At least one large Internet board already includes disability in its diversity and inclusion postings, message boards, and resource listings, and several representatives from the disability community serve as advisors. While these steps acknowledge that the board recognizes that people with disabilities are bona fide members of the diversity community, stakeholders think that the resources and information available to both employers and job seekers should be strengthened and expanded. The following recommendation presents suggested methods to accomplish this goal.

Recommendation: The EEOC, SBA, DOL, IRS, Social Security Administration (SSA), and other federal agencies concerned with enforcement of the ADA and employment of people with disabilities should collaborate with large Internet job boards such as Monster, HotJobs, and others of similar size and scope to determine methods to increase awareness of the ADA by employers and methods to encourage increased outreach to and hiring of people with disabilities. Areas for collaboration could include the following:

- Development of an online column featuring information of interest to employers and job seekers alike (e.g., examples of effective accommodation, hiring and tax incentives, Ticket to Work).
- Adding informational resources for employers and job seekers alike, such as the Job Accommodation Network, location and function of the One-Stop Career Centers, and Frequently Asked Questions (FAQs) about ADA rights and responsibilities.

Recommendation: EEOC, DOL, and other federal agencies concerned with implementation of the ADA and employment of people with disabilities should foster methods whereby employers such as those who participate in business leadership networks and organizations such as SHRM and the National Association of Workforce Boards (NAWB) can engage in peer-to-peer discussions about ADA implementation. The goal is for business leaders themselves to demonstrate that the ADA can be implemented in a meaningful way and to illustrate by example the beneficial outcomes of implementation, which will serve as a model for others.

Recommendation: EEOC, DOL, and other relevant federal agencies concerned with employment of people with disabilities should explore the feasibility of establishing a national alternative dispute resolution program, possibly in connection with existing private mediation services, which would help employers and people with disabilities resolve workplace disputes related to ADA rights and responsibilities. Financing could be secured from a combination of public funding and private subscription fees from businesses.

- **Health Insurance**

While stakeholders recognized that recommendations for systemic health care reform are beyond the scope of this report, they thought that certain steps should be taken, nevertheless, that will raise awareness about some specific concerns of people with disabilities who rely on employer-sponsored health insurance and that hold some potential for future reform. Such individuals increasingly face the possibility of leaving paid employment in order to become eligible for public health insurance that will pay for necessities that are becoming less available under private policies, such as motorized wheelchairs and ventilators, mental health services, and prescription drugs. The following recommendations identify specific steps.

Recommendation: The federal agencies charged with improving employment opportunities for people with disabilities should convene a working group of agency leaders, disability leaders, insurance company representatives, and others to develop strategies to address the impact on working people with disabilities of decreasing benefits

from employer-sponsored health care insurance. Subjects for discussion should include the increasing prevalence of benefit caps on durable medical equipment and restrictions on mental health services and prescription drugs.

Recommendation: Disability advocacy groups should educate state legislators about the impact on working people with disabilities of private health insurance coverage limitations, and advocate for legal and policy reforms at the state level that prohibit coverage caps for durable medical equipment and other necessary services.

3. Topics for Further Research

Various stakeholders pointed out that the lack of data on accommodation requests, outcomes, employee satisfaction, and long-term retention makes it difficult to evaluate the extent to which midsized and large employers are successfully implementing the accommodation provisions of the ADA.

The reasonable accommodation practices of various large employers (for example, the University of California, San Francisco; Alaska Airlines; State of Maryland) are profiled in books, articles, and reports. Yet, upon closer scrutiny, few of these employers collect sufficient information to evaluate whether their policies have produced measurable outcomes. In some cases, stakeholders pointed out, the data that exist conflate ADA accommodations with return to work measures called for under a workers' compensation agreement, thus further obscuring the impact of ADA implementation. Such data are critical because they serve as indicators that an entity is engaging in an activity that could be promoted as a best practice.

Both employer and community stakeholders noted that leaders in the field of education have established centers of excellence—sometimes called communities of practice—as a strategy to collect and evaluate information about effective educational practices that might have the potential to become best practices, and to provide technical assistance to educational professionals and researchers. Such centers are being used to evaluate numerous approaches to the delivery of educational programming and the respective outcomes related to their stated objectives. Using this example as a guide, the following

recommendation calls for establishing centers of excellence devoted to effective ADA implementation.

Recommendation: Key federal agencies charged with a role in enforcement of the ADA (for example, EEOC and the Departments of Justice, Health and Human Services, and Education) should establish a center of excellence either within the agency or through a qualified contractor. Each center's mission would be to conduct research and collect information about effective methods of ADA implementation related to the agency's sphere of concern, rigorously evaluate those methods to determine their quantifiable impact on people with disabilities, and report and widely disseminate results that will serve as models.

Specifically, the centers established to evaluate Title I implementation practices should build collaborative relationships with businesses, which could include providing technical assistance and other incentives to help them develop methods to collect relevant data, for example, on the effectiveness of procedures for requesting job accommodations, the number and type of requests, and outcomes.

B. Public and Private Transportation (Title II and III)⁴

1. Key Implementation Issues and Discussion

Insufficient Resources for Implementation and Enforcement

The lack of sufficient resources for ADA enforcement in the area of transportation concerns advocates and Department of Transportation (DOT) personnel. One staffer pointed out that the Federal Transit Administration (FTA) receives four times as many disability complaints as any other type of complaint. The situation with the ADA was compared to enforcement of the Air Carrier Access Act (ACAA), which, over a period of time, came to be funded at a sharply higher level. Increased funding has had a very real and positive impact on ACAA enforcement.

Paralleling DOT's comments on insufficient resources, some transit agencies mentioned lack of funding and resources available for ADA implementation.

A novel approach to monitoring compliance was raised by the ADA coordinator of a nationwide transportation company, who pointed out that his company's brochure about accessible services and the rights of riders with disabilities is available in poster form, and it is company policy to display the poster prominently at every station the company has nationwide. The brochure and poster provide customers with the contact number and mailing address for the ADA Compliance Department and advise customers with disabilities to contact the Department if they believe their rights have been violated. The ADA coordinator said this is how he harnesses the power of riders with disabilities to be his eyes and ears across the country where he cannot go on his own; he was proud of this system, which alerts him to problematic drivers, staff, and other compliance issues. The same company has a disability advisory committee that includes riders who have made complaints. No other transportation providers represented at the dialogue could cite a similar effort to identify their own organization's areas of noncompliance.

One group suggested that to increase provider knowledge, information accompanying the licensing of a vehicle should explain the ADA requirements for that vehicle type, whether it is an over-the-road bus, a van with a particular passenger load, or any other vehicle. Another group suggested publications and training for undercover rider programs to link such programs and share information about them.

Oversized Wheelchairs and Other Mobility Equipment

What transit agencies call "oversized wheelchairs" are a major concern. One group reported that very heavy mobility devices are a real issue, because lifts are not strong enough to withstand the weight of these devices. Another transit provider pointed out that chairs with fiberglass shells do not allow for securement, and that scooters require a lot of space. A government regulator noted that the so-called "wheelchair envelope" in the Access Board vehicle rule has been used improperly; it was intended to describe a performance standard for vehicle manufacture, not to screen out particular users of wheelchairs. Another government staffer said, "You need to be the weight of a car to really break a lift, even though a lot of users are told, 'You're too heavy; you broke the lift.'"

Information, Education, and Training

The systemic organizational challenge of training staff on ADA requirements and good customer service was a hot topic. Stakeholders agreed that to achieve compliance, it is necessary for disability access to be integrated into all the components of large transit organizations. All personnel should consider access, not just staff assigned to disability-specific issues. One transit agency staffer commented that when a paratransit-related taxi program exists, the agency may thoroughly train its paratransit drivers, but taxi drivers remain untrained.

Participants shared a number of strategies to improve training. One group recommended involving people with disabilities more in the training of drivers. Dialogue participants felt it was necessary to train boards of directors, managers, and policymakers in their legal responsibilities under the ADA. One transportation provider shared his company's efforts to achieve high training standards. All his company's staff, including management, receive an eight-hour sensitivity training, both in the classroom and in hands-on in-service training that includes testing. Training topics cover ADA requirements, good customer service, assisting customers with disabilities, using lifts, and maintaining accessible equipment. The training program includes computer-based continuing education for some staff and has received union support, which adds to its strength and effectiveness.

Another group recommended training on ADA transportation rights and requirements at the onset of vocational rehabilitation and in educational programs in which youth with disabilities participate. It was recommended that DOT work with the Department of Education (DOED) to make this training a part of the transition process from school to work for youth with disabilities.

Fixed-Route Bus Service Issues

Several participants pointed out that stop announcements remain a challenge. Some participants focused on the benefits of automatic annunciators, but one transit agency

reported achieving great success with stop announcements without the use of this technology.

Effectively securing mobility devices in vehicles—including the difficulty of securing certain mobility devices and, in some locations, uneven driver performance in proper securement—is another significant challenge. One provider began a lively discussion by declaring that scooters cannot be secured and the ADA regulation that requires that they be secured could be challenged legally as arbitrary and capricious. A government technical assistance expert explained that scooters could, in fact, be properly secured. One advocate lamented what he called “the human side—getting 2,000 bus drivers in [his city] to follow the securement rules.” He reported conducting a study on securement by drivers that resulted in a highly disappointing 95 percent failure rate. One recommended strategy to address this problem is the wide replication of programs begun by some transit agencies that equip the wheelchairs of volunteer riders with securement straps and markers showing proper securement points. One group reported that the ANSI/RESNA WC-19 standard for four-point securements be promoted more aggressively to device manufacturers.

ADA Paratransit Issues

Much discussion centered on ADA paratransit. One general concern of transit agencies was expressed in several different ways: Some called it the high cost of paratransit, and others viewed it as too much paratransit demand by people with disabilities who, it was suggested, could possibly use fixed-route transit instead. Participants suggested a number of strategies to address this issue. One speaker mentioned offering free rides on the fixed-route service for people who are paratransit-eligible. He pointed out that many systems now allow self-selection on a given day, and he chastised systems that do not trust riders but instead “worry about a \$2 loss and lose a \$20 gain.” An advocate explained the Miami-Dade system’s “frequent transit user” program, which provides benefits such as free entry into the museums, the aquarium, and other local destinations. A transit provider pointed out that her system awards prizes such as tickets and dinner passes for customers with disabilities if they switch from the paratransit system to the fixed-route system. Other transit agencies offered examples of service models that provide cost efficiencies.

For example, Chicago has a taxi voucher system on which paratransit riders can take subscription trips. This public/private partnership results in a lower cost than providing paratransit without the voucher system. One transit agency representative pointed out that his system guarantees next-day service but accommodates same-day service whenever possible; this system also uses accessible taxis, which goes beyond the ADA's mandated minimums. Another participant mentioned that a Los Angeles consultant's study revealed what was perhaps an unexpected result: that a mixture of same-day and next-day paratransit service, with at least 10 percent same-day service, resulted in a lower total cost than 100 percent next-day service.

Discussion also focused on paratransit eligibility. One transit agency representative expressed the challenge of in-person eligibility assessments. Advocates viewed the increasing strictness of eligibility assessments as a challenge and commented that riders may be inadvertently discouraged from trying the fixed-route system for fear of losing paratransit eligibility.

On-time performance in ADA paratransit is a very real implementation challenge in many locales. Issues include consideration of desired arrival or appointment times; protecting the pick-up time negotiated between the agency and the rider; and establishing limits on trip length. One government participant lamented that the ADA regulation was never intended to allow a paratransit provider to respond to a rider wanting a ride at 1:30 p.m. by providing a ride at 2:15 p.m. DOT's intention was to require a genuine negotiation with a one-hour deviation as the maximum allowable time gap, but this ceiling has become a widespread de facto practice.

Some ADA paratransit providers discussed what one termed "unreasonable requests"—for example, to transport someone in a coma, or to provide personal care. Another cited "demanding, aggressive customers who don't understand the limitations of the transit provider."

There was a lively discussion of the origin-to-destination service issue. Many transit agencies have based their paratransit systems on what they view as a choice given to them in the DOT ADA regulation to establish either door-to-door service or curb-to-curb

service, but recent DOT policy guidance clarifies the ADA requirement that even agencies with curb-to-curb policies are sometimes required to provide additional service if necessitated by an individual's particular disability. DOT has proposed to add to its ADA regulation a requirement for reasonable modification of policies, practices, and procedures when necessary to avoid discrimination, in the wake of a Fifth Circuit Court decision stating that the DOJ regulation under Title II of the ADA does not cover public transit agencies.⁵ Several transit agency representatives felt that DOT has not provided adequate guidance on what the new policy would require of their agencies. For example, when would it be legitimate to make a finding of undue financial and administrative burdens, fundamental alteration, or direct threat? Some were concerned about the documentation requirement for such findings. Others felt that they provided such accommodations already but were not sure if a requirement to do so would impose additional burdens.

One advocate presented a concern with the lack of ADA paratransit subscription service in some communities, which makes regular trips to work or school difficult. A transit agency representative pointed out that many ADA paratransit providers are not aware that they are allowed to exceed the DOT regulation limit of 50 percent of capacity to be dedicated to subscription service if there are no denials or other capacity constraints on the service. If properly understood, this exception to capacity regulations could result in more subscription service in many locations.

A number of comments at the dialogue centered on the goal of attaining equity in wages and benefits between fixed-route and paratransit operators (drivers), an idea that has been discussed increasingly in transit circles because of its potential to benefit ADA paratransit implementation by reducing driver turnover and increasing driver competence. Many transit agencies appear to be implementing measures that lessen the discrepancies in experience and training between the two groups of drivers. For example, one transit agency representative reported that his fixed-route operators work at least two hours with ADA paratransit during their training. Another discussed the benefits his system has realized by having fixed-route drivers go through what he called "the paratransit experience," because it gives them a closer familiarity with securement procedures and

tie-down devices, and makes working with people with disabilities a routine and acceptable part of the job. He said he could see a clear educational benefit to drivers as a result of having some paratransit experience—he called it an opportunity “to mold their minds” on disability access issues.

Several transit agency representatives discussed how paratransit is viewed, in the words of one participant, as a “second-class offspring” in their organizations and addressed the challenge of keeping paratransit from being marginalized. Ensuring that paratransit managers attain equity in pay, benefits, and status within their organization is a related challenge. Some transit agencies discussed their successes in resolving this problem, such as upgrading paratransit within a transit agency. For example, if bus and rail divisions are managed at the vice president level, the paratransit division should also be managed at that level. Pay equity among these managers was an important strategy for improving the skill level of ADA paratransit managers, seen as key to providing quality service. One transit agency representative reported success in elevating accessibility issues at the management level.

Contracting for Paratransit Services

Methods and approaches in paratransit contracting are a much-discussed topic among ADA paratransit providers. Participants seemed to agree that many ADA paratransit implementation challenges stem from difficulties in contractor management, monitoring, and quality. It was pointed out that some transit agencies monitor their fixed-route service much more actively than they monitor their paratransit service. One provider stated that there are an inadequate number of qualified paratransit contractors. He felt that while it is easy to state the need to hold the contractor’s feet to the fire, if other qualified contractors are unavailable, the agency is without options. Regarding strategies, one provider pointed out that most transit agencies use a low-bid process but should use a value-based analysis of the bids they receive. He said they should analyze what would be provided for a particular amount of money and possibly accept a higher and more qualified bid. Another provider mentioned providing bonuses to contractors who meet and exceed expectations.

One provider discussed a number of approaches his agency has developed in the contracting process. For example, the agency awards the contract based on best value, not lowest cost, by looking at factors such as better driver wages, better staff benefits, and better employee training. Also, the contract is structured to minimize risk for the contractor by paying a monthly fixed cost and a monthly variable rate based on the number of revenue hours the contractor operates. The fixed cost includes utilities, the lease cost of the building, and salaries of key management staff. The contractor can count on receiving the fixed-cost amount and is less apt to pad the charges. The contractor must document every item in the variable rate, which includes charges related to paratransit operations. The agency charges the contractor liquidated damages in particular categories for events such as “no driver available,” “no vehicle available,” “late to the first pick-up of the run,” “failure in timely preventive maintenance,” “no field supervision,” and “vehicle replacement.” The agency requires that a malfunctioning vehicle be replaced within one hour, or it charges liquidated damages. This works because the agency does its own dispatching. The vehicles have automatic vehicle locators (AVLs) and mobile data terminals (MDTs), so the agency can track its vehicles.

Rail Issues

In the area of rail transit, a number of participants mentioned DOT’s current proposal to require high-level boarding platforms for commuter and intercity rail systems. Providers and government regulators alike regarded level boarding as a challenge.

Access to rail stations was discussed as an important issue in rail transit. One transit agency representative noted the challenge he faces in providing access to 44 light rail stations. One nationwide transportation provider lamented the challenge of an upcoming deadline by which it must provide access to its many stations across the country. A government official responded by pointing out that this provider waited too many years to begin addressing this requirement, adding that it would have been easier with thorough planning and gradual implementation from the time the requirement was established in 1990. One advocate discussed how even ADA-compliant rail systems could still be virtually inaccessible to people with disabilities, because the law requires only key stations to be accessible.

Ensuring that the gap between the train car and the platform does not exceed ADA specifications was mentioned as a challenge by several participants. One suggested strategy is a “gap filler”—a rubber strip just under the door. This two-inch gasket has helped at least one transit agency perform more consistently within ADA specifications.

Elevator maintenance and the provision of information on elevator outages are other issues of concern to rail providers and advocates. In general, information on elevator outages should be communicated in a widely accessible manner. Examples include a centralized phone system to report out-of-service elevators, signage at each station to provide information on elevator service throughout the system, and systemwide announcements made over a public address system when an elevator goes into or out of service. One transit agency has a system to send an e-mail to a list of interested riders if a particular elevator is out of service.

One participant discussed a number of rail issues for people who are deaf or hard of hearing, including visual announcements to complement audible announcements. He suggested that DOT and the Access Board consider the issue of visual announcements on both the rail platform and the train.

Private Companies Using Over-the-Road Buses

Several participants mentioned the problem of new companies providing curbside over-the-road intercity bus service but ignoring the ADA requirements. One government official mentioned that the Federal Motor Carrier Safety Administration of DOT is not yet very familiar with this challenge, although it is the logical agency to address it. The representative from the private bus company trade association explained that there are 4,000 companies in the United States using over-the-road buses. He said that it is easy to become a licensed company, yet there is no oversight of operations once a license has been granted. Many of these companies are not aware of their ADA obligations. For example, charter bus companies often say, “We don’t have an accessible bus, and we don’t know anyone who does.”

Rural Issues

The need for better transportation for people with disabilities in rural areas was also a theme at this dialogue. There are few transportation services in most small towns and rural areas, which adversely affects a significant percentage of people with disabilities in the United States. Rural advocates discussed the challenges they face in bringing more transportation to rural areas. For example, some advocates regard the proposed FTA rules for the New Freedom Initiative, which could provide rural transportation, as inflexible because they would preclude voucher and volunteer driver programs, even though these models have been successful in rural areas. One rural advocate lamented, “There is no ADA service in rural areas because there is no fixed-route service. Rural areas get electricity and roads, but no transportation.”

ADA paratransit in rural areas was a topic of discussion in one group. In smaller communities, there is even more of a shortage of resources to fund ADA paratransit than in higher density urban areas. One suggested strategy is for rural transportation providers in smaller communities to place priority on education, employment and medical trips.

Additional Implementation Issues Identified

- Maintenance of accessibility equipment remains an issue, but the acquisition of low-floor ramp-equipped buses that are easier to maintain than lift buses has significantly ameliorated this concern.
- One advocate raised the concern that jurisdictional boundaries create problems in an ADA paratransit context. On the fixed-route system, if one’s city or town borders another city, nondisabled people can travel from one system to the next. However, paratransit service frequently stops at the jurisdictional border. Contiguous jurisdictions are encouraged to coordinate paratransit systems but are not required to do so by the ADA. These arbitrary barriers impose difficult limitations on paratransit riders if there is no way to transfer from system to system.

- One advocate raised the issue that the DOT ADA regulation mandates next-day service in ADA paratransit, not same-day service, even though fixed-route riders always can avail themselves of same-day transportation on bus and rail systems.
- Capacity constraints in paratransit still present challenges, according to some participants. Paratransit ride denials and long telephone hold times were cited as challenges that remain in some communities.
- In some cities, lack of full ADA implementation on the fixed-route system (for example, low rates of stop announcements on the bus, or sizable gaps between the train car and the platform) steers many riders with disabilities toward the paratransit system.
- ADA paratransit providers sometimes find significant numbers of rider no-shows to be costly. In some transit systems, advocates report that riders are not informed of, or accorded, their right to contest that a particular no-show was beyond their control, or their right to appeal no-show suspensions imposed by the transit agency. Some transit agencies impose penalties for fewer no-shows than FTA has suggested would constitute a pattern or practice of missing scheduled trips.
- Some transit agencies have cut paratransit service back to minimum ADA requirements in order to limit costs. In the view of some riders and advocates, some of these cuts have significant adverse effects on riders.
- Some transit agencies have stated that when they attempt to involve the disability community in decision making, it is challenging to know how to attain good representation. Which organizations and individuals should they involve? How much diversity among disability categories do they need? Who represents the disability community?
- Two other issues arose: difficulties in the use of taxi service faced by people with disabilities who use service animals; and barriers encountered by wheelchair users due to the lack of accessible vehicles on the part of airport shuttle services, despite ADA requirements.
- One government enforcer identified as a challenge the lack of standardized data being reported from agency to agency, and suggested building in financial incentives toward

standardization of data. Reflecting a similar concern, DOT recently published a Notice of Proposed Rulemaking (still out for public comment at the time of this writing) that asked whether it should require standardization in how ADA paratransit denials are counted.

- One participant discussed the challenge of emergency transportation and how it needs to include planning for people with disabilities in a meaningful way. Most localities do not consider this aspect of transportation, or pay it lip service at best.

Discussion of Successes

Participants discussed many successes and advances in ADA transportation. One included the successful use of AVLs and MDTs to track vehicles and communicate with drivers.

The public involvement process counts as another significant success reported by one transit agency representative. He described two components. The first is an advisory group that met monthly for a number of years. At this point, so many issues have been resolved that the group does not need to meet monthly; now they meet quarterly instead. The second component is quarterly public meetings. At one time, all the issues raised at these meetings involved paratransit; today, they are mostly fixed-route issues. In earlier times, strife and bitterness filled the meetings; now they are “more like family reunions.” There is a public comment section at the beginning of each meeting, and approximately 85 percent of the comments are complimentary. This agency is committed to a public involvement process to discuss all issues, even if there is not always agreement.

2. Key Stakeholder Recommendations

Implementation Issue: A lack of resources for enforcement hampers ADA compliance by transportation providers. DOT receives four times as many complaints related to disability as any other issue.

Recommendation: Congress should provide additional resources for enforcement of the ADA transportation provisions. Additional staff to conduct complaint investigations,

additional funds for ADA compliance reviews, and funding for a complaint reporting mechanism could have a significant impact on implementation.

Recommendation: Transit operators should provide brochures and posters that inform riders about their rights and how to reach the provider's ADA compliance office. This strategy would enlist riders with disabilities to report information about ADA implementation and compliance problems with drivers, equipment, and service.

Implementation Issue: Some transportation agencies and consumers lack information, education, and training on how the ADA applies to them.

Recommendation: Transit agencies should include ADA training for boards, managers, and policymakers as well as for frontline staff who are delivering services.

Recommendation: DOT should work with DOED to include training on riding public transportation as a component in the Individualized Education Programs (IEPs) of students with disabilities. Vocational rehabilitation clients also should receive training on public transportation skills.

Recommendation: As a condition of the program, contracts between transit agencies and taxis that participate in an ADA paratransit service using a voucher system or other arrangement must include mandatory training on the ADA for the taxi service provider.

Implementation Issue: Sporadic stop announcements.

Recommendation: Transit agencies should provide strong oversight of drivers and other staff responsible for stop announcements.

Recommendation: Transit agencies should use progressive discipline in cases of operator failure to announce required stops.

Recommendation: Transit agencies should institute secret rider programs to assess compliance with the ADA stop announcement provisions.

Recommendation: Transit agencies should acquire equipment such as lapel and sleeve microphones to help drivers announce stops.

Implementation Issue: Effectively securing mobility devices in vehicles—including the difficulty of securing certain mobility devices—and, in some locations, uneven driver performance in proper securement.

Recommendation: To improve securement of mobility equipment in transit vehicles, transit agencies should institute voluntary programs to install securement straps, if needed, on riders' wheelchairs and to mark the wheelchair's best securement points.

Implementation Issue: Transit agencies are concerned with the impact on strained budgets caused by the high demand for paratransit by people with disabilities who may be able to use fixed-route transit.

Recommendation: Transit agencies should encourage use of the fixed-route service by offering incentives such as free or reduced-fare rides on the fixed-route system, discounts to local venues for fixed-route riders, and symbolic awards such as tickets and dinner passes for former paratransit riders who are now using the fixed-route service.

Recommendation: Paratransit programs should investigate whether offering same-day taxi voucher rides in combination with next-day service leads to reduced costs.

Implementation Issue: The lack of ADA paratransit subscription service in some communities makes it very difficult to arrange regular trips to work or school.

Recommendation: DOT should distribute periodic announcements that the ADA allows paratransit providers to exceed the regulation limit of 50 percent of capacity to be dedicated to their subscription service, if the demand is present, as long as there are no capacity constraints on the service.

Implementation Issue: High turnover in ADA paratransit personnel jeopardizes compliance with the ADA.

Recommendation: Transit agencies should equalize the salary and benefits of their fixed-route and paratransit drivers as much as possible, and provide them with the same or similar training components. If possible, operators should have experience driving in both systems rather than only one.

Recommendation: Transit agencies should recognize and compensate their paratransit managers at a level equal to that of other management positions in the agencies.

Implementation Issue: ADA paratransit implementation challenges stem from difficulties in contractor management, monitoring, and quality.

Recommendation: Transit agencies should award contracts according to best value, not necessarily the lowest bid.

Implementation Issue: Elevator outages and the provision of information on elevator outages are barriers to riders of rail transit systems.

Recommendation: Transit operators should communicate information on elevator outages using a variety of accessible methods. Examples include a centralized phone system to report out-of-service elevators, signage at each station to provide information on elevator service throughout the system, system-wide announcements made over a public address system when an elevator goes into or out of service, and sending an e-mail to a list of interested riders if a particular elevator is out of service.

Implementation Issue: Barriers to equal access to transportation remain for people who are deaf or hard of hearing.

Recommendation: The Access Board should consider whether visual announcements should be required when audible announcements are present on buses, in trains, and on train platforms.

Implementation Issue: There is inconsistent compliance among small, private over-the-road bus operators, vans with a particular passenger load, and other types of passenger vehicles.

Recommendation: When an over-the-road vehicle is licensed, the licensing agency should include information with the license that explains the ADA requirements for that type of vehicle.

Implementation Issue: There are few transportation services in most small towns and rural areas, which adversely affects a significant percentage of people with disabilities in the United States.

Recommendation: Federal Transit Administration rules for the New Freedom Initiative should not preclude voucher and volunteer driver programs, which have been effective in bringing additional transportation to rural areas.

3. Topics for Further Research

Stakeholders identified the following research needs related to transportation:

- Document the extensive unmet transportation needs of people with disabilities.
- Document the social and financial benefits of an accessible, integrated society. For example, when transportation and other services are not available, institutionalization can be the result, at a high cost to the individual and society.
- Document the hidden costs of the lack of transportation for people with disabilities, or of the transportation systems that are not in compliance with the ADA.
- Research best practices in paratransit contracting.
- Research the reasons companies purchase wheelchair-accessible taxis. Are there specific incentives, or other reasons that motivate the purchase?
- Document the link between stable transit agency personnel and the quality of transit service.

C. Public Accommodations (Title III)⁶

1. Key Implementation Issues and Discussion⁷

Stakeholders discussed their perceptions about the difficulty some businesses have knowing when they are in compliance with the ADA and the extent to which businesses have failed to implement the ADA. They also discussed problems that flow from lack of awareness about disability, the principle of “universality,” and the deep lack of training and knowledge in the building and construction community. These overarching issues and other implementation concerns are loosely grouped and summarized below.

Limited ADA Implementation

Stakeholders with disabilities consistently said that they perceive that Title III entities—especially smaller businesses, medical providers, and certain social service organizations—have done too little to implement the law, with the consequence that people with disabilities do not have full and free access to facilities, goods, and services.

They expressed the view that some businesses do little to comply with the ADA, apparently in part because of concern for cost but also because they do not perceive that people with disabilities comprise a significant customer base. Many disability community stakeholders observed that, in their experience, businesses are not responsive even when specifically requested to remove an architectural barrier or provide a particular accommodation. (See Chapter IV for a discussion of the effectiveness of informal requests for compliance.) These stakeholders observed that their frustration with the lack of implementation was further compounded by the fact that there is no legal enforcement mechanism, other than litigation, available to resolve most individual complaints of noncompliance by Title III entities. (DOJ investigates charges of discrimination by Title III entities when it has reason to believe that a covered entity is engaging in a pattern or practice of discrimination, but DOJ does not investigate each individual complaint.) Furthermore, according to disability community and attorney stakeholders, the lack of monetary damages under Title III hinders the development of case law that could help clarify what steps covered entities are required to take to comply.

Difficulty Determining Compliance

Representatives of covered entities, especially smaller businesses, strongly expressed the view that they find it difficult or impossible to know when they are in compliance with the ADA and what constitutes compliance, particularly with respect to the barrier-removal provisions of Title III as they apply to existing facilities. They cited the lack of easily obtained, appropriate, industry-specific information that could guide them in determining what actions are required and how much money they must spend to meet the requirements. Some business stakeholders said that regardless of how much effort they devote to becoming accessible, they fear that minor construction problems will leave them vulnerable to litigation. One person suggested that businesses do not know how to calculate the fiscal benefits of compliance, so the cost to achieve implementation is regarded as an unnecessary expense.

There was general agreement among stakeholders that small businesses in particular either are not aware of or do not understand the “readily achievable” barrier-removal requirements of Title III. Representative business stakeholders indicated that they would prefer clear-cut guidelines rather than the current flexible standard that represents, from their perspective, a constantly moving target. Small business stakeholders mentioned that they think some form of certification—such as that provided by health departments—would verify that the steps they had taken to comply with the law, particularly those concerning readily achievable barrier removal, had fulfilled their obligations. Such certification would serve as an incentive to take action and would help shield them from litigation.

Lack of Disability Awareness

The stakeholders as a group also acknowledged that one of the greatest challenges to ADA implementation is widespread lack of awareness about disability; in particular the extent to which disability is pervasive in the communities that businesses and other entities serve. This lack of awareness perpetuates the view held by some businesses that people with disabilities do not represent a potential customer base. Inaccurate information and perceptions about disability also have influenced the extent to which implementation

has been carried out by some entities. One access specialist stakeholder reported that some businesses still say they think wheelchair users do not patronize their establishment, so they do not have an incentive for complying with the architectural access requirements of the ADA. Several business stakeholders said they think accessibility features present in hotel rooms and public transportation, for example, are underutilized; therefore, implementation requirements should be more flexible so industries can determine the best way to achieve access.

However, disability community members noted that if access, auxiliary aids, and other accommodations are available, people will come; but because access cannot always be predicted, people with disabilities do not want to waste their time or money, or risk disappointment, so they tend to patronize facilities they know will welcome them. Some suggested that there still is a pervasive attitude among certain businesses that people with disabilities should be grateful for whatever is provided for them, thus suggesting that voluntary charitable responses to disability are still considered appropriate. Others noted that many small businesses are owned and operated by people from diverse cultural and linguistic backgrounds. Not all cultures use the same rights framework, so the challenge is reaching these individuals with understandable, culturally relevant, and meaningful information and training.

Market Share Should Motivate ADA Implementation

From the disability community perspective, there was significant discussion about how people with disabilities who go out to restaurants, movies, sporting events, and other entertainment, as well as those who travel for business and recreation, are frequently accompanied by their friends, family, and colleagues. An inaccessible business loses not only the patronage of the individual with a disability but also that of his or her family and friends. Therefore, market share should be a strong motivation for implementing the ADA. One access specialist mentioned that he had worked with numerous retail establishments over the years and found that every one thought that accessibility was worth the cost after it led to increased business.

Several community stakeholders observed that some businesses call for both flexibility and specificity in implementing the ADA, suggesting that their real issues might have less to do with what businesses are required to do under the law and more to do with their perceptions about the importance of accessibility and the extent to which people with disabilities are valued as customers.

Principle of Universality

Diverse stakeholders discussed at some length and in various contexts the idea that one overarching goal should be to eliminate the perception that people with disabilities are a separate group that exists apart from the rest of the populations that businesses and other covered entities serve. This perception of separateness perpetuates negative stereotypes and discourages ADA implementation actions that some business stakeholders perceive meet the needs of only a small, discrete group. While ways must be found to increase disability awareness, a central tenet of methods to enhance ADA implementation must require strategies to ensure that disability is also perceived as an ordinary, indeed common, aspect of human experience. This strong message—referred to by many as “universality”—was linked to discussion about the urgency of promoting principles of universal design at every opportunity. Most stakeholders think that these principles blur the artificial distinctions that currently exist between people who do and do not have disabilities by focusing on the functional needs of the largest and most diverse population possible, and identifying solutions that meet those needs.

Information, Education, and Training

Diverse stakeholders identified education and training at all levels of business and among architecture, design, and construction professionals and people with disabilities as critical and essential elements of meaningful ADA implementation. They pointed out many situations in which the lack of professional training has a negative impact on implementation, the absence of ongoing training for frontline staff undermines customer service, and people with disabilities are unaware of their rights and what the ADA provides.

Many stakeholders acknowledged that poor ADA implementation by some Title III entities stems from widespread lack of knowledge as well as misinformation about the requirements of the ADA and state accessibility codes and guidelines among design, construction, and other building professionals. One accessibility expert reported that corporate attorneys and others with whom he works incorrectly perceive that some businesses are “grandfathered”; that is, that the ADA does not apply to their facilities and operations.

Stakeholders cited the shortage of qualified architects and other design and construction professionals as a significant problem; it can take up to three years of hands-on professional experience to acquire the knowledge that is necessary to ensure accessibility in accordance with federal and state accessibility guidelines. Stakeholders said that most design and building professionals do not fully appreciate that the work is not only highly detailed and contextual but also requires judgment, design creativity, and well-honed technical skills. Even for those design professionals who work primarily with ADA access issues, disability community and allied stakeholders noted that few take into account related programmatic access concerns in their own design work or while reviewing the work of others. For example, few are likely to understand the need to plan for additional space in an examination room in a medical office building to accommodate a wheelchair user who requires the assistance of a mechanical lift to get up on an examination table.

As a practical matter, this pervasive lack of adequate training and experience has a direct impact on the work of building professionals, including plan checkers, inspectors, code officials, and architects who work in municipal building departments. Some local building officials do not have sufficient training or experience to determine whether architectural drawings submitted for approval meet accessibility requirements; thus, incorrect or missing access features can be overlooked at the plan stage. Various participants noted that, all too frequently, a significant difference exists between structural details called for in a construction blueprint and what is actually built. This problem demonstrates that onsite construction inspections are conducted less frequently

than they are needed or that some inspectors have insufficient training on or experience with access features. Thus, access construction mistakes go unnoticed and uncorrected.

Some stakeholders suggested that code officials and plan checkers have received adequate training but simply do not apply it, either because they think the level of detail in the current standards is unnecessary or because they have forgotten what they were taught. Others said that these individuals receive too little training and almost no explanation about the practical impact of accessibility requirements on the ability of people with disabilities to move about freely in their communities.

Lack of knowledge among design professionals was considered to be so important that stakeholders devoted significant time discussing solutions aimed at every level of the design and construction industry.

Poor Communication

Another problem is poor communication between covered entities and local officials, particularly those charged with building plan approval, which stakeholders noted can be slow and fraught with incorrect information. In one example raised by several stakeholders, an entity that rents a facility owned by a city government was unclear on who was responsible for implementing the ADA in common areas and experienced significant difficulty obtaining information from city officials.

Obligations of Lessors and Lessees

In general, Title III entity stakeholders also expressed strong concern about the problems they have experienced trying to determine the respective ADA obligations of lessors and lessees. Some larger entities noted that they have developed model leases that require the parties to spell out their respective obligations before entering into a lease agreement. Others mentioned that the issue often comes up after a lease has been negotiated, when the lessee wishes to make accessibility modifications to its space but finds that the lessor either will not permit the work or will not share the cost of removing barriers from shared public space. Several small business operators mentioned that lack of implementation of

the ADA's access requirements by entities that lease temporary space—such as those sometimes used as art galleries—poses an additional problem.

Add-Ons

Some stakeholders mentioned that when a business seeks approval from building officials to modify its premises for accessibility, additional building code requirements frequently are added on to the project, making it either too costly or unfeasible to complete. Others expressed frustration with the length of time it takes to obtain a building permit and other approvals, which can serve as an additional deterrent to entities that want to remove accessibility barriers or improve accessibility.

Include ADA Oversight in Existing Business Systems

Much discussion was devoted to identifying methods to include ADA oversight in existing business systems. Representatives from several locales mentioned that they are in discussions with city officials about methods to expedite the permit process when the purpose of the request is the removal of architectural barriers.

Confusion about Programmatic Access

Many disability community stakeholders thought that businesses do not yet understand the difference between architectural accessibility and programmatic accessibility (for example, modification of policies and practices, provision of materials and information in alternative formats, and provision of auxiliary aids and services), or that these are civil rights issues for people with disabilities. For example, several community stakeholders observed that, in their experience, there is widespread lack of knowledge among covered entities about provisions of the ADA that permit service animals to enter most public accommodations. They noted that businesses think of the ADA only as a building code when, in reality, it provides methods that ensure that people with disabilities can participate fully in all aspects of community life. Access is about enabling people with disabilities to interact with and participate freely in all aspects of a business. Many businesses, moreover, are not aware that they have ongoing obligations under the ADA.

Franchise Operations

Several stakeholders associated with franchise operations noted that while they do not experience resistance from franchise owners to following the ADA, they find that they have to be very vigilant and aggressive about addressing the gap between good will on the part of the owner and the actual realization of accessibility in facilities and products. They also noted that they have experienced difficulty maintaining accessibility awareness among building professionals and even greater difficulty ensuring that contractors build ADA-compliant facilities. They said that they must directly oversee the work of subcontractors in the field because there is a dearth of competent general contractors. One person noted that access construction errors can reach 30 percent.

Poor Implementation by Faith-Based Groups

Several people noted that the trend toward increased federal funding for faith-based groups that provide social services has increased access problems because these groups tend to think they are exempt from compliance with the ADA.

Widespread Problems in Delivery of Health Care Services

Some stakeholders, including those representing Title III health-service-related entities, noted that medical systems—including state-funded health plans, clinics, hospitals, and the offices of health care professionals—thus far have failed outright to recognize the depth and breadth of the need for physical and programmatic access to health facilities and services for people with disabilities. Consequently, very few have explored, implemented, and evaluated solutions. While private health care providers have their own independent ADA Title III obligations, several community stakeholders expressed the opinion that health plans do not pay providers enough to help cover the cost for certain accessibility features and to provide effective communication, auxiliary aids, and other accommodations. Overall, there is limited awareness of the issues and little interest or coordination among states, health plans, providers, and others responsible for finding solutions.

Poor Implementation in Culturally Diverse Communities

Various disability community stakeholders observed that implementation of the ADA's Title III requirements for architectural accessibility and barrier removal in culturally diverse communities and economically disadvantaged communities is particularly weak. Several people said that some of the One-Stop programs in their communities (comprehensive federally funded one-stop career centers) are inaccessible, as are other programs that provide essential support and services to members of the community. They note that lack of access compounds the difficulties people with disabilities face in these neighborhoods and communities, and further limits their capacity to lead productive and independent lives.

Relationships between Title II and Title III Entities

Stakeholders representing city governments noted that working with city contractors that are Title III entities (for example, day care centers, drug treatment programs, homeless shelters, health clinics) is challenging because service providers with whom cities contract are frequently unaware of the ADA or, if they are aware of the law, they do not know how it applies to them. Even when an entity is aware of the ADA and has taken steps to ensure equal access and participation for people with disabilities, high staff turnover in these organizations creates the problem of consistently ensuring appropriate responses to people with disabilities who have contact with the program.

Several stakeholders from city governments discussed methods they use to improve ADA compliance by organizations with whom they contract. One person noted that his office has a small fund for auxiliary aids that a city contractor can use for limited purposes, and that his department provides contractees with ADA technical assistance, community resources for obtaining alternative formats, auxiliary aids, and other accommodations upon request.

High Staff Turnover

Many large entities noted that staff turnover in their industries can be as high as 100 percent annually (for example, in large retail establishments, stadiums, budget restaurants), so maintaining an informed workforce equipped to provide high-quality customer service for people with disabilities presents a tremendous challenge. Without training that is deeply embedded and ongoing, the institutional memory loss created by such high turnover inevitably leads to poor service and potential discrimination against people with disabilities.

Perception of Lack of ADA Information

Some stakeholders observed that since the enactment of the ADA in 1990, significant ADA technical assistance material has been created, translated into many languages, and disseminated by various federal agencies, disability organizations, public interest groups, trade associations, membership groups, and others. Yet business stakeholders strongly indicated that they did not know precisely where to obtain information about the law or how to locate expertise that relates directly to their specific industry.

Most stakeholders representing covered entities said they perceive a deep need for reliable, industry-specific information to help businesses understand their obligations and enable them to know when they are in compliance. One membership organization stakeholder said he would actively disseminate such information to members if it were available. Many business stakeholders said they would prefer to have the information delivered to them through the conventional business channels they rely on for other information. However, it was the view of several business stakeholders that some of their peers either do not take advantage of existing informational and educational resources or simply lack enough interest in the topic to investigate where information might be available. Others noted that the ADA was a high priority when the law was first enacted but is no longer perceived to be an important area of concern, so less effort is made to acquire information.

Tax Credits

Some businesses indicated that they were unaware of the tax credits available for access modifications, or thought the credits did not offer enough benefit to bother with the paperwork. This view was echoed by several disability community stakeholders, who said that research with which they were familiar showed that the federal tax credit has not been a sufficient incentive for businesses to initiate barrier removal. One person mentioned that certain devices—such as height-adjustable examination tables used in the offices of health care providers—might not qualify for a tax credit according to the IRS because they would be used by all patients, not just people with disabilities. Thus, the financial incentive for acquiring accessible equipment might be removed for some entities.

Lack of Disability Community ADA Awareness

Diverse stakeholders observed that many people with disabilities do not understand the ADA or what rights it affords. This knowledge gap has led some to hold unrealistic expectations about what is required of businesses and other covered entities, while others simply accept the lack of physical and programmatic access as an inevitable consequence of disability. Lack of knowledge also leads people with disabilities to provide inaccurate advice to businesses and other entities about their ADA obligations.

Web Site Accessibility

Businesses that operate a Web site expressed confusion and uncertainty about what is expected of them in terms of Web usability and accessibility. Some were unaware that Web access is even an issue, while others indicated that they do not understand the central tenets of Web accessibility, what they are legally required to do to ensure usability under the ADA, and where to obtain information and assistance.

Health and Safety Risks

Some disability community stakeholders observed that people with disabilities are sometimes perceived as either a health or a safety risk, whether or not they actually pose any risk, and are therefore refused service, excluded from participation, or otherwise discriminated against by various entities. This situation can occur when covered entities apply stereotypes about people with disabilities in the absence of objective evidence. Examples that stakeholders mentioned include wheelchair users who are incorrectly perceived as posing a hazard to pedestrians, or individuals with psychiatric, cognitive, or behavioral disabilities who are incorrectly perceived as possessing aggressive or violent behaviors. Others noted that failure of covered entities to maintain accessibility equipment can pose hazards to people with disabilities.

2. Key Stakeholder Recommendations

Implementation Issue: Many Title III entities, especially small businesses, have not complied with the barrier-removal provisions of the ADA.

In order to change the current pattern of ADA noncompliance that stakeholders reported, especially on the part of smaller businesses and other covered entities, new mechanisms for elevating and imbedding ADA awareness, spurring and rewarding implementation, and establishing penalties for failure to act must be created. This observation led to recommendations that call for enhanced federal enforcement and enlisting support from and establishing alliances with many organizations and governing bodies that play diverse roles in state and local government, and from fields such as health, safety, business development, financing, design and construction, and insurance.

Recommendation: DOJ should devote substantially more resources and time to investigating Title III complaints, especially those regarding small businesses, in light of widespread noncompliance by these covered entities.

Recommendation: Disability community, government, and other leaders and experts in accessibility should partner with the following key organizations to identify legislative,

regulatory, and other methods to embed ADA information, incentives, and, where appropriate, penalties in interactions they have with Title III covered entities:

- National Association of State Fire Marshals: Marshals tend to be responsible for fire safety code adoption and enforcement, fire and arson investigation, fire incident data reporting and analysis, public education, and advising governors and state legislatures on fire protection. Methods should be identified and implemented that empower fire marshals, when they conduct routine fire and safety inspections, to inspect businesses and facilities for ADA-related accessible exits and paths of travel, evacuation plans, and any other ADA oversight that is relevant to fire safety for people with disabilities, and to inform the business about any problems.
- City health departments: Department staff enforce laws and regulations that protect health and ensure safety. Methods should be identified and implemented that would empower health department officials to determine whether sanitary facilities also meet ADA accessibility requirements when they conduct routine inspections of businesses and facilities, and inform the entity about any identified problems.
- Mortgage and construction lenders: If mortgage and construction lenders conduct plan reviews or undertake other compliance oversight as a routine part of processing a loan application for entities that would be covered by Title III, methods should be identified and implemented that would require lenders to require compliance with all applicable ADA requirements as a condition of loan approval for businesses and other covered entities. Lenders who do not otherwise conduct plan reviews or undertake other compliance oversight should provide information to prospective Title III borrowers about the ADA. State mortgage lender associations should adopt model policies on ADA compliance oversight and information dissemination that could help guide the practices of member lenders.
- Associations of city and county government: Associations of city and county government—such as the League of Cities, National Association of Cities, and National Association of Counties—should provide leadership on the recommended initiatives related to state and local government by convening meetings with key experts, developing model policies, supporting any required legislative or regulatory initiatives, and disseminating information to members.

Recommendation: When businesses apply for a new license, or renewal of an existing business license, they should receive information about complying with the ADA and where to obtain additional information.

Recommendation: When health care professionals apply for a new license, or renewal of an existing business license, they should receive specific information about complying with provisions of the ADA that relate to health professionals.

Recommendation: Cities should make incentives available to small and medium-sized businesses that want to remove architectural barriers in existing buildings and facilities by expediting the building permit and approval process when the purpose of the project is solely to achieve accessibility. Locales routinely provide various incentives to businesses to attract them to a particular neighborhood or prevent them from leaving; thus, precedent exists for expediting the permit and approval process.

Recommendation: The Building Officials and Code Administrators International Inc. (BOCA), known as the International Code Council (ICC), should amend ICC International Codes to bar the addition of non-barrier-removal items by building officials when an entity seeks a permit solely for the purpose of removing an architectural barrier that prevents the full enjoyment and participation of individuals with disabilities. California has embedded such a requirement in the state access code, which serves as a model and a precedent.

Recommendation: States should consider creating a credentialed access specialist program as Texas has done and California is in the process of doing. The program must have rigorous qualification and training standards, and methods to conduct ongoing evaluation of specialist knowledge and expertise. Specialists should be required to review and approve construction drawings when building permits are required, and should be trained to conduct site inspections and to advise businesses about barriers that can be removed in a readily achievable manner.

Recommendation: When a business seeks a permit to undertake a general renovation, the request should trigger an ADA compliance review so the owner will know which, if

any, aspects of ADA accessibility are required. For example, the City of Chicago now requires every business to pay a fee for an accessibility review each time an application is made for a building permit.

Recommendation: Key federal agencies and private community development organizations should convene an experts meeting to explore methods for using various sources of community development funding—such as the community investment tax, small business administration loans, Federal Emergency Management Agency (FEMA) disaster relief funding, and community development block grants—to help bring about ADA compliance changes. This could be accomplished by requiring ADA compliance as a term and condition of funding, which would be supported with some financial help from the funding agency toward achieving the required accessibility features and by dedicating specific amounts of money from development funds to accomplish high-priority barrier-removal projects in the target communities.

Recommendation: SBA, in collaboration with participating lenders, should require ADA compliance as a term and condition of eligibility for small business loans. In concert with this requirement, SBA should provide additional low-interest loan assistance to businesses to help them provide the required accessibility features.

Recommendation: Local partnerships made up of community disability groups and various business associations should regularly recognize entities that have been especially successful at achieving architectural and programmatic access by publishing information about them on industry and community Web sites and in publications, and by honoring them at public events attended by their peers.

Implementation Issue: It is difficult to ensure ADA compliance by chain businesses that are set up as franchise operations.

Several business franchisor stakeholders expressed the view that it is essential for the various communities that are concerned about ADA implementation to work collaboratively with franchisors, franchisees, and their member organizations to promote compliance. They indicated that they thought key member franchise organizations would

be eager to participate in a collaboration that could potentially produce results for both parties. These organizations provide an array of educational and support services to both franchisees and franchisors. Stakeholders noted that it is the role of franchisors to provide accurate information to franchisees, including information on legislative or regulatory changes that affect franchisee operations. A franchisor can be held liable by a franchisee that has not been informed that it is violating either federal or state law. Similarly, a franchisee can be charged liquidated damages by a franchisor if it fails to comply with laws and regulations of which it is aware, according to stakeholders. Stakeholders made the following recommendation:

Recommendation: Organizations such as the American Association of Franchisees and Dealers (AAFD), a national nonprofit trade association that defines and promotes quality in franchising practices, and the International Franchise Association (IFA), which works to increase the knowledge and professional standards of the franchising community, should work with the disability community, DOJ, and representative businesses—

- To include ADA implementation obligations in the Fair Franchising Standards created by AAFD and the Franchise Association Code of Ethics, which is intended to establish a framework for the implementation of best practices in the IFA’s relationship with its members. The Fair Franchising Standards provide the basis for objective accreditation of franchising companies seeking the endorsement of and membership in AAFD. The Fair Franchising Seal is conferred by AAFD on franchisors who demonstrate that they meet certain standards.
- To ensure that all franchisors require that franchisees with whom they contract meet all applicable ADA implementation obligations. These should be spelled out to the extent possible, and any necessary technical assistance or informational materials—including facility plans that include ADA access features—should be made available when the contract is finalized.
- To ensure that the annual monitoring carried out by the franchisor includes a review of ADA obligations to verify that the facility is fulfilling its architectural accessibility requirements and that it is capable of meeting the needs of customers with communication, alternative format, and other needs.

- To ensure that a business owner who sells a franchise or chain company be required to show in the sales contract that the facility meets all applicable ADA accessibility requirements.

Implementation Issue: Building officials and practitioners in the fields of design, construction, engineering, landscape architecture, architecture, and city planning lack adequate and ongoing training on accessibility guidelines and universal design principles, and this lack contributes significantly to ADA implementation problems.

Several stakeholders said that from their experience and perspective it has been very difficult to instill a lasting commitment to principles of access and universal design in schools of architecture and in the architecture profession as a whole. While architecture schools are required to include accessibility in their curriculums, few explain and discuss the human factors that underlie principles of universal design and accessibility or monitor whether accessibility is being included as a design factor in studio courses. Change, they said, depends on leadership in these institutions, where the culture must be shifted so the need for accessibility is no longer perceived as an unwanted problem but rather as a creative challenge. Many stakeholders agreed that promoting universal design principles is the best approach from a design perspective, while accessibility standards and codes should be subsumed and explained as legal requirements.

In light of these observations, stakeholders made the following recommendations to address specific aspects of training and education for practitioners in the fields of design, construction, engineering, landscape architecture, architecture, and city planning.

Recommendation: As a condition of ongoing licensing, everyone involved in design, construction, engineering, landscape architecture, architecture, and city planning should be required to take universal design courses that include explanations of access codes and standards, and these courses should be offered through continuing education programs. Sponsorship should be provided by state and national trade and member organizations such as the ICC and the American Institute of Architects (AIA).

Recommendation: The AIA should establish a task force empowered to make recommendations about activities the AIA should undertake to promote universal design and ensure that members and others become educated on the subject, and have access to appropriate and effective resources.

Recommendation: The National Architectural Accrediting Board (NAAB), American Society of Landscape Architects (ASLA), National Association of Schools of Art and Design (NASAD), and other accreditation bodies should require that schools they accredit teach a required course on universal design that includes a component that focuses on accessibility codes and guidelines. A model for this requirement is the current trend toward requiring environmentally friendly (“green”) architecture courses as a condition of accreditation.

Recommendation: Decision makers from key federal agencies charged with implementing the ADA should convene to explore methods to advance the principles of universal design beyond what is currently being supported by the National Institute on Disability and Rehabilitation Research (NIDRR).

Implementation Issue: Health care systems and practitioners have failed to implement the ADA in many aspects of patient care.

Stakeholders pointed out that ADA implementation is poor in the health care delivery sector. In addition to the recommendation that NCD undertake a separate initiative on this issue, they identified the following recommendations related to accreditation.

Recommendation: The Association of American Medical Colleges (AAMC) and the Liaison Committee on Medical Education (LCME) should require that, in order to gain accreditation, medical schools increase disability knowledge and programmatic access awareness among prospective health care professionals by incorporating disability and ADA implementation issues and methods into curricula. The AAMC works to ensure that the structure, content, and conduct of medical education meet the highest standards, and accreditation by the LCME is required for schools to receive federal grants for medical education and to participate in federal loan programs.

Recommendation: The Institute of Medicine of the National Academies should call for the AAMC and the LCME to require that disability knowledge and ADA programmatic access awareness be included in curricula for prospective health care professionals as a qualification for accreditation.

Implementation Issue: Title III entities lack information, education, and training on how the ADA applies to them and how to take steps to comply.

Recommendation: Leading business associations such as the U.S. Chamber of Commerce, the Council of Better Business Bureaus, the National Federation of Independent Businesses, and the National Restaurant Association should explore initiating an ADA education project with their members. This would involve notifying members about the ADA through mailings; providing information on their respective Web sites and at conferences and regional and national meetings; and informing them that the organization can distribute ADA implementation materials published by DOJ and other federal agencies upon request.

Recommendation: The Small Business Council of the U.S. Chamber of Commerce should endorse and support the dissemination of information related to ADA implementation to Chamber members and to identify the most effective ways both the Council and the Chamber can engage in member education that comports with its mission and capacity.

Recommendation: SBA should establish partnerships with disability organizations and institutions of higher education to develop and add an ADA Title III training course to its roster of free online courses for small businesses. SBA also should be urged to sponsor local and regional ADA Title III training as an ongoing element of its national training seminars for small businesses.

Recommendation: SBA should identify methods to ensure that participants in the SCORE project—retired executives who advise small businesses—are provided information about the Title III public accommodation provisions of the ADA, and

incorporate this information when they consult with small business owners and executives.

Implementation Issue: Many people with disabilities do not understand the basic provisions of the ADA and, therefore, cannot advocate effectively for themselves or provide accurate ADA advice to covered entities.

In light of the fact that robust ADA training for the disability community nationwide has not been undertaken since shortly after the law's enactment in 1990, stakeholders observed that a new training initiative is overdue.

Recommendation: The federal agencies that have ADA implementation and enforcement roles should join in a collaborative effort to fund a substantial nationwide ADA training initiative for people with disabilities. Training should accomplish the following:

- Increase ADA awareness in low-income communities.
- Raise awareness among people from diverse racial and ethnic backgrounds.
- Develop advocacy capacity among youth.
- Increase awareness of the ADA's potential to increase independence and community participation among seniors.
- Promote leadership development.
- Target specific areas in which ADA implementation has lagged behind (for example, health care and small businesses).

Implementation Issue: Widespread use of the Internet has developed since the enactment of the ADA, yet many Title III entities have not taken steps to ensure that their Web sites are accessible.

Stakeholders think that the Internet holds significant promise for social change and regard the issue of Web access as cutting edge. To the extent that businesses and other covered entities do business or provide information or services using the Internet, they think it is

becoming increasingly important to find ways to promote the fact that people with disabilities represent a substantial part of their customer and service base and, therefore, should have full and free access to the goods and services entities offer. Stakeholders made the following recommendations to advance accessibility.

Recommendation: Entities that register domain names should provide Web access information to applicants and a link to World Wide Web Consortium (W3C) information about Web site accessibility.

Recommendation: Entities that register domain names should require assurances that sites that plan to sell goods and services online will be accessible as a condition of acquiring the domain.

Recommendation: Federal tax credits available for architectural barrier removal also should be available to make existing Web sites accessible.

Recommendation: Accreditation programs and industry associations (for example, the American Association of Museums) should require Web accessibility as a criterion for membership.

Recommendation: Entities that contract for services (e.g., states and cities) should require that entities with which they contract have accessible Web sites as a requirement to receive contracts.

Recommendation: Accreditation organizations should require educational institutions that offer information technology (IT) programs to include disability and Web site accessibility courses as curriculum requirements.

Implementation Issue: Misperception of health or safety risks sometimes results in exclusion from participation of people with disabilities.

Significant discussion took place about how people with disabilities are excluded from activities and programs based on misperception of health or safety risk. Stakeholders

crafted specific recommendations regarding this problem, but they indicated that all recommendations must be built on the following guiding principles:

- Avoid making assumptions about all individuals in a disability group on the basis of the behavior or conduct of one person in that group.
- Exclusion is permitted only when bona fide evidence is available showing that the individual with a disability or others might be exposed to a legitimate risk.
- Exclusion is a last and final resort after all other avenues have been exhausted (for example, providing accommodations, modifying policies).

Recommendation: Key organizations concerned with ensuring that civil rights for individuals with disabilities are protected (for example, DOJ, American Diabetes Association, The ARC, National Disability Rights Network, and mental health consumer organizations) should collaborate with certain businesses (e.g., theaters, stadiums, performance centers, amusement parks) to create training and informational materials that provide practical, realistic information and guidance for businesses and entities, dispel stereotypes, and recommend policies the entities should adopt to guide their conduct if a bona fide safety risk arises. Policy guidelines must acknowledge that standards for behavior and conduct will differ according to the context and the situation, but a process must be set forth for determining whether a risk exists and whether an accommodation can be provided that will mitigate the risk.

Implementation Issue: There is a lack of successful implementation models and examples of ADA best practices that can demonstrate effective methods for complying with the law.

Stakeholders noted that leaders in the field of education have established centers of excellence as a strategy to collect and evaluate information about effective educational practices that might have the potential to become best practices. These centers evaluate numerous approaches to the delivery of educational programming and the respective outcomes related to their stated objectives. Using this example as a guide, the following recommendation calls for establishing centers of excellence devoted to identifying and promoting effective ADA implementation.

Recommendation: Each key federal agency charged with a role in enforcing the ADA (for example, the Departments of Justice, Health and Human Services, Education, Labor, and Transportation) should establish a center of excellence, either within the agency or through a qualified contractor. Each center's mission would be to conduct research and collect information about effective methods of ADA implementation related to the agency's sphere of concern; rigorously evaluate the methods to determine their quantifiable impact on people with disabilities; support activities that will enhance covered entities' capacity to collect and report data on implementation activities that have the potential to become best practice models; and report and widely disseminate results. (The EEOC's study of nine states' implementation of the ADA's employment requirements is an example of preliminary work of the type such centers would undertake.)

Implementation Issue: Some businesses that are required to comply with the ADA want a certification or seal of approval indicating that the business has met its ADA barrier-removal obligations for existing buildings and facilities.

Stakeholders discussed at length the benefits and disadvantages of some form of certification or seal of approval that would indicate that a business has met its ADA barrier-removal obligations for existing buildings and facilities. Many thought that a certification program was imperative, because it would shield against liability and indicate a good faith effort to comply with the ADA. Others thought that time and effort would be better spent helping businesses learn about the ADA and about methods to provide access, because doing so would actually attract customers with disabilities and their families and friends. The following recommendation is presented in light of these divergent views.

Recommendation: To explore the feasibility of creating a certification or seal of approval program that would indicate that a business has met its ADA barrier-removal obligations for existing buildings and facilities, the Council of Better Business Bureaus (CBBB) should convene a working group of stakeholder representatives, such as neighborhood business networks, individual small businesses, and representatives from the disability community. CBBB should invite representatives from DOJ and the Access

Board, as well as architects and other technical and policy experts familiar with barrier-removal issues in existing facilities, to serve as advisors. The group should be charged with determining the need, benefit to stakeholders, and feasibility of such a program. If it is determined that the concept should go forward, the group should recommend possible mechanisms for testing one or more program ideas in several pilot studies that include methods for evaluating outcomes. The following questions could serve as a starting point:

- What is the purpose of the program (for example, promoting customer service, attracting customers with disabilities, avoiding liability)?
- What are the criteria for participation?
- What is the process for determining whether a business is eligible to participate?
- Who would administer the program?
- What are the qualifications of those who determine eligibility?
- What is the frequency and process for renewal?
- What is the cost of the program, and who pays?

3. Topics for Further Research

Creating Incentives for ADA Compliance

Stakeholders discussed numerous ways ADA implementation could be enhanced by embedding rewards and incentives in existing business systems and points of contact for routine matters. These include the purchase of various types of insurance coverage and the sale of commercial property.

In theory, mechanisms could be adopted whereby businesses that have taken steps to comply with Title III of the ADA can be acknowledged and rewarded through a reduced insurance rate structure. Some insurers already offer reduced premiums for certain coverages, including workplace safety, disaster preparation, and human resource intervention if certain requirements are followed; thus, there is a potential model for this strategy. Furthermore, since insurance companies frequently are required to pay for costs related to ADA barrier-removal litigation, taking steps that could reduce their liability

holds potential financial benefit for their own operations while furthering the goal of enhancing ADA implementation.

Certain insurance trade associations—such as the National Association of Insurance Commissioners (NAIC), the Insurance Information Institute, and the Insurance Institute of America—could serve as points of contact. Discussions should also include identifying methods and procedures whereby insurance companies can routinely provide information to prospective Title III entities about their responsibilities under the ADA and where they can find additional information when they apply for coverage.

Another method to build ADA implementation into commonplace business interactions is to require that when commercial property is sold, the seller must disclose all known areas of ADA noncompliance. Under this scheme, the buyer has received notice about ADA violations, thus initiating the first step in a voluntary process of compliance.

The following specific research recommendations are intended to build on these implementation strategies:

Recommendation: An independent insurance research body should conduct a feasibility study to determine to what extent the insurance industry could offer reduced premiums on certain products (for example, property insurance, business interruption, and liability) as a result of the reduced risk of liability when entities implement the ADA. Such research should determine how the strategy to offer reduced insurance premiums can be implemented and whether amendments would be required to state insurance laws and regulations, and document the actions necessary to achieve this approach. Research results should be widely disseminated through industry publications, on the Internet, and to DOJ.

Recommendation: A nonpartisan real estate research body should commission or undertake research on selected state laws and regulations governing the sale of commercial property to determine to what extent they would permit a requirement that those who are selling commercial property disclose all known areas of ADA noncompliance, and should make recommendations for achieving this requirement.

Research results should be widely disseminated through industry publications, on the Internet, and to DOJ.

Improving Programmatic Accessibility

Stakeholders think that the underlying reason entities do not provide programmatic access when required to do so is rooted in the unmet need for education about disability generally and about the ADA as a civil rights law in particular. They discussed the role that negative attitudes and disability stigma play, and identified areas in which education could play a crucial role—in K–12 curricula; enhanced professional training for architects, designers, planners, medical professionals, and others; and an ongoing public education and public relations campaign.

Various stakeholders identified the need for research to clarify why many covered entities either do not understand programmatic accessibility or are unaware of its principal requirements. Although lack of knowledge about the ADA and misperceptions about disability appear to be root causes, little structured investigation has been conducted to identify potentially effective solutions. Several stakeholders noted that people with disabilities, policymakers, legislators, and others currently have only anecdotes and litigation outcomes to help them shape responses. Stakeholders identified research strategies that would help clarify and define the various problems and perspectives, and inform potential solutions.

Such research would, at a minimum, determine to what extent certain types of covered entities are aware of their obligations in this respect and what additional information and assistance they require to provide effective communication and alternative formats and to modify policies that exclude people with disabilities. Research would also reveal the impact of lack of compliance on people with disabilities, further define the impact of the limited role of federal enforcement, and potentially encourage collaboration with trade and membership associations for the purpose of promoting ADA education and enhancing implementation.

Stakeholders determined that the enormous magnitude of poor ADA implementation by health care providers calls for specific, targeted research.

Recommendation: Federal agencies charged with ADA implementation or ensuring full community participation for people with disabilities (for example, DOJ, the Access Board, NIDRR, the Department of Health and Human Services [HHS]) should form a consortium to generate funding to commission research on the following general themes:

- Identify obstacles and barriers to implementation of the ADA's provisions related to programmatic access (for example, modification of policies and practices, provision of materials and information in alternative formats, and provision of auxiliary aids and services) by representative Title III entities such as social service organizations and health care providers, and recommend solutions.
- Understand the extent to which the programmatic access needs of people with disabilities (for example, modification of policies and practices, provision of materials and information in alternative formats, and provision of auxiliary aids and services) are being met to enable them to enjoy or benefit from the programs and services offered by selected Title III entities such as social service organizations and health care providers, and recommend solutions.

Recommendation: NCD should undertake a robust, independent qualitative and quantitative research project that identifies ADA implementation issues related to health care institutions and providers, and should make recommendations for reform.

Evaluation of Technical Assistance Materials

Stakeholders from trade and member associations, businesses, and other covered entities strongly stated that one key issue related to their capacity to determine whether they are in compliance is that they perceive that they do not have access to adequate, industry-specific information and materials in plain language that instruct them on how to comply with the ADA and what constitutes compliance.

In light of the fact that DOJ created industry-specific ADA compliance materials soon after the enactment of the law, and that much of that material has been updated and translated into numerous languages, it is important to understand why Title III entities report that they do not have access to adequate information about how to comply with the ADA.⁸

In response to discussion about where stakeholders go for ADA information, representatives from larger entities said that, for the most part, they rely on in-house sources, including legal counsel or their industry organizations. Smaller businesses said they would likely turn to their neighborhood associations, peers, and local chambers of commerce, if they sought information at all. According to some stakeholders, the rise of the Internet has made it difficult for businesses to know what sources of information are accurate and reliable without guidance or direction from trusted colleagues, peers, or trade associations.

This situation suggests several research questions:

- To what extent are leading information sources—for example, DOJ, the Access Board, regional Disability Business and Technical Assistance Centers (DBTACs) and IT Centers, Protection and Advocacy organizations, and other disability rights and independent living groups—effective in reaching the key contact points where covered entities go for information?
- If the material, or information about how to obtain it, is reaching the contact points, how effective is it in responding to the informational needs of the various stakeholders?
- Does new material need to be created?
- If new material is needed, what information should it contain?
- How can distribution of materials and information be improved?
- Why is the Internet perceived as a source of confusion, and how can it be used effectively to promote implementation?

To answer these and related questions, the following research is recommended:

Recommendation: ADA federal enforcement and allied agencies (for example, the Access Board, NIDRR) should join forces to commission research (e.g., focus groups, surveys, interviews) designed to elicit structured responses from a variety of Title III entities about the extent to which specific technical assistance and informational materials currently available from DOJ and others provide the ADA implementation guidance these entities seek. Specific recommendations should be made regarding content, formats, and distribution mechanisms that would meet the needs of these entities.

Recommendation: DOJ and the Access Board should convene a work group composed of businesses, representatives from the disability community, disability law experts, city building officials, architects, and others with related knowledge and expertise to evaluate whether the federal interpretive guidance currently available on methods to comply with the readily achievable barrier-removal provisions of Title III provides sufficient information and detail to covered entities, and to determine whether the material should be revised or expanded. If the work group determines that new material should be created or the existing material revised, it should submit a detailed recommendation to that effect to DOJ and the Access Board.

D. Telecommunications (Title IV)⁹

Implementation of the Title IV mandates has differed somewhat from implementation of the other ADA mandates. Unlike the other titles, Title IV has a financing mechanism, allowing the companies that are charged with providing telecommunications relay services (TRS) to benefit financially from the provision of these services. Specifically, these companies are able to receive compensation for intrastate relay services through state jurisdictions and for interstate relay services through the federally administered Interstate TRS Fund. As a consequence, the tensions that have existed between people with disabilities and businesses and governments covered under Titles I through III have largely been absent when it comes to Title IV implementation. Rather, since Title IV first went into effect in July 1993, relay consumers and telephone companies have enjoyed a cooperative relationship that has fostered innovative technologies and high service standards. These innovations and improved standards have been authorized by the Federal Communications Commission (FCC), the agency that bears responsibility for

implementing Title IV. Recently, increased competition among companies entering the interstate relay business—many of which are not traditional telephone companies—has provided added stimulus for improving and enhancing relay products.

Another difference between the implementation of Title IV and the other ADA titles is that—unlike other agencies charged with implementing the provisions of Titles I through III—the FCC has undergone a continuous and thorough review of its TRS regulations virtually since the passage of the ADA. Over these years, open rulemaking proceedings on every facet of relay services have provided extensive and unparalleled opportunities for consumers and providers to provide input on their needs and objectives, and have resulted in a string of rulings that have enabled relay services to evolve along with the rapid pace of modern technologies. Guiding these proceedings has been the overarching goal of achieving telecommunications access that is functionally equivalent to telephone access enjoyed by individuals without hearing or speech disabilities. While the past 13 years have not been without tension or conflict between consumers and the FCC, the constant involvement of consumers in these proceedings has helped to allow telecommunications relay services to become a catalyst for achieving independence and integration into society.

Title IV stakeholders identified a number of reasons that Title IV has been effective for people with hearing and speech disabilities:

Ubiquitous Access

The ability to make or receive calls 24 hours a day, without any limit on their number or content, has been beneficial to the health, safety, independence, employment opportunities, and social lives of relay users. Relay services have helped end the isolation of people who cannot hear by fostering strong relationships with family and friends. The growth in relay use over the past decade and a half is a testament to the success of Title IV.

Innovative Services

Two pivotal provisions in Title IV have facilitated improvements in the quality of relay services as technology has evolved. First, the ADA requires TRS to be functionally equivalent to telephone services that are available to hearing people who use conventional telephones. One stakeholder called functional equivalency a “moving target” that transitions with each new technology. Second, Title IV directs the FCC to ensure that its regulations “encourage . . . the use of existing technology and do not discourage or impair the development of improved technology.” Consistently, the FCC has relied upon this section to approve innovative technologies, such as captioned telephone, Video Relay Service (VRS), and Internet-based text relay. One of the stakeholders reported that the FCC’s orders have also changed the perspective of many states with respect to the types of relay services they should offer their residents. Stakeholders elaborated on the benefits of these new and innovative technologies:

- By providing a means of achieving telephone communication for people whose native or preferred method of communication is sign language, VRS has empowered consumers who previously were not able to communicate by phone. Many individuals who now use VRS were not comfortable using written English to communicate by phone; therefore, they were not able to enjoy functionally equivalent telephone services through TTY-based text-to-voice services. VRS is particularly helpful to children who cannot yet express themselves in writing and to older deaf and hard-of-hearing people who may have difficulty typing. In addition, by allowing communication at the regular voice telephone speed (200 wpm) rather than the 40–60 wpm typical of TTYs, VRS achieves a more natural and flowing conversation, can be used for conference calls, and enables callers to use interactive telephone voice response menus.
- Captioned telephone service enables individuals with hearing loss to hear what the other party is saying and simultaneously to read that party’s responses, so that these people can enjoy a more private, natural, and interactive call that is functionally equivalent to real-time telephone communications. Callers can simply dial the number they are trying to reach and be connected automatically to a captioned telephone communication assistant (CA), affording a new level of relay transparency. Two-line

captioned telephone service also enables callers to receive calls directly and to have direct 911 access with captions, without first dialing a CA who then has to link the incoming number to a special 911 database. This service has been particularly popular among hard-of-hearing senior citizens who were reluctant to use TTY-based relay services.

- Wireless relay options that allow access through pagers, PDAs, laptops, and other wireless Internet-enabled devices have been extremely beneficial in allowing people to maintain their independence, privacy, and productivity. As our society as a whole becomes more mobile, these options have afforded people with hearing and speech disabilities the same opportunities to achieve communication that others have when they are on the move.

Available Funding

Title IV allows both intrastate and interstate relay providers to recover the costs of providing relay services. Having a ready and available funding source to support these services has been critically important to their success.

Varied Services

Various types of relay modalities enable people with differing needs to choose the modality that is best suited to their telecommunications access needs. This enables people with hearing and speech disabilities to achieve the type of communication that is most effective in any given situation.

Consumer Choice

Internet-based relay services offer TRS consumers more choice in relay providers than ever before. Competition among new entrants now regularly brings innovative options and allows users to switch providers any time they wish.

Universal 711 Access

Universal 711 access has been very effective—not only for people with disabilities, but for hearing people who do not have TTYs and need to call people with hearing or speech disabilities. This three-digit code is easy to remember and can be used anywhere in the country for most relay services that are initiated over the telephone network.

Mobility

Internet relay enables consumers to make calls when they are away from their homes or businesses. For example, when they are on vacation, relay users now can use computers at hotels to make their calls rather than being limited to hotels that have a TTY.

However, the provision of TRS is undergoing significant change, as these telephone services join in the migration away from the public switched telephone network (PSTN). Originally merely a service that connected calls between TTY users and voice telephone users, relay service is now capable of providing an assortment of communication options, many of which use text or video applications over the Internet. Newer, creative types of services have expanded the number of users who can make telephone calls. This evolution of relay services raises many issues for achieving effective implementation of Title IV. The goal of the Title IV dialogue was to gather feedback from consumers, providers, and government officials on strategies to achieve the desired objectives of the ADA's relay mandates as these technological changes are taking place.

1. Key Implementation Issues and Discussion

When the ADA was enacted, several states had already established statewide relay programs or were in the process of doing so. After the passage of the ADA, all these states applied for and received approval from the FCC to continue administering and enforcing these programs; indeed, by 1993, every state plus the U.S. territories had received such certification. Local telephone companies that were obligated under the ADA to fund relay services—and that bore ultimate responsibility for Title IV compliance—fulfilled their responsibility through these individual state programs.

Typically, each of the states chose a single relay provider to provide these services to all people residing in their state. Once certified, the state was required to meet—or could exceed—the FCC’s mandatory minimum TRS standards, including requirements to provide relay services 24 hours a day, seven days a week; prohibitions against limiting the content, length, or frequency of relay calls; and mandates for calls to be answered within a certain amount of time. This arrangement ran relatively smoothly, with many states raising the bar with more stringent requirements designed to produce better relay services. For example, although FCC rules required 85 percent of all calls to be answered within 10 seconds, several states demanded faster answer speeds. Although the FCC retained ultimate authority over the provision of all relay services nationwide, the actual administration and enforcement of these systems occurred almost exclusively at the state level.

Since March 2000, relay services have undergone a major transition. In an order released that month, the FCC approved various new types of relay services that have taken advantage of innovative technologies. Many of the newly approved relay services—including video relay, speech-to-speech (STS) relay, and, more recently, captioned telephone relay (approved in 2003)—have changed dramatically the nature of and vastly improved telephone communication for people with hearing and speech disabilities. The introduction of new services, and the overall transition of many relay services from the PSTN to the Internet, has created implementation challenges that did not exist during the first 10 years of Title IV implementation. At the stakeholder dialogue, many of these challenges emerged. They have been loosely grouped below.

Lack of Training and Education

- Despite the considerable success of relay services among various user communities and the rapid growth of these services over the past few years, many potential relay users—especially those who could benefit from using VRS and STS—are still not using these services. Many people are not aware of the existence of relay services or have not received training on how to use them.

- There exists a lack of knowledge about the availability and use of relay services among the general public. Individuals and businesses not acquainted with relay services often mistake these services for commercial solicitations and refuse to accept relay calls.
- Increased abuse of Internet-based relay services by pranksters and hearing individuals who anonymously use them to make fraudulent credit card purchases has caused many businesses to become distrustful when they receive a relay call. Their lack of awareness often causes these entities to hang up on relay users.
- Some businesses and even some governmental agencies are unfamiliar with the ADA's promises of confidentiality and refuse to use relay services to exchange information about confidential matters, such as those concerning banking or investment transactions, tax information, and health matters.
- Many parents and schools are unaware of the availability and function of relay services.

Funding

- As the public migrates away from using telecommunications services provided through the PSTN and transitions to using communications services provided over the Internet, the traditional funding base for TRS, which relies on revenues from PSTN-based services, is in danger of drying up. A stable and reliable funding source is needed to ensure the communication access required by Title IV.
- Newer types of relay services require broadband access to the Internet, for which there are no low-income subsidies.
- Consumers need to acquire computers, video equipment, captioned telephones, or other expensive devices to be able to use new types of high-tech relay services. Most state equipment distribution programs do not provide funding for these devices, many of which are Internet-based.
- There is no funding mechanism to reimburse providers for the technical customer support needed to operate video equipment used with VRS.

- Interpreter shortages in many communities impede the effective provision of VRS. Funding is needed to train additional American Sign Language (ASL) and oral interpreters, so that there are enough interpreters to handle both VRS and community interpreting demands.

Service Quality and Oversight

- Stakeholders expressed concern that there are no federal standards to assess the skills of CAs and interpreters who provide Internet-based text and video relay services.
- Previous oversight mechanisms employed by the states do not work for Internet-based relay services. New TRS delivery methods that are Internet-based need the same level of oversight on the federal level as exists for traditional TRS on the state level.
- State relay services vary considerably in quality: Some states have dedicated administrators who are careful about providing high-quality services; other states pay less attention to relay service quality. When state contracts last for a long time and quality fluctuates, there is not much consumers can do to improve the services they are receiving, because they are bound by the relay provider chosen by their state and may not switch providers at will.
- State relay program administrators frequently are approached about problems with the quality of Internet relay and VRS. However, these governmental bodies neither oversee nor have any authority over complaints received about Internet-based services because of technological limitations in determining the location of Internet-based callers. New mechanisms are needed to handle relay complaints at the federal level.
- Despite the existence of two relay advisory bodies at the federal level—the Interstate TRS Council, which advises the National Exchange Carrier Association (NECA) on interstate cost recovery issues, and the TRS Subcommittee of the Consumer Advisory Committee—there is no formal federal mechanism that oversees interstate relay service quality or provides ongoing advice to the FCC with respect to the quality of these services. Consumers want a structured means of influencing the FCC process with respect to issues of relay quality.

Other Factors

- It is a challenge for the TRS regulations to keep up with new technologies. Specifically, it often takes years for the FCC to grant provider approval to implement a new technology. This prevents relay consumers from taking advantage of relay innovations as soon as they become available.
- The FCC has decided not to compensate providers for research and development for technologies that are not needed to meet the agency's minimum TRS standards. This can create a chilling effect on research and development needed to achieve true functional equivalency, discourage innovation, and prevent consumers from reaping the benefits of advanced technologies that can better meet their telecommunications needs.
- Attitudinal barriers that impede full telecommunications access still exist, especially at police departments and hospitals, where personnel seem unwilling to make their emergency services accessible to consumers who use modern relay technologies. These entities do not realize that the telecommunications access mandated by the ADA is a civil right.
- For most relay services, the process of first connecting to a CA and then connecting the second leg of the call to the receiving party is not transparent to the call participants. Consumers would prefer that there be automatic connections for all relay modalities, for both incoming calls and outbound dialing.
- Although some relay calls are made between people with hearing or speech disabilities, most relay calls include at least one hearing person. Often the experience of the hearing person to the call is not fully considered in the planning of relay implementation. These needs must be considered to ensure that the call flows as seamlessly and naturally as possible, with few interruptions.
- For a number of reasons, the telecommunications needs of people who are deaf-blind still are not being met as well as they are for other populations of relay users. First, TeleBrailles—devices that consist of a TTY connected to a Braille keyboard—have gone out of production because of their high cost (each device costs approximately \$6,000) and low market demand. Second, VRS is not accessible to deaf-blind people

unless they have access to costly equipment for receiving Braille output and unless VRS companies cooperate in offering dual sign language/text services. Third, deaf-blind people do not have access to pagers to facilitate their mobility.

- Although access to 911 emergency assistance through traditional TTY-based relay services has been relatively effective, because relay services depend on third parties, it is not clear what would happen if a pandemic broke out that threatened relay staffing. Consumers believe that the telecommunications industry needs to prepare for such contingencies, because another 15–20 years will pass before the third party to relay calls can be eliminated entirely.
- Significant relay innovation has originated in state relay programs. For example, the provision of VRS, STS, and captioned telephone service all began as state initiatives. Stakeholders raised concerns about losing these local perspectives as the nation's relay services migrate to the interstate jurisdiction.
- Sometimes businesses, such as airlines, request people with hearing loss to use a direct TTY line instead of VRS. Stakeholders expressed an interest in being able to choose how they communicate with businesses and governmental agencies.

2. Key Stakeholder Recommendations

Implementation Issue: The laws governing relay services have not been able to keep up with the fast pace of ever-changing relay technologies.

The FCC must approve a new relay technology or service before it can become eligible for reimbursement from the Interstate TRS Fund. Many consumers feel that the process for granting such approval is too drawn out and has been unfairly preventing consumers from benefiting from innovations until long after they are technically feasible. The problem is that relay technology is evolving at an unprecedented pace, which is being accelerated by the migration from PSTN to Internet-based technologies. As a consequence, technology has pushed ahead much faster than the law has allowed; one stakeholder explained that there is a mismatch between the speed at which technology is being developed and the pace at which the laws are amended. One recent instance in which this occurred concerned video mail, a technology that enables a hearing person to

leave a video message through an interpreter for a VRS recipient. Although this technology is the functional equivalent of voice mail, it took over a year to get it approved by the FCC after the technology to provide this feature became available.

Recommendation: The FCC should accelerate approval for new relay technologies and should establish clear guidelines to govern new technologies at the time they are approved. (The latter concern grew out of events that occurred following approval for VRS, when the lack of FCC standards resulted in several unfair marketing practices later banned by the FCC.)

Recommendation: Rather than deal with new technologies on a piecemeal basis, the FCC should look at the big picture and chart a forward-looking course for TRS over the next 5–10 years that considers new mainstream technologies and that drives decisions that respond to these innovations. The communication technology that relay users need and want is melding with the technology desired by mainstream consumers, such as videoconferencing, VoIP (Voice over Internet Protocol) services, and enhanced multimedia that provides text and video. It is important to get on the technology bandwagon, to ensure that people with disabilities become players in the development of mainstream technologies.

Implementation Issue: A viable and stable funding source for TRS is needed as telecommunications services migrate from the PSTN to the Internet.

Under the ADA, relay services are supported with funds that come from intrastate, interstate, and international end user telecommunications revenues. As telephone users migrate away from the traditional telephone network to the Internet, this funding source is declining. The decreasing revenue base is accompanied by unprecedented growth in relay services, brought on by new technologies. Virginia was the first state to pass legislation (effective January 1, 2007) that changes the funding mechanism for state TRS services from a surcharge on landlines only to a surcharge on landline and wireless telephone services, as well as cable, satellite, and VoIP services. In addition, the U.S. Senate is considering legislation that would require universal service contributions from these entities.

Recommendation: Congress and the FCC should consider regulatory or legislative actions that include Internet-based providers in the categories of companies that must contribute to state and interstate relay support to ensure the viability of relay funding and to distribute costs fairly among all subscribers of communication services.

Recommendation: The FCC should develop a reliable and consistent funding methodology to ensure the stability of VRS, as well as all other types of TRS. The funding mechanism currently used by the FCC for interstate relay services—especially VRS—has been in a state of flux since 2003.

Implementation Issue: Although VRS has become extremely popular among people whose first or preferred language is sign language, and Internet-based text relay has become popular among people who enjoy its versatility and mobility, not all potential users of these services are able to afford the high-speed broadband needed to use them.

Recommendation: Congress should amend the Communications Act or the FCC should initiate a rule change regarding provisions governing universal access. As people with disabilities migrate from the public switched telephone network to Internet-based text and video communications, state utility regulators should allow universal service subsidies that are used to defray the high costs of telephone service for low-income people—such as subsidies available under the Lifeline program (which provides a monthly discount for telephone service) or the Link-Up program (which provides a discount for initial telephone connection charges)—to help defray the costs of broadband service.

Implementation Issue: As the jurisdiction for relay services shifts away from the state to the interstate arena, complaint handling and oversight for these services must be redefined. Currently, most businesses and consumers are not aware that states have no jurisdiction over Internet-based relay services, and relay service complaints continue to come to their state-based relay authorities.

Recommendation: The FCC should supplement the current TRS complaint procedure, which requires consumers to bring complaints to the states first and then—after 180

days—to the FCC, with new procedures for Internet-based calls. This would be consistent with the FCC’s new certification process for Internet-based and VRS providers.

Recommendation: Additional oversight of Internet-based relay services is needed, either through a new structure at the FCC or through a new federal-level advisory body that can monitor Internet relay activity and provide regular feedback to the FCC on the need for revisions to the agency’s relay standards.

Recommendation: State relay administrators, state relay service providers, and other telecommunications providers should educate businesses about how and where to report Internet relay misuse. This can be done in part through programs such as Maryland’s relay partner program, which educates businesses about the functions and purposes of relay services.

Recommendation: The FCC should establish a mechanism whereby consumers can contact an Internet-based relay provider when they have a complaint about that provider or wish to report relay misuse. One way of enabling consumers to identify the provider on any given relay call is to assign each provider a series of unique numbers for each of its CAs. For example, Sprint could be given the 1000 series of numbers, Verizon the 2000 series, MCI the 3000 series, and so on. That way, the employer of every CA could be identified easily by the enforcing agency.

Implementation Issue: Despite improvements in the percentage of individuals and businesses that accept relay calls, hang-ups by businesses, and even by government agencies, are still common.

Since the inception of relay services, lack of awareness about TRS has caused many businesses and individuals to hang up on relay calls, believing them to be commercial solicitations. Over the past year or so, this problem has been exacerbated by an onslaught of inappropriate or abusive Internet-based relay calls. In addition to pranksters, the perpetrators often are hearing individuals from other countries who make calls over Internet-based relay services to con unsuspecting businesses into sending them products using fraudulent credit cards. It has now become common for some sales establishments

that are afraid of being victimized to refuse relay calls; several of these establishments have even requested that relay providers block all calls to their numbers, a practice that the FCC has specifically prohibited. As a consequence, relay consumers frequently find themselves in the difficult position of having to plead with retail businesses simply to accept their calls.

Recommendation: State relay administrators, state relay service providers, and other telecommunications carriers should identify and implement methods to educate the general public and, in particular, business establishments about the purpose and function of relay services to put an end to the resistance coming from the business community.

Recommendation: Greater efforts need to be made to prosecute individuals who misuse Internet relay services. In the nonrelay context, when fraud is committed by telephone, law enforcement officials can obtain subpoenas that allow them to secure the telephone records of the alleged perpetrators. The same can be done here. The FCC currently has an open rulemaking proceeding to explore the most effective ways of curbing Internet relay misuse.

Recommendation: Technical solutions are needed to automate the identification of the location of someone initiating an Internet-based relay call. This will help deter abuse, facilitate calls to 911, and facilitate accurate billing. The FCC should track these technical developments so they can be implemented as this function becomes available.

Implementation Issue: No common strategy yet exists for the handling of emergency calls made using Internet relay or VRS.

Recommendation: The FCC has an open proceeding to determine how VRS and Internet text-based providers can best handle incoming emergency calls. At the same time, the Department of Transportation (DOT) has been designated the point agency for the development and testing of next-generation technology for 911. The two agencies should coordinate with one another to ensure that relay providers are able to accept and swiftly connect incoming calls with appropriate public safety answering points.¹⁰

Implementation Issue: Few state equipment distribution programs have modernized their equipment to keep up with technological innovations.

Various states have programs through which they distribute specialized customer premises equipment (SCPE) designed to facilitate telephone communication by people with disabilities. Some of these programs make loans for equipment, others distribute vouchers, and still others grant recipients outright ownership of the devices.

Traditionally, the equipment given out by these programs has been geared largely to address the needs of TRS consumers. While the programs have successfully distributed SCPE to hundreds of thousands of people with disabilities, restrictions in their scope are keeping most of these programs from meeting the communications needs of these people. The vast majority of states continue to offer only legacy technologies that rely on the landline network and that are becoming obsolete in a rapidly changing communications environment. This excludes all wireless devices, including mobile phones and pagers. Many programs also fail to offer equipment needed to use STS relay, such as artificial larynxes or biofeedback devices. In addition, TeleBrailles needed by deaf-blind relay users are often not available. Similarly, the programs rarely pay for computers or computer-like equipment. Thus, a deaf person with low vision who wants to use VRS, but needs a larger screen to do so, is not likely to be able to acquire that screen through these programs. To make matters worse, some states require recipients to keep their equipment for at least five years before they are allowed to acquire new equipment. The consequences of this policy are severe. For example, an individual given a TTY just two years ago would be unable to exchange this device for a captioned telephone, even if the latter better meets his or her telecommunications needs.

Recommendation: State equipment distribution programs need to take a harder look at the needs of the consumers they serve. These programs should reevaluate the scope of their offerings in light of new computer, electronic, and Internet-based technologies, and should allow consumers to trade in their equipment sooner. One state that has already made some of these changes is Missouri; in 2000, it began distributing adaptive computer equipment for access to the Internet and e-mail. Finally, state programs should coordinate

with one another to ensure that they are consistent and uniform in providing the best options for relay consumers.

Recommendation: The introduction of new technologies has expanded both the need and the role of equipment distribution programs. Now, along with relay users, other people with disabilities often need specialized equipment to obtain access to technology and telecommunications. As a result more people are now competing for limited state funds, and new funding sources need to be identified. Disability advocates are interested in making universal service funding available to subsidize the cost of the expensive SCPE that is needed by people with disabilities to access broadband technologies. Such “broadband bucks” would allow these individuals to select the accessible equipment they need to accommodate their specific disabilities.

Implementation Issue: Relay users still find that businesses and other individuals are reluctant to use TRS to return their calls.

More than a decade and a half after passage of the ADA, relay users still find that receiving return calls through TRS remains a problem. This situation is especially the case when it comes to potential employers, who tend not to want to bother when they see “To contact me, call this number.” As an access gateway to all PSTN-based relay services, 711 relay dialing has improved significantly the rate of traditional TRS return calls, but even this access code has not eradicated the problem. To exacerbate matters, paper and electronic forms and applications typically do not provide room for a relay number (even if it is only three digits); these forms typically only have a single space for the applicant’s 10-digit phone number.

Recommendation: An FCC rule change may be needed to require connections for outgoing and incoming relay calls that are automated to the same extent as those for conventional voice telephone calls. The technology for automatic connections through all relay modalities exists but is not mandated by the FCC.¹¹

Implementation Issue: Greater efforts need to be made to provide STS relay users with information and training on STS. In part, this is because unlike the culturally

Deaf community, which uses a number of networks for the distribution and flow of information, individuals with speech disabilities often are not members of disability organizations where they can distribute or acquire this information. Although STS relay services are mandated by the FCC, use of these services over the past year declined at a rate of 2.4 minutes per day.

Recommendation: The underutilization of STS relay services can be reversed by identifying and training potential STS users. Training of this type, which typically takes three hours in the person's home, must be done on a one-on-one basis. (Minnesota and California are two states that are conducting such training.¹²)

Recommendation: States should release information about STS call volume so consumers can determine where outreach is needed. In the past, some states have been reluctant to give out this information; for example, in a 2006 call volume study, only 26 states provided this information.

Recommendation: The telecommunications companies could establish a national nonprofit organization to advance the use of STS.¹³

Implementation Issue: It is not clear whether relay calls using the services and skills of more than one type of communications assistant are eligible for compensation from state and interstate relay funds.

In recent years, innovative types of relay technologies have made it possible for individuals with disabilities who use one type of relay to call people using other types of relay or text devices. For example, a captioned telephone user now can speak to a TTY user, and an STS user can converse with a VRS user. In these instances, more than one CA, each of whom has different skill sets, is needed to assist in relaying the call. Similarly, on occasion, more than one CA will be needed to accommodate a single individual's disability during a relay call. For example, a person who is deaf-blind may wish to use VRS to sign to someone else but may need to receive conversation back in Braille (using a TTY connected to a Braille display). In this instance, one CA would need to perform sign language interpreting while a second would need to type back the

responses. Virginia, Maryland, and Massachusetts are three states that provide reimbursement for these and other multiple CA calls. Maryland indicated that it will also pay for the call if one of the relay modalities used is interstate, such as interstate captioned telephone service.

Recommendation: The FCC should clarify that all relay calls must be handled and are eligible for compensation from the Interstate TRS Fund, even when more than one relay modality is needed to complete the call.

Implementation Issue: Although captioned telephone relay services are the only means of providing functionally equivalent relay services for many individuals with hearing loss, these services are not available to the vast majority of potential users.

As a group, individuals who are hard of hearing or late-deafened have not benefited from the relay mandates of Title IV to the same extent as their peers who are culturally Deaf. There are a few reasons for this. First, these individuals typically are not familiar with TTYs; they are typically accustomed to using voice telephones. Second, until recently, most relay marketing and service features have focused on the needs of the culturally Deaf community. Although the FCC's Title IV rules require voice carryover (VCO)—which allows a hard-of-hearing person to use his or her own voice to speak and to use the CA to type back responses from the other person—many hard-of-hearing or late-deafened individuals do not understand how to use this relay feature. Captioned telephone service finally offers individuals with hearing loss the opportunity to use relay services with equipment that is just like the conventional voice telephones that many of these people are familiar with. Sixty percent of current captioned telephone users have indicated that they did not use relay services before this technology came along. Thirty-eight to 40 percent of these people are over the age of 65. However, captioned telephone relay services are not mandated by the FCC. As a consequence, many states do not offer these services and, if they do, they limit the number of residents who can participate in their captioned telephone program. At this time, there is no Internet-based version of captioned telephone relay service available to the public.

Recommendation: Petitions requesting the FCC to mandate captioned telephone relay service and approve an Internet version of this service (filed on October 31, 2005) should be granted¹⁴ because a far greater number of individuals will be able to receive functionally equivalent telephone services. Internet-based captioned telephone relay services also would eliminate the need for separate captioned telephone equipment, because users simply would be able to install software on their computers to access these services.

Implementation Issue: Stakeholders raised concerns about the extent to which testing and assessments are being conducted by Internet-based relay providers to ensure the high quality of their CAs. Among other things, stakeholders raised concerns about the voicing quality of video interpreters.

Recommendation: The FCC should issue standards to ensure standard interpreter qualifications across providers. One way of evaluating is to use qualified interpreters and deaf relay consumers to assess the ability of video relay interpreters to effectively facilitate communication. While some, if not most, VRS providers already require compliance with minimum certification standards, or test interpreters to assess the effectiveness of their signing, voice presentation, finger spelling, and so on, FCC standards are needed to ensure consistency. VRS stakeholders say it would be helpful as well for them to be able to receive some type of feedback during calls (for example, through captions) that would let them know what the interpreters are voicing, to build trust in the interpreter's ability.

Implementation Issue: Although the ADA has various requirements for public TTYs, public VRS stations are rare. In mainstream locations, such as public libraries, the few attempts at installing public video stations have been unsuccessful either because there is minimum "deaf traffic" in these locations or because people are not aware that these public stations exist.

Recommendation: Vendors should install videophone equipment in public areas frequently visited by people who are deaf, such as in dormitories and activity rooms in residential schools for the deaf, vocational rehabilitation offices, and community service

centers for people who are deaf (such as the California Coalition of Agencies Serving the Deaf). At the latter sites, people who are deaf or hard of hearing also can make arrangements to acquire telecommunications equipment through state distribution programs. At all the locations, people who cannot afford the high-speed connectivity needed for direct access to videophones can follow up on business related to the services provided at these locations, seek advocacy services related to ADA-related complaints, or use the phones for other purposes.

Implementation Issue: It is difficult for hearing individuals to make calls using Internet relay and VRS, because the dynamic IP addresses used for Internet communications constantly change. Although some VRS providers use proxy numbers that are mapped to dynamic IP addresses, these numbers cannot be used from one provider to the next.

Recommendation: The FCC should approve a global database for proxy numbers. Each Internet-based relay customer should be given a single number that can be used to receive Internet-based calls through all relay providers. Such a universal approach to numbering—by which the assigned number would be neutral with respect to both the provider and the equipment the customer uses—is commonplace for conventional telephone users. Although telephone subscribers have different local exchange companies that provide their service and telephone wiring, the telephone number that each person is assigned is used to receive calls through any telephone company. Universal numbering is especially important in emergencies such as hurricanes, where consumers cannot rely on a single provider to receive incoming calls. The FCC currently has an open rulemaking proceeding to address the need for a global database of proxy numbers that can be used to connect hearing individuals to their dynamic IP or VRS calling destinations.

Implementation Issue: Businesses and governmental agencies frequently use firewalls for security, which can inadvertently block VRS calls. Sometimes hotels or corporations are not willing to open up the ports needed for employees or visitors to have video communication.

Recommendation: DOJ, the Access Board, and agencies concerned with digital and communication security should amend the ADA Title II and Title III/ADA Accessibility Guidelines (ADAAG) to address the problem of the use of firewalls for security, which can inadvertently block VRS calls. Businesses and government agencies need to have an accessibility guideline that requires them to make video communications possible when they use firewalls. If there is an ADAAG guideline on this matter, technology will be designed to fix this dilemma. In the meantime, employers should obtain a separate broadband line that can be opened for VRS users.

Implementation Issue: People who are deaf-blind are unable to type quickly and tend to have greater lags in response time during their TRS calls. Hearing parties to the call can grow impatient when this occurs.

Recommendation: State relay administrators and relay service providers should instruct CAs to be more patient with deaf-blind callers, who, because they use refreshable Braille, often read more slowly than other relay users. In addition, CAs should be permitted to instruct call recipients about the caller's needs and the fact that the call may take a bit longer to complete. Technologies that may enable tactile communication over the Internet through robots are being explored and could facilitate access in the future for people who are deaf-blind.

3. Topics for Further Research

Market Research on Relay Use Patterns

Relay consumers must help lead technological advances by establishing core guiding principles and working with technology companies to plan out the future of relay business. To achieve this end, additional market research on relay usage patterns is necessary. This research should focus on the types of relays people use, why they use

them, why they shift from one relay modality to another, and so on. The goal is to ensure that consumers with disabilities stay ahead of, not behind, the technology curve.

E. Disability Community¹⁵

1. Key Implementation Issues and Discussion

People with Hidden Disabilities

A key topic of discussion was the ADA implementation issues facing people with hidden disabilities, such as psychiatric disabilities, learning disabilities, epilepsy, and multiple chemical sensitivities. One participant said that the issue of whether to disclose a disability in an employment situation presents a real dilemma for people with hidden disabilities, especially if stigma is commonly associated with the disability. Even when a person with a disability needs a minor reasonable accommodation, he or she sometimes fears that disclosure may result in discrimination. Other participants discussed attitudinal barriers that people with hidden disabilities face, including the many inappropriate comments they may endure if their disabilities become known.

Advocates for people with psychiatric disabilities stated that the ADA has not worked well for this group. Many individuals with psychiatric disabilities are not aware of the ADA, according to various stakeholders, or are not aware that it applies to them. Similarly, from various stakeholder perspectives, covered entities are unaware and uneducated about how to ensure that the rights of people with psychiatric disabilities are protected.

While the courts are hostile to the ADA generally, according to some stakeholders, they are especially so with respect to people with psychiatric disabilities. This problem is rooted in stereotypes and incorrect assumptions about risks, dangers, and capacities. Several people called for an education campaign for people with psychiatric disabilities because they need to be aware that the ADA does apply to them, and need to know how they can use it.

Covered entities have a similar need for education, according to various people, including police who need education on appropriate use of restraints with people with many types of disabilities, and especially people with psychiatric disabilities. Another participant pointed out that people with psychiatric disabilities have “really gotten clobbered” in the media, which frequently portrays members of the group in a stereotypical manner that encourages negative attitudes and perceptions. Another person added that the group has seen “horrible pushback” by society against their community and against the recovery model for people with psychiatric disabilities. Many people noted that serious and damaging perception problems lead people to assume that everyone with a psychiatric disability is a danger unless he or she is on medication. Even then, the fact that a person uses medication can become a central issue and the basis for discrimination.

Another participant said that the ADA has not worked well in the area of employment for people with learning disabilities, who are still largely unemployed or underemployed. The perception of the difficulty involved in tailoring accommodations for people with learning disabilities could explain this, according to several people. The Supreme Court’s ruling in the *Sutton* case has had a very significant impact on people whose disability is mitigated by equipment or medication, including those with psychiatric and other hidden disabilities. Another person discussed how ADA implementation has always been very weak in dealing with the issue of multiple chemical sensitivities, because covered entities do not recognize the impairment and are generally unwilling to provide appropriate accommodations when they become aware. Additional discussion took place about how retailers often fail to consider accessibility for people with nonmobility disabilities.

People with Visual and Hearing Impairments

People with visual and hearing impairments still face particular ADA implementation challenges. Representatives of organizations of people with visual impairments pointed out that one of the most underimplemented provisions of the ADA is the requirement that covered entities provide alternative communication formats. They noted that businesses and others assume that providing information and material in alternative formats will impose an undue burden and, therefore, is not required. Equally frequently, covered

entities simply are unaware that the ADA requires materials and information be provided in alternative formats.

Similarly, municipal officials in charge of the public rights of way, such as streets and sidewalks, assume that they have met their ADA obligations if they have installed curb ramps. Public entities are not aware of problems faced by people who do not use a wheelchair, or the liability concerns raised by their failure to be aware of other disabilities.

Various stakeholders mentioned that entities that operate Web sites, for example, want to know what the ADA requires rather than creating accessible sites simply because it is a good business practice.

Several stakeholders mentioned that some employers still fail to allow service animals to accompany people with disabilities, which indicates that basic ADA information is not reaching the employer community.

Representatives from the Deaf community expressed continued frustration over lack of communication access. One person pointed out that it can still be difficult to telephone a doctor or discuss critical health issues and stressed the need for continued, robust education about the access needs and rights of individuals who are Deaf.

Core ADA Issues: ADA Definition of Disability, the *Olmstead* Decision, and the Persistence of Stereotyping Attitudes About Disability

A significant and central theme identified by many stakeholders is the problems that have arisen from the U.S. Supreme Court's narrowing of the ADA definition of disability, which has caused a serious "rift" in the statute. One person expressed a grave concern about how the current definition disadvantages people with "episodic disabilities."

Many saw poor implementation of *Olmstead* as a significant ADA challenge. A number of participants discussed how states are not meeting the deinstitutionalization mandate of the *Olmstead* case and how difficult it has been in many locales to sustain momentum for

efforts that could lead to meaningful community placement outcomes. Lack of funding and lack of political will contribute to this stagnation, according to some.

Others discussed the persistence of negative attitudes about people with disabilities. One participant described a discussion in which the idea of using the contracting power of the government to spur the hiring of people with disabilities was met with uninformed and stereotypical ideas about the productivity of people with disabilities. Other participants noted that popular language continues to include expressions that are disrespectful of people with disabilities.

Employment

Employment issues were a key topic of discussion at the disability community stakeholder dialogues. Lack of accommodations in the workplace was a significant issue for many participants. One person suggested promoting a new approach to understanding reasonable accommodation—emphasizing universal design and ergonomics instead of the exclusive use of the diagnostic and medical model in employment.

Another major issue raised by some stakeholders is the lack of bona fide employment data for people with disabilities. One person felt that the emphasis on protecting employee privacy prevented entities from collecting concrete information about workers with disabilities and employers' track record and performance in hiring and retaining people with disabilities. Others felt strongly that people with disabilities have not been encouraged to answer employment questionnaires and voluntarily provide information about employment and accommodation. One stakeholder said that employment data are critically important to show that people with disabilities already are working and that their presence in the workplace is not a burden for employers. This stakeholder felt that it is necessary to find ways to obtain this information without forcing people with disabilities into a medical model, or requiring a diagnosis or voluntary self-identification.

Access to Public Accommodations and Transportation

Several stakeholders discussed retailers who fail to provide access, such as accessible dressing rooms, and Title III entities that think a back door entry constitutes “appropriate access.” One participant mentioned the paradox of paratransit: If it works well, demand grows, thus creating funding and management challenges for the transit district. Others mentioned various large and small transportation barriers that people with disabilities face. For example, numerous cultural or attitudinal barriers exist in certain areas of private transportation, especially taxi service. Stakeholders mentioned that cab drivers sometimes refuse to accept service animals. One participant said that he has been made to feel as though he is troublesome when the fixed-route bus driver must spend time securing his wheelchair or when a bus passes him by with the excuse that the lift is not working. Another stakeholder mentioned that there is a need to reduce costs for attendants who accompany people with disabilities during paratransit rides as well as in other situations such as at entertainment facilities. In some cases, these added costs prevent the person from attending the function or using the transit service.

There was significant discussion about the ongoing problem some people with disabilities face when they seek appropriate accommodations from colleges and universities. These entities do not always appear to understand their ADA obligations and responsibilities, which can result in limited educational choices and opportunities for students with disabilities.

Training

Stakeholders agreed that there is a need for more training of people with disabilities. One person said, “Only the protected class can be relied on to truly enforce the law and ensure its continued implementation.” They noted that many people with disabilities do not know about the ADA or, if they have heard of the law, they do not understand how it affects them. Others said that some people with disabilities think they understand the law but actually are not well-versed in its provisions, so they have inappropriate expectations or provide poor advice. Several stakeholders noted that training should be targeted to specific groups (e.g., youth, people with hidden disabilities) so it will be perceived as

relevant and they will be encouraged to use it on their own behalf and to advocate for others.

Enforcement

Enforcement was a significant topic of discussion. Participants were unanimous in their observation that federal enforcement, particularly of Title III, has been weak and ineffective. The lack of damages under Title III, in their view, has created a disincentive for some public accommodations to remove architectural barriers or take other steps to become accessible. They noted that the courts have further limited the way the ADA can be used in various contexts, including employment and when public accommodations have failed to become accessible or provide auxiliary aids or services. Various stakeholders noted that weak or incomplete enforcement of accessibility requirements on the state and local levels is, in part, a result of poorly trained building inspection officials, architects, and other building professionals.

Rural Issues

Disability community stakeholders across all the dialogues discussed at great length the unique ADA implementation challenges people in rural areas face. An overarching problem stakeholders described is the lack of understanding and awareness of the ADA and access on the part of local governments and businesses in rural areas. They noted that a backlash is likely when people in small towns and rural areas raise the issue of poor access or file a complaint to combat the general lack of access. A common theme among rural stakeholders was that people are reluctant to rock the boat in a place where everyone knows one another. Some participants discussed how the lack of access is perpetuated, because the community can label a person a troublemaker if he or she raises an ADA complaint. Also, if a covered entity provides access or an accommodation for a person with one type of disability, often nothing will be provided for people with other requirements. Where accommodations do exist, there is little or no signage or advertising signifying its availability. Some people noted that, as a practical matter, many small towns have older buildings that present very difficult accessibility problems. When

attempts are made in these situations to provide accessibility, they often are inadequate, ineffective, and poorly maintained.

Many stakeholders from rural areas discussed the impact of the lack of government infrastructure available in urban areas. For example, one person said, “Small cities equal small funding,” especially when locales depend on a local tax base to fund capital projects. Several people mentioned that rural towns and small cities tend to have very small building code inspection departments, often consisting of only one person, and few resources for addressing disability access. Another serious problem is that low-density areas have little or no public transportation, which makes it very difficult for some people with disabilities to travel to school, jobs, and community activities, and to conduct business in their communities.

Others mentioned specific ADA enforcement problems. Several discussed how difficult it is to use litigation effectively in rural areas. Some stated that there are too few attorneys and almost no one who is qualified or willing to take a case on a contingency basis. In rural areas, lack of ADA training for attorneys is part of the problem. As several people noted, if DOJ won’t investigate a complaint, and if a person cannot find legal representation, then people with disabilities effectively have no ADA rights. Furthermore, several people noted that attorneys in rural areas are reluctant to file a lawsuit against a party they perceive as a neighbor or a friend.

Various strategies were suggested to address these issues. Several people said they have found it effective when individuals who do not live in the community either bring or follow up on compliance complaints. One example from California involved a rural independent living center that contacted CalTrans, the state transportation agency, about the very slow pace of improved bus stops and roadside access for which the county in question had received funding. CalTrans contacted the county, conducted a review of what had been done, audited the spending records, and brought in outside monitoring to implement the funded program more vigorously. Advocates stressed the importance of devising strategies that follow the money and that encourage locals and outsiders to work together on advocacy.

Several stakeholders noted that people with disabilities in rural areas also have seen some ADA successes. The availability of TTYs in hospitals was an advance hailed by one person. Another described an accessible homeless shelter that was built with community development block grant funds in a small city in rural California.

2. Key Stakeholder Recommendations

Implementation Issue: Few people with psychiatric disabilities are aware that they are covered by the ADA.

Recommendation: Federal agencies that have ADA implementation and enforcement roles should join in a collaborative effort to fund a substantial nationwide ADA training initiative for people with disabilities. (See similar recommendation in Section C – Public Accommodations.)

Implementation Issue: Some public safety agencies are not aware that the ADA confers civil rights on people with disabilities or how to relate appropriately with individuals with disabilities, especially psychiatric disabilities.

Recommendation: Key organizations concerned with disability advocacy and policy (for example, DOJ, NDRN, and mental health consumer organizations) should create training and informational materials that provide practical, realistic information and guidance for specific public safety entities (e.g., police, sheriffs, firefighters) and that dispel stereotypes. The key organizations should recommend policies that the entities should adopt to guide their conduct in situations involving individuals with disabilities, especially psychiatric disabilities. Policy guidelines must acknowledge that standards for behavior and conduct will differ according to the context and the situation, but a process must be set forth for determining whether a risk exists and whether an accommodation can be provided that will mitigate the risk. (See similar recommendation in Section C – Public Accommodations.)

Implementation Issue: People with disabilities from small towns and rural areas sometimes experience a backlash if they challenge the general lack of access, making it difficult or impossible to implement and enforce the ADA.

Recommendation: DOJ should step up its enforcement efforts in rural communities. Using Project Civic Access as a model, DOJ should initiate compliance activities tailored to the needs and stated goals of the disability communities in small towns and rural areas.

Recommendation: Federal agencies charged with ADA implementation and enforcement should create a rural monitoring and enforcement project in collaboration with regional ADA & IT Technical Assistance Centers, state Protection and Advocacy organizations, local disability organizations, individual leaders with disabilities, and civic and community leaders. The goal would be to identify and test effective methods for achieving ADA implementation in small towns and rural areas that could be publicized and replicated.

Recommendation: Regional ADA & IT Technical Assistance Centers and state Protection and Advocacy organizations should develop a model project by collaborating with disability organizations and individuals with disabilities from selected small towns and rural areas to develop an education and information campaign that promotes public awareness and accessibility. One key strategy would be to distribute targeted ADA materials to the public—for example, libraries, job training centers, hiring programs, and unions—and include ADA information with local business tax invoices, and with all business transactions involving licensing, building and occupancy permits, business permits, and inspections. (See related recommendations for urban areas in the section on Title III.)

(NOTE: See sections on Title I and III for additional recommendations that address implementation issues raised during the disability community dialogues.)

F. Observations by Stakeholders from Diverse Cultures

1. Key Implementation Issues and Discussion

Over one-third of the participants in the stakeholder dialogues were from culturally diverse communities in rural areas or large cities. These individuals shared their perspectives on ADA implementation in employment, transportation, telecommunications, by public entities and public accommodations. People with disabilities from diverse backgrounds who lived in predominantly homogeneous areas spoke of accessibility issues in their communities, particularly the lack of access provided by small businesses and community service agencies in Chicago's Latino neighborhoods and San Francisco's predominantly Asian and Latino neighborhoods.

Comments about the lack of compliance by small businesses in diverse neighborhoods mirrored the comments about small businesses in general. Stakeholders noted that some small businesses in diverse communities fail to implement the ADA for the same reasons many small businesses fail to do so: ignorance of the law, concerns about the cost of barrier removal, and the perception that people with disabilities do not frequent their establishments.

An important distinction emphasized by stakeholders from diverse cultures was that people with disabilities sometimes confront an additional barrier to access in culturally diverse communities: different cultural attitudes about disability.

Different Cultural Attitudes About Disability

Stakeholders from diverse cultures noted that underlying the lack of compliance with the ADA in all communities are differing cultural attitudes toward disability. In culturally diverse communities, lack of compliance also may be due in part to the small number of people from those communities who understand different cultural attitudes and can respond with appropriate information and technical assistance. Stakeholders pointed out that individuals from ethnically diverse cultures are underrepresented in organizations such as independent living centers (ILCs), ADA & IT Technical Assistance Centers, and

special education departments—groups that are primary providers of information about disability and the ADA.

Experience among the stakeholders correlates somewhat with research showing that when a person has previous experiences with people with disabilities—for example, having a family member, employee, or friend with a disability—progress toward compliance is more likely.

Lack of Culturally Competent ADA Information

Stakeholders noted that although DOJ publishes much of its information and technical assistance materials in multiple languages, the materials do not demonstrate cultural competence, nor are they delivered in a culturally competent manner.

Lack of Leadership

Stakeholders from culturally diverse populations reported that their leaders have not embraced disability rights, nor have significant numbers of people with disabilities in their communities developed into leaders. Increased ADA implementation requires leaders who are disability advocates and who promote and model accessibility.

Noncompliance by Community Organizations

Stakeholders gave a number of examples of community-based organizations serving culturally diverse communities that are not architecturally accessible or do not make programmatic accommodations for their constituents with disabilities. For example, an immigration resource center turned away a deaf client rather than provide an interpreter, and a mental health clinic in a Latino neighborhood in Chicago remains inaccessible to people using wheelchairs. Unfortunately, according to the stakeholders, these organizations do not understand that their failure to accommodate people with disabilities who seek their services erects rather than alleviates social barriers.

2. Key Stakeholder Recommendations

Implementation Issue: Many small businesses in culturally diverse communities have not complied with the ADA.

Recommendation: DOJ should dedicate additional resources to develop culturally competent information materials on the ADA and should support development of culturally competent outreach activities.

Recommendation: Disability advocates associated with local Independent Living Centers and other disability organizations should initiate contact with leaders in the community and discuss local needs from all perspectives.

Recommendation: Disability advocates, with the assistance of local leaders, should contact local chambers of commerce, merchant associations, and social service clubs in their communities and build partnerships for outreach and education.

Recommendation: The National Institute on Disability and Rehabilitation Research should establish a program modeled on the regional ADA & IT Centers but focused on culturally competent outreach and technical assistance to culturally diverse communities. The goal of these new centers would be to enhance culturally diverse covered entities' capacity to implement the ADA. With support from and collaboration with local community leaders and organizations, the centers would conduct outreach and provide technical assistance, information, and training to small businesses and organizations in their project area.

Recommendation: In conducting outreach to culturally diverse communities, disability advocates and organizations should use popular local media outlets that target those communities.

Implementation Issue: It may be financially prohibitive for some small businesses to remove physical barriers.

Recommendation: Key federal agencies and private community development organizations should convene an experts meeting to explore methods for using various sources of community development funding—such as the community investment tax, SBA loans, FEMA disaster relief funding, and community development block grants—to help bring about ADA compliance changes. This could be accomplished by requiring ADA compliance as a term and condition of funding, which would be supported with some financial help from the funding agency toward achieving the required accessibility features and by dedicating specific amounts of money from development funds to accomplish high-priority barrier-removal projects in the target communities.

Implementation Issue: Implementation in a culturally diverse manner that is sensitive to, and respectful of, cultural traditions is hampered by the lack of inclusion of people from diverse racial and ethnic backgrounds among the local leadership.

Recommendation: The leaders of local Independent Living Centers and other disability organizations should seek out leaders in culturally diverse neighborhoods to hold discussions on ADA implementation and to understand the needs of citizens and businesses. The objective is to raise awareness about important cultural traditions that may affect perceptions of disability; to inform leaders about the benefits of the ADA; and to build partnerships that provide mutual benefit for the disability and culturally diverse communities. The goals are for local leaders to demonstrate that the ADA can be implemented in a meaningful way in all communities, to promote implementation, and to serve as a model for others.

Recommendation: Local Independent Living Centers and other disability organizations should seek out individuals from culturally diverse backgrounds to mentor people with disabilities.

Recommendation: For ADA implementation to remain a priority in the community, disability advocates must make regular informational visits to state and regional public office holders, especially caucuses dedicated to specific diverse communities.

Recommendation: Local partnerships made up of community disability groups, local business associations, and elected officials should regularly recognize entities that have been especially successful at achieving architectural and programmatic access by publishing information about them on community Web sites and in publications, and by honoring them at public events attended by their peers.

G. Judicial Stakeholders

Judicial focus groups were held November 15, 2005, and March 28, 2006, with participants recruited from among state judges who were taking courses at the National Judicial College (NJC) in Reno, Nevada. Since the goal was to obtain input from a variety of states and from course participants who presided over a general civil jurisdiction court that would give them the opportunity to see disability rights cases, focus group participants were recruited from among judges undertaking training on “First Amendment Media Issues” and other general interest courses.¹⁶ (See Appendix D for a discussion of focus group methodology.)

1. Participants

Eleven participants from nine states signed up and took part in the two focus groups. They included state judges from North Dakota, Indiana, Louisiana, Pennsylvania, Kentucky, and Oklahoma. One participant was an administrative judge in the Department of Defense operating out of Virginia, one was an administrative judge for the Department of Motor Vehicles (DMV) in Nevada, and another was an agency judge who heard occupational work cases in Ohio. The participants came from courts in such busy urban centers as Philadelphia and from large rural areas in which the judge is required to travel from courthouse to courthouse. The participants represented a wide variety of benches, from high-volume municipal courts to courts of general civil jurisdiction and courts of common pleas (general jurisdiction including criminal and civil). Some participants had practiced law for more than 25 years before their appointment to the bench, and a number

of participants had many years of experience on the bench “in anything from murder to medical malpractice.” One participant had graduated only five years earlier, and another continued to maintain a private practice in addition to sitting as a municipal judge (permitted in his state). There was no representative from either California or New York. There was only one female participant, although various races were represented.

An evaluation form administered to the judges at the focus group’s conclusion reflected interest in and openness to disability rights law from every participant. When asked why he or she chose to attend the focus group, one participant wrote, “I think disability rights is a very important area. Anything involving the law and its implementation should be of concern to judges.” Another participant specifically mentioned his interest in the ADA’s application in the area of access to courts. One came “to share information and experiences and receive information concerning disability rights,” while another admitted that “I know very little about the rights of disabled citizens.”

2. Discussion

Participant self-introduction consisting of name, type of bench, and areas and years of experience in practice and on the bench

The participants took it upon themselves to establish from the beginning their base experience with the ADA. Most participants indicated that they had no direct experience with the law and had never had to handle an ADA case, in practice or on the bench. As one participant said, “I have never had to implement, supervise, or manage [the ADA] or deal with applying it judicially.” Everyone had heard of the ADA and associated it with physical accessibility and disability rights. One judge said that even though he had not heard any ADA cases, he had tried as a private attorney to get up to speed on the law when it came into force, because he had anticipated a huge impact in the small rural communities that he served. All the participants who mentioned the accessibility features of their court seemed to feel a certain pride in the fact, and throughout the focus group the participants reiterated their interest in learning more about the ADA.

A couple of participants said they had gleaned some ADA knowledge from work experience before they became judges. For example, one participant had worked with DOED and DOL, and had been involved with a reauthorization of the Individuals with Disabilities Education Act (IDEA). Another participant said that at one time he was on a list of judges who could serve as impartial IDEA hearing officers.

Case management and general bench procedures

All the participants heard cases through from beginning to end (none functioned as a pure motions judge), so everyone had to deal with case management techniques and tracking cases. As the chief judge of an urban court, one participant estimated that he had 1,000 cases of all kinds in his courts at any one time, with 300–400 tort cases alone. One participant said he heard 30–40 cases a day in municipal court, and jury trials were to be transferred to district courts within 28 days.

Most of the judges said they worked in a unified state system in which all state court dockets are expected to adhere to strict timelines for being heard and given a disposition. Some of the centralized systems had specific deadlines for specific types of cases, and others required individual courts to manage their case timelines in accordance with a master calendar. One judge did not come from a state with a unified system; he is supposed to adhere to general standards (e.g., hearings are to be heard “expeditiously”), but he is not given explicit timelines for hearing and running categories of cases.

How participants typically familiarized themselves when confronted with new legal issues on the bench

All the participants said they were responsible for a docket that was broad enough to include areas of law that were unfamiliar to them. There was general concurrence that in such an event, they rely first on the lawyers who are responsible for briefing the issues but then also use their law clerks and may check the law on their own, if necessary. Depending on the nature of their bench practice (e.g., very rural or administrative), some participants did not have law clerks. One participant was careful to clarify that while he could check the law as a judge, he has to rely on plaintiff and defense lawyers to inform

him of the issues and the relevant law, especially in an unfamiliar area, and his main focus is on applying relevant law to the facts. In other words, attorneys are the front line for judges to obtain legal knowledge in new areas of law.

Substantive knowledge of and experience with disability rights cases

The ADA was the predominantly recognized disability rights law. The participants also recognized IDEA when it was mentioned, but many seemed wholly unfamiliar with Section 504 of the 1973 Rehabilitation Act (Section 504) when it was brought up by the participant who had worked in DOED and DOL. When asked specifically about the context in which they were aware of disability rights laws, participants gave broad answers rather than particular areas of application such as employment, public accommodations, or access to public services. One participant said he saw disability or injury raised as a defense when an occupational licensee was accused of not doing his job or failing to perform his contract. Another participant similarly stated that he sees disability raised as a defense or mitigating circumstance when the Federal Government attempts to remove an employee's security clearance.

One judge with five years of experience on the superior court in a large city had recalled earlier only a single experience with the ADA—a case in which a deaf couple were divorcing and needed an ASL interpreter for court and mediation. Later in the discussion, he recalled a civil tort case in which a woman driving a motorized cart supplied by a department store had hit an older woman. The older woman's hip was broken and she could no longer live independently after the incident, prompting her to sue the department store for its failure to provide training in the use of its carts. The store's defense was that the ADA required it to supply mobility devices but did not require it to give training in their use.

The only other context in which the participants had experience with disability rights laws was in the context of civil dependency cases. It was unclear whether the brief reference to such civil dependency cases resulted from a confusion of laws designed for the protection of people with limited mental capacity and disability civil rights laws. Aside from these references, and the participants' awareness of disability accommodation

policies in their courts, the group was generally unfamiliar with the broader contexts in which disability rights laws operate proactively. When questioned directly on what they felt were critical elements arising in disability rights cases, the group opined that disability rights cases usually turned on matters of law rather than matters of fact. This may reflect the extent to which the participants were unfamiliar with the law and their underlying assumption that “disability rights” is a highly technical and specialized area of law.

This underlying assumption about the difficult and technical nature of the ADA was repeated a number of times during the session by different participants. When the group was asked whether they received good information about disability rights laws from lawyers and litigants, most participants said they did not see good briefing or issue spotting, or any real knowledge of the law, from the lawyers who appeared before them and raised disability issues as a defense. The judge who had graduated in 2000 did not recall being offered any coursework in the area and had not heard any disability rights cases. Another participant who had practiced extensively before joining the bench in rural Oklahoma said it was very difficult for attorneys to take on ADA cases, especially in rural areas, because they would be taking on local businesses owned by friends and acquaintances and they would become competent in a highly technical area.

In response to the question about the information received from lawyers, some participants simply reiterated their initial assertion that they themselves knew very little about the scope of the ADA and its requirements, and added their impression that there is a very low level of general knowledge of disability rights law on the bench and in the bar. A judge with more than 10 years of experience in an urban state court of general jurisdiction thought that the substantive and proactive ADA cases were probably heard in federal court. Another participant recalled a case in which a plaintiff employee had asked for a special chair as an accommodation. The judge recalled the lawyering as excellent in that case but could not say that this was generally true.

Knowledge of and involvement in disability rights case resolutions and settlements

The participants were first questioned generally about their involvement in case settlements in all areas of law. A participant from a very rural area indicated that 95 percent of the cases before him settle, while a participant from an urban court said that about 92 percent of his cases settle. The rest of the group expressed general agreement with these numbers. There was consensus on the idea that the judges do not involve themselves in settlement except to the extent that judicial conferences are scheduled; often they do not know the terms of settlement, except in those few areas such as class actions and family law where judicial approval is legally mandated. As one judge with 10 years of bench experience put it: “The ‘why’ or ‘how’ of parties settling only matters to me insofar as it is relevant to the next case. Settling means compromise.”

The group indicated that, as judges, they may never know the terms of settlement unless a minor is involved or they are working in some other category of case that requires them to ensure that the settlement is not unconscionable, unreasonable, or against public policy. Most of the judges had little to add when asked about their experience with settlements that involved more than money. The administrative DMV judge recalled settlements that involved, for instance, the retention of a license conditioned on such remedial action as taking a driving course. Neither the judge nor the DMV required proof that the remedial action had been taken—it would only come up if the party appeared again before the DMV and could not produce evidence that past requirements had been fulfilled. The participant who had worked as an impartial IDEA officer said he had seen many IDEA cases that involved factors besides money. He said he frequently interacted with upset parents who felt they had been “railroaded” into settlement by a school district that threatened to continue with extensive litigation. On the point of special education, the participant with DOED experience remarked that a number of judges have very little experience in special education law. These judges have no vested interest in special education cases, and “their behavior reflects it” when they are unwilling to involve themselves in settlement issues.

In response to a specific question about their knowledge of how ADA or disability rights cases are resolved, the group stated that they have only the same general knowledge as

the average citizen on the subject. They said they might read about a case in the newspaper but do not hear very much from or among their colleagues on the topic.

Views on private enforcement of disability rights cases

When asked directly whether private enforcement was fostering the implementation of disability rights laws, one participant simply stated, “I don’t know.” No one disagreed with him, though there was much more participant response when they were asked about any barriers that could be impeding private enforcement as an implementation tool. The judges uniformly pointed to the lack of a bar familiar with disability rights law. While many lawyers are involved in social benefits litigation, the group felt that ADA and Section 504 were a “boutique” practice, raising once again the assumption about the technical nature of the ADA. A couple judges discussed how the practice of law has become increasingly specialized overall, so it is important to have an attorney who really knows disability law before bringing a case in this area. The participant from Ohio stated flatly, “There is no glut of lawyers in Columbus, Ohio, working in this area,” and he did not see any attorneys “going around saying they could help parents of children with disabilities or people with disabilities.”

The group’s uniform view that there were very few lawyers proactively representing people with disabilities led to a specific question about whether anyone in the group had seen disability rights laws “clogging up” the courts. One participant responded by bringing up the term “attorney mill” to describe a lawyer who simultaneously takes on many of the same kinds of cases. The other participants recognized the term, but no one had seen this occur in the context of the ADA or disability rights laws. When the judges were asked about the existence of state disability rights laws, each believed that his or her state had laws covering disability discrimination in a variety of areas (e.g., employment, housing),¹⁷ but they agreed that they were seldom used. One participant asserted that he had not seen case law in this area developed, and it was hard to research.

Participants' own needs and interests concerning disability rights laws and suggestions for disability rights policy and lawmakers

On the specific issue of disability accommodations for their courtroom, the judges said they had an administrative office or place they could call to obtain help. All the judges said they would be interested in getting further information about disability rights laws. First of all, the judges were interested in making their courts accessible to people with disabilities. Second, the judges were interested in finding out more about substantive disability rights laws—a couple mentioned that Westlaw had an ADA research tab that could be useful for this purpose. On the other hand, the group agreed that formal training and information would be of little use unless cases were filed. There is little incentive for busy judges to develop expertise in an area unless they are hearing cases that demand that expertise, and they believed that it was common for state law claims to be tagged onto federal claims filed in federal court rather than the other way around.

The group did not have much feedback for lawmakers, which might be expected considering their overall lack of direct experience of disability rights laws. The participant who had worked with the DOED voiced a need to study and implement safeguards to ensure that resolutions and settlements reached under the IDEA actually benefited plaintiffs. He was of the opinion that mediation and other tools in the law could be used to delay the actual implementation of education rights for a very long time, and that parents were disadvantaged. Another participant stated a concern for vulnerable adults and said there should be greater dissemination of information concerning the availability of legal disability expertise offered by such groups as Protection and Advocacy organizations. One participant who had received training on Section 504 in the late 1970s or early 1980s, when he was serving as a hearings officer in the Nevada state welfare office, made the interesting comment that it was “extremely illuminating” to receive training from presenters with disabilities who could impart an awareness of disability issues that extended beyond the black letter of the law.

3. Conclusions

A number of interesting observations made by the judicial focus group are worth highlighting. While every judge had heard of the ADA and clearly associated the act with disability rights and access, most of the judges knew very little about the law's actual provisions. With few exceptions, the judges could not recall dealing with an ADA case, and they tended to associate disability rights laws exclusively with accessibility issues in their own courtroom or as a defense raised by individuals who were losing their occupational licenses or security clearance.

The judges also lacked specific knowledge of their own state's disability rights laws and said they were unfamiliar with jurisprudence in the area, or even with how to research disability rights cases. The judges had encountered very few attorneys with expertise in disability rights, an area of law that they perceived as technically complex and one that had inherent disincentives to the proactive bringing of cases (e.g., attorneys in rural areas would have to file actions against friends who owned local businesses). The comments made in the judicial focus groups therefore support the contention that there is inadequate private enforcement of disability rights laws and refute the claim that there is widespread abuse of disability rights laws by litigants and attorneys who are bringing multiple accessibility claims against small businesses.

The judges' uniform expression of interest in learning more about disability rights laws is positive. Such training is needed in the face of continuing concerns about the adequacy, reasonableness, and monitoring of some disability rights class actions. However, the focus groups make the irrefutable point that such training would be of little use unless the private enforcement of disability rights is encouraged and cases are brought before them. Until this goal is achieved, compliance with the ADA will remain elusive insofar as private enforcement is a crucial factor in ADA implementation.

II. Effective ADA Implementation Practices

Research was undertaken to identify ADA implementation practices that could serve as models and to demonstrate how the ADA is working effectively in different

environments. Best practices were sought that relate to the requirements of the law; educate people about those requirements; or enhance systems, infrastructure, and technologies that bear directly on practical aspects of implementation (for example, Internet and computer accessibility) and advance the spirit of the ADA (practices that encompass, for example, universal design principles).

To be considered a best practice, the following criteria had to be met:

- The practice is structural in nature; that is, a covered entity or government enforcement or information agency or Department must have in place a well-established policy setting forth its commitment to fulfilling specific requirements of the ADA (for example, providing job accommodations) and materials and information related to the policy.
- A well-functioning procedure or process for activating the policy must be in place.
- The practice must be institutionalized within the entity or organization; it must not depend on the leadership of a few individuals but rather can be easily adopted and carried forward by new personnel when there are staff changes.
- Data must be available to demonstrate that the structure and process produce significant positive outcomes for people with disabilities.

ADA implementation best practices were identified through a literature survey and review, key informant interviews, Internet research, and review of Web-based public information. Further evaluation was done by conducting telephone interviews using an interview questionnaire with individuals within the entity whose practice was under consideration, collecting program evaluation data and reports, and seeking the opinion of others who were familiar with the practice, including stakeholders who attended the dialogues.

Because the ADA is broad in scope and coverage, the environments in which best or promising practices might be found cut across many aspects of American life. Thus, in attempting to identify these practices, an effort was made to include those that reflect

issue and organizational diversity, and that intersect in critical ways with ADA implementation, such as technology and leadership development.

Two categories of implementation practices are presented. The first includes practices that appear to meet all the criteria for a best practice; the second includes examples of implementation efforts that do not achieve best practice status but nevertheless illustrate the range of creative and innovative implementation activities in which covered entities and others are engaged. In some cases, the activity likely will not generate meaningful outcome data for some time, but the fact that an important process is in place that lays the foundation for a potentially significant outcome is sufficient reason to include it.

A. ADA Implementation Best Practices

Minnesota Department of Human Services—AXIS Healthcare

AXIS Healthcare operates in cooperation with Minnesota Disability Health Options (MnDHO), a managed care plan serving people with physical disabilities ages 18–64 years who are eligible for Medicaid and who reside in four target counties. The Minnesota Department of Human Services (MnDHS), in collaboration with two rehabilitation organizations in the state, designed this program to combine physician, hospital, home care, nursing home care, home- and community-based services, and other care into one coordinated care system.¹⁸

The plan was designed because people with disabilities who participated in the Medicaid program in the target counties were experiencing poor access to health care services, were unable to obtain accommodations in health care settings, and found that few health care providers understood their particular needs. The program offers some unique solutions to typical problems. For example, to avoid accessibility and transportation problems, home or workplace visits replace office visits for patients when possible. If an office visit is needed, the plan arranges for lifting or other personal assistance if necessary, so the patient can get onto an exam table or undergo a diagnostic procedure. While the plan is aimed only at people with physical/mobility disabilities, they are the ones who are most frequently unable to obtain appropriate services in conventional health

care settings. This is due in significant part to poor ADA implementation overall in health care settings and particularly by state Medicaid officials and managed care organizations with whom they contract for services.

AXIS reports that 500 people are enrolled in the plan, up from 200 in 2004, and that evaluations show a high degree of satisfaction with services.

Overall, study participants were more satisfied with the services they received in the year following MnDHO enrollment. Participants felt that they received more coordinated and self-directed care after they enrolled in the MnDHO program. Their interactions with their health providers and office staff were more satisfactory after they enrolled in the MnDHO program. In addition, those who reported a need for specific services, such as primary care doctor and medical equipment, were more likely to access these services after they enrolled in the MnDHO program.¹⁹

Ohio Youth Leadership Forum—Leadership Training for High School Students

In 1999, the Ohio Governor's Council on People with Disabilities launched a program, modeled on a similar one in California, that brings 35–40 high school juniors and seniors to Ohio's capital to learn how to become effective leaders.²⁰ The program, ongoing since its inception, was evaluated in 2002 by a doctoral candidate to determine outcomes and effectiveness.

The program covered topics such as disability history and culture, transition from high school to employment and/or postsecondary opportunities, advocacy skills, rights and responsibilities, the ADA and Section 504 of the Rehabilitation Act of 1973 and its amendments, and the Individuals with Disabilities Education Act (IDEA).

Ohio has operated four forums, beginning in 1999. Data were collected retrospectively from the delegates for years 1999–2001 using surveys and questionnaires to learn whether the forum had any long-term impact. The study revealed that leadership development programs for students with disabilities can produce a significant long-term outcome. The results of this study indicated that youth delegates who attended the leadership program improved their leadership skills, increased their potential to be leaders and change agents, and increased their knowledge of disability rights laws and

regulations and their capacity for self-advocacy. Youth delegates also established peer and mentor relationships, demonstrated improved self-esteem and motivation, and made commitments to long-term leadership development and planning.²¹

This project demonstrates the potential impact of enhancing the capacity of young people with disabilities to assume advocacy and other leadership roles in the community. These roles are recognized as critical to the complex process of ADA implementation in a variety of spheres. It also indicates an appreciation by Ohio's primary educational and advocacy entity, the Governor's Committee, that leadership development is consistent with the spirit of the ADA and helps set the stage for future reforms.

Microtel Inns & Suites

Microtel Inns & Suites, the chain of newly constructed budget/economy hotels, offers ADAAG-compliant sleeping rooms, strong advertising, and significant staff training for franchise operators on serving customers with disabilities. The company reported gains in its 2004 bookings for ADA room nights across all distribution channels by nearly 275 percent over 2003. In addition, net revenues for ADA room nights increased by more than 260 percent.

Verifying that use of accessible rooms has increased since the company has undertaken staff training and advertising, Microtel's vice president for corporate communications, Barbara Wiener-Fischhof, provided the following information: The Microtel Inn & Suites in Leesburg, FL, reported that from 2003 to 2004, ADA room nights increased from 209 to 523, and revenues increased from \$11,606 to \$29,031. The Microtel Inn & Suites in Bowling Green, KY, reported that from 2003 to 2005, ADA room nights increased from 9 to 228 to 392, and revenues increased from \$514 to \$10,425 to \$19,673.²²

Microtel appears to have made a strong commitment to appeal to the market segment of people with disabilities. The corporation has taken very seriously the need to ensure that its facilities are fully ADAAG-compliant and that all service personnel are trained to provide courteous service to customers with disabilities. Disability-friendly Web content

appears as a primary link on the company's home page, rather than being buried under an obscure title. The Web site also provides extensive details about accessibility features. Company personnel are familiar with the features and accommodations that are available and seem knowledgeable about Microtel's disability philosophy.²³

Pay Equity for Fixed-Route and Paratransit Drivers

Almost all transit agencies pay fixed-route bus drivers considerably more in wages and benefits than paratransit drivers. It is often assumed that this pay discrepancy reflects greater difficulty in the fixed-route driver's job; however, the salary differential is not necessarily based on any objective comparison of the two jobs but rather has historic roots. Paratransit developed from a social services model, in which salaries are lower than those for public transit operators. Arguably, paratransit driving is the more difficult job, requiring skills such as familiarity with the street network and more physical stamina.

Resolving this discrepancy in pay would resolve some of the chronic difficulties that persist in paratransit service. The low driver salaries lead to high turnover and difficulties in maintaining a stable, skilled force of drivers. A stable driver workforce is particularly important in paratransit systems, since veteran drivers are more familiar with the street network and with the needs of their riders. These factors enhance on-time performance and service productivity, as well as improving the ride experience of the passenger.

A few transit agencies have eliminated the pay discrepancy and have seen significant service benefits as a result. Tri-Delta Transit in Antioch, CA, made this change in the late 1990s and lowered paratransit driver turnover by 50 percent. In Wenatchee, WA, Link Transit has extensive experience with equalizing driver pay. Richard DeRock, who became general manager in 2002, described Link's positive experience, which dates back to 1995:

Here at Link, the agency decided in 1995 to bring its paratransit operation in-house. The Link board decided that the operators [drivers] would be fully integrated into the Link operation and that full wage parity would be provided.

The paratransit operators that were assumed from the contractor were made employees of Link and had to complete the Link training program for fixed-route operators. The operators can choose to drive exclusively paratransit, exclusively fixed-route, or a combination based on their seniority. All operators are paid on the same scale. Most of the operators regularly choose to alternate between paratransit and fixed-route. Nearly all operators drive paratransit at least two months each year.

The results: Our turnover rate is very low and uniform between paratransit and fixed-route. Our average operator has driven for ten years, as opposed to most paratransit systems that have turnover around 50 percent per year. This longevity has resulted in very skilled drivers who rarely get lost, know nearly all of their passengers, and operate at very high productivity—3.9 ADA passengers per hour. This compares to an industry average that is around 1.8 passengers per hour. In addition, by having the drivers operate both paratransit and fixed-route, efforts to move paratransit riders to fixed-route have been much more successful. The passengers seem to be more willing when they know that the big bus operator is someone who has transported them on paratransit. I am convinced that driver attitude has a huge impact on the possibility of moving paratransit riders to fixed-route. We believe our parity actually reduces paratransit demand.

Utah Transit Authority—Stop Announcements

Utah Transit Authority in Salt Lake City has attained a high rate of stop announcements without resorting to automated stop-calling technology. Negotiation with the drivers union resulted in an agreement on a secret rider program. When the program was first implemented, it simply collected information and reported results, thus providing a grace period so everyone had an opportunity to become comfortable with the system. Only after the grace period were the results used in connection with employee discipline. A progressive disciplinary program was established that started with citations and warnings, then progressed to suspensions for longer periods, and resulted eventually in termination. The success rate in stop calling is often well over 90 percent; performance below 75 percent is subject to discipline.

Dallas Area Rapid Transit—Equipping Paratransit Vehicles with Automatic Vehicle Locators and Mobile Data Terminals

A number of large urban transit agencies have equipped paratransit vehicles with two technologies: automatic vehicle locators (AVLs) and mobile data terminals (MDTs). The

AVL uses a global positioning system to allow the agency to monitor the location of its paratransit vehicles on a real-time basis and to provide historical location information on trips. MDTs facilitate digital communications between drivers and the dispatcher. Drivers can use the terminals to record their arrivals and departures in real time. This information is then used to calculate new estimated arrival times for subsequent trips.

One acknowledged leader is Dallas Area Rapid Transit (DART). With these technologies, a transit agency has constant real-time ability to monitor where vehicles are. If a vehicle is having problems, the agency can update schedules—if one vehicle becomes late, the agency is not dependent on the driver to provide notification but can see the problem right away and take action. Agency personnel can make other arrangements for the trips that the troubled vehicle was supposed to provide. The agency can look ahead for the next hour or two to see where on-time performance problems will occur and move trips around to avoid them. Drivers are not given a paper list of the day's rides but electronic notice that is always timely. Thus, AVL and MDT enable an agency to do a much better job of managing trips.²⁴

According to a June 2006 DART report that presents cumulative data indicators for the fiscal year-to-date, trending is positive, and there is a high probability that performance indicator goals for the year will be reached. Specifically, the on-time goal for the year was set at 86 percent and the annual year-to-date on-time performance through June 2006 was reported as 88.6 percent, 2.6 percent over the goal. This data suggests that AVL and MDT are enabling the system to manage trips more effectively.

Job Accommodation Network

The Job Accommodation Network (JAN) is a service of ODEP of DOL. JAN's mission is to facilitate the employment and retention of workers with disabilities by providing employers, employment providers, people with disabilities, their family members, and other interested parties with information on job accommodations, self-employment, and small business opportunities and related subjects. JAN's efforts support the employment—including self-employment and small business ownership—of people with

disabilities. JAN is the most comprehensive resource for job accommodations available. Its work has greatly enhanced the job opportunities of people with disabilities by providing information on job accommodations since 1984. In 1991, JAN expanded to provide information on the ADA. JAN consultants have obtained at least one master's degree in their specialized fields, ranging from rehabilitation counseling to education and engineering. The development of the JAN system has been achieved through the collaborative efforts of ODEP, the International Center for Disability Information at West Virginia University, and private industry throughout North America.²⁵

Preliminary data from a recent customer satisfaction survey of 778 employers and 882 individuals with disabilities reveals that a broad spectrum of business types use JAN's services. JAN customers reported that implementation of worksite accommodations would significantly reduce the individual's level of limitation due to the disability. Further, JAN customers reported having made highly effective accommodations at very little or no cost. Employers who were interviewed said slightly over half (50.5%) of the accommodations they implemented following discussion with JAN had been at no cost. For those employers who did experience some cost, the median dollar value was \$600.²⁶

While JAN's primary mission is to advise businesses and people with disabilities about effective workplace accommodations, the experience of the organization also has shown that employer fears about the cost of accommodations is unfounded. This information is crucially important to the process of identifying and fostering new strategies to increase employment opportunities for people with disabilities, and for employer education. JAN's track record, level of effectiveness, and significant role relative to the accommodation requirements of the ADA place it in the best practices category.

B. ADA Implementation Notable Practices

1. Employment—Title I

State of Maryland—Cabinet-Level Department of Disability

As a result of numerous senior-level brainstorming sessions on ways to increase employment of people with disabilities in state government, the State of Maryland

created the Disability Employment Workgroup in 1999. Co-sponsored by the Maryland Department of Budget and Management and the Department of Disability, the workgroup is responsible not only for developing innovative ways to increase the number of people with disabilities employed in state government but also for ensuring that state employees have access to current and accurate information regarding the ADA. Since the creation of this group, the state has implemented numerous practices intended to support the employment of people with disabilities, including the following:²⁷

- Elevating the Governor's Office on Individuals with Disabilities to cabinet-level status as the Department of Disability.
- Establishing a special outreach and employment position in the Department of Budget and Management to help state agencies target diverse applicant pools for state positions.
- Implementing (in 2003) a state-level Disability Mentoring Day that provides a mentoring/job shadowing experience for participants, with informational workshops on applying for state employment.
- Providing ADA training resources to state agencies; creating flyers and other materials that explain the ADA reasonable accommodation obligations of various state agencies; issuing a reference booklet entitled "The Americans with Disabilities Act and Employment Guidelines" to all ADA coordinators statewide; and putting on ADA train-the-trainer conferences.
- Establishing (in 2000) the Governor's QUEST (Quality, Understanding, Excellence, Success, and Training) Internship Program for People with Disabilities, which offers three-month paid internships in state government.

The QUEST program has successfully weathered hiring freezes and budget cutbacks and is reported to have been successful in promoting the employment of people with disabilities in state government. The state reports that approximately 50 percent of all former QUEST interns are presently employed in their target job areas in either private or public sector positions.²⁸

As early as 2001, several state agencies in Maryland began tracking their provision of reasonable accommodations to their employees and documenting the number of accommodation requests received, who made the request (the employee or the employer), and how many requests were approved. This statistical information began to be included in the “Statewide Equal Employment Opportunity Report” in 2003.

The 2005 EEO report indicates that there were 259 requests for reasonable accommodation from state employees, of which 231 (89%) were granted. All agencies reported to the EEO, but not all agencies provided information about accommodations. Among those that did report, Agriculture, Education, Health and Mental Hygiene, Human Resources, Juvenile Services, Transportation, and the Maryland Automobile Insurance Fund accounted for 173 (67%) of the total reasonable accommodations requests.

Some departments granted a higher percentage of requests than others. For example, DOED granted 100 percent of the requests (32 of 33 requests were granted and one was pending at the time the report was released); Juvenile Services granted 43 percent (7 of 16 requests); and the State Police granted zero percent (two requests were received, and both were denied).²⁹ Of the reported 259 accommodation requests, 35 appear to be from job applicants. Maryland has approximately 93,000 employees. The number of accommodations sought and provided in 2005 represents a small percentage of that overall workforce; in the future, it will be important to learn if accommodations are underreported and to understand whether accommodation requests increase over time.³⁰

University of California at San Francisco—Providing Job Accommodations

Over three decades ago, the University of California (UC) system developed an Employee Rehabilitation Program in response to the requirements of the Rehabilitation Act for reasonable accommodation of disability. At the UC San Francisco (UCSF) campus, the program evolved into a comprehensive program to foster employee health, safety, and productivity, and to retain employees who have or develop disabilities. McMahon, et al. (2004) quote UCSF’s assistant director of human resources: “Our approach is based on our desire to retain the highly skilled employees who work here. . . .

We want to make dealing with [reasonable accommodations] just a regular part of what supervisors do day-to-day, just as they deal with vacation and sick leave.”³¹

The UCSF approach to retaining employees focuses on (1) providing reasonable accommodations as needed, and (2) providing temporary transitional work for conditions that are expected to be temporary. For transitional work, the employee, the supervisor, and, often, a disability management professional develop a written plan for the employee to follow for a set period of time. When necessary, employees may use the Special Selection system, which allows preferential placement into new or vacant positions. Under Special Selection, hiring managers are required to consider the covered employee first for positions for which he or she is qualified, and to document hiring or rejection decisions thoroughly.

UCSF has established a comprehensive program that is expressly tied to the ADA with regard to providing accommodations to employees with disabilities. Disability Management Services, the organizational unit that “administers the UCSF workers’ compensation program and facilitates return-to-work initiatives and reasonable accommodation for employees who have, or who may develop, health problems affecting employment,” has a Web site that contains clear written policies as well as information on how to locate resources and staff experts on disability-related needs.³² An “ADA and Accommodation” link (www.ucsfhr.ucsf.edu/dismgmt/ada/index.html) is featured prominently on the site’s home page; it connects to resources that include where to find ADA help at UCSF; an ADA reference sheet; a supervisor’s guide to complying with the ADA; job aids on essential job functions, reasonable accommodation, interview guidelines, and mental disabilities; and other accommodation resources on the Web, such as the California Department of Rehabilitation, JAN, and the Pacific Disability and Business Technical Assistance Center. The Web site for the UCSF Chancellor’s Advisory Committee on Diversity (www.ucsf.edu/diverse/) also provides resources on reasonable accommodation, including a Manager’s Tool Kit for the UCSF Transitional Work Program.

According to UCSF Disability Services staff, the strength of the program is that management of day-to-day accommodation request is taking place in an efficient manner.

The major weakness of the program is accommodating people who have to be transferred to other departments because their disability cannot be accommodated in their current job. Because of departmental decentralization, accommodation processes can be inconsistent.³³

Alaska Airlines—Disability Accommodations Program

Alaska Airlines has developed a comprehensive process for providing accommodations for its employees with disabilities; the process has been institutionalized and promoted extensively throughout the company. The airline first developed a return-to-work/disability management program in the mid-1980s; in time, it was expanded into a formal Disability Accommodations Program. The program is staffed by accommodations specialists who not only are able to provide expert assistance tailored to the individual worker but who are also positioned organizationally to easily coordinate accommodation services with workers' compensation service agents and other disability professionals.³⁴

Any employee who desires an accommodation for a disability completes a Disability Accommodation Request Form and meets with the disability accommodation supervisor to discuss what accommodations may be needed. The individual's frontline supervisor and, often, the union representative are also involved in the discussions. According to McMahon, et al. (2004), every accommodation request is reviewed with the Job Accommodation Network to identify available options and standards for accommodation.³⁵ All accommodation requests are documented thoroughly and tracked through completion of the request and subsequent follow-up.

Alaska Airlines has established a program that seems to be effective in promoting employment and retention of people with disabilities by implementing the reasonable accommodations provisions of the ADA. The airline has developed clearly written policies that are readily available to employees, and it provides training to supervisory personnel on reasonable accommodations; procedures for assignment to the Modified Duty Program (allowing employees with a temporary injury or medical condition to return to work on a temporary duty basis); workers' compensation procedures; and

related topics. Managers are expected to participate actively in the process of ensuring employment opportunities for all qualified individuals, including people with disabilities.

Evidence of Alaska Airlines' commitment to equal employment opportunities and the accommodation of people with disabilities can be found on the "Careers at Alaska Airlines" page of the airline's Web site: "We take a proactive approach to the recruitment, hiring, and reasonable accommodation of qualified applicants who are differently abled. Our employees participate in organizations and outreach activities dedicated to providing education and information regarding employment of people with disabilities, and we are committed to providing appropriate reasonable accommodation for members of the Alaska Airlines team who become disabled while employed with us."³⁶

2. Public Accommodations—Title III

California Hotel & Lodging Association—We Welcome Service Animals™ Program

The California Hotel & Lodging Association (CH&LA) is the largest state lodging industry trade association in the country. Its 1,600 members represent approximately 175,000 guest rooms in hotels, motels, bed and breakfast inns, guest ranches, resorts, spas, condominiums, timeshares, and vacation homes throughout California.

The CH&LA Educational Foundation received \$100,000 from the J. Willard and Alice S. Marriott Foundation to fund the We Welcome Service Animals™ program. The funding will be used to reproduce and distribute the "We Welcome Service Animals" training videos and collateral materials, with the specific goal of ensuring enhanced accessibility throughout the hospitality industry for guests and patrons who use service animals.

The foundation created the program as a national education and outreach campaign to teach people in the hospitality industry and law enforcement community how to improve service to guests and patrons with disabilities who use service animals for assistance. In accordance with the ADA, hotels, motels, and restaurants are required to treat customers with disabilities accompanied by service animals like all other guests, providing them

with the same service and access to all areas where other guests are allowed. The development of the program's training videos and collateral materials was made possible with initial funding from the American Hotel & Lodging Educational Foundation and the American Express Foundation.

The We Welcome Service Animals™ program won the Associations Advance America award from the American Society of Association Executives, as well as a gold Telly award (honoring local and regional television commercials and productions).

The program will be offered by Marriott International, Inc., as an education and training component to its approximately 2,200 lodging properties in the United States. Best Western International will also distribute the program to more than 2,400 properties in the United States and Canada, and the Asian American Hotel Owners Association is furnishing the videos and collateral materials to its 8,500 members.³⁷

Kaiser Permanente Health Plan—Plans for New Construction in California are Site-Checked by Trained Outside Experts

In 2000, three wheelchair users sued Kaiser Permanente, the nation's largest nonprofit health maintenance organization. Based in Northern California, Kaiser operates 30 hospitals in nine states and the District of Columbia, and has 8.2 million members. The lawsuit alleged that the health care giant failed to provide equal and adequate care for patients with physical disabilities, citing pervasive barriers as well as a lack of specially equipped examination tables and weight scales at scores of Kaiser facilities throughout California. Of Kaiser's nearly 6 million patients statewide, more than 100,000 are people with disabilities, and 40,000 use wheelchairs, according to attorneys for the plaintiffs.

While much has happened since 2000, one important change appears to be embedded in the company's culture and practices: Five years after the lawsuit was filed, Kaiser Permanente has transformed the way it ensures that accessibility requirements are met in new construction projects, according to architecture and design experts who have worked with the company.

All plans for new construction are reviewed by outside access experts who were trained by the original access expert consultant team. Kaiser established this process because it became evident in the course of the litigation that most architects, even those with prestigious firms, know very little about accessible design or the requirements of the ADA. Under the new procedure in California, five teams—about 35 people—work full time reviewing plans against a lengthy checklist of about 1,000 items related to ADAAG and state access law compliance. The original architectural team that developed the plans welcomes the design feedback and incorporates it into revisions. This feedback process has enhanced the skill set of professionals in these primary firms and has enabled them to assess access issues in more practical and effective ways. Although the process might appear rudimentary, it has resulted in several important changes in the way both Kaiser and the architecture firms with which it does business operate.

Kaiser has embedded a practice into its operational philosophy and process that will ensure the highest quality and most current thinking about access in new construction. In light of the company's significant capital budget, much new construction will be created in the next few years that has the potential to represent state-of-the art models for other health care providers.

Not only will new health care facilities owned and operated by Kaiser have the potential to feature both creative and ADA-compliant design, the companies that received training are now staffed with access experts who fundamentally understand the value and importance of access and are in a position to inculcate that viewpoint into design decisions for other clients. The collateral effect, therefore, is quite significant.³⁸

Blue Ridge Community College—Assessing Educational Technology Accessibility

Blue Ridge Community College (BRCC) in the Appalachian region of North Carolina developed a practice to assess current educational technology accessibility, implement faculty training, and upgrade adaptive technology on its two campuses. The project included the input of a student advisory board, the development of faculty training materials, the creation of a disability services handbook, an assessment by the North Carolina Assistive Tech Project, and proposed procurement policies.

BRCC took steps to improve services to students with disabilities in partnership with the Southeast DBTAC, a project of the Center for Assistive Technology and Environmental Access (CATEA) at the Georgia Institute of Technology in Atlanta. The Southeast DBTAC provided funding for professional development opportunities for faculty, the improvement of training materials for distribution, the establishment of a panel to solicit advice from students with disabilities, the assessment of campus accessibility in the area of educational information technology, and the expansion of procurement policies.

While outcome indicators for this initiative are primarily anecdotal, they suggest the following:

- Increased input from students with disabilities regarding barriers.
- Increased interest from faculty in accommodating students who have learning disabilities.
- Increased awareness of technology department staff regarding students with disabilities and their information technology needs.
- Policies for purchase of accessible copiers, computers, workstations, and removal of physical barriers in the computer labs and distance learning rooms.
- The addition of a disability service director to the information technology planning committee.³⁹

It appears that the project contributed to more students with disabilities completing programs of study and an increase in their graduation rate of 20 percent in three years, according to program staff estimates. This project removed barriers to students with disabilities at BRCC and, in many cases, improved educational services for all students.

Furthermore, the changes that the initiative wrought appear to have been institutionalized within the culture of the campus and are memorialized in policies, practices, and procedures that will continue to serve the long-term technology needs of students with disabilities.⁴⁰

University of Wisconsin–Madison—Development, Articulation, and Support of a Web Accessibility Policy

The University of Wisconsin–Madison was one of the first universities to develop a policy to make the Web more accessible for people with vision, hearing, and other disabilities. The university based its original policy, adopted in December 2000, on the guidelines developed by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium. The standards were supported at a high administrative level—they were disseminated and promoted by the vice chancellor for legal and executive affairs and ADA coordinator.

The policy was updated in November 2001 and again in May 2003 to reflect what had been learned from implementing the first policies, to recognize rapidly changing technology, and to bring the campus policy in line with new standards that had been adopted by the Federal Government. Consistency with Section 508 standards allows campus Web developers to benefit from the clear guidelines and extensive supporting materials developed in response to federal standards. The new policy was promulgated by the vice chancellor for legal and executive affairs and ADA coordinator, the chief information officer, and the director of the Division of Information Technology.

Local responsibility for adhering to the standards is mandated by the administration. A leadership team brings together a variety of perspectives and concerns from computing staff, faculty, administrators, and student services. This team works with the university community to establish feasible guidelines for updating legacy Web pages, develop policy updates, and ensure that ongoing training and support are provided to Web developers campuswide.

The University of Wisconsin’s current published policy was recognized by the National Center on Accessible Information Technology in Education, an NIDRR-funded project. On its face, the policy appears to provide meaningful direction to campus units and departments about methods and procedures they can use to evaluate their Web sites and actions they can take to achieve accessibility.⁴¹

Oregon State University—Software Access Guidelines

Postsecondary institutions nationwide routinely purchase computer software that is inaccessible to individuals with some types of disabilities. This software is not designed so it can be used by students and employees who rely on assistive technology, such as speech output systems for people who are blind. Inaccessible products restrict educational and employment opportunities for people with disabilities. Few campuses have developed policies that promote the procurement of software that is accessible for individuals with a variety of disabilities and compatible with commonly used assistive technology. Oregon State University (OSU) is one campus that has taken proactive steps to ensure that software purchases are accessible to potential students and employees with disabilities.

The Software Access Guidelines provide minimum standards for software accessibility. The guidelines are designed to be used by vendors to the university and by those responsible for overseeing the purchase of information technology at OSU. Specifications cover keyboard access, icons, sounds, display, field labeling, and documentation. The specifications present the minimal level of product accessibility, but software developers are encouraged to maximize the accessibility of their products. OSU's Technology Access Program provides assistance in maximizing accessibility.

Universal access to information is presented as a part of OSU's ongoing commitment to providing a barrier-free learning community. The university developed the Software Access Guidelines with the goal that all students and employees, including those with disabilities, would have access to software used in the programs and other activities of the university. According to the National Center on Accessible Information Technology in Education, the guidelines were established as a part of this commitment and to meet OSU's ethical and legal obligations under the ADA and Sections 504 and 508 of the Rehabilitation Act of 1973, as amended.⁴²

3. Public and Private Transportation—Title II and III

King County Metro—Assessment Procedures for Paratransit Riders

King County Metro in Seattle, WA, has a thorough system for assessing what level of service to provide for paratransit riders. The evaluation takes place as part of the eligibility assessment process, when the county conducts a careful examination to determine which of the following services the person needs:

- Curb-to-curb service (the driver waits at the vehicle or the curb rather than providing more assistance to the individual).
- Door-to-door service (the driver goes to the door of the rider's pick-up and drop-off locations and provides assistance to and from the vehicle).
- Hand-to-hand service (the driver will only leave the rider at a destination where there is an individual with whom the rider can be left; this is a service that might be needed, for example, by an individual with dementia).⁴³

Eugene, Oregon—Modifying Public Transit Fixed Routes

In Eugene, OR, the transit operator has made small adjustments to some of its fixed routes to make it easier for people with disabilities to reach particular facilities. In one case, a number of riders were going to work at a Goodwill facility. Many had the ability to ride transit unsupervised, but some had problems with being dropped off on the opposite side of a busy street a block away from the destination. The transit agency made small changes to the route on the bus run that arrived around the time the daily employment program began, which enabled the fixed-route bus to stop at the facility's front door. It is a relatively common practice for bus routes to community facilities such as schools and factories to be adjusted to meet the needs of large groups of frequent riders; in the case of Eugene, the transit agency modified the route to accommodate workers with disabilities, which has reduced the need for paratransit service for these riders.⁴⁴

Whatcom Transportation Authority—Flexible Will-Call Policies

For many people with disabilities, will-calls—return rides for which a rider does not have a specific time (e.g., after a doctor’s appointment)—can require long waits and uncertainty. Some transit agencies require a rider to provide a return time. If the rider is finished early, he or she must wait; if the appointment runs late, the rider may miss the vehicle, which poses problems for both rider and transit agency. The ability of the paratransit operator to respond when the return ride is actually needed is an important service for the rider. The agency is more likely to have the capacity to handle such requests efficiently if it is equipped with AVL and MDT technology. When the rider calls, the agency has a real-time picture of where all the vehicles are and which drivers might be available for the pick-up. Without the technology, many agencies take quite a long time to pick up a will-call rider, because they only know which drivers had an opening in their schedules as of 5:00 p.m. the evening before, when rides for the following day are scheduled.

In Washington State, many transit agencies have progressive policies about will-calls. Whatcom Transportation Authority in Bellingham is an example.⁴⁵

Tour and Charter Service—Royal Celebrity Tours

Companies that use over-the-road buses (OTRBs) in demand-responsive systems, such as many tour and charter bus services, are covered by the requirements in DOT’s 1998 regulation covering private companies that offer transportation service using OTRBs. Many of these companies have taken advantage of funding for accessibility equipment provided through DOT specifically for privately operated OTRB service providers. As in most modes of transportation, much has been accomplished, yet many problems remain.

Advocates in Alaska point to a real success story. Royal Celebrity Tours was started in 2001 and, according to Maggie Kelly, manager of Alaska operations, obtained accessible OTRBs “because we thought it was the right thing to do. We tie the coach line into [our other services], and Royal Caribbean Cruises has always been concerned about accessibility.” The company’s fleet is about 40 percent accessible, and many customers

use the lift feature. The company is conscientious about ensuring that staff members complete mechanical training for lift equipment use and mandatory sensitivity training “beginning each season for all staff with direct contact with customers.”

Mona McAleese, an Alaska ADA advisor and a person with a disability, noted, “Royal Celebrity Tours is an awesome company to deal with. They have had [disability community advocates] address the whole tour company for three years now. They do have accessible buses, and the drivers get trained on etiquette, performance, and the ADA.”

Airport Shuttles—SuperShuttle International

In April, 2002, the DOJ signed a settlement agreement with SuperShuttle International to ensure that the nation’s largest door-to-door airport shuttle company provides the same level of service to wheelchair users that it provides to the general public. The company agreed to have two accessible vehicles at each of its 11 corporate locations nationwide within a year, as well as standing subcontracts with accessible transportation providers to meet overflow demand. The 11 locations are Phoenix, AZ; Los Angeles, Sacramento, San Francisco, and Orange County, CA; Denver, CO; Washington, DC; Tampa Bay, FL; Baltimore, MD; New York City; and Dallas/Fort Worth, TX.⁴⁶ The agreement also required SuperShuttle to display its disability nondiscrimination policy statement, mention its accessible service on its prerecorded telephone message, and include it in all its advertisements.

Merrimack Valley RTA—Integrated Non-Fixed-Route Service

In Haverhill, MA, the Merrimack Valley RTA (a small system with a fixed-route fleet of 40–50 vehicles) has a totally integrated non-fixed-route service. It has achieved very good transit coordination. The demand-response service includes ADA paratransit, some contracted senior service, and a fixed-route deviation service:

- All systems use the same vehicles.
- Riders call the same place to arrange rides.

- All systems have the same dispatcher at the same phone number.
- All systems use the same drivers.

Service is seamless and costs less because separate operating structures are not necessary.

A Creative Practice by the Miami Dade Transit Authority

David Chia of Planners Collaborative witnessed an elegant practice on the part of the Miami Dade Transit Authority. In Miami, most of the rail stops have a center platform, so northbound trains run on one side of the platform and southbound trains run on the other. This arrangement presents a barrier to visually impaired individuals who have no way to know which side or which train to board. The transit agency arranged for male voices to announce northbound trains and female voices to announce southbound trains. This solution worked because the structure of the rail system was relatively simple.

Utah Transit Authority

The Utah Transit Authority (UTA) in Salt Lake City has done a good job of tying ADA paratransit performance into fixed-route performance, reframing them as overall transit agency performance. For example, staff job evaluations are tied to how well the agency is performing in both modes, in contrast to most large urban transit agencies, where greater value is attached to the effectiveness of the fixed-route system than the paratransit system. UTA is able to accomplish this because it provides the paratransit service itself rather than contracting it out. Many job categories at UTA serve both service modes; for example, the same garage superintendents have oversight of both types of service. Furthermore, agency managers' performance is judged, in part, on how well they are attracting and serving people with disabilities on the fixed-route system. This is seen as a cost-management strategy for ADA paratransit.

4. Telecommunications—Title IV

Department of the Deaf and Hard of Hearing to Oversee State TRS Program

Virginia allows its Department of the Deaf and Hard of Hearing to oversee the state telecommunications relay services (TRS) program, because this agency has easy access to consumer feedback. It is helpful for the entity administering the relay program to be in touch with the consumers who use the service.

VRS Used with a Larger Screen and a Black Background

When VRS is used with a larger screen and a black background, it can make communication possible for low-vision deaf-blind people by making it easier to see the interpreter. This best practice enables people who were unable to communicate in the past to do so.

NexTalk Provides a Web-to-TTY Service

NexTalk provides a Web-to-TTY service (not an operator-assisted relay service) that allows deaf-blind people to change the font size and color on computer screens, so they can fit the service to meet their vision needs when they converse with others. This is superior to TTYs, even those with large print, because the lighting on these TTYs is too bright and these devices do not allow for a change in font or color. In addition, NexTalk technology allows users to save and cut-and-paste conversations into Microsoft Word. Although TTY tapes can also be printed and saved, these are hard to read for people with low vision.

A PAC Mate Provides an Accessible Pocket PC

A PAC Mate (by Freedom Scientific) provides an accessible pocket PC that has a refreshable Braille display, instant messaging (IM) capability, and TTY software. With one of these devices, someone who is deaf-blind can shop at a store by communicating with others using the Braille display. The person can then call a cab via Internet relay to return home. This fosters independence and integration into the community.

Wisconsin Free Second Line Service Facilitates Direct Calling

In Wisconsin, telephone companies are required to offer consumers a second line at no cost for use with two-line captioned telephone, two-line voice carryover (VCO) or two-line hearing carryover (HCO). Two-line services facilitate direct calling from hearing people to the captioned telephone user, rather than going through a two-step process. It also facilitates using the captioned telephone service for calls to 911.

Caller Profiles Speed Up Relay Calls

Caller profiles, which allow users to preselect their relay mode, long distance carrier, and various other relay features, can speed up the processing of relay calls. Privacy concerns, however, have kept many relay users from taking advantage of this best practice.

ID Numbers Allow Access to Relay Profiles from Any Phone

Virginia, Maryland, and a few other states allow speech-to-speech (STS) users to be assigned an ID number. Callers can use this number to access their relay profile from any phone. These states also encourage STS users to provide communication assistants (CAs) with information about the subject matter of their calls while they are being set up, so the CA can do a better job of facilitating the conversation.

TSP Allows Relay Centers Priority Line Restoration

The Telecommunications Service Priority (TSP) system gives relay centers that have applied for and received TSP status priority to have their telephone lines restored in the event of an emergency. The FCC will sponsor any relay facility that applies for TSP priority status. The Emergency Communications Subcommittee of the Department of Homeland Security has announced a goal of achieving 100 percent relay provider participation in the TSP program by the end of 2006.

Fee Waivers for Hotel Ethernet Service

Hotels sometimes charge guests an Ethernet service fee for wireless access to the Internet. A best practice exercised by some hotels is to waive this fee when relay users need a wi-fi connection to make a relay call. For these individuals, the wireless connection is functionally equivalent to accessing the hotel's in-room wireline telephone.

5. Federal Government Agencies

DisabilityInfo.gov—Information Resource Web Site

The Department of Labor's Office of Disability Employment Policy (ODEP) created www.DisabilityInfo.gov to provide people with disabilities easy access to the information and resources they need to live full, independent lives. Through an Executive Memorandum, the President directed the development of DisabilityInfo.gov as the citizen-centric entry point to federal, state, and local programs. The Web site is a collaborative effort among 16 federal Departments and agencies. This interagency collaboration has resulted in the development of a single source that provides access to information in one place.

A review of the Web site shows comprehensive resources that are easily navigated, and there is additional evidence of success. First, the Web site is reaching a large number of users. Since it was launched in 2002, DisabilityInfo.gov has received more than 4.4 million visitors from 180 countries, averaging more than 3,000 users a day. Second, in 2005, the Web site received a best practice award from the Web Content Managers Forum.⁴⁷ The award was given after professional Web site content managers evaluated the site for quality and content. The Web Content Managers Forum is a group of more than 900 federal, state, and local government Web managers. Its Advisory Council established the best practice awards to showcase innovative and successful Web practices that can be replicated across government agencies. The council received more than 70 nominations from more than a dozen government agencies.

Equal Employment Opportunity Commission Report on Best Practices

The Equal Employment Opportunity Commission (EEOC) published a report in October 2005 entitled “Report on Best Practices for the Employment of People with Disabilities in State Government,” which highlights the practices of nine states that promote the hiring, retention, and advancement of individuals with disabilities in state government jobs.

The EEOC elected to conduct research with state governments because they employ more than 5 million workers nationwide and, therefore, are situated to serve as model employers for people with disabilities, who experience unemployment at rates that remain around 70 percent. The governors of the nine participating states allowed EEOC to review a wide range of practices affecting individuals with disabilities who are state government employees or applicants for state employment.

This effort represents a vital first step toward developing an understanding of the potential impact of the ADA on employment opportunities for individuals with disabilities in state government. Some innovative and important practices were identified in the report that the EEOC should promote. However, the agency should urge the states to collect data and monitor outcomes of selected practices over time. This data is critically important for EEOC to determine whether the practices are having the desired positive impact and to showcase with confidence those that are most effective. The EEOC has laid the foundation to continue working with the states whose policies were initially studied and to initiate similar, but more in-depth, studies with them and with other states.⁴⁸

The Access Board—Facilitating Collaboration

The Access Board is an independent federal agency committed to design that is accessible to people with disabilities. It is structured to function as a coordinating body among federal agencies and to directly represent the public, particularly people with disabilities. The Board has 13 members (appointed by the President) representing the public and representatives from 12 federal Departments.

The Access Board has been effective in bringing together a broad range of stakeholders—including businesses, technical experts, researchers, trade associations, and people with disabilities—to tackle difficult and sometimes controversial problems related to the built environment and the Board’s ADA Accessibility Guidelines rulemaking authority. These collaborations educate all parties involved and build goodwill for future endeavors. The following are examples of collaborations that have generated important policy or informational outcomes and ramifications for ADA implementation.

a. Indoor Environmental Quality Project

A growing number of people suffer a range of debilitating physical reactions from exposure to everyday materials and chemicals found in building products, floor coverings, cleaning products, and fragrances, among others. Some people have developed an acute sensitivity to various types of chemicals, a condition known as multiple chemical sensitivity (MCS). The range and severity of reactions are as varied as the potential triggering agents. In addition, some people report reactions from exposure to electrical devices and frequencies, a condition referred to as electro-magnetic sensitivity (EMS).

In response to these concerns, the Board sponsored a study on ways to improve indoor environmental quality for people with MCS and EMS, as well as for the population generally. Conducted for the Board by the National Institute of Building Sciences (NIBS), this project brought together various stakeholders to explore issues and develop an action plan. A copy of the report is available on the NIBS Web site at <http://ieq.nibs.org>. While the project focused on commercial and public buildings, many of the issues addressed and recommendations offered are applicable to residential settings. The report includes recommendations on improving indoor environmental quality that address building products, materials, ventilation, and maintenance.

A panel organized to serve as a steering committee for the project included representation from MCS and EMS organizations, experts on indoor environmental quality, and representatives from the building industry. Panel members explored various strategies for

collecting and disseminating information, selecting focus areas, increasing awareness of the issues involved, broadening participation in the project, developing recommendations for best practices, and identifying potential partners for further study and outreach.⁴⁹

b. Education Initiative

Recognizing the critical role education plays in ensuring access for people with disabilities to the built environment, the Access Board is undertaking an initiative to promote accessible design in the education of architects, interior designers, engineers, and others. As a first step in this endeavor, the Board held a forum to get advice from various experts on how it should proceed. Specifically, the Board sought input on how this effort can be advanced through education curricula, design competitions and awards, and outreach to colleges, universities, and accrediting organizations.

c. Winning Design Selected for Amusement Ride Transfer Device August 18, 2005

The International Association of Amusement Parks and Attractions (IAAPA), in partnership with the Board, organized a competition for the design of a transfer device that can be used to facilitate access to amusement rides. The Board issued guidelines under the ADA for amusement rides that permit use of a transfer device but do not include design specifications. The goal of the design competition was to inspire creative solutions for such a device, specifically one that could serve rides that have seats lower than load platforms, which pose particular transfer challenges. The Board received entries from engineering and accessibility design professionals and college students. A panel organized by IAAPA and the Board reviewed the designs and selected the top three. The three winning design teams, all from the University of Kansas School of Mechanical Engineering, will receive monetary awards.

While this competition is a useful undertaking to work on a specific access problem, the real value of the effort is to build cooperation, interest, and support among a broad range of stakeholders in this particular industry for ensuring that people with disabilities can have access to the activities and rides at amusement parks.

U.S. Department of Justice

1. “Ten Small Business Mistakes”

DOJ has primary enforcement authority for the ADA. The effectiveness of DOJ’s compliance monitoring, complaint processing and investigation, litigation, and technical assistance activities have been thoroughly evaluated by NCD and others. However, two relatively new technical assistance products are included here as promising practices because they appear to be effective ways to use Internet and electronic technology to educate covered entities. Furthermore, they were conceived and executed in response to concerns raised by small businesses that lawsuits are being filed against them for accessibility violations even though they are unaware that their facilities are not in compliance with the ADA.

“Ten Small Business Mistakes” is a 13-minute streaming video that identifies common mistakes that small businesses make when trying to comply with the ADA and addresses the importance and value of doing business with 50 million people with disabilities. The video features statements by store owners expressing their doubts or misunderstandings about the ADA, followed by responses from Assistant Attorney General R. Alexander Acosta and other DOJ employees, explaining the law in plain language.

The video is potentially an effective tool for educating businesses about their obligations under the ADA while dispelling myths and fears about what is required. By late 2005, according to DOJ, about 8,000 copies had been distributed. The Department has received positive informal feedback from its ADA Business Connection Group (which DOJ has brought together to foster discussions and dialogue about ADA implementation) but has not undertaken a formal customer evaluation of the video.

“Reaching Out to Customers with Disabilities,” an online ADA course for businesses, also holds the promise to be an effective tool for educating businesses using Web tools and resources. The course includes 10 chapters that can be accessed individually or as a whole. The material is straightforward and easy to read and understand, and contains simple, illustrated instructions to businesses for handling typical interactions with

customers with disabilities. According to DOJ, the course is being advertised incrementally and also will be available on CD-ROM.⁵⁰

2. Project Civic Access

On August 23, 1999, DOJ reached a settlement with the City of Toledo, Ohio, in which the city agreed to remove barriers and relocate activities throughout its city government. To build on that settlement, the Disability Rights Section (DRS) of DOJ's Civil Rights Division began similar reviews of other local and state governments, and began to develop technical assistance materials to help communities quickly come into full compliance with the requirements of Title II of the ADA.

The project now includes 134 settlement agreements with 128 localities in all 50 states, the District of Columbia, and Puerto Rico. In most cases, the compliance reviews were undertaken on the Department's initiative under the authority of Title II and, in many cases, Section 504 of the Rehabilitation Act of 1973, because the governments receive financial assistance from DOJ and are prohibited by the Act from discriminating on the basis of disability. Some reviews were undertaken in response to complaints filed against the localities. The majority of the compliance reviews occurred in small cities and towns.

According to DOJ, local government officials have responded favorably and cooperated fully in the reviews. They were timely in submitting records as requested, made themselves available to answer questions during the onsite visits, and escorted investigators throughout their communities so that facilities surveys could be accomplished quickly and efficiently. Most important, local officials have indicated a willingness to effect changes to make their programs and services accessible to people with disabilities. The project appears to have a strong educational component while also sending the message that failure to move toward compliance voluntarily will spur legal action.

3. Conclusion

The examples presented here of ADA implementation best practices and those that have the potential to rise to that level in the future illustrate that meaningful ADA implementation is both possible and practicable. These examples send the message to those who have failed to take action or insist that the law is too complex or vague that taking steps to make the goals of the ADA a reality makes practical sense, attracts customers, and ensures full participation by people with disabilities. These examples can serve as models and inspire diverse covered entities to engage in implementation on their own.

PART 2. Legal and Enforcement Tools

Introduction

The right of private citizens to bring an action in court when their rights have been violated has long played a vital role in U.S. civil rights laws.⁵¹ A private right of action, with its attendant ability to seek compensatory/punitive damages and injunctive relief, enables those most impacted by the deprivation of civil rights to play a part in the law's enforcement and enhances limited government resources to achieve desired social change. The right of individuals with disabilities to bring their own action in federal court against employers, government entities, and public accommodations regulated by the ADA is a critical component of the law.⁵² While federal agencies such as the Equal Employment Opportunity Commission (EEOC),⁵³ the Department of Justice (DOJ),⁵⁴ and the Department of Transportation (DOT)⁵⁵ were given specific mandates for enforcing different parts of the ADA, the law from its inception also enabled individuals to sue in federal court without exhausting administrative remedies.⁵⁶ The importance of the “private attorneys general” concept also encouraged Congress to adopt the fee-shifting rule, common in civil rights litigation, for private litigants under the ADA.⁵⁷ Any consideration of the implementation of the ADA must perforce consider the function and state of private litigation under the ADA.

The following sections focus on the use of the private right of action in two specific contexts that increasingly over the past several years have generated controversy among covered entities, people with disabilities, disability advocates and attorneys, and the general public. Broadly speaking, private lawsuits brought under Title III against business entities and regional or national class action lawsuits brought under Title III on behalf of people with various disabilities have each raised concerns about the potential for abuse.

In the case of individual private lawsuits, covered entities and defense attorneys allege that some ADA plaintiffs and attorneys, motivated purely by a desire for profit and unconcerned with achieving true accessibility, have brought dozens of similar lawsuits

against small local businesses in particular for minor ADA violations. In large Title III class action claims, plaintiff and disability advocates allege that inexperience and the potential for collusion on the part of plaintiff and defense attorneys put people with disabilities at risk of being encompassed within national or regional class settlements that trade plaintiffs' diverse rights under state laws for inadequate, inappropriate, or no accessibility relief from the defendant. While the private right of action lies at the root of both these allegations of abuse, the fact that covered entities and defense attorneys raise the first set of concerns while people with disabilities and plaintiff attorneys raise the second set likely accounts for how the two groups differ widely in their suggested solutions and calls for legal change.

This portion of the report examines various factors that have contributed to the allegations of abuse, analyzes supporting evidence for the allegations, discusses the general state of compliance by covered entities under Title III of the ADA, and comes to some conclusions about what is needed to support the optimal use of private lawsuits against public accommodations. Our research leads to the conclusion that the private right of action is generally underutilized under Title III throughout the country. Moreover, the effectiveness of the lawsuit tool is further undercut by general misinformation; a lack of reliable and readily available Title III expertise; insufficient government enforcement of compliance obligations among small businesses in particular; and insufficient Title III education for all building professionals, attorneys, judges, and other individual professions and licensing bodies that interact with covered entities on their access and accommodation obligations.

I. Private Right of Action

A. Introduction

The right of private citizens to bring an action in court when their rights have been violated has long played a vital role in U.S. civil rights laws.⁵⁸ A private right of action, with its attendant ability to seek compensatory/punitive damages and injunctive relief, enables those most impacted by the deprivation of civil rights to play a part in the law's enforcement and enhances limited government resources to achieve desired social

change. The right of individuals with disabilities to bring their own action in federal court against employers, government entities, and public accommodations regulated by the ADA is a critical component of the law.⁵⁹ While federal agencies such as the EEOC,⁶⁰ DOJ,⁶¹ and DOT⁶² were given specific mandates for enforcing different parts of the ADA, the law from its inception also enabled individuals to sue in federal court without exhausting administrative remedies.⁶³ The importance of the “private attorneys general” concept also encouraged Congress to adopt the fee-shifting rule, common in civil rights litigation, for private litigants under the ADA.⁶⁴ Any consideration of the implementation of the ADA must perforce consider the function and state of private litigation under the ADA.

While private enforcement of Titles I and II has received controversial media attention,⁶⁵ and considerable academic attention has been paid to Title I employment outcomes and analysis,⁶⁶ Title III litigation is likely the most publicly well-known area of private ADA lawsuits at this time. In the years since the ADA’s 10th anniversary, the right of private litigation under Title III of the ADA, which concerns discrimination in public accommodations and services operated by private entities,⁶⁷ has received increasing media coverage and been the subject of intense public scrutiny and debate.⁶⁸ Before delving into the context and dimensions of this debate, it is worth noting how private litigation and administrative enforcement are structured under Title III. Unlike the private right of action under Titles I and II, private actions under Title III do not include the right to recover monetary damages.⁶⁹ Private litigants under Title III may only ask for prospective injunctive relief, though a prevailing party has the right to recover attorney fees.⁷⁰

This limited private right of action under Title III unfortunately is matched, rather than made up for, by a weaker and narrower administrative mandate for DOJ. While DOJ *can* seek compensatory damages under Title III, as well as civil penalties where doing so will “vindicate the public interest,”⁷¹ the Department is not *required* to commence civil actions to enforce the Title III complaints submitted to it.⁷² DOJ’s authority to commence a civil action under Title III hinges on the Department’s finding of “a pattern or practice” of discrimination or “an issue of general public importance.”⁷³ When the Department’s

limited human and financial resources are added into the mix, it is not surprising that the DOJ's enforcement record focuses on large, high-profile commercial defendants, and emphasizes settlements and consent decrees over litigation. One commentator's recent review of appellate level Title III cases found only 82 Title III cases heard between the ADA's passage into law in 1990 and the end of 2004. DOJ was either a party or submitted an *amicus* brief in 22 of these cases.⁷⁴ In addition:

Title III cases had a dramatically higher percentage of pro-plaintiff results on appeal when the DOJ was involved (9 of 22 cases, 49.9%) than in cases where the DOJ was not involved (27.8%). But the DOJ only gets involved in a limited number of cases and, if anything, it appears it is reducing the number of complaints it investigates. . . . The emphasis on settlement creates less public law that businesses will pay attention to when creating accessibility policies.⁷⁵

DOJ has been criticized for its overall enforcement of the ADA,⁷⁶ but the lack of broad, effective enforcement under Title III is especially problematic in light of the interaction between the unavailability of damages under Title III and a 2001 U.S. Supreme Court decision. In *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, the high court found that plaintiff's counsel can only recover statutory fees when litigation has resulted in a "judicially sanctioned change in the legal relationship of the parties."⁷⁷ For Title III plaintiffs and their attorneys, this effectively means that they are unable to recover fees under the ADA if a public accommodation is able to achieve compliance with the law before a court issues a judgment, even if the plaintiff's notice or lawsuit clearly prompted the defendant entity's actions. In fact, defendants most often demand a waiver of attorney fees after lengthy settlement negotiation. A right to compensatory damages would survive a defendant's mooted of a lawsuit under *Buckhannon*, but there is no right to damages under Title III. The fact is, "most civil rights litigation is not brought by institutional litigators or by large firms engaged in pro bono activity,"⁷⁸ but by individual members of the bar who must choose cases that will enable them to maintain their practices and make a living. Title III cases carry an inordinate amount of risk for an attorney: Even if there is a clear violation and plaintiff achieves the desired result after expending time and resources in settlement, *Buckhannon* allows the expense to be borne by plaintiffs and their attorneys rather than the Title III violator.

Few civil rights plaintiffs, no matter how self-motivated and justified by circumstances, have sufficient resources of time, money, and specialized training to successfully bring and maintain a federal lawsuit by themselves. The private right of action under Title III is a vital component of enforcement when DOJ enforcement actions are neither mandatory nor common.⁷⁹ Local and state building code officials, even though they likely received training in federal access requirements, are only responsible for enforcing state law provisions and do not provide any kind of forum or authority for enforcing the relevant accessibility provisions of federal law. In any event, even local codes only come into play when a public accommodation is engaged in new construction or substantial renovation that requires plan approval and construction inspection. Title III enforcement requires the availability of a private bar that has the incentive to acquire ADA expertise and is willing to take on Title III compliance cases. Unfortunately, Title III's remedial limitations and the *Buckhannon* case have created the exact opposite status quo. Individuals with disabilities who encounter barriers under Title III are forced to rely purely on a public accommodation's good will in responding to informal complaints or are left to seek out those few attorneys who have found ways to manage their risk when bringing Title III actions.

B. Title III and Voluntary Compliance

The controversy over private litigation under Title III takes place in a context in which there is very little disagreement over the worthiness of Title III's goal; that is, making public accommodations across the nation accessible to people with disabilities. In addition, there is general acknowledgement that many public accommodations are not in compliance with Title III and are not, in fact, accessible.⁸⁰ One small business owner in San Francisco went so far as to state that even though he is not an access expert, by simply walking down the street, he as a lay person can tell that stores are not in compliance by looking at doorways that are not wide enough or have steps or narrow aisles inside. While he had heard that approximately 50 percent of small businesses were noncompliant, he feels that figure is "conservative" and is actually much higher.⁸¹ If Title III's goals are both worthwhile and far from achieved, then it is illogical to argue over a critical enforcement tool for achieving Title III's goals unless there are other effective means for achieving compliance. While vigorous administrative enforcement cannot be

counted on to achieve compliance, another—and, some would say, obvious—solution is to encourage voluntary compliance. Litigation draws down resources from plaintiffs, defendants, a specialist bar, and the courts, and can lead to lingering ill will.

A number of innovative attempts have been made across the country to provide mediation services, tailored technical assistance, and even monetary incentives to nurture voluntary compliance with Title III, especially among small businesses. Unfortunately, the results of these programs have not been encouraging, though the attempts do reveal much about the shortcomings of relying on voluntary compliance as a means of achieving the goal of Title III. Christine Griffin, then executive director of the Disability Law Center, the designated Protection and Advocacy center⁸² for the state of Massachusetts, described one such attempt as follows:

When our capacity prevents us from taking a public accommodations case, we have a difficult time referring this type of case to a private attorney. In response to that problem, we initiated a mediation program that is free to the complainant (the individual with a disability) and free to the business owner. We first ask the individual calling with the complaint if he or she is willing to mediate the complaint. In most cases, the individual says yes. They just want access. We then contact the respondent (the owner or manager of the public accommodation), and in most cases the business owner declines to participate. They prefer to hedge their bet and wait to see if someone files the lawsuit.⁸³

In 2001–2003, Access Living, the independent living center in Chicago, focused on providing technical assistance and free accessibility compliance reviews to 41 progressive nonprofit organizations (e.g., YMCA, Goodwill) participating as federal Workforce Incentives Act (WIA)–funded youth contractors in the Chicago area. This attempt differed from the mediation program offered in Massachusetts in that public accommodations were offered technical assistance and the opportunity to proactively assess their ADA violations before receiving any particular complaint or being embroiled in a dispute. The project was funded by the Department of Labor, which was working to improve the participation of youth with disabilities in the WIA-funded program. Access Living compiled and offered technical assistance manuals, gave live training to over 175 frontline staff on disability-related issues of recruitment and accessibility, and organized field trips for youth with disabilities to the WIA youth contractors. Access Living also contracted with the Great Lakes ADA and Accessible IT Center and the University of

Illinois at Chicago (UIC) Department of Occupational Therapy to perform basic physical and programmatic accessibility site surveys of the 41 organizations. The survey results showed that “[Y]outh participants with physical disabilities are unable to literally get in the door and go to the bathroom in 75 percent of the WIA-funded youth programs in Chicago,”⁸⁴ and none of the sites were fully compliant with federal and Illinois accessibility laws. This was the case even though a few of the organizations specifically served youth with disabilities, though clearly the targeted group must have been primarily youth with cognitive disabilities who did not have many physical access issues.

Comments made by the WIA youth contractors organizational staff during the surveys ranged from “We do not serve many people with disabilities” to “Where do we get the money to make all these changes?” to “We’re glad to have someone telling us where we lack and what we can do about it.” Despite the positive tone of some comments, none of the sites voluntarily chose to achieve greater compliance with applicable accessibility laws after receiving their survey results. However, Access Living was successful in persuading the Chicago Mayor’s Office of Workforce Development (MOWD), which administered the WIA funds locally, to incorporate an access survey requirement and prefunding policy and procedure for enforcing physical and programmatic accessibility into its WIA funding request for proposals (RFP). MOWD also agreed to provide funds for grants to the WIA youth contractors to improve accessibility. With the first funding round under the new RFP, Access Living began receiving calls from among the 41 organizations that had been surveyed. Since accessibility surveys were now required for continued WIA funding, many of the youth organizations sought copies of the free surveys that Access Living had earlier provided with the stated incentive that such a service would normally cost hundreds of dollars. The logical conclusion is that the organizations had not only failed to improve their accessibility, they had misplaced the accessibility survey itself.

It should be noted that the lack of success in the programs described above could be attributed in part to the fact that the offers of assessment and technical assistance came from entities that also had the capacity and mission to bring a private lawsuit against entities that failed to comply with the ADA. The public accommodations involved could

have felt inhibited by a natural distrust of such assistance, even with assurances of confidentiality. Access Living, for example, does bring litigation, and some WIA-funded organizations were reluctant to even schedule the free survey, perhaps because they believed Access Living was gathering evidence for a lawsuit. As one participant observed at a stakeholder meeting in Chicago, one would not readily go to the Internal Revenue Service first to ask for advice about whether one's tax practices violated the revenue code. However, two other attempts to encourage voluntary compliance—made by a small business-disability collaborative and an academic third-party source—also failed to achieve uniform or even rudimentary voluntary compliance.

The San Francisco Collaborative was formed in 2003 to give small businesses the opportunity to proactively come into compliance with their Title III obligations *before* litigation was brought.⁸⁵ The Collaborative's partners were the San Francisco Small Business Network, the Independent Living Resource Center San Francisco (ILRCSF), and the San Francisco Small Business Commission, with funding from the latter two partners and the Public Entity Risk Institute. There was relatively high awareness in the small business community at the time of the potential for being sued under the ADA, as hundreds of lawsuits had been filed against San Francisco small businesses in 2002 and 2003 for violations of the ADA and Title 24, California's state building code.⁸⁶ Many of the violations involved the inaccessibility of something as basic as entrances. The Collaborative's partners worked together for approximately one and a half years under certain cooperative assumptions, accepting the following:

- The average small business person did not understand the requirements under the ADA's "readily achievable"⁸⁷ standard.
- San Francisco's Department of Building Inspection had made errors and omissions in the permit and inspection process for Title 24, leaving small businesses unaware of their state accessibility obligations.
- Most businesses would make needed changes if they were informed about what was required.
- Financial assistance to small businesses to obtain independent confidential accessibility surveys to assess the need for modifications would make it easy for

businesses to proactively ameliorate the risks of litigation while also gaining new customers.⁸⁸

The Collaborative's services to the business community included the following:

- Outreach through media (local newspaper articles, paid advertisements, radio shows, press releases); presentations to small business groups at award dinners and neighborhood merchant association lunches/dinners; personal contacts by Small Business Network and neighborhood association representatives; a display at the Department of Building Inspection offering technical assistance (TA) funds; walking tours of small businesses to provide tips and information about available services; classes on accessibility and practical solutions conducted by an architect and an accessibility consultant; and direct mailings of an introductory information packet complete with \$500–\$1,000 TA coupons to neighborhood merchant associations and individual businesses randomly selected from lists provided by the Council of District Merchants and the Small Business Network.
- Information and referral services via telephone and e-mail.
- Creation of easy-to-understand print materials about what accessibility means in such formats as “tips for serving customers with disabilities” and “hot topic question and answer” lists.
- Establishment of a \$25,000 technical assistance fund that offers assistance of \$500–\$1,000 for an accessibility needs survey or architectural plans to make accessibility changes (average cost, \$1,000–\$1,500),⁸⁹ and a list of qualified, experienced accessibility surveyors.
- A voluntary dispute resolution process that would use a panel of people with disabilities and small business owners.

After 18 months of operation, the Collaborative had successfully distributed more than 2,200 print packets of information and reached more than 500 merchants at presentations. Forty merchants had been reached through the walking tours that had been conducted in a few San Francisco districts with public support from city supervisors. However, only one neighborhood association took up the offer of a free class, which was conducted for 10

merchants. On the crucial measure of whether a significant numbers of businesses chose to engage in an accessibility survey and/or increase their accessibility, a mere \$1,775 had been distributed from the fund for surveys and increased accessibility by the three applicants existing as of July 31, 2005 (one request was pending at the time). Despite extensive and varied outreach during the period of the Collaborative's operation, it was forced to conclude that—

Eighteen months after a collaborative effort began in San Francisco, less than 3% of those offered information responded. Less than .2% requested funds for accessibility surveys or modification planning. Litigation has achieved greater compliance with state and federal law, greater accessibility than a non-litigious, collaborative approach.⁹⁰

Another attempt to encourage Title III compliance that is examined here is notable for its focus on an urban Latino community in Chicago.⁹¹ Small business owners and managers of diverse racial and cultural backgrounds are a growing economic force, and ethnic urban neighborhoods frequently take root in older built environments that have both numerous physical accessibility challenges and relatively poor residents.⁹² Researchers, in a study based out of the University of Illinois at Chicago,⁹³ used an educational intervention to assess the physical accessibility of 38 small business establishments in two adjacent Chicago neighborhoods. Teams visited the businesses to give them a baseline assessment of their physical accessibility, focusing on whether the business's entrance and goods and services were fully accessible, moderately accessible, or inaccessible.⁹⁴ Within six weeks, each establishment received by mail or in person specific written feedback regarding the business's physical accessibility and suggestions for inexpensive improvements.⁹⁵ The improvements included such simple suggestions as offer a service bell and curbside service if an entrance is not accessible or to oil hinges and adjust doors if an entrance door is too heavy or has inaccessible handles. At least four months after the feedback, teams conducted follow-up accessibility surveys and interviews with the 38 participants to determine the extent to which accessibility improvements had been made and to obtain the participants' views on barrier removal.

Of the 38 participating businesses, 15 were moderately accessible and 23 were inaccessible at the time of their baseline assessment, with an average of 6.7 accessibility

problems for every establishment. At the time of the follow-up interview, only three sites had improved from being inaccessible to moderately accessible, with an average of one improvement made per site (specifically, 20 of 38 establishments had made at least one accessibility improvement). In addition, one of the larger businesses was actually undergoing major renovations and had incorporated the study's feedback into a move toward achieving full accessibility. From the participant interviews, the researchers found that "participants appeared to lack adequate and accurate knowledge" about the ADA, and 45 percent of the sample said they had not heard of the ADA before participating in the study.⁹⁶ The provision of customized ADA-related compliance information to businesses that had not sought out the information on their own and were facing economic hardship did lead to an average improvement of 1/6.7 accessibility problems.⁹⁷ On the other hand, this leaves an average of 5.7 accessibility problems at each establishment, none of which achieved full accessibility. The research team also found that "many establishments believed that the lack of customers with disabilities justified not making accessibility improvements," demonstrating a lack of awareness that their inaccessible entrances prevented customers with disabilities from entering.⁹⁸

The study effectively illustrates the limits of relying on the goodwill and voluntary compliance of public accommodations.⁹⁹ Businesses may not be actively antagonistic toward people with disabilities and may be willing to do *something*. But the accessibility changes that a business might make on its own—especially with inadequate information about the law and erroneous perceptions concerning both the costs of modification and the existence of customers with disabilities—will rarely enable actual accessibility or comply with Title III. At the time of the interview, 74 percent of the businesses (28) had not even posted the bilingual "If you need assistance, please ask" sign with the accessibility symbol that had been given to them as part of their feedback package, perhaps indicating a reluctance to commit to an unknown degree of assistance. As the research team in Chicago concluded—

The results also indicate that an educational approach, although helpful, may not be sufficient. Additional strategies—informational, motivational, and legal—may also be needed. In all likelihood, multiple change strategies will be needed to make substantial and sustained progress in securing the accessibility rights of people with disabilities.¹⁰⁰

The limitations of voluntary compliance by public accommodations, as well as the critical role of the private right of action, is illustrated in a series of lawsuits initiated in 1995 by one private plaintiff and the Disability Law Center (DLC), the Protection and Advocacy agency for Alaska.¹⁰¹ The “Ramps Project” was initiated when Jesse Owens, a professor at the University of Alaska and a wheelchair user, came to DLC for assistance.¹⁰² Professor Owens was an avid outdoorsman and was extremely frustrated by the inaccessible public accommodations that served Alaska’s highway system. In his travels and activities in Alaska, he would pass through entire small towns where “he would not be able to get in anywhere to go to the restroom or get a bite to eat.”¹⁰³ Two attorneys at DLC first identified architecturally inaccessible public accommodations, especially those with entrance steps, then sent a letter to each public accommodation informing it of its ADA obligations and asking the business to inform them of how it would meet this obligation. If a business failed to take action even after a second letter, DLC would file an administrative complaint or lawsuit.

In the first phase of the project, 62 letters were sent out, with the result that 38 new ramps were built.¹⁰⁴ Some of the ramps were built voluntarily, but 12 were built only after DLC filed an administrative complaint against the businesses. Later in the same year, 271 letters were sent out in a second phase that received a lot of media attention, and 85 of the businesses responded with voluntary compliance.¹⁰⁵ DLC still had to pursue lawsuits against 19 businesses, many of which were resolved through entry into a consent decree in which the businesses agreed to provide a ramp and pay attorney fees. Under phase two, 102 ramps were eventually built. Janel Wright, a DLC attorney who worked on the project, recalls that while some businesses quickly responded with compliance, others “fought everything every step of the way.” The lawsuits were filed steadily—one new lawsuit every two weeks—and were closely tracked by the media. Two businesses that had initially ignored the letters eventually called DLC, but only after 15 lawsuits had been filed. For at least some businesses, notice of a Title III violation and the threat of a lawsuit are insufficient to motivate voluntary compliance; such businesses seem to require actual proof that lawsuits are being pursued before they are sufficiently motivated to comply with the law themselves.

The Alaska example shows another difficult aspect of voluntary compliance as a means of achieving Title III implementation. A public accommodation may profess willingness to comply with the law, but in fact that willingness may be conditioned on being told exactly what is needed for compliance and the specific consequences of not following the law, and/or receiving some kind of assurance that providing accessibility as directed will be a guarantee against future litigation. In other words, voluntary compliance is not a simple matter of being told what is wrong; it is also about being informed of one's specific liability and risk of a lawsuit under Title III. The relatively high "voluntary compliance" rates achieved in Alaska through the Ramps Project were obtained with the assistance of DLC, a legal organization with sufficient personnel that had the capacity and mission to enforce the federal civil rights law. The two letters that were sent provided businesses with a clear idea of what the ADA required of them and indicated that they risked legal enforcement if they did not take action. In this scenario, voluntary compliance is not an "alternative" to the private right of action; it is, in fact, *entirely dependent on the imminent threat of a private right of action*. Thus, voluntary compliance requires the availability of a private bar with technical ADA expertise—attorneys who can make a living by including Title III compliance cases in their work.

The average person who has not retained an attorney is more likely to send a request for voluntary compliance like the notice sent in a recent California case: an unsigned, undated letter sent to a defendant business before any lawsuit was initiated, telling the business that the sender "could not find handicapped parking" and "had serious problems trying to use your restroom," and asking the business to "please take care of these problems at once."¹⁰⁶ Such a letter is sufficient to let a public accommodation know that it has specific barriers that prevent people with disabilities from gaining access. Eventually, the plaintiff did file a lawsuit and the parties reached a settlement in which the business agreed to remove the architectural barriers and pay monetary damages of \$4,000, leaving the determination of the plaintiff's attorney fees to a court motion. At that motion, the court found that "it is a proper exercise of discretion and common sense in an ADA case or a parallel state case to require, as a prerequisite to recovering attorney fees, a pre-litigation unambiguous warning notice to the defendant and a reasonable

opportunity to cure the violation.”¹⁰⁷ The court then stated that the letter sent prior to the lawsuit was insufficient because:

[a]n unambiguous warning notice would specify and detail the nature of the claimed ADA violation, and warn of the need for a lawsuit if the defect is not fixed within a reasonable time. Plaintiff’s letter does not unambiguously accomplish those objectives. Without an appropriate advance notice, the Court is unable to find the lawsuit was necessary.¹⁰⁸

This leaves the average person with a disability facing a catch-22 when encountering barriers in a public accommodation. Before bringing a lawsuit, she will need to find an attorney with the kind of ADA technical expertise that can “specify and detail the nature” of the public accommodation’s inaccessibility and its liability risks under applicable federal and state law. But what reasonable private attorney will take on a case in which his fees may depend, according to the court in *Doran*,¹⁰⁹ upon sending the kind of prelitigation notice that will allow a business to fix the problem and make attorney fees unobtainable according to *Buckhannon*?¹¹⁰ What kind of private attorney could afford to investigate public accommodations and write warning letters free of charge? It should be noted that the staff of the DLC, as a part of the federally funded Protection and Advocacy System, are not private attorneys who need to make a living from their fees. Also, most of the time, Protection and Advocacy (P&A) agencies must use their limited resources to pursue areas other than Title III physical access.¹¹¹

The experience of many people with disabilities is that their initial requests for barrier removal are met with misunderstanding, condescension, or hostility, or perhaps are simply ignored. The notion that voluntary compliance is a fairer and better way to implement the goals of Title III because it enables both people with disabilities and business owners to effectively bypass attorneys is revealed to be fiction every time a public accommodation disregards notice of its inaccessibility.

If voluntary compliance means giving public accommodations tailored information about their accessibility obligations and the freedom to make a few changes over time as convenient, then voluntary compliance has not been an effective means of achieving Title III implementation over the ADA’s 16-year history. The above examples illustrate this

repeatedly. If voluntary compliance requires the receipt of a direct threat of litigation in a detailed letter outlining one's risk of liability under Title III, then people with disabilities are placed in the untenable position of seeking out and independently paying for expert technical and legal advice to be provided to public accommodations. The ideal of voluntary compliance—when it means that a person with a disability can simply communicate how he or she was denied access to a public accommodation that will then make reasonable efforts to determine its obligations under the law and address the problems—is a worthwhile goal. The dissemination of information about Title III obligations and technical assistance, outreach to businesses, and collaboration among disability organizations and small businesses in particular should all be encouraged as means to achieve this goal. However, it is clear that voluntary compliance is not working very effectively at the present time and cannot be relied on to achieve widespread Title III compliance without a healthy private right of action.

C. Reasons for Widespread Noncompliance with Title III

There are numerous reasons for the present state of noncompliance with Title III, 16 years after the passage of Title III. There is very little voluntary compliance, partly because of the dearth of readily available, reliable, tailored technical information for small businesses in particular and insufficient motivation for businesses proactively to seek out information. There is insufficient legal enforcement, both administrative and private, that would provide motivation for private compliance and publicize the law and how the “readily achievable” standard works in practice. However, various stakeholders and academic commentators allude to deeper systemic reasons that make it difficult to achieve broad Title III compliance and the effective use of existing enforcement tools.

Complexity

Title III is intended to cover public accommodations of all sizes all across America. This scope of coverage is needed to ensure that people with disabilities can gain access to *all* the goods and services provided by public businesses.¹¹² Title III also protects the rights of people with all kinds of impairments, encompassing a wide variety of circumstances in which discrimination can occur, ranging from outright denials of service to people with

developmental disabilities, to refusals to modify communication practices and policies for people who are Deaf, to physical inaccessibility for people with mobility impairments. In addition, the physical accessibility requirements of Title III depend in part on the date of construction or alteration of the building that houses the public accommodation. Existing buildings are under a “readily achievable” barrier-removal standard for compliance, which says a business must make the physical accessibility changes that are “easily accomplishable and able to be carried out without much difficulty or expense.”¹¹³ Finally, the obligation to maintain readily achievable barrier removal is ongoing—as the years pass, public accommodations must assess remaining barriers and evaluate whether barrier removal is readily achievable in light of their resources.¹¹⁴

Title III is not a simple law and, ironically, some of its complexity arises from an attempt to ensure that small businesses in particular are not subject to an inflexible burden of compliance.¹¹⁵ Whether barrier removal is readily achievable in any particular business is a case-by-case judgment that depends on factors that include the nature and cost of barrier removal and the size and financial resources of the public accommodation.¹¹⁶ While this flexibility allows the small mom-and-pop grocery store to avoid being held to the level of barrier removal that could be expected of a supermarket chain store, it also means that businesses in existing facilities cannot follow a simple, industry-wide formula for achieving compliance. DOJ has published accessibility standards and guidelines for existing facilities, complete with numerous examples of “modifications that may be readily achievable,” but businesses remain responsible for applying the standard to their own circumstances and maintaining readily achievable barrier removal under federal law.¹¹⁷ Larger public accommodations can afford to obtain in-house expertise or hire consultants to help them determine their Title III obligations, but smaller businesses often lack the resources to acquire such expertise.

The challenge of navigating Title III’s physical accessibility requirements is further exacerbated by the dearth of readily available local expertise regarding federal accessibility standards. Access Living’s work with Chicago’s WIA youth workforce resulted in the conclusion that the surveyed organizations showed little motivation for

achieving Title III compliance and did not seem to think they served people with physical accessibility needs. At the same time, Access Living acknowledged that it was “extremely difficult to identify people and firms who were qualified” to conduct accessibility site surveys or help workforce development agencies create an ADA/504 plan, and cited a “tremendous need nationwide for resources” such as lists of such people and firms.¹¹⁸ The San Francisco Collaborative concluded in its report that while the small businesses it reached out to uniformly chose a “wait until I’m sued” approach to compliance over proactive risk management, there is also “genuine confusion about obligations under Title 24 [California’s State Building Code] and ADA” as well as “real difficulty in accessing funds to make significant changes under the ongoing obligations of ADA or to redress past errors under Title 24.”¹¹⁹

Ignorance of the law does not excuse a failure to follow the law, and the complexity of the ADA does not excuse the failure of businesses to comply with their Title III obligations. However, Title III’s complexity for the existing facilities in which many small businesses are located is one more factor that may influence business owners to focus on other legal requirements first. One participant in the work of the San Francisco Collaborative observed that many small businesses with slight profit margins see Title III as just another regulation:

There are many regulations that small businesses must comply with, and laws such as health regulations and minimum wage requirements keep changing. Disability access isn’t a regulation that small business owners feel is “up there” with the others. They know that if they don’t comply with health codes they can lose the business, and the same if they don’t abide by minimum wage requirements and many others.¹²⁰

If the ADA is “just another regulation”—but one that the government fails to check or enforce and that boasts few qualified plaintiff attorneys—the average small businessperson will not choose to expend resources on trying to understand Title III’s complexities or finding and hiring an expert.

Inertia and Motivation

One of the most striking aspects of Title III is its “hybrid” nature. Congress intended to, and did, enact a sweeping civil rights law for people with disabilities, as evidenced in the ADA’s stated purpose: “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”¹²¹ For the disability community and disability advocates, the law is about stopping the discrimination that has prevented people with disabilities from fully entering the mainstream of American life. At the same time, the ADA’s primary and immediate impact for many public accommodations, especially the very small businesses to which Title I does not apply,¹²² is purely regulatory. Title III’s often detailed directions for the achievement of physical accessibility feels just like the state building code regulations that establish standards for the built environment, but with the distinct disadvantage of a lack of broad government presence and enforcement in the form of local plan and building inspection. There is even less official regulatory supervision of the requirement that all businesses proactively make changes in existing structures where readily achievable.¹²³ If the regulatory authorities that small businesses deal with daily pay far more attention to the minutia of building standards than enforcing meaningful access to goods and services for people with disabilities, then those businesses will come to view Title III violations as just a failure to measure correctly and not a denial of civil rights.

This perceived split between the ADA’s broader goals and the importance of executing ADA Accessibility Guideline (ADAAG) details—which for some people with certain disabilities may mark the critical difference between independence and exclusion—to some extent underlies all noncompliance with Title III. One architect who is himself a small business owner and was a participant in the San Francisco Collaborative said that “the majority of the small business community doesn’t equate access with discrimination.”¹²⁴ Many small business owners do not see how the couple steps that have always been there or the small restroom that no one else has a problem using could be the kind of discrimination that they would associate with a refusal to serve someone on racial grounds, for example. Under the law, though, a business in an existing building that does not undertake readily achievable barrier removal is discriminating against those who are unable to enter or use a service because of those barriers.

This is not just a theoretical discussion. There is clearly a profound communication gap between the disability community and disability advocates and attorneys, and the business community that is responsible for implementing Title III. Many very small businesses in particular profess to be unaware of the ADA or unaware that they are doing anything wrong by offering alternative services to customers with disabilities; they do not think about whether barrier removal would enable customers to independently gain access to goods and services. The section on voluntary compliance illustrates a basic inertia and reluctance to expend resources; businesses must overcome this reluctance when “compliance requires a more proactive step than merely removing a “whites only” sign and may entail what is perceived to be a significant expense.”¹²⁵ But when businesses believe they have not done anything wrong, they are not motivated to expend time and money on barrier removal. Small businesses are difficult to reach collectively with accurate information; and in both rural and urban areas, small business owners tend to pay more attention to word-of-mouth and what their peers are doing. One commentator cites the prevalence of Internet and phone shopping, and the fact that it may not be worthwhile for someone with a disability to make the effort to go out if only one or a few stores are accessible:

There may thus be a substantial network effect to retail accessibility. If so, one business can reap the benefits of accessible facilities only if many other businesses make their facilities accessible as well. Without some assurance that other businesses will remove barriers, an individual business may lack the incentive to do so itself.¹²⁶

Since businesses may experience very little internal or economic motivation to comply with Title III, the importance of external motivation in the form of public or private enforcement is critical. The weaknesses of administrative and private enforcement under Title III have been discussed above, but additional issues arise, depending on the context of enforcement. The small and specialized bar familiar with the complexity of Title III litigation may be ideologically or personally committed to developing a further expertise in a specific type of discrimination (e.g., failure to provide alternative formats for people with visual disabilities); is unlikely to be available equally across the country; and is not necessarily prepared to focus on small business entities. In other words, any person with any disability who wants to enforce his or her rights may have tremendous difficulty

finding an attorney nearby who is willing and able to give advice on and handle the specifics of the case. These chances are even slighter as the area of expertise narrows, as it would if a person with a mobility disability were looking for an attorney competent in the ADA Accessibility Guidelines. In discussing the aftereffects of *Buckhannon*, one commentator warned that ADA Title III litigation and compliance could become concentrated “in urban areas where there are established and adequately funded disability rights public interest groups, leaving rural areas behind.”¹²⁷ Moreover, there will never be enough public interest resources to address even a fraction of access problems in urban areas.

Another difficulty in enforcing Title III compliance effectively in rural areas and small towns was noted in one of the judicial focus groups. A participant who worked as a judge in a rural area said that attorneys in his jurisdiction have two disincentives to bringing disability rights cases: “One, it’s a highly technical area; and two, it would mean having to take on their friends who own the local businesses.” Even if an attorney is familiar or willing to become familiar with Title III, a plaintiff still has to be found who is willing to pursue access to the point of litigation if voluntary compliance does not occur. In parts of the country where everyone knows everyone else and daily lives are deeply entwined, plaintiffs run a huge personal risk of being branded as troublemakers for insisting that businesses make physical or procedural changes that would allow independent access. These factors can make it particularly difficult for people with disabilities who live in rural areas or small towns to bring a lawsuit or act as the external motivators to compliance for the small businesses in their community.

Disincentives

Assuming that a business knows about the law and is sufficiently motivated to work through the law’s complexity to determine its ADA obligations, there are still rational disincentives to compliance. Whether the costs of compliance and barrier removal are minor or significant, there is an economic rationale for choosing to pay those costs later rather than sooner, especially if a business is not already committed on principle to “doing the right thing.”

Businesses might calculate that it is cheaper to not comply, since statutory enforcement is unlikely to be as expensive as compliance from the date of enactment of the ADA. In other words, a business that is sued in the year 2000 for failing to comply with ADA Title III may have benefited for ten years by saving money on an auxiliary service or device. Prospectively offering that device and paying a modest compensatory award to an individual victim of discrimination as a result of enforcement activity may be cost-effective.¹²⁸

This is especially true in states whose laws do not offer the possibility of recovering compensatory damages for violations of state and federal disability laws. If a business cannot be held monetarily liable for the inconveniences, increased costs, injuries, or humiliation that people with disabilities endure when the business has failed to engage in readily achievable barrier removal, why should the business pay for anything until it is forced to do so? This is especially the case if a business owner believes that customers with disabilities do not or will not patronize his or her business even if it is accessible. Why invest money now for the chance of gaining hypothetical customers or avoiding a lawsuit that may never happen?¹²⁹

Over the past five years, another distinct disincentive to compliance has sprung from the fear and anger that has been generated in the business community by “serial litigation,” which is discussed in the following section. Regardless of one’s opinion of serial litigation tactics and the actual dimensions of the problem, stories of family-owned businesses forced to close because they were targeted by greedy lawyers and plaintiffs with disabilities have generated negative public opinion, as well as anxiety among the business community.

If businesses could easily, quickly, cheaply, and permanently “inoculate” themselves against such lawsuits, the alleged prevalence of Title III litigation should lead directly to increased compliance. The complexity and flexible nature of the readily achievable barrier-removal standard and the rarity of competent physical accessibility expertise means that businesses can not achieve compliance so readily and painlessly. Instead, some public accommodations refuse to participate in or publicly sponsor educational seminars on Title III obligations, and spurn offers of free technical assistance and accessibility surveys in a bid to totally remove themselves from notice. This irrational response is fanned by media and anecdotal evidence that a business will be sued

anywhere, anytime for the slightest Title III violation, and causes some businesses to try to ignore obvious or easily fixable access barriers. Another irrational business response to serial litigation that can act as a disincentive to compliance is the urge to fight enforcement on principle; in this case, the time, money, and effort that could have gone into barrier removal is spent instead on litigation.¹³⁰ Such stands on principle may play well on the news and mobilize industry associations to lobby for legislative and policy changes, but they do little to foster broader overall awareness of how to comply with Title III obligations and achieve accessibility.

This analysis of the underlying and interconnected reasons for widespread noncompliance with Title III also highlights the complex reality of what is needed to support broad social change. There is need for the consistent reiteration of a clear, attainable goal that is adequately supported by ubiquitous notice of one's obligations under the law, as well as technical support for achieving compliance. There is need for strong administrative compliance, and a widely and wisely exercised right of private litigation that will help publicize and ensure motivation for compliance among all public accommodations. Public accommodations, as well as the broader public, must come to recognize that inaccessibility under the ADA is discrimination and is socially unacceptable as well as legally actionable. Currently, noncompliance with structural and other policy and communication modifications required by Title III is so deeply embedded that it requires an attack on all fronts to overcome the longstanding inertia and the more recent fearful responses to the threat of litigation that stand in the way of people with disabilities achieving their civil rights. We have entered a long struggle, and we have not yet reached the "tipping point," when enough businesses will have become compliant that accessibility will be the physical, social, and economic norm of American life.

D. Title III and Serial Litigation

While the above discussion has established that there is an ongoing need for a strong private right of action and an available expert disability bar, members of the business community, the defense bar, Congress, and the federal judiciary have raised serious concerns about Title III lawsuits variously and colorfully described in the press as "drive-

by,” a “shakedown,” or a “cottage industry” driven by the “economics of attorney fees.” These concerns raise allegations that a few individual and organizational plaintiffs and attorneys have taken advantage of the widespread lack of compliance to bring vexatious lawsuits that are motivated more by personal profit motives than by a desire to bring about genuine compliance with the law. Unfortunately, these concerns have prompted some business associations and legislators to propose solutions¹³¹ that risk further undercutting Title III implementation in an attempt to curb the alleged excesses of a limited number of known individuals working in a few states.¹³²

While it is very difficult to assess the full extent of the allegations, it is possible to at least begin to assess their factual outlines by looking at some figures gathered from federal courts for the year 2005. The Public Access to Court Electronic Records (PACER) Web site¹³³ enables subscribers to gain access to court records of all cases filed in all U.S. federal court districts. When attorneys initiate a civil case by filing a complaint, they must indicate the nature of suit (NOS) on a cover sheet.¹³⁴ There are two ADA-specific topic codes: Title I complaints are filed under the 445 NOS code, while all other ADA and disability rights cases are filed under the 446 NOS code. In a search for all 446 cases filed in federal district courts between January 1 and December 31, 2005, the raw number obtained was 1,383 non-Title I ADA and other disability rights cases. For our purposes, this total is both over- and under-inclusive. It includes cases brought under Titles II (government entities), III, and IV (telecommunications) of the ADA, as well as cases brought under the Individuals with Disabilities Education Act (IDEA) against school districts and state education departments. On the other hand, the figure does not include cases that were incorrectly designated by the filing attorney as 445 (Title I) or 440 (other civil rights) cases when they were actually Title III cases.¹³⁵ The following is a closer examination of the numbers that attempts to correct for at least some of these possible errors of over- or under-inclusion.¹³⁶

California, Florida, Hawaii, New York, and Texas federal courts, in declining order, had the highest number of 446 filings,¹³⁷ collectively accounting for 969 (70%) of the 2005 total of 1,383 446 filings. California had the greatest number of 446 filings by far in 2005: 576 (41.6%). The vast majority of California’s 446 cases (533) were filed in either

the Central or Eastern District by many of the same attorneys, who tended to represent only a few plaintiffs. One attorney, who is also a person with a disability, filed more than 100 Title III lawsuits in the Eastern District on his own behalf in the first half of 2005. Two attorneys in the Central District worked together to file 47 Title III lawsuits in the same period. Most of the complaints specified physical accessibility problems involving entrances, restrooms, and store counters, and an estimated 90 percent of the cases were dismissed within a year by voluntary agreement of the parties or through settlement. The defendants included small privately owned businesses as well as larger chain stores and restaurants. When complaints likely filed under Title II and IDEA are excluded, there are 506 cases, at most, that could be Title III cases. Since 23,910 civil cases were filed in federal district trial court in California in 2005, Title III cases made up 2.4 percent of California's civil cases.¹³⁸

In Florida, 169 cases were filed in 2005 under the 446 NOS code; at most, 110 of these were Title III cases. Of the 110, 104 were filed on behalf of one of five individual plaintiffs or four disability advocacy groups working with a small group of attorneys. In Hawaii, only 46 of a total of 103 NOS 446 cases were filed under Title III. While many of Hawaii's complaints cannot be accessed through PACER, of the 19 Title III cases that could be examined, four were filed on the same day by a single attorney and two other plaintiffs filed eight of the cases within a six-month period. In New York, 67 cases were filed; 28 of these were Title III cases. In Texas, 41 Title III cases were filed out of a total of 54 NOS 446 cases. (In New York and Texas, there is less evidence of multiple filings by the same attorneys or plaintiffs.)

It is possible to look at these numbers and see a story of litigation abuse. The same handful of plaintiffs and attorneys is repeatedly bringing lawsuits against dozens of businesses for remarkably similar allegations of physical access violations under federal and state law. Furthermore, as business associations and media often report, these lawsuits are brought in federal court for Title III violations but are joined with state access law claims that provide for the compensatory damage recovery that is missing under Title III. All five of the states mentioned above have some form of compensatory damage relief in their state laws banning disability discrimination in public

accommodations.¹³⁹ The common accusation is that state damage provisions, together with federal and state provisions enabling the recovery of attorney fees, are used by “serial” plaintiffs and attorneys to file similar lawsuits against small businesses that are ignorant of their Title III access obligations and will quickly pay the excessive sums demanded by plaintiffs and their attorneys rather than risk going to court. Moreover, the charge continues, the Title III violations that supposedly were the bases of the complaints often continue to go unremedied after settlement, and access for people with disabilities is not achieved.

On the other hand, consider the state of private enforcement under Title III without “serial litigants.” In Florida, for example, if all the Title III actions brought by a small group of nine individuals and advocate organizations were somehow prevented, there would have been *six* Title III cases filed for the entire state in 2005. Even if every one of these six cases dealt with physical access violations in small businesses, it strains credulity to suggest that only six establishments in Florida were inaccessible to people with disabilities in 2005. Similarly, there are approximately 109,000 private businesses in San Francisco, according to that city’s Economic Development Office, and about 85 percent are small businesses that employ anywhere from 1 to 100 people. San Francisco is in California’s Northern federal court, where a mere six Title III access claims were filed in the first six months of 2005. This is the situation in a city where one small business participant in the San Francisco Collaborative recently asserted that over 50 percent of his fellow business owners were obviously inaccessible.¹⁴⁰ Without minimizing the concerns of small business owners who feel defenseless against the few unscrupulous practitioners and plaintiffs who bring vexatious lawsuits and far more ADA technical expertise to the table, it is still clear that Title III is overwhelmingly underenforced in most of the country. Only 414 NOS 446 cases were brought in federal court in 46 states (including the District of Columbia) in 2005, and these cases encompass not only complaints brought under Title I and IDEA but also the broad gamut of Title III’s access and modification requirements.¹⁴¹ This is far from a national “flood” of litigation, especially in the face of acknowledged widespread noncompliance with the ADA’s readily achievable barrier-removal provisions, the aspect of public accommodations accessibility that has garnered the greatest controversy.¹⁴²

Concerns raised about state law and the risks of remedial damages as encouraging overlitigation of Title III also seem to be overblown. A number of states have remedial provisions that extend beyond those of Title III by allowing for compensatory damages. These states include Vermont,¹⁴³ Oregon,¹⁴⁴ Kentucky,¹⁴⁵ and the District of Columbia,¹⁴⁶ yet the federal courts in these states have not seen a surfeit of Title III actions. In Kentucky, the state disability discrimination provisions recognize a private right of action, provide for minimum statutory damages of \$1,000 or \$5,000 (if the violation was committed intentionally or recklessly) for each violation, enable courts to award attorney fees, and do not limit the right of aggrieved people to damages under any other applicable law.¹⁴⁷ Yet only two Title III cases were filed in that state's federal courts in 2005. Even though Kentucky does not set as high a statutory minimum for damages as California, which allows for the greater of three times actual damages or \$4,000, Kentucky state law supplements Title III in the same way as the state laws of those districts in which serial litigation is a concern. Yet not only is serial litigation absent, state compensatory damages have been insufficient to overcome the systemic disincentives to private litigation discussed in the introduction.

The picture of insufficient private enforcement of Title III is supported by the appellate case review findings of ADA scholars.¹⁴⁸ Professor Ruth Colker searched for reported appellate-level decisions filed under Title III between June 1992 and July 1998 and found just 25, concluding that "only 5 percent of the reported appellate cases are therefore ADA Title III cases."¹⁴⁹ Professor Colker also examined available verdict data services available in different regions of the country and concluded that out of 109 verdicts in ADA cases heard in state or federal court by September 28, 1998, only 16 (about 16%) were brought under Title III.¹⁵⁰ She attributed the small number of cases to Title III's limited remedial scope.¹⁵¹ Professor Michael Waterstone extended Professor Colker's research, searching for and analyzing reported appellate-level cases brought under Title III between the ADA's passage in 1990 and the end of 2004; he found 82.¹⁵² In his analysis, Professor Waterstone writes:

Considering the convergence of no damage remedy and the increasingly doubtful prospects for attorneys' fees, the low number of Title III cases at the appellate level (79 [excluding three Title III cases brought against two distinct entities])

makes sense. Individual plaintiffs have very few incentives to bring these cases. The numbers bear this out: only 17 of 79 cases in my Title III database were brought solely by private plaintiffs—i.e., where a public interest organization was not involved as a plaintiff or as a counsel for plaintiff, or the DOJ was not a participant as an *amicus* or intervener.¹⁵³

If there is one state where Title III litigation could be said to approach problematic levels, it would be in California, where a few plaintiffs and attorneys have been behind virtually all the physical access cases brought in two of the state's four judicial court districts. While only 2.4 percent of California's federal civil court filings are Title III cases, there could easily be twice as many Title III cases if the state court filings for California could be counted.¹⁵⁴ In districts where courts have imposed sanctions on serial plaintiffs and/or attorneys, the latter may choose to file their federal and state law claims in state court to avoid the impact of the sanctions. Even in federal districts where sanctions have not been imposed, California plaintiffs may choose to file in state court to avoid the risk that defendant businesses will fix their access problems before the court hearing and, according to *Buckhannon*, moot the plaintiff's federal accessibility and attorney fees claims because the fix was not "judicially sanctioned."¹⁵⁵ California is unusual in that even after *Buckhannon* was decided, the state Supreme Court explicitly continued to recognize the "catalyst theory" of attorney fees, by which a plaintiff may recover attorney fees as long as the plaintiff's actions brought about the primary relief sought by the plaintiff.¹⁵⁶ The ability to avoid *Buckhannon* by not filing in federal court is only possible in state courts that continue to recognize the catalyst theory for recovering attorney fees or, at the very least, do not follow *Buckhannon* in its requirement for a "judicially sanctioned" change in the parties' relationship.

In California's Central District, one court has characterized a plaintiff's filing of hundreds of Title III lawsuits as "vexatious," meriting an order that requires the plaintiff "to file a copy of this order with every new complaint that he seeks to file."¹⁵⁷ Even in this case, however, the court also noted that "[i]t is possible, even likely, that many of the businesses sued were not in full compliance with the ADA."¹⁵⁸ And even in California there is no uniform judicial opinion on the vexatious nature of serial litigation. In the Eastern judicial district of California, which has also seen hundreds of Title III physical access filings, a court denied a defendant's motion to have the plaintiff, who had more

than 40 Title III cases under his belt, declared a vexatious litigant. In doing so, the court found that the defendants lacked standing to bring the motion because they could not show that “they are the subject to [sic] a frivolous lawsuit because they, in fact, have not violated the ADA. They have failed to demonstrate compliance with the statute.”¹⁵⁹ Moreover, the court recognized that “the number of lawsuits plaintiff has filed does not reflect that he is a vexatious litigant; rather, it appears to reflect the failure of the defendants to comply with the law.”¹⁶⁰ The court answered accusations leveled at the plaintiff’s attorney by wondering “why uniform instances of misconduct do not justify uniform pleadings.”¹⁶¹

Title III’s private right of action needs to be effectively and broadly wielded if it is to make an impact in a sea of noncompliance. Currently, however, serial litigants are virtually the only ones bringing Title III actions. At the same time, the force of the anger and public backlash that have been generated among the business community by some serial litigants’ arguably indiscriminate choice of defendants and controversial use of multiple filing tactics may inhibit the private right of action’s effectiveness over the long term. The central problem is that any attempt to curtail the actions of serial litigants by limiting Title III’s private right of action will inevitably lead to limiting implementation of the ADA by further restricting a private right of enforcement that is already severely limited. Even if every one of the total number of non-Title I ADA cases brought in 2005 (1,383) was an actual physical access case, there really is no dispute that there are more than 1,383 public accommodations in the United States that are inaccessible and out of compliance with the ADA. Any one of those cases *could* have been brought by a different plaintiff among the thousands of Americans with disabilities who lack equal access to publicly sold goods and services.¹⁶² The fact that this did not occur is more indicative of how difficult it is for the average person with a disability to find and hire a competent attorney and bring and maintain a Title III lawsuit than it is a sign that there are too many vexatious litigants.

Ultimately, it is not possible to draw a clean line between “good” litigants and serial litigants. The serial litigant is simply the attorney and/or plaintiff who has figured out a way to bring Title III actions despite all the roadblocks. Having figured that out, he or she

has no reason not to continue, given the existence of such widespread noncompliance. Professor Samuel Bagenstos pinpoints this fact when he observes—

Those lawyers who bring ADA public accommodations cases in the face of the disincentives created by the fee-shifting rules are likely to fall into one or more of three categories: lawyers with atypically low litigation costs; lawyers with atypically good ability to determine which cases are likely to succeed (and thus generate a fee award); and lawyers with ideological motives. Serial litigants are likely to populate each of these three categories. The ADA's rules governing physical accessibility are highly complex, detailed, and contextual. Lawyers are thus likely to experience a high fixed cost in familiarizing themselves with and internalizing those rules. But once an attorney has handled a number of accessibility cases, the additional cost of learning the rules governing a new case drops. . . . specialization will also enable the attorney to recover higher fees—both by justifying a higher “lodestar” rate, and by making possible more effective screening of cases. . . . Finally, lawyers and plaintiffs who are ideologically motivated are not likely to stop with making only one business accessible when so many others are violating the law.¹⁶³

There may be plaintiffs with disabilities and attorneys who go over the line and bring lawsuits that are factually unjustified, wrongly motivated, or marred by some collusive element or other unethical conduct. Such parties and attorneys can and should be sanctioned, and this, in fact, has occurred.¹⁶⁴ However, if the Title III private right of action is weakened or restricted in a misguided attempt to control serial plaintiffs and attorneys, but no measures are taken to strengthen the ability of the average person with a disability to bring a private lawsuit, not only will physical accessibility among public accommodations come to a halt, but all the other nondiscrimination requirements of Title III compliance will suffer as well.

Existing Ways of Dealing with Vexatious Litigation

The federal judiciary is not powerless against plaintiffs and attorneys who bring vexatious litigation, defined as a “lawsuit instituted maliciously and without good cause.”¹⁶⁵ All district courts “have the inherent power to file restrictive prefilings orders against vexatious litigants with abusive and lengthy histories of litigation.”¹⁶⁶ A number of federal courts in those districts of California and Florida in which the great majority of Title III serial litigation has been filed have devised numerous ways to impose limits on a

litigant's repeated filing of access lawsuits in the district and an attorney's right to fees under the ADA's fee-shifting provisions.

One of the earliest cases to sanction a Title III plaintiff in some way was the Florida decision of *Rodriguez v. Investco, L.L.C.*¹⁶⁷ The court did not make an explicit reference to frivolous litigation but did find that the "Plaintiff was evasive and willfully ignorant, totally lacking credibility" and questioned "whether attorney fees should be awarded where no effort is made pre-suit to obtain voluntary compliance."¹⁶⁸ Since the plaintiff lost the case, he was in any event ineligible for attorney fees, but the court also awarded costs assessed against the plaintiff.¹⁶⁹ Since then, numerous courts in Florida and California have noted and extended the question raised by Judge Presnell concerning attorney fees, and have exercised their discretion under Title III¹⁷⁰ to deny attorney fees when no pre-suit demand letter was given to the defendant.¹⁷¹ One Florida court presented a variant on the denial of fees when it exercised its discretion to deny the plaintiffs' demand for attorney fees, expenses, and costs after settlement of Title III litigation, except for the amount that defendants' attorneys conceded as reasonable.¹⁷²

Another California case involved the imposition of sanctions specifically aimed at curtailing future filings from a specific plaintiff and attorney firm. In *Molski v. Mandarin Touch Restaurant*,¹⁷³ the court invoked its "inherent power to levy sanctions in response to abusive litigation practices" as well as its authority under the Central District's Local Rule 83-8 to fashion "appropriate orders to control" vexatious litigation.¹⁷⁴ The court analyzed the plaintiff's access filings in the aggregate to find that "the allegations contained in Plaintiff's complaints are contrived and not credible," and "even if the businesses sued by [the Plaintiff] were in violation of the ADA, this fact is outweighed by the Court's finding that he acted in bad faith, for the improper purpose of extorting a settlement."¹⁷⁵ After considering additional factors relating to the plaintiff's motive, representation by counsel, and the adequacy of other sanctions, the court imposed a prefiling requirement under which the plaintiff would have to seek the court's leave and file the *Mandarin Touch* order before filing any new complaint in the Central District. The court concluded that such a specific prefiling order protected not only the court and defendants but also the "purpose and spirit of the ADA," because it prevented abuse and

“does not limit the right of a legitimately aggrieved disabled individual to seek legal relief under the ADA.”¹⁷⁶ The *Mandarin Touch* court subsequently exercised its inherent power to issue a similar prefilings order against the attorney firm that represented the plaintiff in *Mandarin Touch*. The court’s finding was based on its review of the firm’s litigation history “of giving unethical advice [to unrepresented defendants], making questionable allegations of physical injury, pursuing excessive compensatory damages, and securing quick settlements.”¹⁷⁷

Rule 11 of the Federal Rules of Civil Procedure offers another procedural route to control vexatious litigants.¹⁷⁸ Rule 11 builds on and expands the federal court’s equitable power to impose sanctions against a litigant who acts in bad faith in instituting or conducting litigation. Rule 11 requires a ruling on the merits, and the applicant must bring a separate motion,¹⁷⁹ but a court may also raise the rule on its own and enter an order requiring an attorney, law firm, or party to show cause why specified behavior has not violated Rule 11.¹⁸⁰ In general, the courts have relied more on their inherent discretion in imposing sanctions against Title III vexatious litigants rather than on Rule 11. Nonetheless, Rule 11 gives courts a number of tools for controlling vexatious litigants, ranging from an order to pay all or some of the opposing party’s reasonable attorney fees and expenses incurred by the violation to nonmonetary directives such as striking an offending pleading or referring the matter to disciplinary authorities.¹⁸¹ The court is able to consider such factors as whether the conduct in question is part of a pattern or activity, whether the person has engaged in similar conduct in other litigation, and what sanctions are needed to deter similar behavior in other litigants.¹⁸²

Another means of imposing sanctions on attorneys who engage in vexatious litigation or unethical legal practices is to complain to the state bar where they practice and are members, as a violation of state ethical canons and local rules could lead to various penalties and even disbarment. A less formal but nonetheless effective potential “sanction” in this period of considerable public backlash against access litigation is the impact of being labeled as someone who brings excessive litigation. As one commentator observed—

The experience of the lawyers who have filed the large number of suits in South Florida shows that demanding high fees has been more successful in generating bad publicity than as a litigation tactic. They have collected only a small amount of attorney fees, been the subject of a bar complaint and even been discredited within the disability community. . . . [W]hile these attorneys may be filing a large number of ADA Title III claims and making high fee demands, there is no evidence that the judges are automatically acquiescing to the fee requests or that their actions will generate more lawsuits.¹⁸³

The cases described above establish that federal courts already have the discretion and authority to impose sanctions on litigants who bring abusive litigation intended to needlessly harass or extort defendants, or attorneys who engage in the unethical practice of law, regardless of the law under which suit is brought. None of these cases, however, should necessarily be endorsed as an appropriate or desirable way to deal with serial litigants under Title III, since many factors besides harassment can enter into a plaintiff's or attorney's decision to bring multiple lawsuits under Title III. It is possible to argue, for example, that filing a large number of access lawsuits in one small town or region is the most effective way to bring about broad compliance in the region and enables defendant businesses to work collectively with one defendant attorney or firm.¹⁸⁴ The behavior of the few Title III plaintiffs and attorneys who have truly engaged in unethical conduct or vexatious litigation should not be used as the basis for devising rules of general application on standing or rewarding attorney fees for all Title III ADA plaintiffs and attorneys. Some California courts, at least, have distinguished clearly between the imposition of sanctions on unethical Title III litigants and preventing plaintiffs and attorneys from fully exercising their rights under federal or state accessibility laws. One court that declined to condition its reward of plaintiff's attorney fees on the giving of clear and unequivocal pretrial notice to the defendant stated that "[t]o be sure, there are excesses and abuses in the prosecution of ADA cases. . . . But the Court cannot find a basis in those abuses to create an impediment to recovery of statutory relief where the individual case is meritorious."¹⁸⁵

E. Conclusion and Recommendations

This examination of the private right of action under Title III will conclude with a closer look at one example of serial litigation, filed over approximately one month, that exemplifies many of the issues that have been raised. In early 2005, Gina Hackel, Ms.

Wheelchair Wisconsin 2004, filed lawsuits in federal court alleging ADA violations against 24 businesses in Fox Valley, a region in Wisconsin with 16 towns, villages, and cities. Hackel lived in Fox Valley and was represented by a well-known law firm from Florida—Schwartz Zweben & Associates—that had brought hundreds of Title III lawsuits in that state on behalf of people with disabilities. The defendants ranged in size from individually owned small businesses to larger chain stores and the town’s Regal Cinema. In accordance with her right of private action under Title III, the plaintiff did not issue demand letters to the defendants before filing her complaints in federal court.

Bruce Hohol, owner of HoHo’s Café, was one of the first to be sued. Initially, he did not take the lawsuit seriously, partly because he serves a clientele that includes many seniors and people with disabilities, who are always assisted over the two entrance steps as a matter of course.¹⁸⁶ While Hohol had heard of the ADA, he believed he was obeying the law and said he was informed by a Fox Valley’s mayor, city attorney, and building inspector upon his inquiry that his facility was “grandfathered in” and he did not have obligations under the law. Once he became aware that other businesses were being sued, he tracked filings daily by calling the courthouse, and took the unusual step of obtaining and reading a copy of the entire law so he could understand it for himself. Seeking assistance, he called an obscure phone number recorded in the law that led him to someone who, in turn, referred him to Robin Jones, director of the Great Lakes ADA and Accessible IT Assistance Center (Great Lakes ADA Center). It was the first time Hohol had heard of the person or the organization.¹⁸⁷

Twelve of the smaller businesses, including HoHo’s Café, banded together to retain the services of Robert Shumaker, a Wisconsin attorney who already represented one of the businesses on other matters.¹⁸⁸ As Shumaker explains it, the group’s primary goal was to minimize the plaintiff’s attorney fees as much as possible. With that objective, Shumaker went to court and filed papers asserting that the 12 businesses admitted being out of compliance, had no objection to having their premises surveyed by an ADA expert, and agreed to come into full compliance in accordance with the survey findings. Since the plaintiff was suing purely for injunctive relief under Title III, the defendants’ action essentially mooted the plaintiff’s case against them, since there was no live issue to argue

before the court. The parties reached a settlement under which the businesses would be inspected for ADA compliance by a licensed Wisconsin architect or a qualified ADA consultant of their choice, with a report given to the plaintiff within 90 days. The plaintiff could dispute the findings of the report but had to give the defendants 90 days' notice and an opportunity to correct any alleged deficiencies before returning to the court. The court could award attorney fees and costs to the defendants if it did not agree with the plaintiff's objections.

The executive director of the Heart of the Valley Chamber of Commerce, Bobbie Beckman, describes the level of ADA awareness among the Valley's business community before the litigation as very low or nonexistent, with most businesses relying on local building inspectors to tell them if their facility was out of compliance with the law.¹⁸⁹ The litigation created tremendous anger in the community. There was a common feeling that outsiders (e.g., the attorneys from Florida) were coming into town to extract fees from local businesses and that the entire situation could have been resolved differently if the plaintiff had simply addressed them individually as a customer who wanted to eat or shop in their establishments. While these sentiments are not uncommon among defendants of serial litigation, what happened in Fox Valley after the settlement is somewhat unusual. The communities rose above their resentment of the litigation and did not display a "bunker mentality" by ignoring the federal law's requirements. Rather, the Chamber and the Great Lakes ADA Center worked together to offer two very well-attended seminars and technical assistance to "open a line of communication, educate the public and business owners, and dispel some of the myths, fears, and concerns that have arisen from the recent complaints filed against our local businesses."

The Fox Valley litigation achieved a number of positive outcomes. The businesses that were sued achieved compliance with Title III and increased accessibility for people with disabilities in the Valley; there was greater ADA awareness throughout the region's business community and general public; and compliance and technical assistance resources were widely disseminated. Nonetheless, there is considerable stakeholder disagreement on the real impetus behind such changes, the role litigation can or should

play in bringing about compliance, and whether there are realistic alternatives to litigation.

Beckman recognizes that the lawsuits ultimately achieved good results throughout Fox Valley but questions whether lawsuits were the only way to obtain change. She knows that a couple small businesses closed down because they did not think they could afford the required changes and recalls that some businesses were unwilling to be publicly identified with the post-litigation education seminars, either as sponsors or as hosts, because of their fear that the plaintiff and her attorneys would come, scope out the place, and target them for the next round of lawsuits. While Beckman agrees that business organizations such as her own are the best vehicle for providing ADA educational outreach to small businesses in rural areas and small towns, she also acknowledged that the seminars would likely not have happened without the lawsuits and was hard-pressed to think of suggestions for getting sufficient, prompt attention from business organizations without bringing litigation.

For his part, Hohol remains deeply convinced that all the positive results in Fox Valley, and more, could have been attained if people with disabilities and the business community had sat down together and cooperatively figured out how to achieve accessibility. He admits that he is still angry about having to spend money on unnecessary litigation when a personal approach would have accomplished the same thing. He says he would have been willing to check out for himself what the law says, then work to come into compliance. Hohol admits, though, that he can speak only for himself and his community, and cannot vouch for how well voluntary compliance would work in larger cities. Hohol's perceptions and conviction contrast with those of plaintiff Hackel, who told local Wisconsin newspapers that "the lawsuits followed years of frustration in trying to persuade area municipalities and businesses to comply with the 15-year-old law."¹⁹⁰ Hackel's view was echoed by another Fox Valley wheelchair user, who said, "You can talk to these people until you're blue in the face, but they're not going to spend any money unless they have to."¹⁹¹

The attorneys involved in the settlement also reflect opinions that go beyond resolution of the immediate lawsuits. Defense attorney Shumaker is "very happy" about how his

litigation strategy worked to keep plaintiff attorney fees low but also holds the strong opinion that bringing federal court litigation without written notice to a defendant is deeply unfair, even though there is nothing that requires such notice in the ADA or in other civil rights laws.¹⁹² Shumaker's desire to see some kind of 90-day notice provision in Title III seems to be based at least in part on his certainty that attorneys who bring serial lawsuits without warning are primarily intent on provoking a lengthy legal battle before settling for large fee awards, and only secondarily seeking increased accessibility. This characterization does not necessarily ring true. The plaintiff and her attorneys did not seek damages for disability discrimination, which are available under Wisconsin state law.¹⁹³ Gene Zweben, the plaintiff's attorney, seems sincerely pleased about the results attained in Fox Valley, focusing on how access barriers were removed and reduced throughout the region as a result of the lawsuits. Zweben recalls the defense attorney as someone who "understood what needed to be done to make places more accessible," found that the defendants in Fox Valley were generally ignorant of the law and not eager to make readily accessible changes or accommodations, and feels that people with disabilities must self-advocate for their rights, since DOJ does not have the staff to investigate Title III violations all across the country.¹⁹⁴

For the business community in Fox Valley and their attorney, the fact that they did not receive prelitigation notice is seen as dishonorable, evidence of greed, and indicative of a lack of real interest in greater accessibility.¹⁹⁵ This attribution of bad motive to the other side makes it easy to justify following a course of action that, above all, is aimed at bypassing or minimizing the plaintiff's right to request attorney fees. However, even the most idealistic attorneys understandably wish to be paid for their time. The defense attorney in Fox Valley, when asked, indicated that he could understand a lawyer's desire to be compensated for prelitigation time that is spent listening to a client's story, checking out the facts and the business, doing research, and calling or sending a letter on a client's behalf. The kinds of barriers that are removable under the "readily achievable" standard—for example, reversing the direction in which a door opens or adding signage or adjusting the height of a grab bar—are the very barriers that can be easily fixed before a lawsuit is brought, leaving attorneys who choose not to charge their clients up front without recourse to fees, because the problem has been fixed. There is no way to

guarantee that an attorney is not motivated by a greedy desire for escalating fees, but the failure to give a defendant prelitigation notice cannot be taken as evidence of such greed in the post-*Buckhannon* world.

The assertion that “things would have been different” if only a customer with a disability had made a personal request, or if a demand letter had been issued before the lawsuit, is as haunting as it is impossible to prove. Hohol radiates the kind of civic and social responsibility that is increasingly rare in transient and highly competitive urban environments. Most failed attempts to create a business and disability community collaboration around voluntary Title III compliance have taken place in urban centers; not in small towns and rural areas, where one or a few community business leaders could potentially mobilize an entire community toward compliance. In tightly knit national industries, such as cinemas and hotel chains, a litigation strategy that targeted some of the largest players in the industry helped to secure the voluntary cooperation and compliance of many smaller players in that industry.¹⁹⁶ It remains an open question though, whether broader voluntary compliance could have been achieved without the “kickstart” of initial litigation.

Whether in an urban or rural context, the broader disability community’s involvement and the need for some way to resolve individual resistance and disagreements over determining “readily achievable” changes are equally necessary. Just as a lack of prefiling notice from a plaintiff attorney is not necessarily a sign of bad motive, a business’s reluctance to simply take the word of a customer with disabilities concerning the law is not necessarily a sign of bad faith or noncompliance. On the other hand, the percentage of attorneys and plaintiffs who bring Title III lawsuits primarily for self-gain is minuscule compared with the number of businesses that persist in a calculated decision to disregard or willfully ignore the existence of obligations under federal and state accessibility laws. There is a private right of action under Title III because Congress recognized that voluntary compliance and collaboration is an unreliable vehicle for providing access, and that people with disabilities should not be forced to rely on the kindness of neighbors or strangers.

Perhaps one final illustrative point to take from the Fox Valley lawsuits is that litigation becomes the flashpoint of anger when it is virtually the only means for a law's enforcement rather than a last resort for enforcement. Hackel and her attorneys did not break any legal rule by filing 24 lawsuits without a demand letter. The businesses that settled were all noncompliant to some extent. The lawsuits achieved greater accessibility and encouraged compliance even among businesses that were not sued. But for the public at large, the question of whether the defendants all deserved to be sued without notice imports considerations beyond whether the rules were met. The same 16 years since the ADA's enactment that are proof for the disability community of how little Title III entities pay attention to access rights and compliance are, for some in the business community, years filled with official misinformation and lack of regulatory enforcement. The ADA's primary enforcement mechanism (litigation) differs sharply from the enforcement of health and safety and fire regulations—where an agent of the state regularly comes to the business and upholds standards that are universally recognized as necessary for society at large. Title III is about achieving accessibility and abolishing disability discrimination for society at large, not about lawsuits. Nonetheless, it is remarkably easy for the media, business organizations, and the public to focus on a few “villains” who bring lawsuits, instead of on the systemic notification, education, and enforcement that are needed to achieve Title III's goals. Fox Valley's ongoing attempt to increase compliance after litigation is all too uncommon, and it came about through the leadership and cooperation of the small business and disability communities as well as some media personalities.¹⁹⁷

The disability and small business communities are both “sympathetic” and have compelling stories to tell. Each community has a lot at stake. Each side is deeply emotional. And often individuals belonging to each community genuinely can not seem to understand why the other is so angry. The following are some broad policy recommendations to maximize the potential for reproducing the best outcomes from the Fox Valley litigation while bypassing some of the area's lingering resentment:

- The DOJ and all technical assistance organizations, such as the Disability and Business Technical Assistance Centers (DBTACs), must be given specific funding and a mandate for outreach to chambers of commerce, Rotary Clubs, and other small

business organizations, especially those serving rural areas and smaller towns. The assistance and cooperation of these business associations, as well as any local disability advocacy groups that work with small businesses, is needed to accurately inform businesses of their obligation to comply with Title III, to disseminate technical resource information, and to help lower the current level of tension and fear among business communities.

- The accessibility requirements of civil rights law must be publicly broadcast, acknowledged, and respected at the same level as other applicable regulations and laws, and equally acknowledged as a make-or-break issue in running a business. When business and industry associations work together to foster the idea that the law is unfair and lobby for legislative change that will weaken the private right of action overall, they are not doing their constituents any favors and certainly are harming the prospect for achieving voluntary Title III compliance.
- Title III compliance cannot depend only on voluntary compliance from the few business owners who are motivated by either a personal familiarity with disability or the determination to do the right thing legally and ethically, regardless of the cost. Nor can compliance depend only on litigation and the minority of people with disabilities who are willing and able to bring lawsuits. If private litigation remains virtually the only means of external enforcement motivating business compliance with Title III, it will likely continue to bear the brunt of public backlash and industry lobbying. Widespread Title III compliance cannot be achieved without business and public outreach, a visible and efficient administrative enforcement procedure, the wide availability of qualified accessibility expertise, and economic incentives such as tax and other credits.

But even with these policy changes, the private right of action remains critical to Title III's enforcement and must be strengthened so that a broader range of people with disabilities across the country can gain access to a more readily available private bar that is competent to advise, litigate, and settle access claims. As millions of people with disabilities and the ongoing inaccessibility of much of the country can attest to, we have not yet reached the point where serial litigation could not be brought because Title III

compliance has become the norm. The following recommendations concern the private right of action:

- Effect a statutory repair of *Buckhannon*'s condition of a "judicially sanctioned" change in the parties' relationship for the recovery of attorney fees under Title III, so that attorney fee-shifting rules will apply if a Title III plaintiff or would-be plaintiff has been the catalyst for a public accommodation's coming into compliance with its Title III obligations.
- Make compensatory damages available under Title III.
- Establish a statutory minimum damages amount for the denial of access rights under Title III.

II. Class Actions and Settlements

A. Introduction

The enactment in 1938 of Rule 23 of the Federal Rules of Civil Procedure, governing the circumstances under which class actions may be brought in federal court, helped the class action to become widely recognized as an invaluable litigation tool. Class actions are lawsuits brought by one or more individuals on behalf of a larger group, and they are significant because any legal victory achieved by the named plaintiffs results in legal relief on behalf of the entire group, including absent putative class members. At the same time, any legal settlement, compromise, or dismissal of the action, once approved by the court, will also bind the entire class. In the context of the Americans with Disabilities Act, class actions can be used—

- To require corporate defendants to remedy discrimination consistently and across geographic and individual circumstances, rather than on a mere case-by-case basis.
- To extend the benefits of the ADA's prohibition on discrimination to individuals who lack the financial and other resources to hire a lawyer and bring a personal action on their own.
- To more widely publicize the requirements of the ADA and the effects of discrimination on the lives of people with disabilities.

Like any tool, class action litigation can be abused when it is used inappropriately. The efficiency, problematic agency relationship, and costs of class action litigation—especially in such areas as mass tort and product liability—have been extensively discussed by academics¹⁹⁸ and have led to the enactment of various reforms, most recently the Class Action Fairness Act of 2005 (CAFA).¹⁹⁹ CAFA addresses very specific problems often associated with mass tort and consumer class actions—such as the value of settlement coupons given by the defendant and the removability of an action to federal court—that generally do not arise in the ADA context.²⁰⁰ However, CAFA’s provisions apply to class actions filed in federal court after February 18, 2005, including ADA class actions. Even if CAFA’s other changes have little or perhaps even a negative impact on ADA class actions, the new notice requirements contained in CAFA’s Consumers’ Class Action Bill of Rights could arguably have a beneficial effect. CAFA establishes “each defendant to serve an appropriate government official of each state in which a class member resides, in addition to an appropriate federal official, with notice of the proposed settlement and certain specified settlement-related papers, within 10 days of the settlement being filed with the federal court.”²⁰¹ In addition, final settlement approval cannot be given until at least 90 days after this service has occurred.²⁰² Finally, if notice has not been properly given in accordance with these provisions, class members may refuse to be bound by the settlement.²⁰³ The impact of these notice provisions is uncertain at this time, especially since state and federal officials are not *required* to do anything in response to the notice, but the requirement in and of itself slows the process of obtaining final settlement approval and theoretically makes it harder for the parties’ attorneys to engage in unnoticed collusion.

The specific problems that have arisen in the ADA class action context are associated almost exclusively with the settlement of Title III class action lawsuits. Generally, plaintiffs have been a group of people with primarily mobility/dexterity disabilities in one state; the defendants have been corporate entities that operate public accommodations nationally; and the lawsuits have requested injunctive relief unaccompanied by a demand for damages. A number of these cases originated around 2000 and drew the attention of the National Association for Protection and Advocacy Systems (NAPAS; now known as National Disability Rights Network, NDRN²⁰⁴), eventually leading to a teleconference

training of NAPAS attorneys on the issue on October 1, 2002. The problematic cases highlighted at the conference had settlement proposals that did the following:

- Used an expansive class definition that encompassed potentially millions of people with various disabilities throughout the country, though the class representatives did not necessarily encompass people with different disabilities and the proposed settlement did not adequately address the specific concerns of people with nonmobility disabilities.
- Superseded pending access litigation, foreclosed for a number of years any future litigation against any of the corporate defendant's stores, and required the broad release of access claims under both federal and state laws without any analysis of the potentially broader state rights that could be claimed and were therefore given up by the parts of the class that lived in states with strong disability rights laws.
- Bound the class members to accept architectural access standards that are below the undisputed minimum standards set out explicitly in the ADAAG and provided minimal or no accessibility standards for certain groups within the class (e.g., people with visual disabilities or deaf individuals).

The cases also underscored the general difficulty of monitoring settlement provisions. For a class action settlement to be truly fair, adequate, and reasonable for a whole class of plaintiffs with various disabilities, it must, at a minimum, provide adequate relief for the different types of discrimination and inaccessibility that class members with different disabilities could face. Adequate monitoring and implementation of particularized access requirements when a defendant operates numerous existing, new, and to-be-constructed public accommodations in a wide geographic area require adequate resources, as well as experience and commitment from, and ongoing remuneration for, class counsel.

The research summarized here will focus on the key cases and proposed settlements in which these problems were first raised. We will discuss a few ongoing cases that exhibit the same problems and review educational suggestions for plaintiff class action counsel, as well as some alternative class action proposals obtained from interviews with key disability rights attorneys working in the area. Finally, there is a sampling of ADA case

settlements in which class action litigation has been used effectively and has not raised these problems to the same extent, or at all.

B. Problematic Class Action Cases

- *Access Now, Inc. et al. v. the May Department Store Company*, Case No. 00-CV-148
Filed 10/14/00 in Florida
National class settlement covering all May Company department stores in 49 states
- *Association for Disabled Americans, Inc. et al. v. Amoco Oil Company et al.*
Case No. 98-CV-2002
Filed 08/24/98 in Florida
National class settlement covering approximately 4,000 U.S. Amoco, BP, and ARCO service stations (excluding California)
- *Association for Disabled Americans, Inc. et al. v. 7-Eleven, Inc.*
Case No. 01-CV-0230
Filed 02/02/01 in Texas
National class settlement covering several thousand convenience stores and gas stations nationwide
- *American Disability Association, Inc. v. BFS Retail and Commercial Operations, LLC.*
Case No. 01-CV-6529
Filed 04/04/01 in Florida
National class settlement covering approximately 2,200 Bridgestone/Firestone tire and service stores nationwide

These are the four key cases and proposed class action settlements that first sparked concern among attorneys who are familiar with ADA class actions and the ADA Accessibility Guidelines (ADAAG) specifications. Some NAPAS attorneys and other Title III practitioners initially noticed the consent decrees because they were already involved in bringing litigation or negotiating settlement on behalf of a separate group of people with disabilities in other parts of the country that would have been superseded by the proposed national settlement.²⁰⁵ When these attorneys reviewed the proposed settlements closely, they discovered numerous shortcomings.²⁰⁶ Chief among the objectionable aspects:

- A filed complaint that implicated all the defendant's facilities across the country as being in violation of the ADA or Title III, but only made specific allegations concerning stores in one state (the May Company complaint focused on access issues at certain Lord & Taylor stores in Florida;²⁰⁷ 12 of the 13 facilities listed in the Amoco complaint are in Florida²⁰⁸).
- Little or no court-monitored activity—such as the initiation of formal discovery concerning defendant's national policies and practices or the filing of additional motions—between the filing of a complaint and the notice that a formal settlement of a proposed class action had been reached.
- An extremely expansive class definition that encompassed people with various disabilities. The 7-Eleven case referred to “all people with a disability . . . and all entities acting or purporting to act in behalf of any such people, who could assert a claim under ADA Title III against 7-Eleven.”²⁰⁹ In the BFS case, the class was even broader, encompassing all those who “have a claim or cause of action under state, federal or local law or rule because they are people with Mobility Disabilities, Dexterity, Vision, or Hearing Disabilities or any other disability covered by title III of the ADA.”²¹⁰ The proposed class definition in the May Company settlement was the narrowest, referring to “[a]ll people with mobility disabilities who use a mobility aid such as a wheelchair, scooter, walker, cane and/or crutches.”²¹¹ The class proposed in the Amoco settlement encompassed “all people with mobility, dexterity, vision, or hearing disabilities.”²¹²
- Inadequate representation of people with various kinds of disabilities, even though the class purported to encompass these people. The May Company proposed settlement had the most narrowly defined class, encompassing “persons with mobility disabilities who use a mobility aid such as a wheelchair, scooter, walker, cane and/or crutches,” yet the settlement did not address the lack of accessible parking and a path of travel from the parking lot to an accessible entrance, the most common complaint of wheelchair users.²¹³ Moreover, a guide dog is a mobility aid, so people with visual impairments who use guide dogs could fall within the class and be bound by the proposed settlement. However, none of the class representatives alleged a visual disability or the use of an assistive animal as a mobility aid.²¹⁴ A similar limitation was

observed by the court in the 7-Eleven case; it found that “the two individual plaintiffs and the Association [for Disabled Americans] have demonstrated the requisite standing to pursue Title III claims against 7-11 related to mobility, visual, and hearing impairments and satisfied the case-in-controversy requirements of Article III with regard to these disabilities . . . [but] the Court must reject plaintiffs’ claim that this limited standing confers carte blanche standing to pursue the Title III claims that every disabled person may have against 7-11.”²¹⁵

- An extremely broad release of each class member’s disability access claims, both state and federal, without noting or accounting for the wide variance among state accessibility laws, many of which grant substantive accessibility requirements and remedial rights that go beyond those enacted in Title III of the ADA. Some states grant plaintiffs the right to claim monetary damages as well as retrofitting or other injunctive relief,²¹⁶ and some state laws grant presumptive damages of a specific amount for each instance of disability discrimination.²¹⁷ In addition, in states such as Arizona, the attorney general may become involved in accessibility cases, thereby enabling the court “to vindicate the public interest” and additionally “assess a civil penalty against the covered person or entity.”²¹⁸ Since the 7-Eleven settlement language proposed barring action by “all entities acting or purporting to act in behalf” of people with disabilities, it would conceivably curtail a state’s sovereign right to enforce its own accessibility laws.
- Relief that fails to address entire segments of the purported class. In the May Company case, the proposed settlement failed to address any accessible concerns commonly held by people with visual disabilities, such as the provision of Braille signage or policies guaranteeing the admittance of assistance animals in May Company’s public accommodations.²¹⁹ The BFS proposed consent decree essentially covered all people with disabilities yet failed to give relief typically of concern to people with visual disabilities (e.g., shopping assistance, talking ATMs, Braille signage, a service animal policy) or people with hearing disabilities (e.g., the settlement requires hearing-aid-compatible receivers but does not refer to amplified headsets, TTY availability, or training employees on how to effectively communicate with deaf and hard-of-hearing customers).²²⁰

- Avoidance of ADAAG requirements applicable to new construction and alterations. The proposed settlements uniformly lowered the minimum accessibility standards adopted in ADA implementing regulations that have been carefully tailored to balance the ADA's overall goal of achieving accessibility for people with disabilities through integration and a public accommodation's need for flexibility and administrative and cost concerns.²²¹ The ADAAG requirements are not mere technical minutiae. They are the factors that enable customers with disabilities to independently enter, maneuver through, and use the services offered by public accommodations, or not. The failure to meet an ADAAG minimum standard can result in a person with a mobility impairment being unable to use a so-called "accessible" restroom or make it more dangerous for a blind person using a cane to negotiate protruding objects in an aisle. While there may be leeway in a settlement for attaining the readily achievable barrier-removal standard of existing construction and, arguably, some minimal level of tolerance for post-1993 newly constructed facilities that would otherwise require complete reconstruction, there is no justification for accepting deviations from the ADAAG for post-settlement construction.²²² In the proposed 7-Eleven settlement, 58 of 63 listed architectural elements fell below ADAAG minimum standards, and 41 elements on the list allowed a more lenient standard even for post-1993 newly constructed stores.²²³ The "tolerances" in the proposed Amoco settlement lowered the ADAAG standard for 4 of 61 listed architectural elements.²²⁴ These concessions in minimum standards appear to have been made for no other apparent reason than the convenience of the defendant.
- Plaintiff class releases claims for an extended time. Both the Amoco and BFS settlements proposed a release that would be in effect for seven years,²²⁵ arguably foreclosing even the future claims of future class members encountering inaccessibility at the defendants' post-settlement newly constructed facilities.
- Wholly inadequate notice provisions for a national class action. For the May Company settlement, the parties stipulated "that notice need not be given of the certification of the class [for purposes of settlement]," even though the proposed settlement included over 8.6 million people.²²⁶ Notice of the settlement itself was published in only two magazines, one a publication targeted specifically to veterans with spinal cord injuries and the other a magazine for wheelchair users that had an annual subscription base of 24,000. Notice was also put on a Web site specializing in travel news for people with

disabilities.²²⁷ As objectors' counsel stated, they "learned about this potential nationwide class action by happenstance."²²⁸ The huge class proposed in the BFS encompassed all people with disabilities "who have or will claim that they has been denied access at one or more of Defendants' facilities in violation of the ADA or state law," and the class members did not receive individual notice of the consent decree or an opportunity to opt out.²²⁹

- No or inadequate monitoring of settlement compliance. The May Company settlement contained no provisions for monitoring settlement implementation by class representatives or by a neutral third party; May store managers were left to monitor compliance with the ADA.²³⁰ As a very general rule, any settlement that involves significant injunctive relief yet leaves the attainment of that relief entirely in the hands of the defendant is potentially suspect.²³¹ In the 7-Eleven settlement, the monitoring provisions required the defendant to survey all of its stores within a specified time frame, after which fewer than 6 percent of the stores could be inspected, presumably at the defendant's expense. The survey instrument was not made available until after the time for filing objections was past; additional inspections could not be undertaken even if the class paid for them; and there was no provision for what would happen if any inspection showed that stores had failed to make required accessibility changes.²³²

The objections outlined above did not always achieve their goals in terms of preventing class certification or disapproval of the proposed consent decree, though this was in fact achieved in the May Company and 7-Eleven cases.²³³ In other cases, the objections led to negotiations in which the parties agreed to further refine the consent decree, add additional relief for subclasses, and narrow the scope of the release language.²³⁴ In some cases, the parties agreed to narrow the class definition to exclude a specified subclass because of an intervention that was brought on its behalf.²³⁵

The uniform concern among the attorneys interviewed was the fear that once a large national class action with all or some of the above shortcomings has been approved, it will stand as a dangerous precedent. These flawed consent decrees profess to regulate the rights of millions of Americans with disabilities, and the approval of one makes it that much easier for the next court to approve a consent decree with an expansive class

definition, overly wide release, and watered-down ADAAG requirements. This fear is what has prompted NDRN to organize a “cadre of lawyers to evaluate and, if necessary, file objections to these proposed settlements.”²³⁶ Other private attorneys, primarily solo or small practitioners, have given extensive labor and time to crafting objections to the settlement and/or working to have their client group excluded from the overly broad class definition.

In many ways, NDRN attorneys are ideally placed to act as objectors to inappropriate Title III class action settlements. Each P&A agency has expertise in both federal accessibility laws and its own state’s disability discrimination laws, as well as a mandate to protect the rights of all people with disabilities. Unfortunately, some defendants in national class action settlements have recently adopted the tactic of raising objections to a P&A agency’s standing to intervene and raise objections to settlement.²³⁷ In response, NDRN attorneys have been forced to find several people with disabilities who live in the state where the objections are raised and whom the P&A can identify as actual objectors to the settlement. This need to find, interview, take depositions, and prepare individuals with disabilities who object to settlement, just in case the P&A’s standing to object is questioned in court places even more time pressure on NDRN attorneys who are trying to guard against proposed settlements.

One of the above cases has, in fact, translated into an unfortunate precedent. The court ultimately approved the Amoco settlement,²³⁸ but even though the settlement that was approved was a substantial improvement over the consent decree that was originally proposed, P&A objectors did not prevail on the issue of ADAAG tolerances. This loss spilled over in the BFS settlement decision, where the court also allowed unjustified ADAAG tolerances.²³⁹ Currently, overly broad national settlements continue to arise, and objections continue to be made. In one case, the objectors managed to influence the defense attorneys, who cooperated with the objectors to craft a much more appropriate settlement.²⁴⁰ In other instances, defense attorneys have fought to maintain inappropriately wide class definitions, all the while resubmitting a moving-target consent decree to the court.²⁴¹

C. ADA Class Action Education and Alternatives

Two attorneys who have worked a number of years in the area of Title III litigation—Lainey Feingold and Amy Robertson—developed a series of suggestions aimed at educating the plaintiff bar.²⁴² Their best practices suggestions can help those who bring Title III class action litigation draft consent decrees that achieve relief for the entire class and appropriately release claims in return. Their article highlights the dangers that class counsel for a group of people with disabilities must know about and avoid to ethically and professionally carry out their duties.²⁴³ Their suggestions encompass the need to—

- ensure adequate class representatives and experienced class attorneys;
- include effective monitoring and dispute settlement mechanisms to ensure postsettlement compliance by the defendant;
- carefully tailor the class definition, class claims, and releases clauses; and
- require notice that is posted widely and appropriately in order to gather the valid concerns of all class members, especially if the proposed class definition encompasses people with a wide range of disabilities and resulting different forums for receiving information.

Judicial education concerning the need to closely oversee national and regional Title III class actions could help prevent the passage of problematic settlements. Brian East, an attorney with the Texas P&A, suggested that existing statutory and regulatory tools governing class action settlements are sufficient for preventing entry into problematic settlements. However, the courts are not necessarily aware of the problems that can occur with Title III class action settlements; fail to pay sufficient attention to the settlements the attorneys involved bring forward; and, consequently, fail to use existing tools to prevent potential collusion or abuse.²⁴⁴

Another stakeholder group that could benefit from further education on class settlement issues is disability advocates and the broader disability community. Some disability attorneys and advocates hold the opinion that any class settlement that does not address the needs of *all* people with disabilities and *all* potential barriers is problematic.²⁴⁵ However, it is not always possible or strategically advantageous to have all disabilities

represented among the named class representatives, and not all attorneys have expertise in the accommodation needs of people with different disabilities. The achievement of a timely, tailored settlement that addresses only the needs of a class of people with specific kinds of disabilities will not bind the rights of people with other disabilities, and will leave the door open for litigation and effective settlement concerning the accommodation needs of other groups.

One potential alternative to class action litigation is championed by Lainey Feingold, who has developed a unique approach to the resolution of Title III accessibility issues and implementing ADA compliance when dealing with corporate defendants that operate multiple public accommodations. Feingold's "structured negotiation" approach does not rely on the initiation of litigation. Rather it begins with a privileged settlement communication sent to the corporate entity and ideally concludes with a settlement agreement in which plaintiff attorneys and their experts work directly with the corporate entity.²⁴⁶

Feingold has worked closely with organizations of the blind and other members of the blind community for some years, and her letter clearly details the accessibility problems that ATMs and point-of-sale (POS) terminals present to people with visual disabilities. The letter is similar to a typical demand letter in that it describes her own and co-counsel's legal credentials, the federal and state laws that underlie the right to ATMs and POS machines that can be independently used by people with visual disabilities, and remedies required under the law. Feingold's letter deviates from a demand letter by offering to work with the corporate counsel for "a nonlitigated resolution [that] would require a written, enforceable agreement with *three* components: injunctive relief for purchase and installation of accessible [equipment] and related policy and training issues; and related damages and attorney fees as allowed by statute."²⁴⁷ The letter sets a deadline for corporate counsel to respond concerning their willingness to work on the structured negotiation process.

Feingold has used this approach for more than 10 years and has a strong record of success in achieving corporate cooperation. By using this structured negotiations approach she has achieved 15 legally binding settlement agreements on the incorporation of accessible

technology for people with visual disabilities. General counsel for some of the financial institutions that have engaged in structured negotiation invariably contrast the approach favorably with the initiation of litigation, and all those interviewed said they developed a positive working relationship with Feingold, even though receipt of the initial letter was “shocking.”²⁴⁸

There are positive and negative aspects to the use of structured negotiations. There have been criticisms of the amount of time it can take to implement a structured negotiations settlement agreement; the general counsel interviewed mentioned amounts of time ranging from two to five years. On the other hand, hard-fought litigation can swallow inordinate amounts of time even before a settlement or judgment is achieved. Aspects of the structured negotiation settlement agreement are often kept confidential by agreement, so the approach does not necessarily incentivize accessibility compliance among others in the industry in the same way as the initiation of a public lawsuit. Feingold includes a list of past participants in structured negotiations when she sends out the initial communication, but while corporations and counsel who have already dealt with her may be willing to speak to others to whom she has sent a letter, they may not freely bring up the issues in their interactions with others in their industry. Both litigation and the structured negotiations approach can effect lasting corporate change in an organization once judgment or settlement is reached, as long as ongoing training and education are included as a component of settlement. While the resources that a defendant is forced to expend on litigation can arguably leave a deeper impression concerning the need for change, litigation also frequently fosters lingering resentment that can undermine the transformation of corporate culture.

Feingold and her co-counsel, Linda Dardarian, have achieved considerable success with the structured negotiation approach, having entered 22 binding settlement agreements to date with some of the biggest companies in the country, including American Express, Bank of America, Wal-Mart, and 7-Eleven. Feingold also has an established working relationship with a clientele of people with visual disabilities, the backing of her co-counsel’s firm (which is recognized for litigating discrimination class actions), and

negotiation skills that are widely recognized by her peers. These factors combine to make the transferability of her approach difficult to predict.

D. Other ADA Class Action Cases

Class action litigation has been used successfully in enforcing other aspects of the ADA and has achieved all the goals of class actions recognized in the introduction. Class actions have raised the profile of the ADA and its nondiscrimination and accessibility requirements. People with disabilities, who frequently are in the lowest economic echelons, are able to participate in protecting their rights, which they would be unable to do if they had to bear the financial brunt of bringing a lawsuit. Also, class action victories have achieved systemic changes that multiple individual lawsuits could not have wrought.

Title I litigation has been rare, but two high-profile cases have emerged in the past few years. In *Glover/Albrecht v. Potter*,²⁴⁹ a class action was brought against the United States Postal Service (USPS) on behalf of “people employed by the USPS throughout the United States between January 1, 1992, and the present while in permanent rehabilitation positions who were allegedly denied promotional and/or advancement opportunities allegedly due to discrimination on the basis of disability.” There have been more than 25,000 rehabilitation employees since 1992, making *Glover* the largest disability discrimination employment class action ever settled. Preliminary approval of the settlement was given December 3, 2003, by Denver EEOC Administrative Judge Dickie Montamayer. Settlement includes injunctive relief to ensure equal promotion opportunities and the establishment of a streamlined claims process through which class members may seek up to \$25,000 in back pay and emotional distress damages.

In *Bates v. United Parcel Service*,²⁵⁰ a pattern-or-practice class action lawsuit was initiated against UPS, challenging its policy of applying the Department of Transportation hearing standard to the entire UPS fleet, including lighter vehicles that were not regulated by DOT. At trial, the court rejected UPS’s business necessity and undue burden defenses, and found in favor of the drivers. Many of the drivers’ additional policy accommodation issues—such as UPS’s failure to provide visual fire alarms in the

workplace—had been settled before trial, and ultimately the class members received both injunctive relief and monetary damages.

Title II class action litigation includes a number of important *Olmstead* decisions that have resulted in settlements that have required state and local entities to take concrete actions concerning the release of institutionalized people into the community. One example is *Travis D. v. Eastmont Human Services Center*, which was initially filed in 1996 on behalf of a class of individuals with mental retardation and other developmental disabilities. Though the action was initiated before the Supreme Court’s 1999 *Olmstead* decision, the latter decision undoubtedly helped motivate settlement in *Travis D.*, which finally took place in 2004.²⁵¹ The class ultimately included 200 people who had been institutionalized between August 1996 and February 2004. Approximately 90 class members continued to be institutionalized at the time of settlement. The settlement provided for community services to be developed for 45 residents of one existing institution, closure of two of the institution’s units, a legislative proposal to eliminate a statutory provision that made institutional commitment easy, and various additional measures to facilitate the discharge of additional institutional residents.²⁵² Other successful Title II settlements have occurred in areas as varied as public transportation²⁵³ to high school and high-stakes exit exams.²⁵⁴

Despite the problems noted with Title III class actions, good tailored settlements have been achieved by experienced class counsel, resulting in benefits to the overall class. In *Farrar-Kuhn and Lucas, et al. v. Conoco, Inc.*,²⁵⁵ the class entered a settlement concerning the corporate defendant’s operation of public accommodations in six states. The settlement agreement

- held a firm line on systemic reductions or ADAAG tolerances in new construction, particularly postsettlement new construction;
- established a pilot program by which the parties would survey the first six sites together with an independent expert to work out disagreements onsite whenever possible before proceeding with surveying the remainder of defendant’s stores;

- released only the class’s Title III claims and the individual plaintiffs’ Colorado claims in exchange for approximately \$2,000 in individual damages.

E. Recommendations for Further Research and Conclusion

Like the private right of action, the class action is a tool that is available and used for the enforcement of Title III’s accessibility requirements. Also like the private right of action, the class action as it has been and is currently used in Title III litigation is coming under criticism because of the potential for abuse. With class action settlements, the potential for abuse comes about because the plaintiff class can be defined to include members of the disability community whose right to bring an individual lawsuit would be traded for inadequate or no accessibility action on the part of the defendant. Most of those warning of the abuse potential in class actions, however, are plaintiff attorneys who recognize the ongoing need for the tool but want the risk for collusive abuse between plaintiff and defense attorneys recognized and specifically addressed. In other words, there is no call for a general curtailment in the bringing of class actions, only a call for measures that would strengthen the broader disability community’s ability to receive notice of, object to, and otherwise have a positive impact on the shaping of class action settlements.

Given the reality that class action litigation has achieved excellent results and implementation in other areas of the ADA, what can be done to preserve and further support the use of this powerful and efficient litigation tool in future cases concerning accessibility in public accommodations? The following are recommendations for preserving the use of the class action tool in Title III litigation while reducing the potential for abuse and entry into problematic class action settlements:

- Continue monitoring for abuse, but also explore any possibility for strengthening the current system by creating at least the possibility of recovering attorney fees for raising reasonable objections to national and regional class action settlements.
- Encourage education of and intervention by DOJ and by attorneys general in states where citizens with disabilities would be adversely affected by these settlements. This option is especially reasonable to explore given the new CAFA provisions requiring notice to “appropriate” state officials with the settlement of federal class actions.

- Consider ways to link the CAFA notice provisions to state and federal officials to actual notice to cross-disability groups with a legal component and to P&A agencies in all affected states.
- Educate the judiciary on the need for vigilance concerning national ADA class settlements that would allow public accommodations to avoid or water down ADAAG requirements and bind an overly broad class of people with disabilities to a settlement that gives many of them inadequate or no relief.
- Disseminate information about the structured negotiation approach and its possibilities for avoiding the inefficiencies of initiating and sustaining a litigious approach to enforcing Title III against corporate defendants that operate multiple public accommodations.

PART 3. Strategies for Improving Public Awareness

Introduction

The public awareness component of the study was developed in response to a critical need to promote implementation of the ADA by increasing public awareness about the law and how to implement it. The prevalence of negative ADA media stories—along with misperceptions about people with disabilities that pervade print, television, Internet, and other media—underscored the importance of asserting a new message that portrays the ADA and people with disabilities in a different, more positive light.

The public awareness piece of this project involved a comprehensive research and planning process that included the following:

- A review of the state of the art in public information campaigns.
- An assessment of past ADA public information campaigns.
- A “situation analysis”—a research-based assessment of the current circumstances that relate to public awareness and knowledge of the ADA.

A detailed discussion of the research and planning process and of its findings is included in Appendix E.

The fourth major piece of the public awareness component of this project was the development of a prototype information campaign to promote awareness and implementation of the ADA, employing the most up-to-date thinking on how to design public relations campaigns that really work. In this context, a “prototype” is a model or a template that, with some fine-tuning and external funding, is ready for implementation as a full-scale public information campaign. The development of the prototype used state-of-the-art strategic planning tools, along with research on stakeholders, to create a model campaign and assemble a toolbox of useful communication products. The prototype can also be adapted to other ADA implementation goals and audiences, meaning that the research and strategic planning process that was used to develop the prototype can be adapted to other target audiences and other messages.

The prototype public information campaign—called “Easy Access”—targets small business owners throughout the United States that provide public accommodations. The primary messages of the Easy Access campaign are that complying voluntarily with the ADA is good business and is easier than people think, while reminding the small business owner that “it’s the law” to comply with the ADA. The Easy Access prototype campaign includes messages targeted to the businesses themselves as well as to other audiences. One such audience includes people with disabilities and their advocates, an audience that is critical to achieving the goal of improving access to businesses that serve the public. Although some of the messages contained in the prototype have been tried before, the prototype offers fresh ideas about how to plan their use strategically and implement a results-oriented campaign.

The backbone of the Easy Access prototype campaign is the strategic plan that leads to the development of communication products and distribution tactics that maximize impact with minimum resources. Although the communication products are the tangible components of the Easy Access prototype campaign, the strategic plan is the invisible logic behind decisions about which communication products to develop and how to distribute them. The plan identifies the problem that the campaign addresses, summarizes research into target audiences through a situation analysis, sets campaign goals, and defines audiences. The last step is to design communication products, specify tactics for their distribution, and specify how the impact of each communication product will be evaluated.

Numerous communication products were developed, including news releases, public service announcements, brochures, and Web-based digital products. For each communication product, a “rationale and implementation strategy” was created that provides the reasoning behind that particular product, including objectives, target primary and secondary audiences, communication strategy for the product, proposed distribution strategies, and a plan for evaluating its impact.

I. Rationale and Implementation Strategy for the Easy Access Prototype

The strategic plan for the Easy Access prototype information campaign can be summarized as a rationale and implementation strategy for the overall campaign. The strategy addresses the following aspects of a comprehensive strategic planning process:

- Problem statement
- Situation analysis
- Goals
- Audiences
- Communication and distribution strategies
- Impact evaluation

Each of these aspects is described in more detail in the next section. Following the summary of the strategic plan for the Easy Access prototype is a description of the model communication products that were developed for the prototype information campaign, along with seven distribution strategies for getting the Easy Access message to the right primary and secondary audiences.

Problem Statement

Many small businesses—businesses selling goods/services to the public that meet the small business size standards of the U.S. Small Business Administration (SBA)—are not in compliance with the public accommodations mandate of the Americans with Disabilities Act (ADA), despite the legal requirement that all businesses, large and small, must comply.

Situation Analysis

Americans with disabilities and their advocates rightfully feel that 16 years after the ADA went into effect, small businesses should be in compliance with its public

accommodations requirements. In the stakeholder dialogues conducted for this report, high—and sometimes unrealistic—expectations for what can be accomplished through a public information campaign were in evidence. The analysis of the external situation, which included focus groups with small business owners, indicated basic awareness of the ADA but limited knowledge on the part of small businesses as to whether the law applies to them and exactly how to comply with it. Further research showed that a wealth of information is available to help small businesses with compliance. What’s missing is the motivation among small business owners to become more knowledgeable about how to comply. Gaining knowledge is the first step toward desired behavior; that is, compliance.

To that end, the Easy Access prototype focuses on education as one of the “Three E’s” of bringing about social change (education, engineering, and enforcement). For significant changes in behavior to occur, education must be combined with engineering and enforcement strategies. Part 1 of this report includes recommendations for engineering (for example, expedited business licenses for businesses that demonstrate compliance with the ADA) and enforcement strategies that, together with education efforts such as this prototype information campaign, can lead to more effective ADA implementation.

The following are key results of the situation analysis:

- Small businesses, as defined by the SBA, were selected as the primary target of the public information campaign, primarily because research showed the likely benefit to them of an education effort centered on a public information campaign (see Appendix E). The primary goal of the Easy Access campaign was to encourage small business owners to comply with ADA access requirements.
- Extensive research was conducted through stakeholder dialogues and focus groups with small business owners to identify barriers to ADA compliance and to assess what small business owners know about ADA compliance and what would motivate them to comply.

- Most small business owners are aware of the ADA but are largely ignorant of specifics or how to access step-by-step assistance in compliance. In addition, many fear litigation, making the topic of ADA compliance something they like to avoid.
- Many small business owners are not motivated to comply because they think the ADA does not apply to them, do not realize how much potential new business would become available through compliance, and do not recognize the marketing opportunity to project a positive image of their businesses through compliance.
- Many small businesses have not engaged in compliance behaviors, and past behavioral change efforts (e.g., in San Francisco and Chicago) have not been successful.
- Based on the research, the Easy Access prototype was designed to use short, motivational messages through multiple communication channels to encourage small business owners to access more detailed compliance information; to provide easy access to more detailed, existing information; and to use secondary audiences (landlords, business associations, architects, people with disabilities and their advocates) as message couriers to add credibility and persuasive power to the campaign.
- Anticipating budget constraints when the prototype is actually implemented, principles of “guerilla marketing” and “laser targeting” of messages were used throughout the research and planning process. Guerilla marketing uses unconventional marketing tools and strategies to maximize results using a minimum of resources. This approach is ideal for activists who seek to bring about positive social change with limited budgets. Guerilla marketing means doing more with less by applying just the right kind of pressure in just the right way to bring about desired change. Laser targeting means focusing highly resonant messages to narrowly defined target audiences with similar characteristics, much like a laser beam. This approach reflects state-of-the-art thinking that rejects “flashlight campaigns” that seek to illuminate the so-called general public across a wide range of issues. The net effect of flashlight campaigns is **no** effect, much like shining a flashlight at the moon.
- Research suggests a role for branding in the Easy Access prototype campaign. Branding is the process of linking certain perceptions, both cognitive and emotional, about a product, organization, or idea with easy-to-remember names and icons. For

example, focus groups with small business owners suggest they do not know how to find information they need or how to determine which information is accurate. This finding suggests branding as a way to label or identify current, accurate information that members of the target audience can rely on to steer them toward compliance and greater access.

- Digital technology has radically increased the channels of communication available for message distribution. However, audiences have a finite capacity to access and process information. So digital technology is a good news/bad news innovation. The good news is that information can be transmitted to geographically dispersed audiences at minimal cost. The bad news is that the audience has more control over the information it accesses and more to choose from than just the three television networks. With digital technology, the challenge is to motivate audiences to actively access information provided by the campaign.
- The primary communication strategy is to emphasize “carrots” (showing key benefits) while also mentioning the “stick” (“it’s the law”). Key message points emphasize that ADA compliance is good business (increased customer base and positive image among consumers) and that compliance is easier than most small business owners realize. Small business owners are also reminded that compliance is a federal law that applies to them.
- Following guerilla marketing principles, simple, inexpensive evaluation strategies are provided for each communication product. When implemented, these prototype evaluation tools should be supplemented by a comprehensive evaluation.

Goals

Based on stakeholder dialogues and focus groups with small business owners, four major goals were established for the Easy Access public information campaign: (1) to increase awareness among small business owners that all businesses must comply with the ADA; (2) to increase awareness among small business owners of the number and spending power of Americans with disabilities; (3) to increase awareness among small business owners of the resources available to them to make ADA compliance easy; and (4) to

increase the number of small business owners who actively seek more information that will help them make their businesses ADA-compliant.

Audiences

The primary audience for the campaign is small business owners. Important secondary audiences include Americans with disabilities, small business associations, commercial landlords, and architects, as well as the media, disability advocates, and others specified in the rationale and implementation strategy for each communication product. Secondary audiences play a key role in distribution of messages targeted at the primary audience.

Communication and Distribution Strategies

Communication and distribution strategies for each communication product are spelled out in the rationale and implementation strategy for each product. Communication strategies outline the underlying logic of the message and how the message will help achieve the goals of the campaign. Distribution strategies outline how the communication products will be delivered to the target audience. Often, secondary audiences serve as couriers for communication products, so that the message has greater impact (e.g., mediated communication facilitated by face-to-face communication from a member of a secondary audience to a primary audience; for example, an individual with a disability hands a brochure promoting Easy Access to a small business owner).

Impact Evaluation

For every communication product, a small-scale, cost-effective impact evaluation strategy is suggested. If this prototype were to be funded as a full-scale campaign, these small-scale evaluations could be supplemented by an overall impact evaluation. In an impact evaluation, the public information campaign would be implemented in five major target markets; five other markets of comparable size would be included in the evaluation as comparison markets. Awareness, knowledge, knowledge-seeking behaviors, opinion, and compliance behaviors among small business owners would be measured in target and comparison markets before and after the campaign was implemented. Data from the

target and comparison markets would be compared to evaluate the impact of the campaign on desired outcomes.

Communication Products

The most visible, tangible aspects of a public information campaign are the communication products themselves. The Easy Access prototype includes three different types of communication products: short motivational messages for small business owners, more detailed informational messages for small business owners, and messages for secondary audiences that serve as dissemination channels and credible information sources.

Motivational messages are designed to cut through the advertising/information clutter in which most small business owners are immersed. The goal of motivational messages is to encourage small business owners (and secondary audiences) to seek out more detailed information and to direct them to those resources. The Easy Access prototype includes five such motivational communication products:

- **Launch news release.** The launch news release takes an event of established hard news value and provides the first opportunity to put key message points before the target audiences. Because the release deals with hard (or breaking) news, newspapers and magazines are more likely to use it. The template begins with an endorsement of the campaign by the “U.S. Association of Small Businesses.” This endorsement would need to be replaced by actual quotes from an actual organization; the rest of the release is ready to be used.
- **Feature news release.** This feature article highlights a small business testimonial on the benefits of compliance.
- **Small business brochure.** This product is targeted directly to small businesses.
- **Scripts for audio messages.** Scripts for 30-second and 60-second spots are provided. These short ads can carry only a little information and so must focus on motivation and on providing a gateway to more detailed information, by, for example, providing a toll-free phone number or an Internet URL.

- **Storyboards for video messages.** Scripts are provided with descriptions of video shots for both 30- and 60-second videos that can be aired as public service announcements (PSAs), paid ads, or downloads or links on the Web, or distributed to bloggers and webmasters.

Informational messages provide detailed information to the target audience, once the audience has been sufficiently motivated to access the information. The Easy Access prototype includes three such informational communication products:

- **Online FAQs.** The FAQ (frequently asked questions) format has become increasingly familiar to the general public through the Internet. Many Web sites have FAQs prominently displayed on their home page. In public information campaigns, FAQ handouts are standard collateral materials in press kits and at meetings.
- **Fact sheet on myths and facts about the ADA.** A fact sheet summarizes the most salient points in a succinct format. This communication product uses a “myth and fact” format adapted from DOJ materials to distill the most common misperceptions among small business owners and to provide correct factual information.
- **Access laminated card.** This pocket-sized card includes the key campaign messages on one side and a very brief checklist of access-related points on the other. This would typically be used as a take-away from an ADA-centered meeting or event.

To further the objectives of the Easy Access campaign, secondary audience messages are designed to use these influential stakeholders as couriers of campaign information, serving both as a means of distribution and a form of third-party endorsement that enhances the credibility of the information provided. The Easy Access prototype includes four such secondary audience communication products.

- **Landlord brochure.** Landlords share access responsibility with their tenants. The brochure seeks to raise the awareness of landlords’ own shared responsibility for accessibility and to communicate with tenants about the key messages of the campaign.

- **Architect flyer.** This flyer is designed to motivate architects to communicate with their clients regarding the messages of the campaign and is accompanied by the small business brochure, which they can share with their clients.
- **Small business association letter and toolkit.** This packet is designed to make it easy for neighborhood business associations, Rotary Clubs, and so on to conduct an informational session at a meeting using a variety of materials. The seven-page packet includes a cover letter, a description of package contents, suggestions for how to use the materials, a handout that describes basic facts of ADA compliance, and a sample meeting flyer.
- **People with disabilities brochure.** The brochure is designed to motivate people with disabilities and their advocates to communicate with small businesses regarding the messages of the campaign.

Distribution Strategies for Communication Products

The following are seven distribution strategies for getting the Easy Access message to the right primary and secondary audiences. For each distribution strategy, an example from the prototype information campaign is provided.

- **News media example.** A news release featuring a small business would be targeted to business editors and through PR Newswire. Once the article has been published, a digital laser image of the article can be transferred onto a plaque with a Good News Commendation from the Easy Access campaign that is suitable for permanent display at the place of business. A digital version of the article could also be stored on an Easy Access Web site in a “Small Business Testimonials” archive that holds high-credibility messages about ADA compliance.
- **Bulk distribution example.** Secondary audiences will receive copies of the small business brochures in bulk through organizations with which they affiliate, as well as directly from the Easy Access campaign.
- **Pass-along example.** Secondary audiences—such as small business associations, community organizations such as Rotary Clubs, architects serving small businesses,

and people with disabilities—will pass along brochures to the primary audience (small business owners).

- **Direct mail example.** Architects will receive brochures through direct mail.
- **Search engine advertising example.** When the search terms “ADA” and “small business” are used in an online search (using popular search engines such as Google, Yahoo, and MSN), the small business brochure will be supported as a sponsored link on the right side of the search display screen. Clicking on the link will display a digital version of the brochure, suitable for printing from the screen or downloading as a PDF file. Sponsored links for additional search terms will be added as appropriate.
- **iPod download example.** Audio and video messages will be recorded and available as podcast downloads. Using the podcast distribution format, business associations, advocates, and others will be able to download these messages. For example, the graphics in the small business brochure will be displayed in the Now Playing box on iTunes while an audio version of the brochure is playing.
- **USB thumb drive promotional example.** Promotional USB thumb drives, with the Easy Access logo and Web address (URL) stamped on the casing, will be given away at small business functions. The audio small business brochure might be stored as an MP3 file labeled “LISTEN TO ME FIRST!” Clicking on this icon will launch the MP3 application on the recipient’s computer. The PowerPoint version of the brochure could also be stored on the thumb drive and labeled, “SEE ME FIRST!”

II. The Easy Access Prototype

Following is the set of model communication products that were developed for the Easy Access, along with the rationale and implementation strategy document created for each communication product that provides the reasoning behind that particular product and a plan for implementing it. This series of interrelated materials is intended to be used in combination to address the goals of the Easy Access public information campaign: While each product addresses its own objectives, the different products work to maximum benefit when used together.

Small Business Easy Access Public Information Campaign

LIST OF DOCUMENTS

Introduction/Overview

Short Motivational Messages:

1. Launch News Release/Rationale and Implementation Strategy
2. Feature News Release/Rationale and Implementation Strategy
3. Small Business Brochure/Rationale and Implementation Strategy
4. Scripts for Audio Messages/Rationale and Implementation Strategy
5. Storyboards for Video Messages/Rationale and Implementation Strategy
6. Disability-Friendly Yellow Pages Ad/Rationale and Implementation Strategy

Informational Messages:

7. The Americans with Disabilities Act: FAQs for Small Businesses/Rationale and Implementation Strategy
8. Myths and Facts about the ADA/Rationale and Implementation Strategy
9. Access Laminated Card/Rationale and Implementation Strategy

Messages for Secondary Audiences:

10. People with Disabilities Brochure/Rationale and Implementation Strategy
11. Business Association Toolkit/Rationale and Implementation Strategy
12. Landlord Brochure/Rationale and Implementation Strategy
13. Architect Flyer/Rationale and Implementation Strategy

An Introduction to the Easy Access Public Information Campaign Prototype

A. Introduction/Overview

PUBLIC INFORMATION CAMPAIGN STRATEGY

This overview of the strategic framework for the prototype public information campaign summarizes the strategic thinking, data collection, and planning that went into its development. In constructing the prototype, a series of communication products were developed, including news releases, public service announcements, brochures, and Web-based digital products. For each communication product, a rationale and implementation strategy is provided that explains the objectives for the product, a brief analysis of research on the target audiences, and the communication/distribution strategy for that product.

As a prototype, this campaign provides a model that is ready to be implemented and that can also be adapted to other ADA implementation goals and audiences.

Problem Statement	<p>Many small businesses* are not in compliance with the public accommodations mandate of the Americans with Disabilities Act (ADA), despite the legal requirement that all businesses, large and small, must comply.</p> <hr/> <p>* Businesses selling goods/services to the public that meet the small business size standards of the U.S. Small Business Administration.</p>
Situation Analysis	<p>Americans with disabilities and their advocates rightfully feel that 16 years after the ADA went into effect, small businesses <i>should</i> be in compliance with its public accommodations requirements. In the stakeholder dialogues conducted for this report, high—and sometimes unrealistic—expectations for what can be accomplished through a public information campaign were in evidence. The analysis of the external situation, which included focus groups with small business owners, indicated basic awareness of the ADA but limited knowledge regarding (1) whether the ADA applies to them and (2) exactly how to comply. Further research showed that a wealth of information is available to help small businesses with compliance. What's missing is the <i>motivation</i> among small business owners to become more <i>knowledgeable</i> about how to comply. Gaining knowledge is the first step toward desired behavior (compliance).</p>

Goals	<p>Based on stakeholder dialogues and focus groups with small business owners, four major goals were established for the Easy Access public information campaign:</p> <ul style="list-style-type: none"> ■ To increase awareness among small business owners that all businesses must comply with the ADA. ■ To increase awareness among small business owners of the number and spending power of Americans with disabilities. ■ To increase awareness among small business owners of the resources available to them to make ADA compliance easy. ■ To increase the number of small business owners who actively seek more information that will help them make their businesses ADA-compliant.
Audiences	<p>The primary audience for the campaign is small business owners. Important secondary audiences include Americans with disabilities, small business associations, commercial landlords, and architects, as well as the media, disability advocates, and others specified in the rationale and implementation strategy for each communication product. Secondary audiences play a key role in distribution of messages targeted at the primary audience.</p>
Communication and Distribution Strategies	<p>Communication and distribution strategies for each communication product are spelled out in the rationale and implementation strategy for each product. <i>Communication strategies</i> outline the underlying logic of the message itself and how the message will help achieve the goals of the campaign. <i>Distribution strategies</i> outline how the communication products will be delivered to the target audience. Often, secondary audiences serve as couriers for communication products, so the message has a greater impact (e.g., mediated communication facilitated by face-to-face communication from a member of a secondary audience to a primary audience; for example, a person with a disability hands a brochure promoting easy access to a small business owner).</p>

**Impact
Evaluation**

For every communication product, a small-scale, cost-effective impact evaluation strategy is suggested. If this prototype were to be funded as a full-scale campaign, these small-scale evaluations could be supplemented by an overall impact evaluation. In an impact evaluation, the public information campaign would be implemented in five major *target* markets; five other markets of comparable size would be included in the evaluation as *comparison* markets. Awareness, knowledge, knowledge-seeking behaviors, opinion, and compliance behaviors among small business owners would be measured in target and comparison markets before and after campaign implementation. Data from the target and comparison markets would be compared to evaluate the impact of the campaign on the desired outcomes.

The campaign includes three different types of communication products:

1. Short motivational messages
 - a. Launch news release
 - b. Feature news release
 - c. Small business brochure
 - d. Scripts for 30-second and 60-second audio messages
 - e. Video storyboard
 - f. Disability-friendly Yellow Pages ad
2. Informational messages
 - a. Online FAQ
 - b. Myths and facts
 - c. Laminated checklist card
3. Messages for secondary audiences
 - a. Landlord brochure
 - b. Architect brochure
 - c. Small business association letter and brochure
 - d. People with disabilities brochure

The communication products developed for this prototype campaign are designed as a series of interrelated materials intended to be used in combination to address the campaign's goals. While each product addresses its own objectives, the products work to maximum benefit when used together. Similarly, the information campaign alone is not sufficient to change behavior. For significant changes in behavior to occur, education strategies must be combined with engineering and enforcement strategies. This report includes recommendations for engineering and enforcement strategies that, together with effective education efforts such as this prototype information campaign, can lead to more effective ADA implementation.

FOR IMMEDIATE RELEASE

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U.S. Association of Small Businesses Endorses ADA “Easy Access” Campaign to Encourage Small Business Compliance

WASHINGTON, DC—The U.S. Association of Small Businesses announced its support today of an information campaign targeted at small businesses that encourages compliance with the 1992 Americans with Disabilities Act (ADA).

“Most small business owners know about the ADA,” said John Smith, president of the U.S. Association of Small Businesses. “But many small businesses assume the law does not apply to them. Other small business owners simply don’t know what to do to comply.”

Regardless of size, all businesses that provide goods and services to the public are required to make their businesses accessible to people with disabilities. However, government agencies have provided mechanisms for small businesses to make compliance as painless as possible. For example, the Department of Justice operates a toll-free ADA Information Line at 800-514-0301, providing technical assistance to small businesses regarding ADA compliance.

Although small businesses are required to remove physical barriers that keep customers with disabilities away, the changes must be readily achievable, meaning that they must be easy to accomplish with little difficulty or expense. Also, small businesses can phase in compliance by removing barriers over several years. Tax credits and deductions for ADA compliance reduce burdens on small businesses.

In a series of discussions with small business owners, researchers for Berkeley Policy Associates (BPA) discovered that many small business owners were aware of the ADA but did not know precisely how to comply. The current information campaign uses two key messages to draw attention to the ADA and increase awareness of specific ways in which small businesses can comply with the law. These key messages are that making businesses accessible to people with disabilities is good business and that compliance need not be very expensive or burdensome.

The information campaign will be rolled out in 10 major markets, with 10 others used for comparison purposes. At the end of the campaign, researchers will compare outcomes in markets that received the campaign information with outcomes in markets where no new information was provided.

Dr. Kay Magill of BPA, which designed a prototype of the campaign, compared the current campaign to those encouraging seat belt use and forest fire safety. “It’s very important for all stakeholders to understand that voluntary compliance

campaigns achieve success in a step-by-step fashion,” said Magill, who has 25 years of experience evaluating communication programs. “Americans took decades to use seat belts conscientiously.”

“Like any positive social change, you begin at the beginning,” said Magill. “In this case, the first step is providing small business owners with helpful, detailed information about what steps they can take now to begin complying with the ADA. Of course, the long-term goal is to ensure that people with disabilities can have full access to all small businesses.”

Based on research conducted by Berkeley Policy Associates, many small business owners are wary of ADA compliance. But that attitude changes when business owners learn of the discretionary spending power of people with disabilities. According to the Department of Justice, Americans with disabilities control \$175 billion in discretionary income. “With that kind of consumer spending power, providing access is simply good business,” said Magill.

“It makes no sense for small businesses to ignore the ADA,” said Smith.

“People with disabilities are a huge potential market, and compliance really is not that difficult. It is the law but, more than that, it makes good business sense.”

For more information, go to www.ada/easyaccess.com.¹

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¹ Not an actual Web site – URL included for illustrative purposes only.

Small Business Easy Access Public Information Campaign

1. LAUNCH NEWS RELEASE

Rationale and Implementation Strategy

**Communication
Product**

Launch news release template: 550–600 words. The quotations in the sample release are for illustration only; they would be replaced with actual quotations from a spokesperson from a national association of small businesses. The URL www.ada/easyaccess/com also is included for illustrative purposes only; it is not an actual Web site. The rest of the news release can be used “as is.”

The launch news release takes an event of established hard news value and provides the first opportunity to put key message points before the target audiences. Because the release deals with hard (breaking) news, newspapers and magazines are more likely to use it. Because the news release deals with small businesses, the “pitch” letter from the campaign should be directed to the current business editors of publications in the target markets.

Objective

This product is tailored to accomplish three objectives:

- To provide the target audience and the media outlets that serve that audience with their first introduction to the Easy Access campaign.
- To motivate small business owners to seek more information about how to comply with ADA, by mentioning the discretionary spending potential of Americans with disabilities.
- To have a credible source (e.g., the Administrator of the U.S. Small Business Administration) point out that ADA compliance is mandatory and makes good business sense.

Situation Analysis	<p>Through focus groups with the target population, BPA learned that—</p> <ul style="list-style-type: none"> ■ Most small business owners and managers are unclear on their specific obligations under ADA to provide access to people with disabilities. ■ Many small business owners were not aware that the ADA applied to them, as well as every other small business selling goods and services to the public. ■ Many small business owners are unaware of the discretionary spending power of Americans with disabilities.
Primary Audience	<p>Owners of small businesses (defined as any business that sells goods and services to the public and meets the small business size standards of the U.S. Small Business Administration).</p>
Secondary Audiences	<p>Secondary audiences are key stakeholders who may be unaware that small businesses are required to comply with the ADA, need encouragement to bring the ADA to the attention of small businesses, or have expectations about what the Easy Access campaign can accomplish. Secondary audiences include—</p> <ul style="list-style-type: none"> ■ People with disabilities ■ ADA advocates, both individuals and groups
Communication Strategy	<ul style="list-style-type: none"> ■ This communication product seeks to create an initial awareness of the Easy Access campaign. ■ The goal is to motivate the primary target audience to seek additional information from resources on the Web or via the telephone. ■ The strategy combines a big carrot (\$175 billion in discretionary income) and a small stick (statement from an authority figure that ADA compliance is required by law). ■ Embedded in the message are efforts to educate Americans with disabilities and their advocates about the limits of what can be accomplished in the short run through public information campaigns (i.e., to manage expectations).

**Distribution
Strategy**

■ **Online Media Distribution**

News releases will be distributed to online news publications, including newsletters for small business associations, industry associations, disability advocacy organizations, and so on.

■ **PR Newswire**

News releases will also be distributed via PR Newswire and other methods to the current business section editors of print newspapers in target markets.

■ **Pass-Along**

Once published in print, the newspaper clippings can be passed along to the primary audience via face-to-face interactions.

■ **E-mail Distribution**

Once published online, the article can be forwarded to other publications and individuals via download or e-mail.

**Impact
Evaluation**

- Use search engine to locate number of sites publishing the news release and number of stories or articles that refer to the news release on the Internet.

- Use a clipping service or contact newspapers in target market to determine which/how many published a story based on the news release.

- Contact a sample of small business owners in the target market to determine how many have seen articles based on the news release.

Small Business Easy Access Public Information Campaign

2. FEATURE NEWS RELEASE

Rationale and Implementation Strategy

Communication Product Feature news release template: 350 words. Material highlighted in green is customized for each market. The rest of the news release can be used “as is.”

The feature news release is a tactic used to take relatively timeless information and give it a “news peg” (i.e., some attribute that makes it current and newsworthy). This article takes a human interest angle, examining how one local business owner brought his business into compliance with ADA requirements. This provides the context for communicating additional background information about ADA compliance for small businesses. The news release is targeted for the business section and is written from a business point of view.

Objective This product is tailored to accomplish three objectives:

- To localize the issue of ADA compliance by providing a local community example of a small business taking steps to make his or her business accessible.
- To motivate small business owners to seek more information about how to comply with ADA by rewarding a local business for ADA compliance with free publicity.
- To teach small business owners basic facts about ADA and small business requirements under ADA.

Situation Analysis Through focus groups with the target population, BPA learned that—

- Most small business owners and managers were unclear on their specific obligations under ADA to provide access to people with disabilities.
- Compliance projects in San Francisco and Chicago indicated that small business owners are not sufficiently motivated to comply or to seek information.

Primary Audience Owners of small businesses (defined as any business that sells goods and services to the public and meets the small business size standards of the U.S. Small Business Administration).

Secondary Audiences

Secondary audiences play a role in identifying a target ADA-compliant business and amplifying the article by passing it along to other businesses. Secondary audiences include—

- Small business associations
- People with disabilities
- ADA advocates, both individuals and groups

Communication Strategy

- This communication product seeks to encourage information-seeking behaviors of the primary audience by localizing compliance through an example of a small business owner complying with the ADA.
- The goal is to motivate this audience to seek additional information from resources on the Web and elsewhere.
- Small business owners with recent ADA compliance would be identified in each target market with the help of small business associations.
- A telephone interview would be used to gather information for the local material highlighted in green.

Distribution Strategy

- **Local Business Editor**
Localized news releases will be distributed to the current business section editor of the newspaper in that market.
- **News Clipping Pass-Along**
People with disabilities and advocates for the ADA may distribute copies of the news clipping to other businesses in the community to ensure exposure and to “reward” ADA-compliant businesses with publicity.
- **“Good News” Award**
Once the article has been published, a digital laser image of it will be transferred onto a plaque with a Good News Commendation from the Easy Access campaign. This plaque will be suitable for permanent display at the place of business.
- **Digital Archive**
A digital version of the newspaper clipping will be stored on the Easy Access Web site in a section set aside for “Small Business Testimonials.” This section of the Web site will serve the dual purpose of providing high-credibility message points about ADA compliance, where small business owners communicate with each other, and of providing ideas for small business promotion through ADA compliance.

**Impact
Evaluation**

- Contact newspapers in target market to determine which/how many published a story based on the news release. (A clipping service can provide this information for a charge.)
- Contact a sample of small business owners in the target market to determine how many saw articles based on the news release.
- Contact the featured business owner by phone 30 days after the news release is published. Ask the owner what kind of reaction he or she has received as a result of the article. Ask specifically about any reactions from other business owners.

IT'S EASIER THAN YOU THINK

Providing access to your business is not necessarily difficult or expensive. Think about how hard you work already to attract new customers and to provide good service to the customers you have! All you need to do is take the next easy step to get information about how to make sure your business is accessible to people with disabilities.



INFORMATION – AT YOUR FINGERTIPS!

As you can see, people with disabilities may be a large untapped market. A wealth of information about the Americans with Disabilities Act has been tailored for small businesses like yours.

Go to the Easy Access Web site at: www.ada/easyaccess.com for information about—

- Evaluating what barriers you may need to remove.
- Determining what is “readily achievable.”
- Doing new construction, alterations, and additions.
- Complying with ADA Standards for Accessible Design.
- Other access requirements.

Or contact an ADA specialist at the U.S. Department of Justice by calling 800-514-0301 (voice) or 800-514-0383 (TTY).

Access is GOOD Business

... and it's easier than you think!



**SMALL BUSINESS
AND THE AMERICANS WITH
DISABILITIES ACT (ADA)**

CUSTOMERS NEED ACCESS

People need “a way in” to your business if they are going to become your customers. If your business is in a building that’s difficult to enter, or if you limit some people’s ability to have access to the full range of your products or services, you are literally turning away customers.

That’s what happens when your business has barriers to access by people with disabilities. As one business owner said, “You’re leaving money on the table when people with disabilities can’t get into your store.”



RAMP UP YOUR BUSINESS

More than 50 million Americans – almost one in five – told the U.S. Census in 2000 that they have a disability. That means that there are millions of potential customers for businesses that provide access to people with disabilities. Not counting older Americans, who also need access to businesses, people with disabilities are estimated to have about \$175 billion in discretionary income!

Invest in Access. With numbers like these, it’s clear that you’re making a good investment when you make sure your business is accessible to people with disabilities. Plus, making your business disability-friendly makes it user-friendly to everyone.

ACCESS IS THE LAW

Yes, it’s the law, and yes, it applies to you. If you own or operate a business that serves the public, Title III of the Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in all places of public accommodation and commercial facilities, and it applies whether your business currently serves customers with disabilities or not.

The ADA says you must make whatever readily achievable modifications are needed



to remove barriers and permit access to people with disabilities. The ADA is more than a building code, and it applies to more than just ramps and doors. The access required by the ADA is all about enabling your customers to interact with all aspects of your business.

Small Business Easy Access Public Information Campaign

3. SMALL BUSINESS BROCHURE

Rationale & Implementation Strategy

Communication Product Single-sheet 8.5" X 11" brochure with two folds, printed front and back, with graphics. This product provides a brief treatment of the message points included in the campaign and is used as collateral material along with other pieces of the campaign. The brochure also directs the reader to more detailed sources of information.

Objective This product is tailored to accomplish four objectives:

- To increase awareness among small business owners of the number and spending power of Americans with disabilities.
- To increase awareness among small business owners of the resources available to them that make ADA compliance easy.
- To increase awareness among small business owners that all businesses must comply with the ADA.
- To increase the number of small business owners who actively seek more information that will help them make their businesses ADA-compliant.

Situation Analysis Through a series of focus groups with the target population, BPA learned that—

- Most small business owners and managers have a rudimentary awareness of ADA.
- However, most were unclear as to their specific obligations under ADA to provide access to people with disabilities.
- Further, focus groups indicated that participants needed more information about how exactly to comply; they needed how-to guidance.
- Materials that have already been developed by SBA and DOJ are seen as useful and appropriate, but most business owners don't yet know of their existence.

Primary Audience Owners of small businesses (defined as any business that sells goods and services to the public and meets the small business size standards of the U.S. Small Business Administration).

Secondary Audiences Secondary audiences for this product are identified as potential channels of distribution of brochures to the primary audience. The secondary audiences also will learn useful facts about the ADA and its application to small businesses.

- Small business associations
- Architects serving small business clientele
- People with disabilities

Communication Strategy The brochure provides a communication vehicle to facilitate face-to-face communication between secondary and primary audiences. As a printed document capable of communicating moderately dense information, the brochure can educate as well as motivate audience members to seek more information.

The brochure can also be used as part of an online package of materials, not only visually pleasing online, but also easy to download and distribute in printed form.

The communication strategy executed in this product provides rudimentary information about the obligations of small businesses under ADA (500 words). The brochure also motivates business owners to seek additional information from resources on the Web.

- Distribution Strategy**
- **Pass along**
Secondary audiences such as small business associations, community organizations such as Rotary Clubs, architects serving small businesses, and people with disabilities will pass along brochures to the primary audience (small business owners).
 - **Bulk Distribution**
Secondary audiences will receive copies of the brochures in bulk through organizations with which they affiliate, as well as directly from the Easy Access campaign.
 - **Direct Mail**
Small business owners and managers will receive brochures through direct mail.
 - **Easy Access Web Download**
A digital version of the small business brochure will be stored as a PDF file on the Easy Access Web site, suitable for downloading. In addition, a PowerPoint version of the brochure can be downloaded from the Web site. These digital versions of the brochure will have the same full graphical support as the paper brochure.

Distribution Strategy (cont'd)	<ul style="list-style-type: none"> ■ Easy Access Web Download A digital version of the small business brochure will be stored as a PDF file on the Easy Access Web site, suitable for downloading. In addition, a PowerPoint version of the brochure can be downloaded from the Web site. These digital versions of the brochure will have the same full graphical support as the paper brochure. ■ Search Engine Advertising When the search terms “ADA” and “small business” are used in an online search (using popular search engines such as Google, Yahoo, or MSN), the small business brochure will be supported as a sponsored link on the right side of the search display screen. Clicking on the link will display a digital version of the brochure, suitable for printing from the screen or downloading as a PDF file. Sponsored links for additional search terms will be added as appropriate. ■ iPod Downloads An audio version of the small business brochure will be recorded and available as an iPod download. Using Apple’s iTunes distribution system, small business owners will be able to download the audio brochure to play while jogging, walking, and so forth, as well as to listen to while driving (using an interface device to connect the iPod to the car stereo). The graphics in the small business brochure will be displayed in the “Now Playing” box on iTunes while the audio file is playing. ■ USB Thumb Drive Promotionals Promotional USB thumb drives, with the Easy Access logo and URL stamped on the casing, will be given away at small business functions. The audio brochure will be stored as MP3 files labeled as “LISTEN TO ME FIRST!” Clicking on this icon will launch the MP3 application on the recipient’s computer. The PowerPoint version of the brochure will also be stored on the thumb drive and labeled “SEE ME FIRST!”
Impact Evaluation	<p>The hotlink (URL) on the brochure could be specific to the brochure. A person accessing the Web site would first go to a Web page that simply counts the hits and click-throughs.</p> <p>This would provide a behavioral measure of the brochure’s effectiveness at motivating small business owners and managers to seek more information.</p>

4. SCRIPTS FOR AUDIO MESSAGES

ADA Easy Access Public Information Campaign

30-second Audio Message

A. Two Shop Owners Discuss ADA

SFX: GENERIC BUSINESS SHOP DOOR CHIME/BUZZER (03 SECONDS)

MS. BRODY: Good morning, Mr. Latch. Maria's watching my shop. Heard you remodeled.

MR. LATCH: Nothing major. Just a ramp to replace that front step.

MS. BRODY: Must have cost a bundle.

MR. LATCH: No, I went to a Web site for small businesses. It helps us comply with the Americans with Disabilities Act. Didn't cost much.

MS. BRODY: Still, it IS an expense...

MR. LATCH: No, it's an investment. People with disabilities have 175 BILLION dollars in discretionary income to spend.

MS. BRODY: I never see any of that!

MR. LATCH: Maybe they can't get past your door. You know, access is good business.

ANNCR: For more information, go to www-DOT-ada-SLASH-easyaccess-DOT-com.

ADA Easy Access Public Information Campaign

60-second Audio Message

B. Two Shop Owners Discuss ADA

SFX: GENERIC BUSINESS SHOP DOOR CHIME/BUZZER (03 SECONDS)

MS. BRODY: Good morning, Mr. Latch. I've got Maria watching the shop. Thought I'd come down and see what you've been up to. Heard you were remodeling.

MR. LATCH: Yup. Nothing major. Just a ramp in front to replace that step. And I rearranged some of the display tables.

MS. BRODY: Nice! It feels roomier. But you must have spent a bundle.

MR. LATCH: Not really. I got all the ideas off the Internet. There's a Web site for small businesses that helps you comply with the Americans with Disabilities Act.

MS. BRODY: Oh boy! Now you're making me nervous...

MR. LATCH: You shouldn't be. The way the law works, you can make your business more accessible in affordable steps.

MS. BRODY: Still, it's an expense...

MR. LATCH: I think of it as an investment – in new customers. Did you know that people with disabilities have 175 BILLION dollars in discretionary spending?

MS. BRODY: I didn't know that. How come I never see any of that spending power in my shop?

MR. LATCH: Maybe they can't get past your door. You know, access is good business. And it's a lot easier than you think.

ANNCR: Any business that sells goods and services to the public must comply with the Americans with Disabilities Act. For more information, go to www-DOT-ada-SLASH-easyaccess-DOT-com.

Small Business Easy Access Public Information Campaign

Rationale and Implementation Strategy

Communication Product 30-second and 60-second audio messages for radio broadcasting, Web links, and Internet downloads and podcasts.

The audio message is the mainstay of many not-for-profit public information campaigns. Often aired as a free PSA (public service announcement) by radio stations and multimedia communication vehicles, these short ads can carry little information and so must focus on motivation and on providing a gateway to more detailed information, often on another medium (e.g., radio announcements that provide a toll-free phone number or an Internet URL).

These audio messages can also be used as paid ads, which offers the sponsoring organization control over when the messages are aired (on radio) or how they are presented as downloads or links (on the Web).

Objective This product is tailored to accomplish two objectives:

- To motivate small business owners to seek more information about ADA compliance by appealing to their desire to invest in attracting new customers.
- To provide access to more detailed how-to information via the Internet.

Situation Analysis Through focus groups with the target population, BPA learned that—

- Most small business owners and managers were unclear on their specific obligations under the ADA.
- Compliance projects in San Francisco and Chicago indicated that small business owners are not sufficiently motivated to comply, or to seek information.
- Focus groups indicated that small business owners are responsive to the notion that compliance is an investment in attracting new customers, not a cost.

Primary Audience	Owners of small businesses (defined as any business that sells goods and services to the public and meets the small business size standards of the U.S. Small Business Administration).
Secondary Audiences	<p>Secondary audiences play a role in identifying a target ADA-compliant business and amplifying the communication product by passing it along to other businesses. These audiences include—</p> <ul style="list-style-type: none"> ■ Advertising and public affairs staff at broadcast, cablecast, and satellite radio stations that serve selected markets. ■ People with disabilities. ■ ADA advocates, both individuals and groups.
Communication Strategy	<ul style="list-style-type: none"> ■ This communication product seeks to encourage information-seeking behaviors of the primary audience by positioning ADA compliance as an investment rather than an expense. ■ The goal is to motivate this audience to seek additional information, especially from resources on the Web. ■ By casting the audio message as a dialog between two shop owners, message resistance is reduced because business owners are not being lectured to. ■ The 60-second audio message acknowledges that ADA compliance is a topic that makes small business owners nervous, then reduces those concerns by indicating how easy it is to comply with the ADA. ■ Both the 30-second and 60-second audio messages would air in the same markets. The 30-second spot is more terse and underscores points that listeners learn from the longer audio message. ■ Small businesses will not be the only ones that hear the radio and/or podcast messages. People with disabilities and their advocates also will hear the messages, which communicate that efforts are underway to improve access to small businesses for people with disabilities. This will reinforce other efforts to bring small businesses into compliance. ■ The general public will also hear the messages, which will serve to raise awareness about public accommodation issues under the ADA and about the importance of public access to all places of business, small or large.

Distribution Strategy

■ **Radio**

The 60-second and 30-second audio messages will be delivered to the advertising and public affairs staff at broadcast, cablecast, and satellite radio stations that serve the target markets; advertising or sponsorship time will be purchased for news and talk shows with high concentrations of business listeners, such as *Marketplace* or *Tech Nation* on NPR; airtime during these and similar programs will be requested for PSAs.

■ **Easy Access Web Downloads**

The 30-second and 60-second audio messages will be available as digitally downloadable files on the Easy Access Web site, for playback on computers, iPods, and other personal playback devices.

■ **iPod Downloads**

Both the 30-second and 60-second audio messages will be available as iPod downloads. Using Apple's iTunes distribution system, small business owners will be able to download the messages for playback on iTunes or iPods.

■ **USB Thumb Drive Promotionals**

Promotional USB thumb drives, with the Easy Access logo and URL stamped on the casing, will be given away at small business functions and as "freebies" at the front desk of small business association offices. Both audio messages will be stored as an MP3 file labeled as "LISTEN TO ME FIRST." Clicking on this icon will launch the MP3 application on the recipient's computer.

Impact Evaluation

Without a survey of small business owners in the target markets, impact evaluations are difficult to achieve for this communication product. Several process measures are possible that look at the necessary conditions for impact, such as successfully distributing the message. However, measuring the process of message dissemination is not the same as measuring the final impact of the campaign.

Regarding downloads from the proposed campaign Web site, a simple counter on the Web site could keep a running tally of the number of downloads occurring over designated time frames.

Regarding over-the-air broadcasting of the audio messages, whether as paid advertising or PSAs, evaluators from the campaign can contact radio stations in the target markets to determine how often the messages ran. This information can be coupled with secondary research from the rating services to estimate how many potential audience members were reached by the messages.




5. STORYBOARDS FOR VIDEO MESSAGES


ADA Easy Access Public Information Campaign

30-second Video Message

Video Storyboard: Accessible Shopping

SEQUENCE: Series of scenes of people going by several stores. A variety of people go in and out of the one store that is accessible, in some cases going past it and then going back to it when they realize that it is accessible. Everyone goes past the stores that are not clearly accessible. Some sample photos are provided. The shots and production elements line up as follows:

AUDIO	DESCRIPTION OF VIDEO	DIAGRAM/PHOTO
Music: Upbeat instrumental music SFX: Street noise (low volume) Narration: None	Opening shot: Long shot of 3–4 storefronts, all with attractive window displays.	
Music: Upbeat instrumental music SFX: None Narration: “Do ALL of your customers have access to your business?”	Zoom in for medium shot of store in center, show accessible entrance and other access features.	
Music: Upbeat instrumental music SFX: Street noise (low volume) Narration: None	Zoom out for wide shot of storefronts. People move in and out of frame, passing by the stores.	
Music: Low volume SFX: None Narration: “You’re losing money if they don’t.”	People passing by take note of inaccessible entrance.	PHOTO


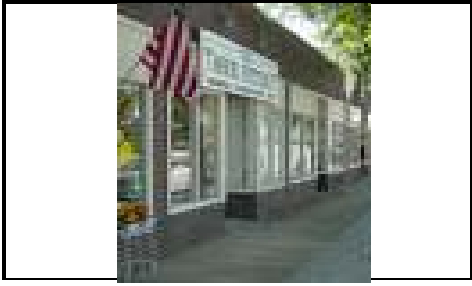

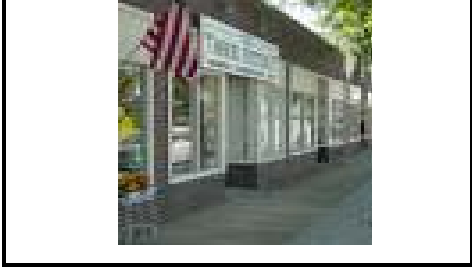
AUDIO	DESCRIPTION OF VIDEO	DIAGRAM/PHOTO
<p>Music: Low volume SFX: None Narration: "Access is good business."</p>	<p>A variety of people go in and out of the one store that is accessible. For example, a person in a wheelchair goes past store, glances at store, turns back to store, looks at the ramp, goes up the ramp and into the store.</p>	<p>5</p> 
<p>Music: Low volume SFX: None Narration: "And the ADA – the Americans with Disabilities Act – says that any business that sells goods and services to the public must provide access to people with disabilities."</p>	<p>Camera follows variety of people in and out of the accessible store (parents with strollers, more people with disabilities, etc.).</p>	<p>6</p> <p>PHOTO</p> <p>CAPTION:</p> <p>Americans with Disabilities Act **THE ADA**</p>
<p>Music: Low volume SFX: None Narration: "Access IS good business."</p>	<p>Close-up of storefront with accessible entrance.</p>	<p>7</p> <p>PHOTO</p>
<p>Music: Low volume SFX: None Narration: "And it's a lot easier than you think. For more information, go to www-DOT-ada-SLASH-easyaccess-DOT-com."</p>	<p>Closing shot.</p>	<p>8</p> <p>Access is good business...and easier than you think.</p> <p>www.ada/easyaccess.com</p>



ADA Easy Access Public Information Campaign




60-second Video Message

Video Storyboard: Accessible Shopping

SEQUENCE: Series of scenes showing people going in and out of different stores that are accessible, in some cases passing by stores that do not appear to be accessible, or backing up to go into a store when they first pass it by and then realize that it is accessible. Some sample photos are provided. The shots and production elements line up as follows:

AUDIO	DESCRIPTION OF VIDEO	DIAGRAM/PHOTO
Music: Upbeat instrumental music SFX: Street noise (low volume) Narration: None	Opening shot: Long shot of 3–4 storefronts, all with attractive window displays.	1 
Music: Upbeat instrumental music SFX: None Narration: "Do ALL of your customers have access to your business?"	Zoom in for medium shot of store in center, show accessible entrance and other access features.	2 
Music: Upbeat instrumental music SFX: Street noise (low volume) Narration: None	Zoom out for wide shot of storefronts. People move in and out of frame, passing by the stores.	3 
Music: Upbeat instrumental music SFX: Street noise (low volume) Narration: None	People passing by take note of accessible entrance.	4 

AUDIO	DESCRIPTION OF VIDEO	DIAGRAM/PHOTO
Music: Low volume SFX: None Narration: "You're losing money if they don't."	People passing by take note of inaccessible entrance.	5 PHOTO
Music: Low volume SFX: None Narration: "Access is good business."	Person in a wheelchair goes past store, glances at store, turns back to store, looks at the ramp, goes up the ramp and into the store.	6 
Music: Low volume SFX: None Narration: "And the ADA – the Americans with Disabilities Act – says that any business that sells goods and services to the public must provide access to people with disabilities."	Camera follows variety of people in and out of different stores (people with disabilities, parents with strollers, etc.).	7 PHOTO CAPTION: Americans with Disabilities Act **THE ADA**
Music: Music comes up SFX: None Narration: None	Person using a cane walks out of the store slowly (path is clear for person with visual disability).	8 
Music: Upbeat instrumental music SFX: None Narration: None	Person with a mobility disability goes up a ramp and into a store.	9 PHOTO

AUDIO	DESCRIPTION OF VIDEO	DIAGRAM/PHOTO
<p>Music: Upbeat instrumental music SFX: None Narration: None</p>	<p>Person in a wheelchair is in a store where aisles are wide enough to maneuver.</p>	<p>10</p> 
<p>Music: Fade to low volume SFX: None Narration: "Access under the ADA? Think of it as an investment – in new customers."</p>	<p>Transportation to hotel.</p>	<p>11</p> 
<p>Music: Low volume SFX: None Narration: None</p>	<p>Family entering hotel.</p>	<p>12</p> 
<p>Music: Low volume SFX: None Narration: "Access IS good business."</p>	<p>Close-up of storefront with accessible entrance.</p>	<p>13</p> <p>PHOTO</p>
<p>Music: Low volume SFX: None Narration: "And it's a lot easier than you think. For more information, go to www-DOT-ada-SLASH-easyaccess-DOT-com."</p>	<p>Closing shot.</p>	<p>14</p> <p>Access is good business...and easier than you think.</p> <p>www.ada/easyaccess.com</p>

Small Business Easy Access Public Information Campaign

Rationale and Implementation Strategy

Communication Product 30-second and 60-second video messages for television broadcasting, Web links, and Internet downloads and podcasts.

Video messages are often aired as free PSAs (public service announcements) on television stations and multimedia communication vehicles. Video spots can also be used as paid ads, which offers the sponsoring organization control over when the messages are aired (on television) or how they are presented as downloads or links (on the Web). The video messages can also be distributed to bloggers and webmasters, particularly those in the disability community, for use as links or downloads.

Similar to messages produced for audio distribution, these short video messages focus on motivation and provide a gateway to more detailed information, often on another medium (e.g., television ads that provide a toll-free phone number or an Internet URL). However, video messages are far more expensive than audio messages to produce and, thus, are far less commonly used in not-for-profit public information campaigns.

Objective This product is tailored to accomplish three objectives:

- To motivate small business owners to seek more information about ADA compliance by appealing to their desire to invest in attracting new customers.
- To provide access to how-to information via the Internet.
- To have a broader reach that includes secondary audiences.

Situation Analysis Through focus groups and Stakeholder Dialogues, BPA learned that—

- Most small business owners were unclear as to their specific obligations under ADA to provide access to people with disabilities.
- Small business owners are not sufficiently motivated to comply, or to seek information.
- Focus groups indicated that small businesses respond to the idea that ADA compliance is an investment, not a cost.

Primary Audience	Owners of small businesses (defined as any business that sells goods and services to the public and meets the small business size standards of the U.S. Small Business Administration).
Secondary Audiences	<p>Secondary audiences play a role in identifying a target ADA-compliant business and amplifying the communication product by passing it along to other businesses. These audiences include—</p> <ul style="list-style-type: none"> ■ Advertising and public affairs staff at broadcast, cablecast, and satellite television stations that serve selected markets. ■ Bloggers and webmasters who provide links and/or air paid advertisements and PSAs. ■ People with disabilities. ■ ADA advocates, both individuals and groups.
Communication Strategy	<ul style="list-style-type: none"> ■ Showing customers of all types, with and without visible disabilities, using a store's accessible entrance provides a strong visual message that "access is good business." ■ Another message that is communicated visually is that "access is for everyone." ■ Both the 30-second message and the 60-second message would air in the same markets. ■ This communication product seeks to encourage information-seeking behaviors of the primary audience by positioning ADA compliance as an investment in bringing in customers, similar to an attractive window display. ■ The goal is to motivate this audience to seek additional information, especially from resources on the Web. ■ Small businesses will not be the only ones the messages will reach. People with disabilities and their advocates will also see the messages, which communicate that efforts are under way to improve access to small businesses for people with disabilities. This will reinforce other efforts to bring small businesses into compliance. ■ The general public will also see the messages, which will serve to raise awareness about public accommodation issues under the ADA and the importance of public access to all places of business, small or large.

Distribution Strategy

■ **Local Television Stations**

The video messages will be delivered to the advertising and public affairs staff at broadcast, cable, and satellite stations that serve the target markets; advertising or sponsorship time will be purchased for news and talk shows with high concentrations of business viewers, such as CNN, FOX, and other network programs on business and financial matters; airtime during these and similar programs will be requested for PSAs.

■ **Easy Access Web Downloads**

The video messages will be available as digital downloadable files on the Easy Access Web site for playback on computers, iPods, and other personal playback devices.

■ **iPod Downloads**

The video messages will be available as an iPod download. Using Apple's iTunes distribution system, small business owners will be able to download the video messages to play on iTunes.

■ **Other Digital Outlets**

The video messages will also be made available to bloggers, webmasters, and others in the disability community as digital downloadable files.

■ **USB Thumb Drive Promotionals**

Promotional USB thumb drives, with the Easy Access logo and URL stamped on the casing, will be given away at small business functions. The video messages will be stored in RAM and WMV formats on the thumb drives. They will be labeled "SEE ME FIRST!"

Impact Evaluation

Without a survey of small business owners in the target markets, impact evaluations are difficult to achieve for this communication product. Several process measures are possible that look at the necessary conditions for impact, such as successfully distributing the message. However, measuring the message dissemination process is not the same as measuring the campaign's impact.

Regarding downloads from the proposed campaign Web site, a simple counter on the Web site could keep a running tally of the number of downloads occurring over designated time frames. Downloads from other sites could be tallied via the click-throughs.

Regarding over-the-air broadcasting of the messages, whether as paid advertising or PSAs, evaluators from the campaign can contact broadcast and cable stations in the target markets to determine how often the messages ran. This information can be coupled with secondary research from the rating services to estimate how many potential audience members were reached.



6. DISABILITY-FRIENDLY YELLOW PAGES AD

C. Advertise in the Disability-Friendly Yellow Pages!

What Are the Disability-Friendly Yellow Pages?

The Disability-Friendly Yellow Pages is a service designed to help businesses access the growing market of consumers with disabilities. It is designed as an online information service for people with disabilities and their families, friends, or caregivers to help people locate businesses near them that are disability-friendly or barrier-free. The online service is searchable by keyword, type of business, location, type of product or service, and special features.

What Is a Disability-Friendly Business?

Before you decide whether to advertise your business in the Disability-Friendly Yellow Pages, consider what it means to be disability-friendly. It means that you have made and continue to make efforts to make your business and services accessible to individuals with disabilities.

- Can a person with a disability park, approach, and enter your business?
- Once inside, can customers with disabilities access your goods and services?
- If public restrooms are available, are they accessible to customers with disabilities?
- Can you and your customers with disabilities communicate with each other?

Why Advertise in the Disability-Friendly Yellow Pages?

More than 50 million Americans – almost one in five – told the U.S. Census in 2000 that they have a disability. That means millions of potential customers for businesses that are accessible to people with disabilities. Not counting older Americans, people with disabilities are estimated to have about \$175 billion in discretionary income. If you want to reach this market, we can help.

How Does a Business Get Listed?

You are encouraged to assess whether you consider your business to be disability-friendly. (See [How Disability-Friendly Is Your Business?](#)) The choice to advertise is up to you. The service does not certify that businesses are barrier-free, but it does provide an opportunity for consumers to submit ratings and write reviews of their service experience (such as the customer rating system used by Amazon.com). To get a listing, go to www.disabilityyellow.com.

How Can My Business Become More Disability-Friendly?

There's a wealth of information available about accessibility and the Americans with Disabilities Act, tailored to businesses that provide goods and services to the public. To view or download the brochure "Small Business and the Americans with Disabilities Act (ADA)" or to find a variety of other easy-to-use information, go to www.ada/easyaccess.com.

How Disability-Friendly Is Your Business?

1. Can a person with a disability park, approach, and enter your business?

- Is there a route of travel that does not require stairs?
- Is route at least 36" wide and free from protruding objects blocking the path?
- If ramps are required to approach or enter your business, are they—
 - o No steeper than a 1:12 slope?
 - o At least 36" wide between railings or curbs?
 - o Covered in a nonslip material?
 - o Equipped with a landing (flat space) at the top and bottom of the ramp?
- Is adequate and appropriate accessible parking available?
 - o Are there enough spaces (at least one space, even in small lots)?
 - o Are spaces marked with a visible sign, without steep cross-slope, and the access aisles clearly marked?
 - o Are the spaces near an accessible entrance, with an accessible path to that entrance?
- Are exterior doors free from barriers?
 - o When opened at a 90-degree angle, do entry doors provide for a minimum 32" clear opening?
 - o Is door hardware operable with a "closed fist," or without grasping or turning?
 - o Is the threshold no more than ¼" high (if beveled, ¾")?
 - o Can the entrance door be opened without too much force?

2. Do customers with disabilities have access to your goods and services?

- Are circulation routes or aisles free from barriers? Do display racks allow for turning space for people who use wheelchairs (60" or "T-shaped")?
- Is at least a portion of the sales counter no more than 36" tall?
- Is the approach to the sales counter clear?

3. If public restrooms are available, are they accessible to customers with disabilities?

- Are all restrooms accessible, or is there signage to direct people to accessible restrooms?
- Do restroom doors provide 32" clear opening?
- Is the path to the restrooms free of barriers?
- Are faucet controls and soap and towel dispensers within reach?

4. Can customers with disabilities communicate with you?

- Do you have a TDD so customers who are deaf or hard of hearing can call you? If not, are you familiar with using the telephone relay service?
- Do you keep paper and pencil handy for writing things down?
- Do employees have a helpful and positive attitude toward serving customers?

Small Business Easy Access Public Information Campaign

Rationale and Implementation Strategy

Communication Product	<p>Single-sheet front and back mailing insert. Also an online advertisement. (The Yellow Pages itself is an online product.)</p> <p>This product is modeled after other specialized Yellow Pages such as the Hispanic Yellow Pages and the Asian Yellow Pages. The ad is designed to encourage business owners to consider how disability-friendly or barrier-free they are and to motivate them to advertise to the disability consumer market.</p>
Objective	<p>This product is tailored to accomplish four objectives:</p> <ul style="list-style-type: none">■ To increase awareness among small business owners of the number and spending power of Americans with disabilities.■ To increase awareness among small business owners of the key elements of accessibility under the ADA.■ To increase awareness among small business owners of the resources available to them to make ADA compliance easy.■ To motivate small business owners and operators to increase their accessibility to customers with disabilities.
Situation Analysis	<p>Through a series of focus groups with the target population, BPA learned that—</p> <ul style="list-style-type: none">■ Most small business owners and managers have a rudimentary awareness of ADA but are unclear on their specific obligations under ADA to provide access to people with disabilities.■ The obligation to make businesses accessible to people with disabilities is viewed in a positive light by small business owners when seen from the perspective of marketing to a new customer base.
Primary Audience	<p>Owners of small businesses (defined as any business that sells goods and services to the public and meets the small business size standards of the U.S. Small Business Administration).</p>

Secondary Audiences The audience of people with disabilities is an essential target for the Yellow Pages, as they are the end user. (Additional marketing materials would be developed to target people with disabilities as the prime user of the online service.)

Small business associations are a secondary audience that would assist in disseminating this communication product to the businesses they serve.

Communication Strategy The ad encourages businesses to consider the value of the disability consumer market, consider how barrier-free their businesses are, and consider reaching people with disabilities to be a marketing effort just like reaching any other market segment. Using a familiar marketing tool like the Yellow Pages brings the concept of accessibility home by incorporating it into business owners' familiar marketing territory, rather than treating ADA compliance as some separate, scary effort outside the realm of everyday experience.

Distribution Strategy The primary distribution mechanism would be as a mailing insert for inclusion in commercial telephone bills.

The ad would also be posted on phone company Web sites, small business and industry association Web sites, shopping sites and other sites that small business owners are likely to frequent, as well as being included on the Easy Access campaign Web site.

Impact Evaluation The key measure of impact would be the number of businesses that advertise through the Yellow Pages. An intermediate outcome would be the number of hits on the Yellow Pages ad on the Easy Access Web site.

7. THE AMERICANS WITH DISABILITIES ACT: FAQs FOR SMALL BUSINESSES

What is the Americans with Disabilities Act?

The Americans with Disabilities Act (ADA) was passed in 1990, signed into law by President George H. W. Bush. The ADA is a civil rights law for people with disabilities; it is intended to break down barriers to their leading the full, productive lives that all Americans are entitled to, and to enable society to benefit from their skills and talents.

Who are Americans with disabilities?

According to the 2000 U.S. Census, more than 50 million Americans reported that they had disabilities. That translates to almost one in five people in this country. In addition, AARP says that 4 million Americans turn 50 each year and become more likely to experience age-related changes in their hearing, vision, mobility, and overall physical condition that they may not define as disabilities. That's a lot of people who shop, work, and live in our communities who might face barriers that could limit their access. Not counting older Americans, people with disabilities are estimated to have about \$175 billion in discretionary income, according to the U.S. Department of Labor.

What does the ADA cover?

The ADA has different sections (titles) that prohibit discrimination against people with disabilities in several specific areas, including public accommodations, public services, employment, transportation, and telecommunications.

I own a small business that's been around since around 1980. Does the ADA apply to me?

Yes, if you own or operate a business that serves the public. Title III of the Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in all places of public accommodation and commercial facilities, and it applies whether your business currently serves customers with disabilities or not. The ADA applies to more than just ramps and doors; it's about enabling your customers to interact with all aspects of your business.

What does “public accommodation” mean?

Under the ADA, “public accommodations” are facilities and establishments that serve the public. A wide range of business are considered to be public accommodations, including restaurants, hotels and other places of lodging, medical offices, stores, and places for exercise, recreation, or entertainment.

Will I have to spend a lot of money to do this?

No, the law only requires businesses to do what is “readily achievable.” This means you need only do what is “easily accomplishable and able to be carried out without much difficulty or expense.” The law allows businesses to determine on a case-by-case basis what steps they will take to comply, based on their particular circumstances and available resources. This might include things like ramping a few steps or installing grab bars where only routine reinforcement of the wall is required. Where adjustments are not readily achievable, you can use alternatives such as helping a customer reach articles from inaccessible shelves, home delivery of groceries, or coming to the door to receive or return dry cleaning. Similarly, you can read information to your customers instead of Braille menus or price tags, and you can communicate with your customers using a pen and notepad instead of hiring a sign language interpreter.

Are there any tax breaks for money I spend to make my business accessible?

A tax credit under Section 44 of the Internal Revenue Code is available to eligible small businesses; it covers a variety of ADA-related expenditures, including removal of architectural barriers and making alterations to comply with the applicable accessibility standards. (The credit cannot be used for new construction, only modifications of existing facilities.) A tax deduction is available under Section 190 of the Internal Revenue Code for the removal of architectural or transportation barriers to comply with applicable accessibility standards.

Can I get fined or sued if my business does not comply?

There is no current system for fining businesses that do not comply with the law. However, you could be sued if you discriminate against a person with a disability by failing to make your business accessible, and enforcement actions by the U.S. Department of Justice can involve civil penalties.

Where can I find more information?

For more information about how businesses can comply with the ADA and reach this nearly untapped market of people with disabilities, visit the Easy Access Web site at: www.ada/easyaccess.com.² Or call the U.S. Department of Justice’s toll-free ADA Information Line: 800-514-0301 (voice) or 800-514-0383 (TTY).

² Not an actual Web site – URL included for illustrative purposes only.

Small Business Easy Access Public Information Campaign

Rationale and Implementation Strategy

Communication Product	<p>Two-page fact sheet on the ADA, organized in question-and-answer format.</p> <p>The FAQ (Frequently Asked Questions) format has become increasingly familiar to the general public through the Internet. Many Web sites have FAQs prominently displayed on their home page. In public information campaigns, FAQ handouts are standard collateral materials in press kits, meetings, and so on.</p>
Objective	<p>This product is tailored to accomplish three objectives:</p> <ul style="list-style-type: none">■ To provide small business owners with basic facts about ADA as it applies to small businesses.■ To provide small business owners with basic facts about the size of the population of people with disabilities who cannot do business with inaccessible businesses.■ To provide small business owners with access to a wide range of more detailed material for the Easy Access campaign Web site.
Situation Analysis	<p>Through a series of focus groups with the target population, BPA learned that—</p> <ul style="list-style-type: none">■ Most small business owners and managers have a rudimentary awareness of ADA.■ However, most are unclear as to their specific obligations under ADA to provide access to people with disabilities.■ Further, focus groups indicated that participants need more information about how exactly to comply; they need how-to guidance.■ Materials that have already been developed by SBA and DOJ are seen as useful and appropriate, but most business owners don't yet know of their existence.
Primary Audience	<p>Owners of small businesses (defined as any business that sells goods and services to the public and meets the small business size standards of the U.S. Small Business Administration).</p>

Secondary Audiences

Secondary audiences include—

- Small business associations
- People with disabilities
- Individuals and organizations that advocate on behalf of people with disabilities

Communication Strategy

- This communication product seeks to motivate small business owners to seek more detailed information on ADA compliance.
- The strategy is to point out that compliance is the law and to address barriers to adoption of the desired behavior (making small businesses more accessible).
- This communication product seeks to begin the process to persuade small business owners that compliance is not expensive and that access will enable them to attract more customers.

Distribution Strategy

- **Bulk Distribution**
Individuals and organizations that wish to use the fact sheet as collateral material at public presentations and as take-away materials in the offices of small business associations, chambers of commerce, and so on will order it in bulk from the Easy Access Web site.
- **Direct Mail**
Small business owners will receive single copies of the fact sheet through direct mail.
- **Easy Access Web Downloads**
“FAQs for Small Businesses” can be downloaded as a PDF file from the Easy Access Web site by small business owners, small business associations, people with disabilities, and ADA advocacy groups.
- **PowerPoint Version**
A PowerPoint version of the “FAQs for Small Businesses” fact sheet will be created from the existing paper version. The PowerPoint file can be downloaded from the Easy Access Web site.

**Distribution
Strategy
(cont'd)**

■ **Collateral Material: Public Meetings**

The “FAQs for Small Businesses” fact sheet is an indispensable component of the collateral materials distributed to audiences whenever ADA is discussed in a public forum (e.g., meetings of small business associations).

■ **Collateral Material: Media**

“FAQs for Small Businesses” is provided to members of the media as additional collateral material whenever other communication products are distributed to the media.

■ **Search Engine Advertising**

When the search terms “ADA” and “small businesses” are used in an online search (using popular search engines such as Google, Yahoo, or MSN), the “FAQs for Small Businesses” fact sheet will be supported as a sponsored link on the right side of the search display screen. Clicking on the link will display a digital version of “FAQs for Small Businesses,” suitable for printing or downloading as a PDF file. Sponsored links for additional search terms will be added as appropriate.

■ **USB Thumb Drive Promotionals**

Promotional USB thumb drives, with the Easy Access logo and URL stamped on the casing, will be given away at small business functions. A PowerPoint version of the “FAQs for Small Businesses” fact sheet may be stored on the thumb drive and labeled “SEE ME FIRST!”

**Impact
Evaluation**

Whenever an evaluation is done of the Easy Access campaign, this would be one of the communication products evaluated. For example, if a small business association organizes a meeting of business owners to discuss ADA, the fact sheet would be one of the products rated for usefulness/clarity by participants.

Myths and Facts About the Americans with Disabilities Act

Excerpt from "Myths and Facts," U.S. Department of Justice

ADA Regulations and Technical Assistance Materials

(updated April 4, 2006), available at: www.ada.gov/pubs/mythfct.txt

MYTH: The ADA is rigid and requires businesses to spend lots of money to make their existing facilities accessible.

FACT: The ADA is based on common sense. It recognizes that altering existing structures is more costly than making new construction accessible. The law only requires that public accommodations (e.g., stores, banks, restaurants, and hotels) remove architectural barriers in existing facilities when it is "readily achievable"; that is, it can be done "without much difficulty or expense." Inexpensive, easy steps to take include ramping one step; installing a bathroom grab bar; lowering a paper towel dispenser; rearranging furniture; installing offset hinges to widen a doorway; or painting new lines to create an accessible parking space.

MYTH: The ADA requires businesses to remove barriers overnight.

FACT: Businesses are only required to do what is readily achievable at that time. A small business may find that installing a ramp is not readily achievable this year, but if profits improve it will be readily achievable next year. Businesses are encouraged to evaluate their facilities and develop a long-term plan for barrier removal that is commensurate with their resources.

MYTH: Many ADA cases involve frivolous issues.

FACT: The Justice Department's enforcement of the ADA has been fair and rooted in common sense. The overwhelming majority of the complaints received by the Justice Department have merit. Our focus is on fundamental issues of access to goods and services that are basic to people's lives. We have avoided pursuing fringe and frivolous issues and will continue to do so.

MYTH: The government thinks everything is readily achievable.

FACT: Not true. Often it may not be readily achievable to remove a barrier—especially in older structures. Let's say a small business is located above ground. Installing an elevator would not, most likely, be readily achievable—and there may not be enough room to build a ramp—or the business may not be profitable enough to build a ramp. In these circumstances, the ADA would allow a business to simply provide curbside service to people with disabilities.

MYTH: Restaurants must provide menus in Braille.

FACT: Not true. Waiters can read the menu to blind customers.

MYTH: Sign language interpreters are required everywhere.

FACT: The ADA only requires that effective communication not exclude people with disabilities—which in many situations means providing written materials or exchanging notes. The law does not require any measure that would cause an undue financial or administrative burden.

MYTH: The government is no help when it comes to paying for accessibility.

FACT: Not so. Federal tax incentives are available to help meet the cost of ADA compliance.

MYTH: Businesses must pay large fines when they violate the ADA.

FACT: Courts may levy civil penalties only in cases brought by the Justice Department, not private litigants. The Department only seeks such penalties when the violation is substantial and the business has shown bad faith in failing to comply. Bad faith can take many forms, including hostile acts against people with disabilities, a long-term failure even to inquire into what the ADA requires, or sustained resistance to voluntary compliance. The Department also considers a business's size and resources in determining whether civil penalties are appropriate. Civil penalties may not be assessed in cases against state or local governments or employers.

MYTH: The Justice Department sues first and asks questions later.

FACT: The primary goal of the Department's enforcement program is to increase voluntary compliance through technical assistance and negotiation. Under existing rules, the Department may not file a lawsuit unless it has first tried to settle the dispute through negotiations—which is why most every complaint settles.

MYTH: The Justice Department never files suits.

FACT: As of January 19, 2007, the Department has been party to 335 suits under the ADA. Although it tries extensively to promote voluntary compliance, the Department will take legal action when entities continue to resist complying with the law.

Small Business Easy Access Public Information Campaign

Rationale and Implementation Strategy

Communication Product	<p>Double-sided 8.5" X 11" fact sheet</p> <p>A fact sheet summarizes the most salient points regarding an organization or issue in a succinct format. This communication product uses a "myth and fact" format to distill the most common misperceptions among small business owners and to provide correct factual information.</p>
Objective	<p>This product is tailored to accomplish two objectives:</p> <ul style="list-style-type: none">■ To provide accurate, factual information about the ADA and its application to small businesses.■ To dispel widely held myths among small business owners about the actual or potential negative impact of ADA enforcement on businesses.
Situation Analysis	<p>Through focus groups with the target population, BPA learned that—</p> <ul style="list-style-type: none">■ Many small business owners and managers believe myths or "urban legends" about the ADA and its enforcement.■ Many small business owners are fearful that the Department of Justice will cause severe economic hardships for small business through overzealous enforcement of the ADA.■ Many small business owners fear that the government's enforcement of the ADA is unmindful of the challenges faced by small businesses.
Primary Audience	<p>Owners of small businesses (defined as any business that sells goods and services to the public and meets the small business size standards of the U.S. Small Business Administration).</p>
Secondary Audiences	<p>Secondary audiences play a role as channels to help inform small business owners about the myths and facts of ADA enforcement. Secondary audiences include—</p> <ul style="list-style-type: none">■ Small business associations■ People with disabilities■ ADA advocates, both individuals and groups

Communication Strategy

- This communication product seeks to address misperceptions regarding ADA enforcement by putting these misperceptions into words and labeling them as myths.
- For each misperception about ADA enforcement, the fact sheet provides specific facts about actual ADA enforcement practices by the Department of Justice, as documented in literature provided by DOJ.
- The goal of the fact sheet is to address as many myths as possible using terse language to put the misperception on the table and then dismantle it with facts.

Distribution Strategy

- **Bulk Distribution**
Individuals and organizations wishing to use the fact sheet as collateral material at public presentations and as take-away material in the offices of small business associations, chambers of commerce, and so on will order the fact sheet in bulk from the Easy Access Web site.
- **Direct Mail**
Small business owners will receive single copies of the fact sheet through direct mail.
- **Easy Access Web Downloads**
The “Myths and Facts” fact sheet can be downloaded as a PDF file from the Easy Access Web site by small business owners, small business associations, people with disabilities, and ADA advocacy groups.
- **PowerPoint Version**
A PowerPoint version of the “Myths and Facts” fact sheet will be created from the existing paper version. The PowerPoint file can be downloaded from the Easy Access Web site.

**Distribution
Strategy
(cont'd)**

■ **Collateral Material: Public Meetings**

The “Myths and Facts” fact sheet is an indispensable component of the collateral materials distributed to audiences whenever ADA is discussed in a public forum (e.g., meetings of small business associations).

■ **Collateral Material: Media**

The fact sheet is provided to members of the media as additional collateral material whenever other communication products are distributed to the media.

■ **Search Engine Advertising**

When the search terms “ADA” and “compliance” are used in an online search (using popular search engines such as Google, Yahoo, or MSN), the “Myths & Facts” fact sheet will be supported as a sponsored link on the right side of the search display screen. Clicking on the link will display a digital version of the fact sheet suitable for printing or downloading as a PDF file. Sponsored links for additional search terms will be added as appropriate.

■ **USB Thumb Drive Promotionals**

Promotional USB thumb drives, with the Easy Access logo and URL stamped on the casing, will be given away at small business functions. A PowerPoint version of the fact sheet may be stored on the thumb drive and, as desired, labeled “SEE ME FIRST!”

**Impact
Evaluation**

The number of downloads from the Easy Access campaign Web site can be counted digitally. Whenever the “Myths and Facts” fact sheet is used at a public presentation, simple evaluation postcards (preaddressed, with return postage provided) can be used to evaluate this communication product, along with other communication products.

9. ACCESS LAMINATED CARD



ACCESS IS GOOD BUSINESS...

Sometimes, finding new customers and satisfying existing ones all comes down to access.

Block people's access to your business with physical or communication barriers, and there's a good chance they won't be spending their money there. Remove barriers, and your business can really profit. And, you'll be complying with the Americans with Disabilities Act (ADA) by serving people with disabilities on an equal basis with everyone else.

How disability-friendly is your business? Turn this card over and ask yourself Easy Access's four key questions.

IT'S EASIER THAN YOU THINK!

Do you consider your business to be disability-friendly?

- ☐ Can a person with a disability park, approach, and enter your business?
- ☐ Once inside, can customers with disabilities access your goods and services?
- ☐ If public restrooms are available, are they accessible to customers with disabilities?
- ☐ Can you and your customers with disabilities communicate with each other?

For more information on providing access to people with disabilities, go to the Easy Access Web site at www.ada/easyaccess.com.

Small Business Easy Access Public Information Campaign

Rationale and Implementation Strategy

Communication Product	<p>Laminated 2 ½" x 3" card, printed front and back, with graphic</p> <p>This product is a pocket-sized card that provides a treatment of the message points included in the campaign on one side and a very brief checklist of access-related points on the other. It will be used as collateral material along with other campaign items, typically as a take-away from an ADA-centered event.</p>
Objective	<p>This product is tailored to accomplish two objectives:</p> <ul style="list-style-type: none">■ To remind small business owners that complying with the ADA means serving people with disabilities on an equal basis with everyone else.■ To motivate small business owners to provide access and comply with the ADA.
Situation Analysis	<p>Through a series of focus groups with the target population, BPA learned that—</p> <ul style="list-style-type: none">■ Most small business owners and managers have a rudimentary awareness of ADA.■ However, most were unclear as to what compliance with the ADA might entail, and some were fearful that compliance was difficult and/or costly.
Primary Audience	<p>Owners of small businesses (defined as any business that sells goods and services to the public and meets the small business size standards of the U.S. Small Business Administration)</p>
Secondary Audiences	<p>Secondary audiences for this product are identified as potential channels of distribution of brochures to the primary audience. The secondary audiences also will learn useful facts about the ADA and its application to small businesses.</p> <ul style="list-style-type: none">■ Small business associations■ Community-based organizations that may hold events or make presentations for owners of small businesses■ People with disabilities

Communication Strategy The laminated card provides a communication vehicle to facilitate face-to-face communication between secondary and primary audiences. As a take-away from a presentation or ADA-centered event, the card can serve as a reminder of the need to comply with the ADA, and can educate—and reassure—owners of small businesses about easy ways to be disability-friendly.

The card can be expanded in size and used as an additional fact sheet in an online package of materials that is easy to download and distribute in printed form.

The communication strategy used in this product provides rudimentary information about the obligations of small businesses under ADA and provides small business owners and operators with a checklist that illustrates easy ways to provide access and be disability-friendly.

- Distribution Strategy**
- **Face-to-Face**
Secondary audiences such as small business associations, community organizations (e.g., Rotary Clubs), and people with disabilities will pass the card along to the primary audience.
 - **Bulk Distribution**
Secondary audiences will receive cards in bulk through organizations with which they affiliate, as well as directly from the Easy Access campaign.
 - **Business Web Site Links**
Many business associations, chambers of commerce, and so forth have Web sites. The expanded, “fact sheet” version of the Easy Access laminated card will be made available on these Web sites as a hyperlink, similar to a sponsored link on a search engine. Clicking on the link will display a digital version of the card, suitable for printing or downloading as a PDF file.

Impact Evaluation A tally of the number of cards passed along by a sample of the organizations (secondary audiences) to which the cards were distributed would provide a measure of small business interest in the message of the card and in the ADA-centered events and presentations at which the cards are distributed.

INFORMATION – AT YOUR FINGERTIPS!

For information at your fingertips, go to the Easy Access Web site at www.ada/easyaccess.com.

The Easy Access Web site has materials that may be of use to you in your communications with small business owners and others in your area, including—

- ADA Frequently Asked Questions (FAQs)
- Small Business Brochure
- ADA “Myths and Facts”
- Sample news releases and scripts for audio messages

In addition to materials that target small businesses directly, there are also materials for organizations and associations that support small businesses, as well as landlords and architects. You can use these materials



to persuade others to get involved in Easy Access and work with you to help your community's small businesses offer more access to people with disabilities.

Order free copies of Easy Access materials to hand out to small businesses and others in your area, or download them to your computer to print out or distribute through e-mail or other electronic means.

If you modify any of the materials or adapt them to your community and would like to share your versions with other advocates working to improve implementation of ADA compliance, please upload your materials to the Easy Access Web site by clicking on the “Add Materials” button, or go to www.ada/easyaccess/newmaterials.com.

You may be interested in the “rationale and implementation strategy” developed for each of the communication materials created for the Easy Access campaign, which describes why each of the materials was developed and how it is intended to be used.

Keep in mind that the Easy Access materials help support effective one-on-one communication but can't replace it. Remember, one-on-one communication between business owners and you – as an important customer to them – may be the ADA's single most powerful tool of persuasion!

Access is GOOD Business

*...and it's easier than
you think!*

THE EASY ACCESS PUBLIC INFORMATION CAMPAIGN

WHAT PEOPLE WITH DISABILITIES CAN
DO TO ENCOURAGE SMALL BUSINESS
TO BECOME ACCESSIBLE



THE EASY ACCESS PUBLIC INFORMATION CAMPAIGN

If you are a person with a disability—or an advocate on behalf of people with disabilities—you are invited to be part of a multifaceted information campaign to encourage owners of small businesses to implement the Americans with Disabilities Act (ADA).

Easy Access

- Targets small businesses.
- Promotes the idea to small business owners that it's good business to comply voluntarily with the ADA, while reminding them that "it's the law."
- Tells small business owners that "it's easier than you think" to implement the ADA.
- Connects small business owners with specific how-to information and motivates them to use it to make their businesses more accessible.



Access is the Law. Title III of the ADA says that any business that serves the public must be readily accessible to and usable by people with disabilities. The Easy Access public information campaign was developed in the belief that the more different ways in which small businesses get the important message about the ADA, the more likely they are to respond.

Taking a Guerilla Marketing Approach. Guerilla marketing means applying just the right kind of pressure in just the right way to bring about desired change. This approach is ideal for activists who seek to bring about positive social change, people who are driven more by their convictions than their pocketbooks. In essence, we do more with less by using all our resources and being smart about how we use them.

By using communication materials and strategies from Easy Access and making direct connections with small business owners you know or encounter, you can help promote community-based ADA awareness and compliance. In fact, one-on-one communication between business owners and people with disabilities—who, after all, are an important market segment for them—may be the ADA's single most powerful tool of persuasion.

ALLIES IN ACCESS

Research suggests that most small businesses are aware that the ADA exists but know little about how it applies to them and how to make their businesses accessible to people with disabilities. By using education and persuasion as your lead strategy, and leaving litigation as a last resort, you can come to be seen as both an ally and a valued customer that the business owner is pleased to accommodate.

You can provide a valuable service to the small business owners you know or encounter by providing them with an easy place to start, so they don't need to plow through the vast amount of currently available information that has been tailored to help small businesses comply with the ADA. Point them to useful, detailed how-to guides, especially helpful technical assistance from the Department of Justice and the Small Business Administration.

Education alone may not be sufficient to get businesses to make changes, but it is a good place to start. You can be a source of support—keep in mind that this is a sensitive issue for both of you—as well as a valued customer. Look for the win-win: You want access and owners want customers.

Small Business Easy Access Public Information Campaign

Rationale and Implementation Strategy

Communication Product	<p>Single-sheet 8.5" X 11" brochure with two folds, printed front and back, with graphics.</p> <p>This product provides a brief treatment of the message points included in the campaign and is used as collateral material along with other pieces of the campaign. The brochure also motivates people with disabilities and their advocates to communicate with small businesses regarding the messages of the campaign and to direct them to seek more detailed sources of information.</p>
Objective	<p>This product is tailored to accomplish three objectives:</p> <ul style="list-style-type: none">■ To provide people with disabilities and those who advocate on behalf of them with strategies and tactics for encouraging small business owners to comply with the ADA.■ To provide people with disabilities and their advocates with facts about themselves as consumers that they can share with small business owners.■ To motivate people with disabilities and their advocates to play a role in the dissemination of Easy Access materials.
Situation Analysis	<p>Through stakeholder dialogues with people with disabilities and their advocates, BPA learned that—</p> <ul style="list-style-type: none">■ People with disabilities are frustrated by the lack of ADA compliance among small business owners.■ Many people with disabilities feel that small business owners will comply with ADA only if forced to do so through mediation or litigation.■ Many people with disabilities feel that small business owners are best persuaded to comply voluntarily by emphasizing their moral and legal obligation to comply.■ According to research on public information campaigns, that kind of persuasive strategy is not effective at bringing about desired behaviors.
Primary Audience	<p>People with disabilities.</p>

Secondary Audiences Secondary audiences in the Easy Access campaign are potential channels of distribution of brochures to the primary audience. The secondary audiences also will learn useful facts about the ADA and its application to small businesses. Secondary audiences include—

- Individuals and organizations that advocate on behalf of people with disabilities
- Small business owners

Communication Strategy The brochure for people with disabilities provides a vehicle to facilitate face-to-face communication between secondary and primary audiences. As a printed document capable of communicating moderately dense information, the brochure can educate as well as motivate audience members to seek more information. The brochure motivates people with disabilities and their advocates to seek additional information from resources on the Web.

In addition, recognizing that people with disabilities are frustrated by the lack of small business compliance with ADA, the brochure shows them how to direct their energies in ways that are most likely to be effective. The brochure seeks to direct people with disabilities away from communication strategies that will not work with small business owners.

By explaining how important people with disabilities are as a market segment (the language of commerce), the brochure seeks to enhance the self-esteem and efficacy of people with disabilities.

Distribution Strategy ■ **Pass-along** Secondary audiences such as people with disabilities, their advocates, small business associations, and community organizations such as Rotary Clubs will pass the brochure along to the primary audience (small business owners).

■ **Bulk Distribution** The secondary audiences will receive copies of the brochure in bulk through organizations with which they affiliate, such as Centers for Independent Living, as well as directly from the Easy Access campaign.

■ **Easy Access Web Download** A digital version of the brochure will be stored as a PDF file on the Easy Access Web site, suitable for downloading. A PowerPoint version also can be downloaded from the Web site. These digital versions of the brochure will have the same full graphical support as the paper brochure.

**Distribution
Strategy
(cont'd)**

■ **Search Engine Advertising**

When the search terms “ADA” and “small business” are used in an online search (using popular search engines such as Google, Yahoo or MSN), the Brochure for People with Disabilities will be supported as a sponsored link on the right side of the search display screen. Clicking on the link will display a digital version of the Brochure for People with Disabilities, suitable for printing from the screen or downloading as a PDF file. Sponsored links for additional search terms will be added as appropriate.

■ **iPod Downloads**

An audio version of the brochure will be recorded and available as an iPod download. Using Apple’s iTunes distribution system, people with disabilities and their advocates will be able to download the “audio brochure” to play while doing other things, including driving (using an interface device to connect the iPod to the car stereo). The graphics in the brochure will be displayed in the “Now Playing” box on iTunes while the audio file is playing.

■ **USB Thumb Drive Promotionals**

Promotional USB thumb drives, with the Easy Access logo and URL stamped on the casing, will be given away at functions attended by people with disabilities and their advocates. The audio brochure will be stored as MP3 files labeled “LISTEN TO ME FIRST!” Clicking on this icon will launch the MP3 application on the recipient’s computer. A PowerPoint version of the brochure can be created and stored on the thumb drive and labeled “SEE ME FIRST!”

**Impact
Evaluation**

The hotlink (URL) on the brochure could be specific to it. A person accessing the Web site would first go to a Web page that simply counts the hits and click-throughs.

This would provide a behavioral measure of the brochure’s effectiveness at motivating small business owners and managers to seek more information.

Access is GOOD Business

*...and it's easier
than you think!*



SMALL BUSINESSES AND

THE AMERICANS WITH DISABILITIES ACT (ADA)

PROGRAM AND PRESENTATION TOOLKIT

[LETTERHEAD]

[DATE]

Easy Access Public Information Campaign Sponsors

Address

City, State, ZIP

Dear Supporters of America's Small Businesses,

The Americans with Disabilities Act (ADA) was signed into law by President George H. W. Bush in 1990. It was intended to break down the barriers that prevented people with disabilities from leading the full, productive lives that all Americans are entitled to, and to enable society to benefit from their skills and talents. There is a long way to go, however, before the promise of the ADA is fulfilled, especially when it comes to people with disabilities having access to the products and services of our country's small businesses.

As an organization that supports or provides a forum for owners and operators of small businesses in your community **[or state, or region]**, you are in a position of leadership and responsibility with regard to members of your association and other small businesses in your area. Not only is promoting compliance with the law consistent with the mission of an organization like yours that supports small businesses, it also can be of enormous financial benefit to the small businesses you serve and, most likely, to you as small business owners yourselves. People with disabilities may be a large untapped market for you!

This ADA Program and Presentation Toolkit is being provided by **[Information Campaign Sponsors]** for your use in the meetings, programs, presentations, and events you hold for the benefit of the small businesses you serve. There is a wealth of information about the ADA, tailored for small businesses like theirs, that is available, and you can help them find it!

Sincerely,

Easy Access Public Information Campaign Sponsors

PROGRAM AND PRESENTATION MATERIALS

WHAT MATERIALS ARE IN THIS TOOLKIT?

- Handout: Access Is Good Business
- Sample Flyer: Inviting members to attend program
- Small Business Brochure
- ADA FAQs (Frequently Asked Questions)
- Myths and Facts about the ADA
- Access Checklist
- Additional communication products for architects and landlords
- “Ten Small Business Mistakes” video from the U.S. Department of Justice (available in the online and downloadable versions of this Toolkit)

WHAT DO THE MATERIALS IN THIS PACKAGE COVER?

The materials in this package provide a brief overview of facts small businesses need to know about the ADA, and they tell the audience where to go for detailed how-to information about—

- New construction, alterations, and additions. If a business building or facility is altered in any way that affects its usability (e.g., remodeling, renovation, changes in the structure of the building), the part of the building that is altered must be as accessible to and usable by people with disabilities as feasible. New buildings or facilities must be built in strict compliance with the ADA Standards for Accessible Design.
- Determining what is “readily achievable.” The ADA requires that businesses that serve the public remove architectural barriers in existing facilities when it is “readily achievable”; that is, it can be done without much difficulty or expense. Think about how hard businesspeople work already to attract new customers and to provide good service to the customers they have—it’s an easy step to get information about how to make sure their businesses are accessible to people with disabilities.
- Learning how access for all of a business’ customers and potential customers can be easily achieved by following the principles of universal design. Universal design is both art and craft, combining imaginative design with functional elements that work for everyone, regardless of where they are on the continuum of human abilities. In universal design, access is the rule, not the exception.

- Finding out about tax incentives that are available to small businesses that incur expenses in removing barriers or increasing access for people with disabilities. A tax credit is available to eligible small businesses for a variety of ADA-related expenses, including removal of architectural barriers. A tax deduction is also available for the removal of architectural or transportation barriers to comply with applicable accessibility standards.

SUGGESTIONS FOR USING THE MATERIALS IN THIS PACKAGE

The materials in this package can be used alone or in combination for programs, presentations, or other events sponsored by your organization, or as agenda or program elements in your regular meetings. Feel free to employ them in any way that is useful to your organization and its members. You may want to hold events or make presentations on topics such as—

- How removing barriers to access for people with disabilities can be seen as a business opportunity, not just a legal requirement.
- How the ADA is about much more than just lawsuits (or fear of lawsuits).
- How providing the access required by the ADA is easier than you might think.

An important goal of this package is to connect small businesses with the many available resources on the ADA that are tailored just for them. To download materials from the Easy Access public information campaign or find links to the U.S. Access Board, the Department of Justice's ADA Business Connection, and other useful resources on the Web, go to www.ada/easyaccess.com.³

A wealth of information about the ADA has been created specifically for American's small businesses—and you can help them find it!

³ Not an actual Web site – URL included for illustrative purposes only.

HANDOUT

ACCESS IS GOOD BUSINESS BECAUSE—

CUSTOMERS NEED ACCESS

People need “a way in” to a business if they are going to become customers. If the business is in a building that’s difficult to enter, or if some people’s ability to have access to its full range of products or services is limited, customers are literally being turned away. That’s what happens when a business has barriers to access by people with disabilities. As one business owner said, “You’re leaving money on the table when people with disabilities can’t get into your store.”

PEOPLE WITH DISABILITIES REPRESENT A LOT OF CUSTOMERS

According to the 2000 U.S. Census, more than 50 million Americans reported that they had disabilities. That translates to almost one in five people in this country. In addition, AARP says that 4 million Americans turn 50 each year and, thus, become more likely to experience age-related changes in their hearing, vision, mobility, and overall physical condition that they may not define as disabilities. That’s a lot of people who shop, work, and live in our communities who might face barriers that could limit their access.

PEOPLE WITH DISABILITIES HAVE A LOT OF SPENDING POWER

Not counting older Americans, people with disabilities are estimated to have about \$175 billion in discretionary spending power, according to the U.S. Department of Labor.

ACCESS IS A GOOD INVESTMENT

It’s clear that businesses are making a good investment when they make sure people with disabilities have easy access to their buildings and facilities. Plus, making a business user-friendly to people with disabilities makes it user-friendly to everyone. Businesses such as architects, interior designers, and commercial real estate agents who have small business clients can serve their clients well—and profitably—if they can offer important know-how about access. Small business clients are not likely to have in-house staff or consultants who are knowledgeable about access for people with disabilities; the professionals who serve them are perfectly positioned to earn their business by helping them make their facilities welcoming to all customers, including people with disabilities. For a landlord, making a business property accessible to people with disabilities makes it a more valuable business location, not only for current tenants but also for businesses looking to lease a property in the future.

ACCESS IS EASIER THAN YOU THINK

The Americans with Disabilities Act (ADA) requires that businesses make only those changes that are “easily accomplishable and able to be carried out without much difficulty or expense,” such as simple ramping of a few steps, installation of grab bars, and similar adjustments.

ACCESS IS THE LAW

Title III of the ADA prohibits discrimination against people with disabilities in all places of public accommodation and commercial facilities. If you own, operate, or lease a business that serves the public, you must remove barriers to the extent feasible to allow access by people with disabilities. If you are engaging in new construction for your business building or facility, you must make sure it is readily accessible to and usable by people with disabilities.

The ADA applies whether a business currently serves customers with disabilities or not. More than just a building code, the ADA goes beyond just ramps and doors. The access required by the ADA is about enabling customers to interact with all aspects of a business.

SAMPLE FLYER
INVITING MEMBERS TO ATTEND PROGRAM

[NAME OF YOUR ORGANIZATION]
EXPAND YOUR CUSTOMER BASE!

**Do you own a small business or
know somebody who does?**

Expand your customer base by improving the access people with disabilities have to your business. Customers need access. If some people's access to your full range of products or services is limited, you are literally turning away customers.

[Name of your organization] is presenting a program called "ACCESS IS GOOD BUSINESS" that is important for all small businesses. The Americans with Disabilities Act (ADA), which prohibits discrimination against people with disabilities in all places of public accommodation and commercial facilities, applies to you if you own, operate, or lease a business that serves the public.

Come to "ACCESS IS GOOD BUSINESS" – this important event will take place:

Day of the week and date

Time

Location

This event is sponsored by [name of your organization]. For more information on programs and membership, please contact

_____.

Small Business Easy Access Public Information Campaign

Rationale and Implementation Strategy

Communication Product	<p>Seven-page printed packet that includes cover letter, a description of package contents, suggestions for how to use the materials, a handout that describes basic facts of ADA compliance, and a sample flyer for a meeting sponsored by a business association on the topic of ADA compliance.</p> <p>The package serves as an introduction to a set of collateral materials (other communication products containing other campaign message points directed at small business owners) that would be sent to business associations as part of the toolkit.</p>
Objective	<p>This product is tailored to accomplish three objectives:</p> <ul style="list-style-type: none">■ To provide business associations that have small business members with basic facts about ADA compliance for small businesses.■ To provide business associations that have small business members with materials about the ADA that are useful and valuable to their members and are easy to use for presentations, meetings, and events.■ To motivate small business associations to play a role in the dissemination of Easy Access materials.
Situation Analysis	<p>Through stakeholder dialogues and discussions with small business owners, BPA learned that—</p> <ul style="list-style-type: none">■ Small business owners network with other small business owners through business associations that include small businesses as members.■ Small business associations provide a safe environment for small business owners to learn about a topic they don't fully understand and may consider a threat to their profitability.

Situation Analysis (cont'd)	<ul style="list-style-type: none"> ■ Because small business owners interact frequently with these associations, the organizations provide a good dissemination point. The materials allow the association to provide a value-added service to its members at no cost. ■ Research on social marketing shows that people are more likely to sustain desired behaviors when they commit to a behavior in the presence of others whose opinions they respect. Small business owners who make a commitment to access in the context of a meeting with other business owners are more likely to honor the commitment.
Primary Audience	Small business associations and other community organizations that have small business members.
Secondary Audiences	Secondary audiences include small business owners.
Communication Strategy	<p>This communication product seeks to motivate small business associations to provide ADA-related information to their members as a service by—</p> <ul style="list-style-type: none"> ■ Providing information about the importance and value of ADA compliance. ■ Providing materials that are easy for organizations to present to their members. ■ Packaging together materials that could be used for a full meeting agenda or program.
Distribution Strategy	<ul style="list-style-type: none"> ■ Direct Mail The business association toolkit is mailed and e-mailed to small business associations by the organization sponsoring the Easy Access campaign, using membership lists of such organizations as the Rotary Club. The toolkit serves as a gateway to a variety of materials directly targeted at small businesses. ■ Search Engine Advertising When the search terms “ADA” and “small business” are used in an online search (using popular search engines such as Google, Yahoo, or MSN), the toolkit will be supported as a sponsored link on the right side of the search display screen. Clicking on the link will display a digital version of the toolkit, suitable for printing from the screen or downloading as a PDF file. Sponsored links for additional search terms will be added as appropriate.

**Distribution
Strategy
(cont'd)**

■ **Easy Access Web Download**

PDF versions of the business association toolkit and its associated materials will be available as a download from the Easy Access Web site. This digital version of these materials will have the same full graphical support as the paper materials. The materials will include—

- Small Business Brochure
- ADA FAQs (Frequently Asked Questions)
- Myths and Facts about the ADA
- Access Laminated Card
- Architect Flyer and Landlord Brochure
- “Ten Small Business Mistakes” video from the U.S. Department of Justice (available in the online and downloadable versions of this toolkit)

■ **iPod Downloads**

An audio version of the business association toolkit and its associated materials will be recorded and available as an iPod download. Using Apple’s iTunes distribution system, members of small business associations will be able to download the “audio flyer” to play while jogging, walking, and so forth, as well as to listen to while driving (using an interface device to connect the iPod to the car stereo). The graphics in the business association toolkit will be displayed in the “Now Playing” box on iTunes while the audio file is playing.

■ **USB Thumb Drive Promotionals**

Promotional USB thumb drives, with the Easy Access logo and URL stamped on the casing, will be given away at small business association functions. PowerPoint versions of the toolkit and its associated materials, including the DOJ video “Ten Small Business Mistakes,” can also be stored on the thumb drive and labeled “SEE ME FIRST!”

**Impact
Evaluation**

When the business association toolkit and its associated materials are sent to a small business association (whether solicited or unsolicited), a follow-up phone call would confirm that the materials arrived to the destination. In that call, the evaluator could determine how the materials are being used. If a meeting of small businesses is planned to discuss the ADA, a packet of program evaluation postcards (return postage prepaid) could be sent to the association.

INFORMATION – AT YOUR FINGERTIPS!

There's a wealth of information available about the ADA, tailored for small business owners and managers, building owners, and other target audiences. You can provide a valuable service to the small business owners to whom you lease by helping them find an easy place to start, so they don't need to plow through the vast amount of currently available information that has been tailored to help small businesses comply with ADA. It's easy to find information that can help you and your tenants and prospective tenants.



To find information and materials that clarify your responsibilities under the ADA, go to

www.ada/easyaccess.com.⁴

There you will find information developed specifically for the Easy Access public information campaign, as well as links to valuable resources such as the U.S. Access Board, the Small Business Administration, and the ADA Business Connection of the Department of Justice that cover topics such as—

- Evaluating what barriers may need to be removed.
- Determining what is “readily achievable.”
- Doing alterations and additions.
- Complying with ADA Standards for Accessible Design.
- Other access requirements.

For additional information on the ADA and small businesses, you may wish to talk to an ADA specialist at the U.S. Department of Justice at: 800-514-0301 (voice) or 800-514-0383 (TTY).

⁴ Not an actual Web site – URL included for illustrative purposes only.

Access is GOOD Business

... and it's easier
than you think!



**BUSINESS PROPERTY OWNERS
AND LANDLORDS
AND THE AMERICANS WITH
DISABILITIES ACT (ADA)**

KNOW YOUR RESPONSIBILITIES

Title III of the Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in all places of public accommodation and commercial facilities. If you own, operate, or lease a business that serves the public, you must remove barriers to the extent feasible to allow access by people with disabilities. Furthermore, if you are engaging in new construction for your business building or facility, you must make sure it is readily accessible and usable by people with disabilities.

If you own a building that includes a place of public accommodation (i.e., a business that serves the public), both you and those tenants are fully responsible for complying with the ADA's requirements.

IMPROVE THE VALUE OF YOUR PROPERTY

Access is good business for you as a landlord. Making your property accessible for people with disabilities makes it a more valuable business location not only for your current tenants but also for businesses looking to lease a property in the future.



ACCESS IS THE LAW

Yes, it's the law, and yes, it applies to you if you lease to a business that serves the public. Title III of the ADA says you and your tenants must make whatever readily achievable modifications are needed to remove barriers and permit access by people with disabilities.

Landlords and tenants may agree in their lease or other contract to allocate shared financial responsibility for ADA compliance, but such allocation is only between the two parties. Both landlord and tenant retain full legal responsibility for ADA compliance. Failure to address ADA issues may result in your being held liable for noncompliance with federal law.

Be flexible as you work together to make the place of business on your property as welcoming as possible to *all* customers.

IT'S EASIER THAN YOU THINK

The ADA says that both you and your business tenant are fully liable for compliance with all provisions of the ADA, which means making changes that are "easily accomplishable and able to be carried out without much difficulty or expense," such as simple ramping of a few steps, installation of grab bars, and similar modest adjustments.

You and your tenants may be able to take advantage of tax incentives available to businesses that incur expenses in removing barriers or increasing access for people with disabilities. A tax credit is available to eligible small businesses for a variety of ADA-related expenses, including removal of architectural barriers.

A tax deduction also is available for the removal of architectural or transportation barriers to comply with applicable accessibility standards. For more information on this specific topic, see the Department of Justice publication "Tax Incentives Packet on the Americans with Disabilities Act" at www.ada.gov/taxpack.htm.

Small Business Easy Access Public Information Campaign

Rationale and Implementation Strategy

Communication Product Single-sheet 8.5" X 11" brochure with two folds, printed front and back, with graphics.

This product provides a brief treatment of the message points included in the campaign and is used as collateral material along with other pieces of the campaign. The brochure also directs the reader to more detailed sources of information.

Objective This product is tailored to accomplish three objectives:

- To persuade building owners who lease to small businesses of the value of their own and their tenants' compliance with the ADA.
- To motivate building owners to communicate with their tenants regarding the messages of the campaign.
- To motivate building owners to seek more specific information about how to comply with the ADA and to tell their tenants where to obtain more detailed sources of information about how small businesses can comply with the ADA.

Situation Analysis Through stakeholder dialogues with people with disabilities, representatives of both large and small businesses, and other stakeholders, BPA learned that—

- Most building owners and landlords appear to have a rudimentary awareness of ADA.
- However, many seem to be unaware of their own ADA responsibilities and those of their small business tenants with regard to providing access to people with disabilities.
- Materials that have already been developed by entities such as SBA and DOJ appear to be well known to landlords for large businesses, but many landlords of small businesses don't yet know of their existence.

Primary Audience Commercial building owners who lease to small businesses (defined as any business that sells goods and services to the public and meets the small business size standards of the U.S. Small Business Administration).

Secondary Audiences Secondary audiences for this product are identified as potential channels of distribution of brochures to the primary audience. The secondary audiences also will learn useful facts about the ADA and its application to small businesses.

- Small business associations
- Other local associations of building owners, landlords
- People with disabilities

Communication Strategy The brochure provides a communication vehicle to facilitate face-to-face communication between secondary and primary audiences. As a printed document capable of communicating moderately dense information, the brochure can educate as well as motivate audience members to seek more information.

The brochure can also be used as part of an online package of materials that are not only visually pleasing online but also easy to download and distribute in printed form.

The communication strategy executed in this brochure provides rudimentary information about the obligations of landlords of small businesses under the ADA. The brochure also motivates such building owners and landlords to seek more specific information about how to comply with the ADA and to tell their tenants where to obtain more detailed sources of information about how small businesses can comply with the ADA.

Distribution Strategy ■ **Bulk Distribution** Secondary audiences such as small business associations, other local associations of building owners and landlords, community organizations such as Rotary Clubs, and people with disabilities will pass brochures along to the primary audience (landlords for small businesses). These secondary audiences will receive copies of the brochures in bulk through organizations with which they affiliate, as well as directly from the Easy Access campaign.

■ **Direct Mail** Building owners and landlords can receive brochures through direct mail.

■ **Search Engine Advertising** When the search terms “ADA” and “architectural” are used in an online search (using popular search engines such as Google, Yahoo, or MSN), the architect flyer will be supported as a sponsored link on the right side of the search display screen. Clicking on the link will display a digital version of the flyer, suitable for printing or downloading. Other search terms and phrases can be added as sponsored links.

**Distribution
Strategy
(cont'd)**

■ **iPod Download**

An audio version of the landlord brochure will be recorded and available as an iPod download. Using Apple's iTunes distribution system, landlords will be able to download the "audio brochure"; they will be able to listen to it while driving (using an interface device to connect the iPod to the car stereo). The graphics in the brochure will be displayed in the "Now Playing" box on iTunes while the audio file is playing.

**Impact
Evaluation**

The hotlink (URL) on the brochure could be specific to the brochure for landlords. A building owner or landlord accessing the Web site would first go to a Web page that simply counts the hits and click-throughs.

This would provide a behavioral measure of the brochure's effectiveness at motivating building owners or landlords of small businesses to seek more information.

ARCHITECTS AND INTERIOR DESIGNERS, TELL YOUR CLIENTS:

Access is GOOD Business

*...and it's easier
than you think!*



THE VALUE OF ACCESS

Your clients that are small businesses—or those who lease facilities to small businesses—may already recognize the economic benefits of having a place of business that is welcoming to everyone, including people with disabilities. They may also know that under Title III of the Americans with Disabilities Act (ADA) if you own, operate, or lease a business that serves the public and are engaging in new construction for your business building or facility, you must make sure it is readily accessible to people with disabilities.

VALUE FOR YOU AND YOUR CLIENTS

As an architect or interior designer, you are in a position of leadership and responsibility with regard to your clients. You are providing them with value when you let them know that new buildings and facilities must be built in strict compliance with the ADA Standards for Accessible Design and that you, as a professional, will seek to meet or exceed those standards for new construction and alterations.

You also are providing them with value when you let them know that access for people with disabilities has clear economic benefits for them and that they are making a good investment when they make sure that people with disabilities have easy access to their buildings and facilities.

Doing your part to make sure that everyone can access the buildings that you design is a good investment for you as an architect. You can take the small business's dreams and design a place that welcomes all customers, including people with disabilities.

IT'S EASIER THAN YOU THINK

A wealth of information is available about the ADA, tailored for clients like yours, and you can help them find it! To download the accompanying brochure—"Small Business and the Americans with Disabilities Act (ADA)"—or to find other information suitable for handouts, flyers, and so on, go to www.ada/easyaccess.com.⁵

There you will find links to the U.S. Access Board, the Department of Justice's ADA Business Connection, and other value-added material to give your clients regarding—

- Requirements for new construction.
- Doing alterations and additions.
- Complying with ADA Standards for Accessible Design.
- Other access requirements.

⁵ Not an actual Web site – URL included for illustrative purposes only.

Small Business Easy Access Public Information Campaign

Rationale and Implementation Strategy

Communication Product	<p>8.5" X 11" flyer with graphics</p> <p>This product provides a brief treatment of the message points included in the campaign and is used as collateral material along with other pieces of the campaign. The flyer also instructs the reader to communicate with his or her clients regarding the messages of the campaign and direct them to more detailed sources of information.</p> <p>The flyer will be accompanied by the "Small Business and the Americans with Disabilities Act (ADA)" brochure, which may be distributed by the architects to their clients.</p>
Objective	<p>This product is tailored to accomplish two objectives:</p> <ul style="list-style-type: none">■ To persuade commercial architects with small business clients of the value of their clients' compliance with the ADA.■ To motivate architects to communicate with their clients regarding the messages of the campaign and tell them where to obtain more detailed sources of information about how to comply with the ADA.
Situation Analysis	<p>Through stakeholder dialogues with people with disabilities and representatives of both large and small businesses, including architects, BPA learned that—</p> <ul style="list-style-type: none">■ Most architects are aware of the ADA.■ Technical assistance materials that have been developed by entities such as SBA and DOJ appear to be well known to architects, although they are not as well used as they might be.■ However, many architects are unaware that the ADA may be considered as a business opportunity for them rather than a compliance burden.■ Further, many are unaware of how they can be of service to their clients, especially their small business clients, with regard to compliance with the ADA.
Primary Audience	<p>Commercial architects with small business clients (defined as any business that sells goods and services to the public and meets the small business size standards of the U.S. Small Business Administration).</p>

Secondary Audiences Secondary audiences for this product are identified as potential channels of distribution of flyers to the primary audience. The secondary audiences also will learn useful facts about the ADA and its application to small businesses.

- Associations for architects and builders (e.g., AIA)
- Other business associations
- People with disabilities

Communication Strategy The flyer provides a communication vehicle to facilitate face-to-face communication between secondary and primary audiences. As a printed document capable of communicating moderately dense information, the flyer can educate as well as motivate audience members to seek more information.

The flyer will be accompanied by the “Small Business and the Americans with Disabilities Act (ADA)” brochure, which can be distributed by the architects to their clients.

With the accompanying brochure, the flyer can also be used as part of an online package of materials that are not only visually pleasing online but also easy to download and distribute in printed form.

The communication strategy executed in this flyer provides messages that motivate architects to communicate with their clients regarding the messages of the overall campaign and tell them where to obtain more detailed information from resources on the Web.

- Distribution Strategy**
- **Bulk Distribution**
Associations for architects and builders, other business associations to which architects may belong, community organizations such as Rotary Clubs, and people with disabilities will pass along the flyers and accompanying brochures to the primary audience (architects).

These secondary audiences will receive copies of the flyers and brochures in bulk through organizations with which they affiliate, as well as directly from the Easy Access campaign.
 - **Direct Mail**
Architects will receive the flyers and accompanying brochures through direct mail, using membership lists of such organizations as AIA.
 - **Easy Access Web Download**
A PDF version of the architect flyer (and of the small business brochure) will be available as a download from the Easy Access Web site. This digital version of these materials will have the same full graphical support as the paper materials.

Distribution Strategy (cont'd)	<ul style="list-style-type: none"> ■ Search Engine Advertising When the search terms “ADA” and “architectural” are used in an online search (using popular search engines such as Google, Yahoo, or MSN), the architect flyer will be supported as a sponsored link on the right side of the search display screen. Clicking on the link will display a digital version of the flyer, suitable for printing or downloading. Other search terms and phrases may be added as sponsored links. ■ iPod Downloads An audio version of the flyer will be recorded and available as an iPod download. Using Apple’s iTunes distribution system, architects will be able to download the “audio flyer” to play while jogging, walking, and so forth, as well as to listen to while driving (using an interface device to connect the iPod to the car stereo). The graphics in the flyer will be displayed in the “Now Playing” box on iTunes while the audio file is playing. ■ USB Thumb Drive Promotionals Promotional USB thumb drives, with the Easy Access logo and URL stamped on the casing, will be given away at architects’ functions. The audio flyer and brochure will be stored as MP3 files labeled “LISTEN TO ME FIRST!” Clicking on this icon will launch the MP3 application on the recipient’s computer. A PowerPoint version of the flyer and the brochure can also be stored on the thumb drive and labeled “SEE ME FIRST!”
Impact Evaluation	<p>The hotlink (URL) on the flyer could be specific to the flyer for architects. An architect accessing the Web site would first go to a Web page that simply counts the hits and click-throughs.</p> <p>This would provide a behavioral measure of the flyer’s effectiveness at motivating architects with small business clients to seek more information.</p>

Conclusion

Research, as well as collaboration and dialogues with diverse ADA stakeholders nationwide, revealed a picture of ADA implementation that is both hopeful and fraught with challenges. The ADA has achieved important and lasting successes in certain sectors of society. Stakeholders point out the increase in accessible fixed-route public transportation as required by Title II and the widespread availability of communications access made possible by implementation of the relay service as required by Title IV of the ADA. They also report an increase in architectural access, especially in newly constructed buildings and facilities that are subject to the

requirements of Title II and III. These important accomplishments are making it easier for more people with disabilities to live active and engaged lives in their communities, as the ADA intended. However, while these notable successes call for acknowledgment, stakeholders identified areas where implementation has lagged far behind. They also identified methods for addressing some of the key implementation issues that have the potential for broad impact.

These methods include a stepped-up role for Federal Government enforcement agencies, especially for investigating violations of Title III, and greater federal agency leadership in establishing government/business collaborations that could address many of the key needs. These needs include ADA training and education on Title I and III for broad audiences; creation of centers of excellence across all titles of the law; evaluation of existing ADA technical assistance methods, procedures, and materials; and initiating needed research. The Department of Transportation was called on to take specific actions related to enforcement of the ADA's transit provisions, and the Federal Communications Commission should take steps to ensure funding as new communication technologies come online.

Many stakeholders called on Congress to take action in a variety of areas, including restoring the definition of disability so certain people who experience discrimination in employment again have access to remedies, and removing attorney fee restrictions on ADA cases so people with disabilities can secure legal representation when they need it for civil rights claims.

Other creative ideas for improving ADA implementation came out of the discussions and research. They focus on building alliances among diverse business communities; membership, trade, and professional associations; and unions; and increasing disability awareness. Some exciting and effective ADA implementation practices were identified that can serve as models and that illustrate how diverse covered entities are going about making the promise of the ADA a reality. These practices demonstrate the need for organized, ongoing best practices research that will add to the ADA implementation knowledge base.

Significant effort was devoted to analyzing and understanding why small businesses have failed to implement Title III of the ADA. The reasons for this failure are complex and arise, ironically, from an attempt to ensure that small businesses in particular were not subject to an inflexible

burden of compliance. The lack of reliable, tailored technical information and insufficient motivation for businesses to seek out information proactively contribute to the problem. There is also insufficient administrative enforcement, which would provide motivation for compliance while also publicizing how the “readily achievable” barrier-removal standard of Title III works in practice. These factors leave people with disabilities with only two options to resolve access problems: They can ask the business to comply voluntarily or they can file a lawsuit. Research revealed and stakeholders confirmed that requests for voluntary compliance have met with limited success. While the media have portrayed those who litigate as self-serving, the percentage of attorneys and plaintiffs who bring Title III lawsuits primarily for self-gain is minuscule compared with the number of businesses that persist in ignoring the existence of obligations under federal and state accessibility laws. There is a private right of action under Title III because Congress recognized that voluntary compliance and collaboration is an unreliable vehicle for providing access and that people with disabilities should no longer be forced to rely on the kindness of neighbors or strangers.

Diverse stakeholders identified numerous methods for improving Title III implementation, especially by small businesses; these included tying licensing to ADA training for building and construction professionals, creating targeted materials for businesses and peer-to-peer distribution mechanisms, and creating incentives and penalties that are embedded in business interactions with locales. ADA training for people with disabilities remains a very high priority, and concerns of culturally diverse communities should be the focus of new initiatives.

Specifically, the Department of Justice and all technical assistance organizations, such as the ADA Technical Assistance and IT Centers, must be given a specific funding and mandate for outreach to chambers of commerce, Rotary Clubs, and other small business organizations—including those serving culturally diverse communities, rural areas, and small towns—to disseminate technical resource information and to help lower the current level of tension and fear about the ADA that is present in business communities.

The accessibility requirements of civil rights law must be publicly broadcast, acknowledged, and respected at the same level as other applicable regulations and laws, and equally acknowledged as a make-or-break issue in running a business. Widespread Title III compliance cannot be

achieved without business and public outreach, a visible and efficient administrative enforcement procedure, the wide availability of qualified accessibility expertise, and economic incentives such as tax and other credits.

Endnotes

¹ Fifty-seven individuals concerned with ADA Title I implementation identified and discussed specific issues from their different perspectives. These issues formed the basis for identification of specific recommendations that are intended to improve ADA implementation and additional research that is needed. Participants represented a variety of types of entities and organizations covered by Title I. Included were state and local government employers, as well as private employers, including representatives from health care, public utilities, software companies, museums, banks, insurance companies, and nonprofit organizations. Also included were plaintiff and defense attorneys, and representatives from the Society for Human Resource Management (SHRM), state employment development departments, state vocational rehabilitation agencies, unions, the Equal Employment Opportunity Commission (EEOC), Disability and Business Technical Assistance and Assistive Technology Centers, the Protection and Advocacy system, governors' committees on employment of people with disabilities, chambers of commerce (U.S., regional, and local), disability community leaders and representatives of key disability organizations, job developers, and training program representatives.

² Fall of 2006 ODEP sponsored the first national conference on mentoring youth with disabilities. Boston, MA.

³ Cal. Gov't. Code §12950.1.

⁴ The Stakeholder Dialogue on ADA Transportation took place April 5–6, 2006, in Washington, DC, at the offices of the Federal Transit Administration (FTA), part of the U.S. Department of Transportation (DOT). There was representation from every stakeholder sector in the field of ADA transportation: public transportation providers including bus, rail, and paratransit, and their trade associations; private transportation providers and their trade associations; government officials and staff from regulatory agencies; researchers; and advocacy organizations, both rural and urban.

⁵ *Melton v. Dallas Area Rapid Transit (DART)*, 391 F.3d 669 (5th Cir. 2004).

⁶ Title III of the ADA describes the prohibitions against discrimination by privately operated public accommodations, commercial facilities, and private entities offering certain examinations and courses.

⁷ Ninety-six stakeholders identified and discussed specific issues related to ADA Title III implementation from their different perspectives. These issues formed the basis for identification of key recommendations aimed at improving ADA implementation, and additional research that is needed. Participants represented a variety of types of entities and organizations covered by Title III. Included were representatives of business trade associations; architects, planners, and building officials; covered entities such as restaurants, theaters, hotels, motels, stadiums, health care facilities and health plans, museums, banks, and YMCAs; neighborhood business associations and chambers of commerce (U.S. and local); defense and plaintiff attorneys; disability community leaders and representatives of key disability organizations; and representatives from various units of local government, the Department of Justice Disability Rights Section, and the Disability and Business Technical Assistance and Assistive Technology Center.

⁸ Department of Justice Web site at www.usdoj.gov/crt/ada/taprog.htm (last visited June 2, 2006).

⁹ Thirty stakeholders participated in the Stakeholder Dialogue on Telecommunications, including relay consumers, representatives of consumer organizations, relay providers, and representatives from states and from the Federal Communications Commission. Consultants with extensive experience working with both consumers and industry interests on relay issues over the past two decades were also present.

¹⁰ At a meeting dedicated to emergency access held the day after the Title IV Stakeholder Dialogue and attended by many of the stakeholders present at the Title IV dialogue, efforts to foster such collaboration were initiated.

¹¹ Two types of relay services now permit a transparent and automatic connection to relay users without the use of any extraneous relay numbers. The first of these is two-line captioned telephone service, which simultaneously directs all incoming calls to both the captioned telephone recipient and the CA. The second is a wireless relay service by which a relay provider assigns customers individual phone numbers. The customer then arranges with the relay provider for this number to be linked with AOL's instant messaging service. When the hearing person dials the assigned telephone number, the CA comes on the line and attempts to make an instant messaging connection. In the event there is no answer, the hearing person receives what appears to be a voicemail request from the CA. Specifically, the CA informs the calling party, "Your party is not answering; would you like to leave a message?" Once the message is provided, the CA sends it to the relay user's e-mail address, which reaches the recipient's computer or wireless pager.

¹² Bob Segalman, founder of STS, challenged the dialogue participants to find a single person in each state to help lobby state public utility commissions to train consumers in this fashion.

¹³ One such organization—Speech Communication Assistance by Telephone, Inc. (SCAT)—was incorporated by Bob Williams in 1990 to provide general education and training in assistive technology for people with disabilities. In 2005, SCAT redirected its mission to focus on providing community training and outreach needed to help potential STS users access these services. SCAT intends to obtain statistical data on STS use through a national survey, work with independent living centers to identify and train consumers, educate consumers and professionals at disability conferences and conventions, and disseminate information about STS through its Web site, www.spechtospeech.org.

¹⁴ As this report was going to press, the FCC issued a rule on internet-based captioned telephone service. *See*, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Docket No. 03-123.

¹⁵ Fifty-eight disability community members participated in two stakeholder dialogues for people with disabilities. They identified and discussed key ADA implementation issues, which are presented and discussed in this report, and made recommendations for improving implementation from their perspectives. The dialogues included cross-disability representation as well as participation by individuals from diverse regions and fields of work and interest.

¹⁶ The National Judicial College in Reno has provided judicial education and professional development for the nation's judiciary, and for judges from other countries, for 42 years. NJC is the top judicial training institution in the United States; it has awarded more than 70,000 professional judicial education certificates since 1963. The institution offers an average of 90 courses annually. These are held onsite, around the country, and internationally, with more than 2,700 judges enrolling from all 50 states, U.S. territories, and more than 150 countries. Programs offered at NJC are designed to give participants the practical tools they need to serve effectively on the bench.

¹⁷ In fact, the group was generally correct in its assumption. The states represented in the focus group all had laws aimed at preventing disability discrimination that raised the concept of reasonable accommodations/modifications, though they differ in varying degrees from the ADA and one another in specifics such as their definition of disability, scope of coverage, exemptions, enforcement, and remedial provisions.

For applicable employment provisions, *see* Ind. Code §22-9-5-1 *et seq.* (Employment Discrimination Against Disabled People); Ind. Code §§16-32-3-1 to -5 (Rights of Blind and Other Physically Disabled People); Ind. Admin. Code tit. 910, r. 1-1.5-1 *et seq.* (Civil Rights Commission); Ky. Rev. Stat. §344.010 *et seq.* (Civil Rights Act); Ky. Rev. Stat. Ann. §207.130 *et seq.* (Equal Opportunities Act); 104 Ky. Admin. Regs. 1:020 *et seq.* (Commission on Human Rights); La. Rev. Stat. §23:301 *et seq.* (Employment Discrimination Law); La. Rev. Stat. §51:2231 *et seq.* (Louisiana Commission on Human Rights); Nev. Rev. Stat. §233.010 *et seq.* (Equal Rights Commission); Nev. Rev. Stat. §613.310 *et seq.* (Equal Opportunities for Employment); Nev. Rev. Stat. § 426.005 *et seq.* (People with Disabilities); Nev. Admin. Code ch. 233, §233.002 *et seq.* (Equal Rights Commission); N.D. Cent. Code §14-02.4-01 *et seq.* (Human Rights Act); N.D. Cent. Code §§25-13-01 to -05 (Blind and Disabled People's Activities); Ohio Rev. Code Ann. §4112.01 *et seq.* (Civil Rights Commission); Ohio Admin. Code §4112-5-08 (Discrimination in the Employment of the Disabled); Okla. Stat. tit. 25, ch. 21, §1301 *et seq.* (Discrimination in Employment); Okla. Admin. Code §335:15-9-1 to -4 (Interpretive Guidelines on Discrimination Against the Handicapped); Okla. Admin. Code §340:1-11-1 *et seq.* (Civil Rights and Nondiscrimination on Basis of Race, Color, National Origin, Sex, Age, Religion, or Disability); 43 Pa. Cons. Stat. §951 *et seq.* (Human Relations Act); 16 Pa. Code §44.1 *et seq.* (Discrimination on the Basis of Handicap or Disability); Va. Code Ann. §51.5-1 *et seq.* (Virginians with Disabilities Act); Va. Code Ann. §2.2-3900 to -3902 (Human Rights Act); 22 Va. Admin. Code §25-10-10 *et seq.* (Regulations to Safeguard Virginians' Human Rights from Unlawful Discrimination).

For applicable Public Services provisions, *see* Ind. Code §22-13-1-1 *et seq.* (Labor and Industry Safety); Ky. Rev. Stat. Ann. §198B.010 *et seq.* (Building Code); Ky. Rev. Stat. Ann. §344.010 *et seq.* (Civil Rights Act); La. Rev. Stat. Ann. §40:1731 *et seq.* (Equal Access to Governmental and Public Facilities for Physically Handicapped); La. Rev. Stat. Ann. §46:1953 (White Cane Law); §46:2251 *et seq.* (Civil Rights Act for Handicapped People); Nev. Rev. Stat. §338.180 *et seq.* (Accommodation of physically handicapped or disabled people); Nev. Rev. Stat. §426.005 *et seq.* (People with Disabilities); N.D. Cent. Code §14-02.4 *et seq.* (Human Rights Act) and §48-02 *et seq.* (Public Buildings); N.D. Cent. Code §54-21.3-04.1 (State Building Code [Accessibility Standards]); Ohio Rev. Code Ann. §3781.111 (Building Standards); Okla. Admin. Code §335:10-1-1 *et seq.* (Enforcement of Anti-Discrimination Act); Okla. Stat. tit. 61, §§11 &

12 (Public Buildings and Public Works); 61 Pa. Cons. Stat. §1455.1 *et seq.* (Grounds, Buildings and Facilities); 43 Pa. Con. Stat. §963 *et seq.* (Human Relations); Va. Code Ann. §51.5-1 *et seq.* (Virginians with Disabilities Act).

For applicable provisions relating to Public Accommodations, *see* Ind. Code §§16-32-3-1 to –5 (Rights of Blind and Other Physically Disabled People); Ind. Code §22-9-1-1 *et seq.* (Civil Rights Act); Ind. Admin. Code tit. 910, r. 1-1.5-1 *et seq.* (Civil Rights Commission); Ky. Rev. Stat. §344.010 *et seq.* (Civil Rights Act); Ky. Rev. Stat. Ann. §207.130 *et seq.* (Equal Opportunities Act); 104 Ky. Admin. Regs. 1:020 to :100 (Commission on Human Rights); La. Rev. Stat. §51:2231 *et seq.* (Louisiana Commission on Human Rights); La. Rev. Stat. Ann. §49:146 (Use of Buildings); La. Rev. Stat. Ann. §46:1953 (White Cane Law); La. Rev. Stat. Ann. §21:52 (Hotels and Lodging Houses – Offenses by Guests); La. Rev. Stat. Ann. §40:1631 *et seq.* (Building Regulations); Nev. Rev. Stat. §233.010 *et seq.* (Equal Rights Commission); Nev. Rev. Stat. §426.005 *et seq.* (People with Disabilities); Nev. Rev. Stat. §651.050 *et seq.* (Equal Enjoyment of Places of Public Accommodation); Nev. Admin. Code ch. 447, §010 *et seq.* (Public Accommodations); N.D. Cent. Code §14-02.4-01 *et seq.* (Human Rights Act); N.D. Cent. Code §§25-13-01 to –05 (Blind and Disabled People’s Activities); N.D. Cent. Code §54-21.3-01 to -08 (State Building Code); Ohio Rev. Code Ann. §4112.01 *et seq.* (Civil Rights Commission); Ohio Rev. Code Ann. §4112.1 *et seq.* (Civil Rights Commission – General Provisions); Ohio Rev. Code Ann. §3781.111 (Building Standards); Stat. tit. 25, §1101 *et seq.* (Anti-Discrimination Act); Okla. Admin. Code §335:10-1-1 *et seq.* (Enforcement of the Anti-Discrimination Act); Okla. Stat. tit. 7, §19.1 (Services to the Blind); 43 Pa. Cons. Stat. §951 *et seq.* (Human Relations Act); 35 Pa. Cons. Stat. §7210.101 *et seq.* (Construction Code Act); 71 Pa. Cons. Stat. §1455.1 *et seq.* (Grounds, Buildings and Facilities); 16 Pa. Code §44.1 *et seq.* (Discrimination on the Basis of Handicap or Disability); Va. Code Ann. §51.5-1 *et seq.* (Virginians with Disabilities Act); Va. Code Ann. §2.2-3900 to –3902 (Human Rights Act); 22 Va. Admin. Code §25-10-10 *et seq.* (Regulations to Safeguard Virginians’ Human Rights from Unlawful Discrimination).

For applicable housing provisions, *see* Ind. Code §22-9.5-1-1 *et seq.* (Fair Housing); Ind. Code §22-9-6-1 to –6 (Equal Access to Housing for People with Disabilities); Ind. Admin. Code tit. 910, r.2-1-1 *et seq.* (Fair Housing Complaints); Ky. Rev. Stat. §344.010 *et seq.* (Civil Rights Act); Ky. Rev. Stat. Ann. §207.130 *et seq.* (Equal Opportunities Act); 104 Ky. Admin. Regs. 1:020 *et seq.* (Commission on Human Rights); La. Rev. Stat. Ann. §41:2601 *et seq.* (Equal Housing Opportunity Act); Nev. Rev. Stat. §233.010 *et seq.* (Equal Rights Commission); Nev. Rev. Stat. §118.010 *et seq.* (Fair Housing Law); Nev. Admin. Code ch. 233, §233.002 *et seq.* (Equal Rights Commission); N.D. Cent. Code §14-02.5-01 *et seq.* (Housing Discrimination); Ohio Rev. Code Ann. §4112.01 *et seq.* (Civil Rights Commission); Ohio Admin. Code §§4112-6-01 to-04 (Housing Discrimination); Okla. Stat. tit. 25, §1101 *et seq.* (Discrimination); Okla. Admin. Code §335:20-1-1 *et seq.* (Interpretive Guidelines on Housing Discrimination); Okla. Admin. Code §340:1-11-1 *et seq.* (Civil Rights and Nondiscrimination on Basis of Race, Color, National Origin, Sex, Age, Religion, or Disability); 43 Pa. Cons. Stat. §951 *et seq.* (Human Relations Act); 16 Pa. Code §45.1 *et seq.* (Housing Accommodations/Commercial Property); Va. Code Ann. §36-96.1 *et seq.* (Fair Housing Law); Va. Code Ann. §2.2-3900 to –3902 (Human Rights Act); Va. Code Ann. §51.5-1 *et seq.* (Virginians with Disabilities Act); 18 Va. Admin. Code §135-50-200 (Fair Housing Regulations); 22 Va. Admin. Code §25-10-10 *et seq.* (Regulations to Safeguard Virginians’ Human Rights from Unlawful Discrimination).

¹⁸ Axis Health Care Homepage at <http://www.axishealth.com/modelinaction/mndho.html> (last visited Oct. 12, 2005).

¹⁹ Pei-Shu Ho, Center for Health and Disability Research, National Rehabilitation Hospital, The Impact of the Minnesota Disability Health Options Program on the Health Care Experiences of People with Physical Disabilities in Minneapolis/St. Paul: Preliminary Longitudinal Survey Findings, 5 (2004).

²⁰ Office of Disability Employment Policy, U.S. Department of Labor on Youth Leadership Forums:

The goal of this project is to assist states in developing youth leadership training for high school students with disabilities. Based on a highly successful program of Youth Leadership Forums (YLF) in California, the long-term goal of the program is to replicate this training in all 50 states. Currently, there are active YLF programs in 21 states, the District of Columbia, and Puerto Rico. An additional 13 states have convened YLF planning groups.

See www.dol.gov/odep/programs/youth.htm (last visited Oct. 3, 2005).

²¹ William Michael Bauer, The Impact of Leadership Training on High School Students with Disabilities (2003) (unpublished Ph.D. dissertation, Ohio State University) (Proquest Dissertations and Theses 2003, Publication Number AAT 3093627).

²² Telephone interview with Barbara Wiener-Fischhof, Corporate Communications, U.S. Franchise Systems, Inc. (June 22, 2006).

²³ Telephone interview with Barbara Wiener-Fischhof, Corporate Communications, U.S. Franchise Systems, Inc. (Oct. 11, 2005).

²⁴ Telephone interview with David Koffman, principal investigator, Nelson/Nygaard Consulting Associates, San Francisco, CA (Oct. 7, 2005); telephone interview with Tammy Haenftling, assistant vice president of paratransit management services, Dallas Area Rapid Transit (July 14, 2006).

²⁵ See Job Accommodation Network Web site at www.jan.wvu.edu/english/whatis.htm (last visited Sept. 22, 2005).

²⁶ D.J. Hendricks Et Al., Law, Health And Disability Policy Center, University Of Iowa, Cost And Effectiveness Of Accommodations In The Workplace: Preliminary Results Of A Nationwide Study, At disability.law.uiowa.edu/lhpdc/publications/abstracts/DSQ_fall2005_schartz_blanck.html (last visited Sept. 20, 2005).

²⁷ The U.S. Equal Employment Opportunity Commission, Interim Report on Best Practices for the Employment of People with Disabilities in State Government (2004), www.eeoc.gov/initiatives/nfi/int_states_best_practices_report.html.

²⁸ *Id.*

²⁹ Dep't of Budget and Management, Maryland Annual Statewide Equal Opportunity Report 11, 12 (2005),

www.dbm.maryland.gov/dbm_publishing/public_content/dbm_taxonomy/employee_services/equal_employment_opportunity/eo_annual_report_for_2005.pdf (last visited July 12, 2006).

³⁰ U.S. Equal Employment Opportunity Commission, Report on Best Practices for the Employment of People with Disabilities in State Government 44 (2005), www.eeoc.gov/initiatives/nfi/final_states_best_practices_report.pdf. (last visited June 3, 2006).

³¹ Virginia Commonwealth University Research and Training Center on Workplace Supports, Business, Disability and Employment: Corporate Models of Success: Collection of Successful Approaches Reported from 20 Employers (Brian McMahon et al. eds., 2004).

³² UCSF Disability Management Services Web site at www.ucsfhr.ucsf.edu/dismgmt/. Reasonable accommodation policy is further referenced at <http://policies.ucsf.edu/150/15026.htm>.

³³ Telephone interview with Larry Hickey, assistant manager of human resources, manager of disability services, University of California, San Francisco (June 28, 2006).

³⁴ See *Employee Services – Disability Accommodation* on the AlaskaWorld.com Web site at www.alaskasworld.com/es/employeeinjuryandillness/disability.asp.

³⁵ McMahon, et al., *supra* note 228.

³⁶ See *Careers at Alaska Airlines* on the AlaskaWorld.com Web site at www.alaskasworld.com/jobs/asjobs/Diversity.asp.

³⁷ While the We Welcome Service Animals video and training materials have been widely disseminated to hospitality industry operators, outcome data showing their effectiveness is not readily available. Telephone interview with Jim Abrams, president and CEO, California Hotel and Lodging Association (June 16, 2006).

³⁸ Telephone interview with James Terry, architect, Evan Terry Associates, AL (Oct. 10, 2005).

³⁹ Telephone interview with Judy Stoneham, director for disability services, Blue Ridge Community College, NC (June 15, 2006).

⁴⁰ Judy Stoneham, *The Accessibility of the Community College Classroom to Students with Disabilities*, 11:1 Information Technology and Disabilities (August, 2005), Equal Access to Software and Information Web site, www.rit.edu/~easi/itd/itdv11n1/stoneham.htm (last visited Oct. 3, 2005).

⁴¹ Nat'l Center on Accessible Information Technology in Education, University of Wisconsin–Madison: A Promising Practice in Development, Articulation, and Support of a Web Accessibility Policy at www.washington.edu/accessit/articles?140 (last visited Oct. 11, 2005).

⁴² Nat'l Center on Accessible Information Technology in Education. Oregon State University: A Promising Practice in Establishing Software Access Guidelines at www.washington.edu/accessit/articles?169 (last visited Sept. 27, 2005). Oregon State University Telephone interview with Angelo Gomez, director, Office of Affirmative Action and Equal Opportunity, Oregon State University (June 19, 2006).

⁴³ Telephone interviews with David Koffman, principal investigator, Nelson/Nygaard Consulting Associates, San Francisco, CA (Oct. 7, 2005) and John R. Rochford, transportation planner III, Access Operations (June, 14, 2006).

⁴⁴ Telephone interview with Terry Parker, accessible services manager, Lane Transit District, Eugene Oregon (Oct. 8, 2005).

⁴⁵ Telephone interview with Chris Colburn, manager for specialized transportation, Whatcom Transportation Authority, WA (Oct. 7, 2005).

⁴⁶ U.S. Department of Justice, Enforcing the ADA: A Status Report from the Department of Justice (April – June, 2002). The SuperShuttle settlement agreement is *available at* www.usdoj.gov:80/crt/ada/superstl.htm.

⁴⁷ Press Release, U.S. ODEP, DisabilityInfo.Gov Wins Web Content Managers Best Practice Award (Sept. 28, 2005) *available at* www.dol.gov/opa/media/press/odep/odep20051842.htm (last visited Sept. 28, 2005).

⁴⁸ U.S. EEOC, *supra* note 227.

⁴⁹ U.S. Access Board Web site at www.access-board.gov/news/ieq.htm (last visited Sept. 27, 2005).

⁵⁰ Telephone interview with Sally Conway, director of ADA technical assistance and mediation programs, U.S. Department of Justice, DC (Oct. 7, 2005, and June 15, 2006).

⁵¹ Activist and commentator Jack Greenberg noted in his 1959 book *Race Relations and American Law* that civil rights laws could be enforced in three ways: “criminal prosecution, private civil suit for damages or injunction by an aggrieved person, and administrative or injunctive implementation by public officials.” While Greenberg’s own preference was for an administrative agency that would vigorously enforce antidiscrimination laws at public expense and without jury trials, he was speaking at a time when “civil rights” in America was seen primarily in terms of race relations. For Greenberg, criminal enforcement and civil suits for damages were problematic as a means of enforcement because they involved trial by jury, “which may very likely be as prejudiced as the defendant,” and private enforcement also required the costs of engaging counsel.

⁵² Trial lawyer Andrew D. Levy spoke on this point in his 2000 testimony before Congress:

Congress recognized that the Federal Government does not have the resources to enforce the civil rights laws entirely on its own. While the Department of Justice plays an important role, the ADA, like other civil rights statutes, relies primarily on private individuals for its enforcement. Congress created incentives for private individuals – acting as “private attorneys general” – to enforce the law. . . . Although Congress did not provide for damages [in Title III], it understood that if it was going to rely on private parties to enforce the ADA, it had to have some new provision encouraging the private bar to take the cases. . . . Keep in mind that there are important limitations on payment of attorney’s fees. First, plaintiffs’ attorneys are only entitled to be paid if they win. . . . Second, even if you win, you are only entitled to a fee that the judge finds is “reasonable” – usually calculated by the lawyer’s normal hourly rate (that is, the rate that his private clients in non-civil-rights cases pay) – multiplied by the number of hours the judge finds the case reasonably should have taken to litigate.

The ADA Notification Act, hearing on H.R. 3590 before the Subcommittee on the Constitution of the House Committee on the Judiciary, 106th Cong. (2000), at 2000 WL 19303719 (statement of Andrew D. Levy).

⁵³ See 42 U.S.C. 12117 and 29 C.F.R. §§ 1630.16-1641.8.

⁵⁴ See 42 U.S.C. 12134 and 28 C.F.R. §§ 35.101-35.190 for Part A of Title II, and 42 U.S.C. § 12188(b) and 28 C.F.R. §§ 36.101-36.608 for Title III. Subpart G of the DOJ Title II regulations also designates other federal agencies to establish complaint procedures to address noncompliance with the ADA in each agency's specific area of responsibilities and programs.

⁵⁵ See 42 U.S.C. §§ 12149, 12164, and regulations found at 49 C.F.R. pt. 27.

⁵⁶ See H.R. Rep. No. 101-485, at 98 (1990), *reprinted in* 1990 U.S.C.C.A.N. 267, 381 ("As with section 504, there is also a private right of action . . . which includes the full panoply of remedies. Again, consistent with section 504, it is not the Committee's intent that people with disabilities need to exhaust Federal administrative remedies before exercising their private right of action.").

⁵⁷ 42 U.S.C. § 12205. See also *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968) (the purpose of the fee-shifting rule for litigation enforcing Title II of the Civil Rights Act of 1964 was "to encourage individuals injured by racial discrimination to seek judicial relief under Title II"). See also Robert V. Percival & Geoffrey P. Miller, *The Role of Attorney Fee Shifting in Public Interest Litigation*, 47 *Law & Contemp. Probs.* 233, 241 ("Congress generally authorizes fee shifting where private actions serve to effectuate important public policy objectives and where private plaintiffs cannot ordinarily be expected to bring such actions on their own. Fee shifting is designed to remove some of the disincentives facing public interest litigants . . .").

⁵⁸ In 1959, activist and commentator Jack Greenberg noted that civil rights laws could be enforced in three ways: "criminal prosecution, private civil suit for damages or injunction by an aggrieved person, and administrative or injunctive implementation by public officials." *Race Relations and American Law* 15 (Columbia University Press, 1959). Greenberg's own preference was for an administrative agency that would vigorously enforce antidiscrimination laws at public expense and without jury trials while potentially offering conciliation and mediation alternatives, but he was also speaking at a time when "civil rights" in America was seen primarily in terms of race relations. For Greenberg, criminal enforcement and civil suits for damages were problematic as a means of enforcement because the former required a standard of proof beyond a reasonable doubt, the latter required plaintiffs to bear the costs of engaging counsel, and both criminal and civil suits involved trial by a jury "which may very likely be as prejudiced as the defendant." *Id* at 15, 16.

⁵⁹ Trial Lawyer Andrew D. Levy spoke on this point in his 2000 testimony before Congress:

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parties to enforce the ADA, it had to have some new provision encouraging the private bar to take the cases. . . . Keep in mind, that there are important limitations on payment of attorney's fees. First, plaintiffs' attorneys are only entitled to be paid if they win. . . . Second, even if you win, you are only entitled to a fee that the judge finds is "reasonable" – usually calculated by the lawyer's normal hourly rate (that is, the rate that his private clients in non civil rights cases pay) – multiplied by the number of hours the judge finds the case reasonable should have taken to litigate.

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⁶⁰ See 42 U.S.C. 12117 and 29 C.F.R. §§ 1630.16-1641.8.

⁶¹ See 42 U.S.C. 12134 and 28 C.F.R. §§ 35.101-35.190 for Part A of Title II, and 42 U.S.C. § 12188(b) and 28 C.F.R. §§ 36.101-36.608 for Title III. Subpart G of the DOJ Title II regulations also designate other federal agencies to establish complaint procedures to address non-compliance with the ADA in each agency's specific area of responsibilities and programs.

⁶² See 42 U.S.C. §§ 12149, 12164, and regulations found at 49 C.F.R. pt. 27.

⁶³ See H.R. Rep. No. 101-485, at 98 (1990), *reprinted in* 1990 U.S.C.C.A.N. 267, 381 ("As with section 504, there is also a private right of action . . . which includes the full panoply of remedies. Again, consistent with section 504, it is not the Committee's intent that people with disabilities need to exhaust Federal administrative remedies before exercising their private right of action.").

⁶⁴ 42 U.S.C. § 12205. See also *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968) (the purpose of the fee-shifting rule for litigation enforcing Title II of the Civil Rights Act of 1964 was "to encourage individuals injured by racial discrimination to seek judicial relief under Title II"). See also Robert V. Percival & Geoffrey P. Miller, *The Role of Attorney Fee Shifting in Public Interest Litigation*, 47 Law & Contemp. Probs. 233, 241 ("Congress generally authorizes fee shifting where private actions serve to effectuate important public policy objectives and where private plaintiffs cannot ordinarily be expected to bring such actions on their own. Fee shifting is designed to remove some of the disincentives facing public interest litigants . . .").

⁶⁵ See for example James Bovard, *The Disabilities Act's Parade of Absurdities*, Wall Street J., June 22, 1995, A16; George F. Will, *Protection for the Personality Impaired*, The Wash. Post, Apr. 4, 1996, A31; Trevor Armbrister, *A Good Law Gone Bad: Drafted With the Best of Intentions, the Americans with Disabilities Act Has Created a Legal Nightmare*, Reader's Digest, May 13, 1998.

⁶⁶ See for example Peter David Blanck & Mollie Weighner Marti, *Attitudes, Behavior and the Employment Provisions of the Americans with Disabilities Act*, 42 Villanova L. Rev. 345 (1997); Ruth Colker, *The Americans with Disabilities Act: A Windfall for Defendants*, 34 Harv. C.R.-C.L. L. Rev. 99 (1999); Christine Jolls, *Accommodation Mandates*, 53 Stan. L. Rev. 223 (2000); *Employment, Disability, and the Americans with Disabilities Act: Issues in Law, Public Policy, and Research* (Peter David Blanck ed., 2000); Amy L. Allbright, *ABA Special Feature: 2003 Employment Decisions Under the ADA Title I-Survey Update*, 28 Mental & Physical L. Rep. 319

(2003); Michael Ashley Stein, *The Law and Economics of Disability Accommodations*, 53 Duke L.J. 79 (2003); Samuel Bagenstos, "Rational Discrimination," *Accommodation, and the Politics of (Disability) Civil Rights*, 89 Va. L. Rev. 825 (2003).

⁶⁷ 42 U.S.C. §§ 12181-89.

⁶⁸ Kathryn Wexler, *Big Winners in Disabled Crusade? Lawyers*, St. Petersburg Times, Mar. 24, 2002; Matt Krasnowski, *Flood of ADA Lawsuits Irks Small Businesses*, San Diego Union-Tribune, September 12, 2004; Walter K. Olson, *The ADA Shakedown Racket: The Americans with Disabilities Act Has Spawned a Sleazy Lawsuit Industry*, City J., Winter 2004); Teri Figueroa, *Disability Rights Advocates Split on Support of Lawyer*, North County Times, Dec. 18, 2005, www.nctimes.com/articles/2005/12/18/news/top_stories/23_24_0412_17_05.txt. Also see other media forums such as, for example; Web site at www.adaabuse.com.

⁶⁹ 42 U.S.C. § 12188(a) only incorporates the "remedies and procedures set forth in section 204(a) of the Civil Rights Act of 1964," which only includes prospective injunctive relief. Ruth Colker has made the case that the unavailability of damages under the ADA are part of a "fragile compromise" entered to achieve passage of the ADA, in which "the remedies underlying ADA Title III were limited in exchange for an expansive list of commercial entities covered by the statute." See Ruth Colker, *ADA Title III: A Fragile Compromise*, 21 Berkeley J. Emp. & Lab. L. 377, 385 (2000) [hereinafter *Fragile Compromise*].

⁷⁰ 42 U.S.C. § 12205.

⁷¹ 42 U.S.C. § 12188(b)(2)(C).

⁷² See 42 U.S.C. § 12188(b)(1)(B), and see also 28 C.F.R. 36.502 (Attorney General *shall* investigate alleged violations of the Act or this part . . . [but] he or she *may* initiate a compliance review). [Emphasis added.]

⁷³ 42 U.S.C. § 12188(b)(1)(B).

⁷⁴ Michael Waterstone, *The Untold Story of the Rest of the Americans with Disabilities Act*, Vand. L. Rev. 1807, 1874 (2005) [hereinafter *Untold Story*].

⁷⁵ *Id.*

⁷⁶ National Council on Disability, *Promises to Keep: A Decade of Federal Enforcement of the Americans with Disabilities Act*, 2 (2000) ("Federal agencies charged with enforcement and policy development under the ADA, to varying degrees, have been overly cautious, reactive, and lacking any coherent and unifying national strategy"). With regard to Title III specifically, the DOJ has made "decisions not to open for investigation a large number of complaints received." *Id.* at 38.

⁷⁷ *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, 532 U.S. 598, 605 (2001).

⁷⁸ Steward J. Schwab & Theodore Eisenberg, *Explaining Constitutional Tort Litigation: The Influence of the Attorney Fees Statue and the Government as Defendant*, 73 Cornell L. Rev. 719, 768 (1988).

⁷⁹ In assessing DOJ's enforcement of Title III, Ruth Colker found that in approximately six years of statutory enforcement, the agency had reached 46 settlements, reflecting "less than one

settlement a month by an agency charged with national enforcement.” *See Colker, Fragile Compromise*, *supra* note 28 at 404. Colker goes on to comment that “it is unrealistic to expect that such efforts will have much impact on the pattern of denial of accommodation that may exist in the larger society. It is hard to believe that the kinds of general problems that the DOJ found – inaccessible hotels and restaurants, improper service animal policies, and inappropriate photo identification policies – are isolated to those 46 entities.” *Id.* Colker subsequently extended the period of her study and found that DOJ had reached 107 in 10 years, which still represented less than one settlement a month. *See The Disability Pendulum: The First Decade of the Americans with Disabilities Act 192* (2005).

⁸⁰ Representative Mark Foley, a prime sponsor of a bill that would place a mandatory prelitigation notice period upon the private right of action under Title III, stated that “no one disputes that ADA access violations exists” before asserting that most businesses are not aware that they are violating the ADA and would fix the violations if notified. The ADA Notification Act, hearing on H.R. 3590 Before Subcomm. on the Constitution of the House Comm. on the Judiciary, 106th Cong. (2000), at 2000 WL 19303719 (statement of Rep. Mark Foley).

⁸¹ Telephone interview with San Francisco small businessman and participant in the San Francisco Collaborative project (June 22, 2006), *see infra* note 44.

⁸² The Protection and Advocacy (P&A) system and client assistance program (CAP) comprise the nationwide network of each state’s congressionally mandated, legally based disability rights agency. P&A agencies are funded through federal grant monies administered through the states and authorized to provide legal representation and other advocacy services, under all federal and state laws, to all people with disabilities in accordance with a prioritized service system. The National Disability Rights Network (NDRN, formerly National Association of Protection and Advocacy Systems, NAPAS) is the nonprofit membership organization for P&A systems and CAP.

⁸³ The ADA Notification Act, hearing on H.R. 3590 Before Subcomm. on the Constitution of the House Comm. on the Judiciary, 106th Cong. (2000), at 2000 WL 19303719 (statement of Christine Griffin).

⁸⁴ Telephone interview with Sarah Triano, currently program director at Access Living in Chicago, and then youth and education team leader and project director for the 2001–2003 WIA-funded accessibility project (July 10, 2006). She later provided a portion of Access Living’s report on the project.

⁸⁵ The Collaborative’s inception, mission, and achievements are discussed in San Francisco Collaborative, *Access to San Francisco Small Businesses a Problem for Customers with Disabilities or Risk Management Approach to Small Businesses Failing* (2004).

⁸⁶ Title 24, California Administrative Code, first adopted in July 1992, is promulgated by the State Building Standards Commission to establish access standards for built and altered buildings in California.

⁸⁷ The physical accessibility of existing buildings that were constructed before, and not significantly renovated since, Title III’s effective date is measured against a “readily achievable” standard that requires public accommodations to make those modifications that are “easily accomplishable and able to be carried out without much difficulty or expense.” *See* 42 U.S.C. §

12181(9). Factors such as a public accommodation's size and financial resources are to be considered in deciding whether a modification is readily achievable. *See* 42 U.S.C. § 12181(9)(A)-(D).

⁸⁸ San Francisco Collaborative, Access to San Francisco Small Businesses, *supra* note 44 at 4.

⁸⁹ Fund money was obtained through a simple application that was usually approved within 24 hours. Payment was made directly to the surveyor or planner on completion of the work. The fund could also potentially be used to pay for classes on accessibility requirements and solutions.

⁹⁰ *Id* at 2.

⁹¹ Daniel L. Kaplan et al., *Assessing and Improving Accessibility of Public Accommodations in an Urban Latino Community*, 12 J. of Disability Pol. Studies 55 (2001) [hereinafter *Accessibility in an Urban Latino Community*].

⁹² *Id* at 56.

⁹³ Daniel Kaplan was a staff psychotherapist at the Counseling Service of the School of the Art Institute of Chicago; the other four authors were researchers and professors at either the Department of Disability and Human Development or the Department of Psychology at the University of Illinois at Chicago.

⁹⁴ The research team used 61 of the 92-item *Americans with Disabilities Act Checklist for Readily Achievable Barrier Removal* (Adaptive Environments Center & Barrier Free Environments, 1992) to assess the accessibility of a business's entrance and goods and services. A business was deemed "fully accessible" if it was accessible to a person who uses a wheelchair without the assistance of others. "Moderately accessible" meant that a person who uses a wheelchair could gain access to the store and its goods and services with mild assistance from others. A business was "inaccessible" if a person who uses a wheelchair could not gain entrance or get to goods and services even with mild assistance from others. Half of the initial assessment teams included a person with a visible disability, as the potential impact of this personal contact was one of the variables being measured in the study.

⁹⁵ The mailed feedback package included a tailored cover letter that emphasized the benefits of attracting and retaining customers with disabilities and the avoidance of future legal programs as incentives for voluntary compliance with the ADA, a copy of the ADA checklist, information about a statewide loan program that offered low-cost loans for barrier removal, and four additional ADA information handouts. The information was provided in Spanish to Spanish-speaking owners, and the baseline interview, feedback and follow-up interviews were conducted in Spanish or English at the interviewee's preference. Feedback was either given face-to-face or mailed, as this was another of the variables being measured in the study. The feedback package also included a 9" × 12" sign in Spanish and English that simply stated "If you need assistance, please ask" and displayed the international symbol for accessibility.

⁹⁶ This figure corroborates the results of an unpublished 1995 study, which found that 52 percent of minority-owned businesses had never heard of the ADA, compared with 32 percent of non-minority-owned businesses. *See* S. Oneglia, A Survey of the Effectiveness of the Technical Assistance Efforts to Assist Very Small Businesses to Comply with the Americans with Disabilities Act (1995) (Unpublished Manuscript, University of Maryland, Department of Social Work, Baltimore).

⁹⁷ Kaplan, *Accessibility in an Urban Latino Community*, supra note 50 at 61.

⁹⁸ *Id.*

⁹⁹ There is very little empirical research that assesses how to promote compliance with Title III. A pre-ADA study concerning the promotion of physical accessibility in public accommodations was conducted by C. Nelson, M. Jones, and N. Salkind, *Promoting Wheelchair Accessibility of Private Business Settings: An Analysis of the Effects of Information, Prompts, Feedback and Incentives*, 18 *Environment and Behavior*, 132 (1986). In the study, 300 public accommodations of various kinds that were already partially accessible (someone using a wheelchair could at least enter the business) were sent an information packet that encouraged participants to call or write for free technical assistance on accessibility issues. Fifteen percent of those receiving a packet requested technical assistance. A follow-up telephone call was made to those who did not respond, and 52 percent said they were interested in an appointment to improve accessibility.

¹⁰⁰ Kaplan, *Accessibility in an Urban Latino Community*, supra note 50 at 61.

¹⁰¹ *Supra* note 41.

¹⁰² Information was obtained through a personal telephone interview (Oct. 17, 2000) with Janel Wright, a staff attorney with the Disability Law Center who helped spearhead the Ramps Project. A fuller report of the Ramps Project can be found at Silvia Yee & Marilyn Golden, *Achieving Accessibility: How the Americans with Disabilities Act is Changing the Face and Mind of a Nation* 413, 440-441, *Disability Rights Law and Policy: International and National Perspectives* (Mary Lou Breslin & Silvia Yee eds., 2002).

¹⁰³ *Id.* at 441.

¹⁰⁴ Among the 62 businesses contacted, 12 already had access but had failed to post signage notifying the public, 5 agreed to provide alternative service, and 7 were determined to be in compliance for other reasons.

¹⁰⁵ Six businesses that already had access agreed to post signage notifying the public, 19 businesses agreed to provide alternative service, and 33 were determined to be in compliance for other reasons.

¹⁰⁶ *Doran v. Del Taco, Inc.*, 373 F. Supp.2d 1028, 1034 (C.D. Cal. 2005).

¹⁰⁷ *Id.* at 1033.

¹⁰⁸ *Id.* at 1034.

¹⁰⁹ 373 F. Supp.2d 1028 (C.D. Cal. 2005).

¹¹⁰ 532 U.S. 598 (2001).

¹¹¹ According to the NDRN Web site, "NDRN serves a wide range of individuals with disabilities—including, but not limited to, those with cognitive, mental, sensory, and physical disabilities—by guarding against abuse; advocating for basic rights; and ensuring accountability in health care, education, employment, housing, transportation, and within the juvenile and criminal justice systems." See NDRN Web site available at www.napas.org/aboutus/default.htm (last visited July 7, 2006).

¹¹² Compare this broad scope of coverage with that found under Title II of the Civil Rights Act, which explicitly lists entities such as hotels, restaurants, and places of entertainment as being covered but fails to explicitly include retail shops, department stores, drugstores, and other public places with goods for sale and explicitly exempts private clubs. *See Colker, Fragile Compromise*, *supra* note 28 at 386–88.

¹¹³ Buildings that were in existence as of Title III’s effective date of January 26, 1992, are subject to the “readily achievable barrier removal” standard. *See* 42 U.S.C. § 12181(9). New construction that is permitted for occupancy after January 26, 1993, is required to be accessible in accordance with the higher new construction standard of being “readily accessible to and usable by individuals with disabilities” that has been published by the DOJ. *See* 42 U.S.C. § 12183. The portion of an existing building that is undergoing an alteration that “affects or could affect the usability of the facility or part thereof” after January 26, 1993, will also trigger the higher new construction standard for the area undergoing alterations, and there must be an accessible path of travel to the altered portion. *Id.*

¹¹⁴ 42 U.S.C. § 12182(b)(2)(A)(iv), (v) & 28 C.F.R. § 36.304 (the DOJ’s section-by-section analysis of § 36.304 clearly specifies an ongoing readily achievable barrier removal obligation).

¹¹⁵ Any search for the term “small business” in the ADA’s legislative history reveals that Congress was deeply aware of and concerned about the law’s impact and potential burden on small business. *For example, see Hearings Before the Committee on Labor and Human Resources and the Subcommittee of the Handicapped on S. 933*, 101st Cong. (May 9, 10, 16, and June 22, 1989).

¹¹⁶ 42 U.S.C. § 12181(9)(a)–(d).

¹¹⁷ One more layer of complexity exists in the fact that state building codes and accessibility requirements need not be the same as federal accessibility requirements, though there is provision for a state to apply to DOJ for certification if its state or local accessibility requirements meet or exceed the ADA’s accessibility requirements. 42 U.S.C. § 12188(b). The procedure is purportedly lengthy and can be fractious, but once a state or local code is certified, public accommodations that have complied with it have rebuttable evidence of compliance with Title III. Only Washington, Texas, Maine, Florida, and Maryland are currently certified, and DOJ has pending requests from California, Indiana, New Jersey, North Carolina, and Utah. *See Waterstone, Untold Story*, *supra* note 33 at 1358–59. Even for those states that lack certification, however, a lot of attention has been given in recent years by both the Access Board on the ADAAG side, and the International Code Council on the International Building Code (IBC) and ICC/ANSI A117.1 “Accessible and Usable Buildings and Facilities Standards” side, to the harmonization of the ADAAG with the model ANSI standards. The IBC and the ANSI A117.1 are the model scoping and technical requirement codes used by most states for their own building codes, though admittedly some state adoption processes move slowly, and the new ADAAG standards have not yet been adopted by the DOJ. Eventually, however, harmonization of the IBC and ANSI A117.1 models with ADAAG will bring increased conformity to all state and federal access requirements.

¹¹⁸ *Supra* note 43.

¹¹⁹ *Supra* note 44 at 7.

¹²⁰ Interview with a representative of the San Francisco Mayor's Economic Development Office (July 10, 2005).

¹²¹ 42 U.S.C. § 12101(b)(1). One of the key congressional findings made in the law is that "individuals with disabilities continually encounter various forms of discrimination including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities." 42 U.S.C. § 12101(a)(5).

¹²² Title I applies to all private employers who have 15 or more employees. 42 U.S.C. § 12111.

¹²³ The "readily achievable" term is identified as "easily accomplishable and able to be carried out without much difficulty or expense." 42 U.S.C. § 12181(9).

¹²⁴ Telephone interview with San Francisco building professional and small business owner (July 7, 2006).

¹²⁵ Colker, *Fragile Compromise*, *supra* note 28 at 394.

¹²⁶ Samuel R. Bagenstos, *The Paradox of Limited Civil Rights Remedies: The Case of "Abusive" ADA Litigation*, 54 *Ucla L. Rev.* (forthcoming October 2006) (manuscript at 8) [hereinafter *Paradox of Limited Remedies*].

¹²⁷ Waterstone, *Untold Story*, *supra* note 33 at 1870.

¹²⁸ Colker, *Fragile Compromise*, *supra* note 28 at 411-412.

¹²⁹ Daniel Kahneman, the 2002 Nobel Prize winner in economics, pioneered "prospect theory" in the field of behavioral finance to describe how people evaluate loss and gain in situations of uncertainty and risk. He found that the fear of loss has a greater impact on the individual than the hope of gain. See Daniel Kahneman and Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk*, 47 *Econometrica* 312 (1979).

¹³⁰ The most well-known example of this is probably found in Clint Eastwood's response to being sued by Zum Brennan, who alleged that a public accommodation owned and operated by Eastwood was in violation of Title III of the ADA. After a seven-day trial in which the plaintiff's motivation and credibility were strongly attacked, the jury found two minor access violations without any award of damages to the plaintiff. Among Eastwood's post-trial comments to the press was the admonition that "[y]ou only settle when you're wrong." Adam A. Milani, *Go Ahead. Make My 90 Days: Should Plaintiffs Be Required to Provide Notice to Defendants Before Filing Suit Under Title III of the Americans with Disabilities Act?*, 2001 *Wis. L. Rev.* 107, note 397 (quoting from phone conversation with Paul L. Rein) [hereinafter *Make My 90 Days*].

¹³¹ Congressmen Foley and Shaw first proposed amending the ADA by requiring a 90-day written notice requirement when they sponsored the ADA Notification Act in February 2000, shortly before the ADA's tenth anniversary. See H.R. 3590, 106th Cong. (2d Sess. 2000). The same text was later introduced in the Senate. See S. 3122, 106th Cong. (2d Sess. 2000). Representative Foley introduced the bill with the assertion that "the ADA is being used by some attorneys to shake down thousands of businesses from Florida to California. And they're doing so at the expense of people with disabilities" and emphasized the dangers of "rogue attorneys"

initiating a “blizzard of lawsuits.” *See* The ADA Notification Act: Hearing on H.R. 3590 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary, 106th Cong. (2000) (Statement of Rep. Foley). Numerous witnesses, including Clint Eastwood, spoke at the May 18, 2000, hearing on the proposed bill, which was eventually defeated. Some version of the bill has been introduced every year since 2000, but so far the ADA Notification Act has not garnered sufficient support to move out of the House.

¹³² Title III’s private right of action enables only injunctive relief and the recovery of attorneys’ fees and costs, without a right to monetary damages, 42 U.S.C.A § 12188(a)(1); 42 U.S.C. § 2000a-3(a). The allegation is that plaintiffs and attorneys in states that have laws which enable plaintiffs to recover monetary damages for suffering disability discrimination—most notoriously California, Florida, and Hawaii—unduly encourage serial and vexatious access claims. *See*, for example, California’s Unruh Civil Rights Act, Cal. Civ. Code §§ 51 *et. seq.*, which both incorporates a violation of the ADA as an independent violation of the Unruh Act and gives plaintiffs the right to seek minimum statutory damages of \$4,000.00.

¹³³ The federal courts make their written opinions publicly accessible and text-searchable on an automated Case Management/Electronic Case Filing (CM/ECF) system, and the CM/ECF system may also have other case-related documents, such as a case summary, docket sheets, and pleadings available through the PACER Web site, pacer.psc.uscourts.gov/index.html (last visited July 2006).

¹³⁴ The Administrative Office of the Judiciary in Washington, DC, develops and establishes the forms and documents used in federal court, including the Civil Cover Sheet and its NOS choices.

¹³⁵ The “440” category represents “Other Civil Rights” cases, thereby spanning all cases filed under such laws as the Civil Rights Act (all Titles), the Age Discrimination in Employment Act, and the Fair Housing Act. Cases that should have been characterized as “446” could have been mistakenly checked under “440,” and we are aware that this happened, for example, in Wisconsin when 24 Title III physical accessibility cases filed in 2005 were found under “440.” Without prior specific information about these cases, they could not be found without individually examining hundreds of “440” complaints filed across the country. In addition, many federal districts have very limited documents and case information available online, so the complaints cannot be viewed without an actual visit to the courthouse. While we know that some cases filed under “440” have not been included, some “440” and “445” cases were mischaracterized as “446” cases. These have been included in our calculations whenever we have not been able to access a federal district’s complaints, as we chose to err on the side of inclusion. In those instances where we were able to fully access a federal court district’s complaints, we have excluded “446” cases that were brought under Title I or another civil rights law.

¹³⁶ The “at most” estimate for the Title III cases comes about because not all the federal court districts have all their complaints and other court documents available online. Without reading the complaint itself, the basis of the “446” claim cannot be determined. Those “446” claims that were brought against a public government entity or a school district/state education department have been excluded as cases that are likely brought under Title II of the ADA/Section 504 of the Rehabilitation Act and IDEA, respectively. Cases in which the defendant was an individual or a Title III private entity have been included in our Title III case count even where the complaint

could not be viewed; therefore, some of these cases doubtless involve Title III issues other than physical accessibility (e.g., allegations of a failure to provide communication access or modification of practices and procedures).

¹³⁷ While New Jersey actually had a just a few more “446” filings than Texas for the first half of 2005 (21 in New Jersey to 18 in Texas), Texas had a considerably higher proportion of possible Title III cases among the “446” filings (7 in New Jersey to 14 in Texas) for that period.

¹³⁸ California Senator Chuck Poochigian has a chart on his Web site that purports to track the filing of ADA lawsuits in California’s federal district courts and shows a steady increase from 26 suits filed in 1992 to 2,231 suits filed in 2004 and 2,544 ADA lawsuits projected to be filed in 2005. If this number is used, ADA lawsuits would constitute 10.6% of California’s civil cases for that year. The chart states that it does not include lawsuits filed in state courts or cases settled before a lawsuit is filed, but does not specify what is included in “ADA lawsuits” or how its numbers are tallied. See http://republican.sen.ca.gov/opeds/14/oped2725_print.asp (last visited July 17, 2006).

¹³⁹ See Cal Civ. Code (Unruh Act) § 54.3(a); FL Civil Rights Law, § 760.11(5); NY Human Rights Law § 297(9); HI Rev. Stat. § 347-13.5; TX Human Resources Code § 121.004(b).

¹⁴⁰ *Supra* note 40.

¹⁴¹ Christine Griffin, then executive director of the Disability Law Center, which was the Massachusetts protection and advocacy agency and a member of the National Association of Protection and Advocacy Systems (now National Disability Rights Network), testified before Congress concerning the breadth of real-life Title III issues the Disability Law Center had dealt with: “Why should a person who is blind and uses a guide dog for mobility assistance have to wait 90 days after they’ve been denied access to a restaurant? Why should a person who uses a wheelchair who has been denied access to a restaurant that was recently remodeled but failed to comply with state and federal access laws have to wait 90 days after their civil rights have been violated? Why should a person who has mental retardation wait 90 days to invoke a court’s jurisdiction after being told by a restaurant owner that he won’t serve him because he doesn’t think the other customers want to look at him?” The ADA Notification Act, Hearing on H.R. 3590 Before Subcomm. On the Constitution of the House Comm. on the Judiciary, 106th Cong. (2000), at 2000 WL 19303717 (statement of Christine Griffin).

¹⁴² *Supra* note 72 and discussion in Part IV.1.C on “Reasons for Widespread Non-Compliance with Title III.”

¹⁴³ See Vt. Stat. Ann. tit. 9, § 4506(a).

¹⁴⁴ See Or. Rev. Stat. § 659A.885(3).

¹⁴⁵ See Ky. Rev. Stat. Ann. §§ 344.450, 207.260.

¹⁴⁶ See DC Code Ann. §2-1403.16(a).

¹⁴⁷ Ky. Rev. Stat. Ann. §§ 344.450, 207.260.

¹⁴⁸ There are other litigation-related activities, such as prelitigation extrajudicial settlements and ADA claims joined to state disability law claims that are brought in state court, which are likely relevant to determining the impact of Title III private litigation. However, it is extremely difficult

to get accurate figures for lawsuits that were threatened and then “settled” informally, since such settlements are not necessarily tracked or published anywhere. Similarly, ADA claims brought in state court are not tracked consistently and are difficult to obtain for review. It is also more likely for state claims to be joined to a Title III claim in federal court than for a Title III claim to be brought in state court, at least in those federal court districts that have not placed specific procedural or other limitations on the filing of Title III lawsuits, *see infra* note 113 and text accompanying. While it is arguable that small claims cases can be linked to Title III, (e.g., a plaintiff with a disability could try to recover for relatively minor out-of-pocket medical expenses or equipment expenses allegedly caused by a defendant public accommodation’s failure to accomplish readily achievable barrier removal in accordance with Title III), it is even more difficult to consistently find and accurately analyze small claims cases, which are generally not formally tracked to nearly the same degree as federal cases. Defense attorney Gregory Hurley, through his work with the California Administrative Office of the Courts, has made estimates of state court and small claims ADA filings based on his own litigation experience; he acknowledges that it is difficult to find concrete evidence for these numbers. Telephone interview with Gregory F. Hurley (April 25, 2006).

¹⁴⁹ Colker, *Fragile Compromise*, *supra* note 28 at 399–400.

¹⁵⁰ *Id.* at 401.

¹⁵¹ *Id.* at 399. It is worth noting that Colker published this article before to the Supreme Court’s decision in *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, 532 U.S. 598 (2001).

¹⁵² Waterstone, *Untold Story*, *supra* note 33 at 1826–27.

¹⁵³ *Id.* at 1870.

¹⁵⁴ One prominent disability rights firm that represents serial plaintiffs throughout California indicated that in 2004 and earlier, it was filing almost exclusively in federal court. The firm now files much less in federal court, with approximately 50% or more of its current 70–75 cases filed in state court. One of the chief factors in the decision to file federally is the nature of the relief claimed. If a case involves a large or complex injunctive relief component, the firm will file in federal court because there is less chance that the defendant can simply fix everything and moot the federal case. Cases that involve less injunctive relief, where damages are a significant component of the remedial claim, are more likely to be filed in state court, since the plaintiff will have to go there anyway if the federal claim is mooted. This same firm has also seen federal court judges in one California district increasingly relinquish their supplemental jurisdiction over the state claims, even when the federal ADA claim remains live, and the plaintiff is required to refile in state court and simultaneously bring the action in two courts. The firm would rather file ADA and state claims in state court in the first place if it will have to try a claim there anyway. Oddly enough, the firm has also brought ADA and state claims in state court only to have the defendant ask for removal to federal court. Telephone interview with Jennifer Steneberg, staff attorney at The Frankovich Group (July 12, 2006).

¹⁵⁵ As long as the defendant addresses the issues raised in the plaintiff’s complaint before judgment or settlement, there will be no right to attorney fees under *Buckhannon*. One federal court in Florida granted the defendant restaurant’s request for a stay of the proceedings pending remediation so that plaintiff’s counsel could not earn fees. *See Macort and Access Now, Inc. v.*

Checker Drive-In Restaurants, Inc., 8:03-cv-1328-T-30EAJ, *discussed in* Association for Disabled Americans, Inc. v. Integra Resort Management, Inc., 385 F. Supp.2d 1272, 1284–85 (M.D. Fla. 2005).

¹⁵⁶ See *Graham v. DaimlerChrysler Corp.*, 21 Cal. Rptr. 3d 331 (Dec. 2, 2004); *Tipton-Whittingham v. City of Los Angeles*, 21 Cal. Rptr. 3d 371 (Dec. 2, 2004). California’s Supreme Court in *Tipton-Whittingham* stated that “California law continues to recognize the catalyst theory and does not require ‘a judicially recognized change in the legal relationship between the parties’ as a prerequisite for obtaining attorney fees under Code of Civil Procedure section 1021.5. In order to obtain attorney fees without such a judicially recognized change in the legal relationship between the parties, a plaintiff must establish (1) that the lawsuit was a catalyst motivating the defendants to provide the primary relief sought; (2) that the lawsuit had merit and achieved its catalytic effect by threat of victory, not by dint of nuisance and threat of expense, as elaborated in *Graham*; and (3) that the plaintiffs reasonably attempted to settle the litigation prior to filing the lawsuit.” *Id.* at 375–76. In a subsequent modification of *Graham v. DaimlerChrysler*, 34 Cal. 4th 553, 577, the Supreme Court clarified that under the catalyst theory, “[l]engthy prelitigation negotiations are not required, nor is it necessary that the settlement demand be made by counsel, but a plaintiff must at least notify the defendant of its grievances and proposed remedies and give the defendant the opportunity to meet its demands within a reasonable time.”

¹⁵⁷ *Molski v. Mandarin Touch Restaurant*, 347 F. Supp.2d 860, 866 (C.D. Cal. 2004).

¹⁵⁸ *Id.* at 865.

¹⁵⁹ *Wilson v. Pier 1 Imports (U.S.), Inc.*, 411 F. Supp.2d 1196, 1199 (E.D. Cal. 2006).

¹⁶⁰ *Id.* at 1200.

¹⁶¹ *Id.* at 1201.

¹⁶² Amy B. Vandeveld, an attorney and disability advocate, makes the same point when she asks “‘What difference does it make whether one person with a disability files 300 lawsuits or whether 300 different people with disabilities file one suit apiece?’ The barriers are the same. The damages are the same.” *Quoted in* Carri Becker, *Private Enforcement of the Americans with Disabilities Act Via Serial Litigation: Abusive or Commendable?*, 17 *Hastings Women’s L.J.* 93, 108 (2006).

¹⁶³ Bagenstos, *Paradox of Limited Remedies*, *supra* note 85 (manuscript at 15).

¹⁶⁴ See discussion on sanctions immediately following.

¹⁶⁵ *Black’s Law Dictionary* 1596 (8th ed. 2004).

¹⁶⁶ See *Weissman v. Quail Lodge, Inc.*, 179 F.3d 1194, 1197 (9th Cir. 1999) (speaking to district court’s jurisdiction under All Writs Act, 28 U.S.C. § 1651(a)). See also 28 U.S.C. § 1927 (court may hold any attorney or person who “multiplies the proceedings in any case unreasonably and vexatiously” personally liable for additional costs, expenses, and attorney’s fees incurred as a result).

¹⁶⁷ 305 F. Supp.2d 1278 (M.D. Fla. 2004).

¹⁶⁸ *Id.* at 1285 and 1282 n. 14 (M.D. Fla. 2004).

¹⁶⁹ *Id.* at 1285.

¹⁷⁰ The ADA's fee-shifting provision is permissive, stating that the court, "in its discretion, may allow the prevailing party . . . a reasonable attorney's fee including litigation expenses, and costs." 42 U.S.C. § 12205.

¹⁷¹ See *Macort v. Checker Drive-In Restaurants, Inc.*, 2005 WL 332422 *1 (M.D. Fla. Jan. 28, 2005, unpublished) ("Court is not inclined to award attorney's fees for prosecuting a lawsuit when a pre-suit letter to the Defendant would have achieved the same result"); *Doran v. Del Taco, Inc.*, 373 F. Supp.2d 1028, 1034 (C.D. Cal. 2005) ("fair and reasonable to require a pre-litigation unambiguous notice and a reasonable opportunity to cure before allowing attorneys' fees in an ADA case").

¹⁷² *Association for Disabled Americans, Inc. v. Integra Resort Management, Inc.*, 385 F. Supp.2d 1272 (M.D. Fla. 2005). The case contains an exhaustive review of decisions that have considered vexatious litigation under Title III, perhaps prompted by the fact that the case was remanded by the Eleventh Circuit when the plaintiffs' appealed the district court's original award of attorney's fees only to the extent conceded by defendants. The decision to deny attorney's fees and costs appears to be based not merely on the absence of presuit notice, but on a judgement that the plaintiff attorneys and his clients' come to the court "without the normal presumption of integrity."

¹⁷³ 347 F. Supp.2d 860 (C.D. Cal. 2004).

¹⁷⁴ *Id.* at 863.

¹⁷⁵ *Id.* at 864–65.

¹⁷⁶ *Id.* at 868.

¹⁷⁷ *Molski v. Mandarin Touch Restaurant*, 359 F. Supp.2d 924, 929 (C.D. Cal. 2005).

¹⁷⁸ The text of Rule 11 is as follows: Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in [Rule 5](#), but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of [Rules 26](#) through [37](#).

¹⁷⁹ See *Molski v. Mandarin Touch Restaurant*, 2005 WL 3719631 (C.D. Cal. Dec. 9, 2005, unreported) (defendant’s Rule 11 application for sanctions in the amount of its attorney’s fees and costs denied for procedural defects, and because summary judgement was issued on standing grounds, which is not a decision on the merits).

¹⁸⁰ Rule 11(c)(1)(B).

¹⁸¹ Rule 11(c)(2) and comments to 1993 amendments to Rule 11.

¹⁸² Comments to 1993 amendments to Rule 11.

¹⁸³ Milani, *Make My 90 Days*, *supra* note 89 at 175–76.

¹⁸⁴ *Infra* notes 145-156 and accompanying text.

¹⁸⁵ *Doran v. Vicorp Restaurants, Inc.*, 2005 WL 3244046 *2 (C.D. Cal. Sept. 20, 2005) (internal quotations omitted).

¹⁸⁶ Telephone interview with Bruce Hohol, owner of *Hoho’s Café* (July 19, 2006).

¹⁸⁷ Many small business entities indicate continuing unfamiliarity with the 10 Disability and Business Technical Assistance Centers (DBTACs) located around the country that provide information, training, and technical assistance to ADA stakeholders through a toll-free line (1-800-949-4232), a main Web site (www.adata.org/) and regional Web sites, and numerous publications. The DBTACs have more than 200 titles available, many in Spanish and other languages; they distributed over 7 million titles in the first decade of the ADA’s existence. Unfortunately, this information, along with such technical assistance publications as the DOJ’s “ADA Guide for Small Businesses,” does not appear to consistently filter down or garner sufficient attention at local levels.

¹⁸⁸ Telephone interview with Bobbie Beckman, executive director of the Heart of the Valley Chamber of Commerce (July 18, 2006) and February 2005 press release issued by the HOV Chamber.

¹⁸⁹ Telephone interview with, and March 25, 2005, press release issued by, Robert Shumaker, Esq., of DeWitt Ross & Stevens (July 19, 2006).

¹⁹⁰ Ed Lowe, *Local Lawsuits Trigger Debate Over ADA Compliance*, Post-Crescent News, July 24, 2005.

¹⁹¹ *Id.*

¹⁹² Title II of the Civil Rights Act of 1964 requires aggrieved people to provide 30 days’ notice to a state or local agency before filing a civil suit for race- or religious-based discrimination, but neither administrative exhaustion nor written notice to the defendants is required. See 42 U.S.C. § 2000a-3(c). See also Milani, *Make My 90 Days*, *supra* note 89 at 159–168.

¹⁹³ Wis. Stat. § 106.52(4)(e) (damages, including punitive, are available for violations of Wisconsin’s “Equal Rights Programs”).

¹⁹⁴ Telephone interview with Gene Zweben, Schwartz Zweben & Associates LLP (July 21, 2006).

¹⁹⁵ Some of the ire felt against Hackel’s attorneys is clearly traceable to their status as “outsiders” to the state. It is an open question, though, how difficult it might have been for Hackel to find a

local attorney who would take her case. Shumaker replied negatively when he was asked whether he had heard of any Title III litigation or demand letters brought by Wisconsin lawyers other than the Fox Valley lawsuits. Hohol mentioned that if any law firm in the Valley or in Wisconsin had tried to bring a bunch of lawsuits without any notice, it would not be able to continue in business. However, Title III plaintiffs have a right to bring such lawsuits. The same “outsider” status is accorded to plaintiffs with disabilities who bring an access lawsuit against communities where they do not reside.

¹⁹⁶ The DOJ, for example, when it chose to establish a principle of “comparable sight lines” in stadium-style movie theaters where wheelchair users were relegated to the front row(s), “[a]ttacked this problem by suing two of the largest chains in the industry. (*United States v. AMC Entertainment, Inc.*; *United States v. Cinemark USA, Inc.*) . . . [and] also opened several investigations of other national chains.” See Press Release, DOJ, Statement by the Department of Justice on the National Council on Disability’s Report on the ADA (June 27, 2000), available at www.usdoj.gov/opa/pr/2000/June/369cr.htm (last visited July 27, 2006).

¹⁹⁷ Robin Jones recalls one particular local radio host who ran phone-in sessions and tried to encourage balanced discussion of the issues raised by the lawsuits. E-mail communication from Robin Jones, director of the Great Lakes ADA and Accessible IT Assistance Center (June 22, 2006).

¹⁹⁸ See, for example, Christopher R. Leslie, *A Market-Based Approach to Coupon Settlements in Antitrust and Consumer Class Action Litigation*, 49 U.C.L.A. L. Rev. 991 (2002); Alexandra Lahav, *Fundamental Principles for Class Action Governance*, 37 Ind. L. Rev. 65 (2003); Edward Brunet, *Class Action Objectors: Extortionist Free Riders or Fairness Guarantors*, 2003 U. Chi. Legal F. 403; Michael Selmi, *The Price of Discrimination: The Nature of Class Action Employment Discrimination Litigation and Its Effects*, 81 Tex. L. Rev. 1249 (2003).

¹⁹⁹ Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4, § 2(a)(2)(A) (codified as note to 28 U.S.C. § 1711).

²⁰⁰ See Anthony Rollo and Gabriel A. Crowson, *Mapping the New Class Action Frontier-A Primer on the Class Fairness Act and Amended Federal Rule 23*, 59 Consumer Fin. L.Q. Rep. 11 (2005)

²⁰¹ Rollo & Crowson, *id* at 17, summarizing Pub. L. No. 109-2, 119 Stat. 4, § 3(a) (codified as 28 U.S.C. § 1715(b)).

²⁰² Pub. L. No. 109-2, 119 Stat. 4, § 3(a) (codified as 28 U.S.C. § 1715(d)).

²⁰³ Pub. L. No. 109-2, 119 Stat. 4, § 3(a) (codified as 28 U.S.C. § 1715(e)(1)-(2)).

²⁰⁴ *Supra* note 41.

²⁰⁵ Telephone interview with Lainey Feingold, Oct. 7, 2005; Telephone interview with Christina Galinda-Walsh and Kenneth Shiotani, Oct. 7, 2005.

²⁰⁶ The following list is a condensed compilation of the different objections and/or supporting memorandums of law filed jointly by numerous P&A attorneys in each of the cases. While each set of objections refers to facts and violations of the ADAAG specific to each case, there is a general pattern of objections owing to the relatively consistent use of overreaching language in all proposed consent decrees. The degree of commonality suggests that, at the very least, the

party attorneys in these cases are aware of the arguments and settlement proposals used by the others. As one attorney involved in filing objections has noted: “the same identical sets of ‘tolerances’ or ADAAG loopholes are reappearing as ‘Appendix 4’ in settlement after settlement in a fashion that could not be coincidence.” Interview with Amy Robertson, Oct. 11, 2005. The Department of Justice (DOJ) objections filed in the May Co. case, the objections filed by the United States amicus brief in the BFS case, and the objections filed by the Florida Attorney General amicus brief in the BFS case will also be reviewed for any additional, specifically government, arguments raised by those agencies to the court.

²⁰⁷ Memorandum of Points and Authorities in Support of Twenty-one Protection and Advocacy Agencies’ Objections to Proposed Class Certification and Settlement at 2 (filed Aug. 9, 2001), hereinafter May Co. objections.

²⁰⁸ Protection and Advocacy Agencies’ Memorandum of Law in Support of their Objections to Class Certification and the Consent Decree at 3 (filed Jan. 9, 2002), hereinafter Amoco objections.

²⁰⁹ Objections to Proposed Class Settlement by Twelve State Protection and Advocacy Agencies at 4 (filed Oct. 22, 2001), hereinafter 7-Eleven objections.

²¹⁰ Objections of Eleven Protection and Advocacy Agencies, and Dean Davis, Peter Giovanoli, Mary Giordan, and Carol Williams to Proposed Class Action Consent Decree at 10 (filed July 18, 2002), hereinafter BFS objections.

²¹¹ May Co. objections at 3.

²¹² Amoco objections at 4.

²¹³ May Co. objections at 20.

²¹⁴ *Id* at 21.

²¹⁵ Memorandum Opinion and Order 6 (N.D. Tex., filed April 10, 2002).

²¹⁶ For example, Arizona’s Civil Rights Act gives the court discretion to “award such other relief as the court considers appropriate, including monetary damages to aggrieved people.” *See* A.R.S. § 41-1492.09(B)(2).

²¹⁷ For example, California’s Unruh Civil Rights Act grants minimum statutory damages of \$4,000 for the failure to provide people with disabilities full and equal accommodations, advantages, facilities, privileges, and services in all business establishments. Prevailing plaintiffs are also entitled to attorney fees. *See* Cal Civ. Code §§ 51 *et seq.*

²¹⁸ *See* A.R.S. § 41-1492.09(C).

²¹⁹ May Co. objections at 21.

²²⁰ BFS objections at 19-21. The settlement does not refer at all to any kind of relief for people with mental or psychological disabilities who face discrimination or policy/attitudinal barriers at BFS stores. Presumably, BFS could adopt an outright exclusion policy of people with developmental disabilities that would not be actionable, because such people are encompassed in the class and would be deemed to have released their rights under state and federal law.

²²¹ For example, public accommodations are given greater flexibility and defenses for the retrofitting of older buildings that were already in existence on the ADA's effective dates, *see* 28 C.F.R. § 36.304(a), while stores built after Jan. 26, 1993, have much less discretion to avoid meeting the ADAAG standards, reflecting the fact that "accessibility can be more conveniently and economically incorporated in the initial stages of design and construction." 28 C.F.R. § 36.304 App. B.

²²² Telephone interview with Brian East, attorney with Texas P&A (June 22, 2006), and telephone interview with Larry Paradis, attorney with Disability Rights Advocates (June 22, 2006).

²²³ 7-Eleven objections at 15, 9.

²²⁴ Amoco objections at 32.

²²⁵ Amoco objections at 14, BFS objections at 23.

²²⁶ May Co. objections at 30.

²²⁷ *Id* at 32.

²²⁸ *Id*.

²²⁹ Amoco objections at 13–15.

²³⁰ May Co. objections at 29.

²³¹ Telephone interview with Larry Paradis, *supra* note 167. Paradis recognized that the insertion of adequate monitoring provisions into a settlement is "always a fight, because defendants don't want it," so plaintiff attorneys must build a credible record for refusing to enter settlement without provision for independent monitoring. Unfortunately, if part of the motivation for a settlement without monitoring is a collusive relationship between plaintiff and defense counsel, plaintiff counsel cannot be counted on to stand up strongly for adequate future monitoring of injunctive relief.

²³² 7-Eleven objections at 23.

²³³ In the May Co. case, the parties subsequently settled for all the Lord & Taylor stores in Florida only after the court denied class certification and the terms of the proposed class action settlement. In 7-Eleven, the court denied class certification and disapproved the proposed consent decree.

²³⁴ Interview with Christina Galinda-Walsh, Oct. 7, 2005.

²³⁵ Interview with Lainey Feingold concerning her intervention in 7-Eleven on behalf of the American Council for the Blind, on whose behalf she had already been negotiating for talking ATMs with 7-Eleven when the Association for Disabled Americans submitted the proposed consent decree (Oct. 7, 2005).

²³⁶ *National Class Action Settlements: When Should P&As Object?* Fact Sheet by Disabilities Law Project and Bazelon Center for Mental Health Law (Oct. 1, 2002).

²³⁷ Interview with Brian East, *supra* note 181.

²³⁸ Court's Order Approving Proposed Class Settlement (filed Feb. 19, 2002).

²³⁹ Court's Order granting preliminary approval of proposed amended consent decree (filed Aug. 16, 2002).

²⁴⁰ Interview with Amy Robertson, Oct. 11, 2005, concerning Title III action initiated against Circle K.

²⁴¹ *Id* concerning Title III action initiated against Arby's, see *Access Now., Inc. and Christ Soter Tavantzis v. RTM Operating Company, d/b/a Arby's*, Case No. 02-23374-CIV-Martinez/Klein (S.D. Flo).

²⁴² The education of Title III class counsel on potential problematic settlement issues must be ongoing, as new counsel are always entering the field without sufficient awareness of all of the settlement pitfalls. East notes that many of the earlier problematic settlements used an "ADAAG light" measure of accessibility that permitted unacceptable levels of tolerances. Some of the more recent problematic settlements have had adequate accessibility measures and tailored remedies for people with mobility disabilities, but they have overly broad class definitions and inadequate remedial provision for people with other kinds of disabilities that fall within the class. Interview with Brian East, *supra* note 181.

²⁴³ Communication from Elaine Feingold & Amy Robertson, Recommendations for Settling Class Actions under Title III of the Americans with Disabilities Act (2002) (Oct. 13, 2005). This article has also been published by LRP.

²⁴⁴ Interview with Brian East, *supra* note 181.

²⁴⁵ *Id.*

²⁴⁶ A sample of Feingold's structured negotiations settlement agreement is attached as Appendix A.

²⁴⁷ Communication from Lainey Feingold, "2004 Sample of Privileged and Confidential Settlement Communication from Linda Dardarian and Elaine B. Feingold" (Oct. 7, 2005).

²⁴⁸ Telephone interviews with three separate corporate counsel, July 18, 21, and 27, 2006. The counsel worked with financial institutions ranging in size from a bank that operated in three states with 500–600 branches and 1,000 ATMs, to a bank with approximately 6,200 branches and 6504 ATMS, ranking in the top five of its industry for assets and market value of stock.

²⁴⁹ *Chandler Glover and Dean Albrecht, et al. v. John E. Potter, Post Master General*, EEOC No. 320-A2-8011X; Agency No. CC-801-0015-99.

²⁵⁰ 2004 WL 2370633 (N.D. Cal. Oct. 21, 2004).

²⁵¹ Class Action Settlement Agreement, *Travis D. v. Eastmont Human Services Center*, No. CV-96-63-H-CSO (D. Mont. Feb. 5, 2004).

²⁵² *Id at Exhibit B*, at 1, 4-11, 13-14, 15-17, 18.

²⁵³ See, for example, Settlement Agreement between *Cupolo and Bay Area Rapid Transit*, No. C-96-02991 CW/JSB (N.D. Cal. July 17, 1998).

²⁵⁴ Disability rights advocates have initiated a number of lawsuits in this area. One was settled in Oregon in 2004.

²⁵⁵ Case No. 99-MK-2086 (D.Col.)

Appendix A – Sample Structured Negotiations Agreement

1. *Parties*

The Parties to this Agreement are (1) COMPANY and (2) Goldstein, Demchak, Baller, Borgen & Dardarian (GDB) and Co-Counsel Elaine B. Feingold (Feingold) and their clients: LIST CLIENTS (Claimants).

2. *Purposes*

The purposes of this agreement are:

- a. To protect the interest of all Parties during the pendency of negotiations concerning disputed claims over SUBJECT OF NEGOTIATIONS
- b. To provide an alternative to litigation in the form of good faith negotiations concerning disputed claims SUBJECT OF THE DISPUTE; and
- c. To explore whether the Parties' disputes concerning the SUBJECT OF DISPUTE can be resolved without the need for litigation.

3. *Tolling of Alleged ADA and State Law Claims*

The Parties recognize and agree that, as used in this Agreement, the term “Claim(s)” includes any and all claims that could be brought either before an administrative agency or in a civil lawsuit in either state or federal court alleging that people with vision disabilities are being, have been, and continue to be discriminated against due to the alleged inaccessibility of SUBJECT OF DISPUTE

To the extent that Claimants could assert a Claim or any Claims under any state or federal statute, which assertion COMPANY denies, such Claims will be tolled beginning with the effective date of this Agreement and will remain tolled during negotiations and throughout the duration of the tolling agreement as described in paragraph 6 below.

The Parties agree that during the duration of the tolling agreement GDB, Feingold, and their clients will refrain from filing state or federal Claims against COMPANY with any agency or court regarding the subject of this Agreement.

The Agreement is not intended to revive and does not revive any Claims which would have been barred by the applicable statute of limitations prior to the effective date of this Agreement. Further, the purpose and effect of this Agreement is to stop the running of any applicable statute of limitations as of the effective date of the Agreement and to restart the running of that statute of limitations immediately upon the expiration of the thirty-day period set forth in paragraph 6. At the end of the thirty-day period, all applicable statutes of limitations shall resume running

from the point that they were tolled. In other words, the statutes are not reset by the execution of this Agreement.

4. *Topics To Be Addressed through Negotiations:* The Parties agree that the subject of negotiations undertaken pursuant to this Agreement will include, but are not limited to:
- a. BASIC TOPIC
 - b. TRAINING OR POLICIES RELATED TO BASIC TOPIC;
 - c. Reasonable damages and reasonable attorney fees, costs and litigation expenses as that term is defined in the Americans with Disabilities Act, 42 U.S.C. § 12205 (the ADA) and applicable state laws.
 - d. Scope and format of binding agreement addressing (a) – (c), monitoring, and other relevant issues.

5. *Attorney Fees*

The Parties recognize that execution of this Agreement is in lieu of Claimants filing a complaint in federal court. The Parties agree that Claimants shall not be precluded from recovering reasonable attorney fees, litigation expenses, and costs, as defined by the ADA and applicable state laws, because Claimants pursued alternative means of dispute resolution, including but not limited to settlement negotiations, mediation and/or arbitration, rather than instituting a civil action in this matter. In this regard, COMPANY will not assert that Claimants or Counsel for Claimants are not entitled to recover attorney fees, expenses or costs because Claimants or their Counsel did not obtain relief in the form of an enforceable judgment, consent decree or court order.

6. *Duration of Tolling Agreement*

The tolling effectuated in this Agreement will remain in effect until thirty (30) days after any party gives written notice by certified mail to all other parties that the tolling agreement is no longer effective. Upon such notice, COMPANY's obligation to negotiate with Claimants regarding the topics listed in paragraph 4 will expire.

7. *No Admission of Liability*

The Parties expressly recognize and agree that entering into this Agreement does not in any way constitute an admission of liability or any wrongdoing by any Party, and that all discussions and negotiations pursuant to this Agreement will constitute conduct made in an effort to compromise claims within the meaning of Federal Rules of Evidence, Rule 408 or any similar state rule of evidence.

8. *Confidentiality*

The Parties and their attorneys agree that all information discussed or exchanged during the negotiations contemplated by this Agreement about COMPANY including but not limited to information about LIST ISSUES OF IMPORTANCE TO COMPANY SUCH AS, business strategy or plans, staffing, internal processes, vendor capability, maintenance and equipment, product or service concepts or pricing, which are not generally available to the public (COMPANY Proprietary Information) shall not be disclosed to any third parties, including the general membership of the Claimants except as legally required. To the extent the Parties retain any experts or consultants for the

purposes contemplated by this Agreement, each such expert or consultant will be advised of the provisions of this paragraph and will execute an agreement to maintain the confidentiality of COMPANY Proprietary Information.

9. *Rules of Construction*

Each Party, through its legal counsel, has reviewed and participated in the drafting of this Agreement; and any rule of construction to the effect that ambiguities are construed against the drafting Party shall not apply in the interpretation or construction of this Agreement. Section titles used herein are intended for reference purposes only and are not to be construed as part of the Agreement.

10. *Effective Date*

The effective date of this Agreement is the date of the last signature below.

CO-COUNSEL
LAW OFFICE OF ELAINE B. FEINGOLD

Date: _____

By: _____
Attorneys for Claimants

COMPANY

Date: _____

By: _____

Appendix B – Stakeholder Dialogue Participants

Disability Community

February 10, 2006

Sacramento, California

Ana Acton, Systems Change Advocate
FREED Center for Independent Living
Grass Valley, CA

Catherine Kelly Baird
Executive Director
California Governor's Committee on
Employment of People with Disabilities
Sacramento, CA

Susan Barnhill Chandler, Board Member
Californians for Disability Rights
Sacramento, CA

Connie Barker, Vice President
Environmental Health Network
San Rafael, CA

Dwight Bateman, Executive Director
Disability Rights Resources Agency for
Independent Living
Modesto, CA

Robert Benson
California Disability Community Action
Network
Sacramento, CA

Carol Bradley, ADA Coordinator
City of Sacramento
Sacramento, CA

Leslie Brewer
Director of Advocacy and Services
Placer Independent Resource Services
Auburn, CA

Kim Carey
Assistant to Executive Director
California Governor's Committee on
Employment of People with Disabilities
Sacramento, CA

Brian Connors, Staff Services Analyst
California Employment Development
Department
Sacramento, CA

Rachel Ford
California Disability Community Action
Network
Sacramento, CA

Don Fox, Accessibility Compliance
Coordinator
Accessible Design Collaborative
Mariposa, CA

Kristi Gillen
Sacramento, CA

Ann Guerra, Executive Director
FREED Center for Independent Living
Grass Valley, CA

Robert Holland
Sacramento, CA

Mark Leeper, Executive Director
Disability Action Center NW
Moscow, ID

Bill Maskill
Strokewaves, FREED CIL
Grass Valley, CA

Tink Miller, Executive Director
Placer Independent Resource Services
Auburn, CA

Christina Mills-Hovious
Statewide Community Organizer
California Foundation of Independent
Living Centers
Sacramento, CA

Mary Nicholson
Healing in Motion
French Camp, CA

Marty Omoto, Executive Director
California Disability Community Action
Network
Sacramento, CA

Pam Porteous-Hunt, Associate Director
State Independent Living Council
Sacramento, CA

Mitch Pomerantz
ADA Compliance Officer
Department on Disability
City of Los Angeles
Los Angeles, CA

Anne Scheck
Trammart, Inc., Medical Writing
Thousand Oaks, CA

Richard Skaff
Mill Valley, CA

Ken Stein
Mayor's Office on Disability
City and County of San Francisco
San Francisco, CA

Nancy Thomas
Alameda County Network of Mental Health
Clinics
Oakland, CA

Terelle Terry
Californians for Disability Rights
Sacramento, CA

Laura Williams, President
Californians for Disability Rights
Glendora, CA

Marcia Yamamoto, Manager
California Employment Development
Department
Sacramento, CA

Title III, Large Businesses
February 21–22, 2006
San Francisco, California

Shelley Bergum, CEO
California Communications Access
Foundation
Oakland, CA

Gene Chelberg, Director
Disability Programs and Resource Center
San Francisco State University
San Francisco, CA

Anne Cohen
Disability and Health Policy Consultant
Disability Health Access
San Francisco, CA

Lainey Feingold, Attorney
Law Offices of Lainey Feingold
Berkeley, CA

Carl Goldberg, Associate Counsel
Federated Department Stores, Inc.
San Francisco, CA

Hollis Harris, Capital Projects Team
Manager
Kaiser Permanente, Inc.
Walnut Creek, CA

Logan Hopper, Architect
Logan Hopper Associates
Oakland, CA

Erica Jones, Executive Director
Pacific ADA & TA Center
Oakland, CA

Karen Jackson
Creative Movement Coordinator
Berkeley YMCA
Berkeley, CA

Tracy Justesen, Attorney
U.S. Department of Justice
Washington, DC

Walter Leveille
Director of Access Compliance Services
Evan Terry Associates
Birmingham, AL

Jim Mercurio
Director, Stadium Operations
San Francisco 49ers
San Francisco, CA

Blossom Michaeloff
Web Research and Design
Wells Fargo Bank
San Francisco, CA

Mark Neider, Nurse Manager
Wells Fargo
San Francisco, CA

Larry Paradis, Executive Director
Disability Rights Advocates
Berkeley, CA

Terrie Stanley, Director
Health Services
Partnership HealthPlan of California
Fairfield, CA

Ken Stein
Mayor's Office on Disability
City and County of San Francisco
San Francisco, CA

Jim Terry, AIA
Evan Terry Associates
Birmingham, AL

Title III, Small Businesses
February 23–24, 2006
San Francisco, California

Anita Aaron, Executive Director
Rose Resnick Lighthouse for the Blind
San Francisco, CA

Jim Abrams, President and CEO
California Hotel and Lodging Association
Sacramento, CA

Pat Christensen, President
National Association of Small Businesses
San Francisco, CA

Paul Church
Disability Service Specialist
City of Berkeley
Berkeley, CA

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Disability Rights Advocates
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Center for Independent Living
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Erica Jones, Executive Director
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Tom Lakritz, Deputy City Attorney
San Francisco City Attorney's Office
San Francisco, CA

Herb Levine, Executive Director
Independent Living Resources of San
Francisco
San Francisco, CA

Walter Leveille, Architect
Evan Terry Associates
Birmingham, AL

Michael Mankin, Architect
Division of the State Architect
Sacramento, CA

Clifford Payne, Vice President
Accessibility Development Associates
Pittsburgh, PA

Ken Stein
Mayor's Office on Disability
City and County of San Francisco
San Francisco, CA

Jim Terry, AIA
Evan Terry Associates
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**Transportation
April 5–6, 2006
Washington, D.C.**

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Regulation and Enforcement
Office of the General Counsel
U.S. Department of Transportation
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Transit Authority of River City
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American Public Transit Association
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Office of Safety, Energy and Environment
U.S. Department of Transportation
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Paratransit Services
Dallas Area Rapid Transit
Dallas, TX

John Gaffney, Member
Governor Bush's ADA Working Group
Ocala, FL

Bonnie Graves, Attorney Advisor
Office of Chief Counsel
Federal Transit Administration
Washington, DC

Gerri Mason Hall, Vice President
Business Diversity and Strategic Initiatives
Amtrak
Washington, DC

Chris Hart
Adaptive Environments
Boston, MA

Russell Haynes, ADA Coordinator
Greyhound Lines
Dallas, TX

Kevin Irvine
Senior Transportation Advocate
Equip for Equality
Chicago, IL

Christian Kent
Washington Metropolitan Area Transit
Authority
Washington, DC

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Community Transportation Coordinator
Center for Independent Living for Western
Wisconsin
Menomonie, WI

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Equal Opportunity Specialist
Office of Civil Rights
Federal Transit Administration
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Boston, MA

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Paralyzed Veterans of America
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United Spinal Association
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Federal Railroad Administration
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ADA Compliance Officer
Civil Rights Department
Utah Transit Agency
Salt Lake City, UT

Joyce Rose, Professional Staff
Subcommittee on Highways, Transit and
Pipelines
Committee on Transportation and
Infrastructure
Washington, DC

Tim Sheehan, Executive Director
Center for Independent Living for Western
Wisconsin
Menomonie, WI

Rosalyn Simon, President and CEO
Simon & Simon Research and Associates
Ellicott City, MD

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Maryland Transit Administration
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Dennis Stombaugh
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Association of Programs for Rural
Independent Living
Kent, OH

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Office of Civil Rights
Federal Transit Administration
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Jackson Heights, NY

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Federal Transit Administration
Washington, DC

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Training and Technical Assistance Manager
Project ACTION
Easter Seals
Washington, DC

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American Bus Association
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Disability Community
April 7, 2006
Washington, D.C.

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American Council of the Blind
Washington, DC

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Center for Psychiatric Rehabilitation
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Jackson Heights, NY

**Employment, Title I
April 18–19, 2006
San Francisco, California**

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Kaiser Permanente Northern California
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Steve Hirschfeld, Attorney
Curiale Dellaverson Hirschfeld & Kraemer
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Evelyn Hunt
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Tina Marzell, Job Developer
Toolworks
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Patricia O'Sullivan
Global Disability Program Manager
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Michael Paravagna
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California Center for Law and the Deaf
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Title III, Large Businesses
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Chicago, Illinois

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Title III, Small Businesses
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Chicago, IL

Telecommunications, Title IV
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Distribution Program Administration/
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National Emergency Number Association
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Bill Schwall
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**Employment, Title I
May 16–17, 2006
Houston, Texas**

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Houston, TX

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Houston, TX

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National Youth Leadership Network
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Houston, TX

Dinesh Pejaver
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Training and Monitoring
Texas Workforce Commission
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City of Houston
Houston, TX

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Appendix C – Attorneys Interviewed for Part 2 – Legal and Enforcement Tools

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Appendix D – Judicial Stakeholder Focus Group Methodology

Background

According to a procedure developed with the National Judicial College (NJC), a package of information introducing the Disability Rights Education and Defense Fund (DREDF), the National Council on Disability (NCD), the ADA Implementation Study, the idea behind the focus group, and the project team members running the focus group was placed among materials given to judges attending courses at NJC November 14–17, 2005, and March 27–30, 2006. Judges could volunteer to attend the focus group by indicating their interest on a sign-up sheet and by handing in a Consent Form when attending the focus group. Materials given to the judges simply referred to our desire to gain insight into the judiciary’s views and attitudes about disability rights claims and laws—the project team wanted to avoid the impression that state judge participants needed expertise in the ADA to attend or participate meaningfully in the focus group discussion.

While a majority of the disability rights lawsuits brought in state court do not directly involve the ADA, many states have laws concerning disability discrimination in employment, state services, public accommodations, and housing that raise similar issues. Both national and state lawmakers have envisioned private enforcement in the courts as an important mechanism for the implementation of disability rights laws. Consequently, the knowledge, understanding, and viewpoints held by state judges concerning disability rights claims are important sources of information about how the judiciary sees the role and place of disability rights law among civil rights protections generally.

The focus group sessions consisted of an informal 90-minute discussion facilitated by one project team member while the other team member primarily took notes. Participants were assured that their responses would be kept confidential and only reported anonymously or in the aggregate. The judges were free to speak directly to one another and to elaborate on issues that were raised by other participants. The sessions were not taped, as this was not allowed under NJC policies on confidentiality, but contemporaneous notes were taken, and the project team facilitators’ impressions were discussed and recorded soon after the session.

DREDF made a number of attempts throughout 2006 to conduct similar focus groups among the federal judiciary. Specifically, DREDF contacted the Federal Judicial Center in Washington, DC; the Federal Magistrate Judges’ Association; and the National Association of Women Judges, which includes appellate, trial, tribal, and administrative law members from all 50 states as well as federal judges. Unfortunately, while each organization expressed interest in and support for the subject, there was a persistent concern that members of the federal judiciary would find it inappropriate to participate in a frank discussion of such policy-related matters as the effectiveness of the private enforcement of federal disability rights. One organization expressed concern about

helping us recruit retired federal judges, as such a solicitation could be perceived as an endorsement of the NCD project and its potential for influencing policymakers. Ultimately, no federal judicial focus groups were conducted given the federal judiciary's reluctance to provide input to policymakers through such a forum.

Development of Questions

The questions used in the focus group were developed by project team members Linda D. Kilb, DREDF director, Legal Trust Fund Programs; Mary Lou Breslin, senior policy advisor; and Silvia Yee, staff attorney. The focus group was facilitated by Kilb, who has undergone training in the ethics and dynamics of running focus groups, and Yee. The questions were designed to solicit the judges' general level of knowledge and perception of disability rights laws, as well as responses on such specific litigation concerns as class settlement enforcement and monitoring, and plaintiffs who bring multiple access cases.

The planned areas of questioning encompassed the following:

- Participant self-introduction consisting of name, type of bench, and areas and years of experience both in practice and on the bench.
- Case management and general bench procedures.
- How participants typically familiarized themselves when confronted with new legal issues on the bench.
- Substantive knowledge of and experience with disability rights cases.
- Knowledge of and involvement in disability rights case resolutions and settlements.
- Views on private enforcement of disability rights cases.
- Participants' own needs and interests concerning disability rights laws and any suggestions for disability rights' policy and lawmakers.

Over the course of the focus group, the conversation among the participants became quite animated and free, as participants increasingly shared their own perceptions and responded to the comments made by others. For the purposes of the discussion below, participant responses have been organized into the framework of the questions, although the discussions did not necessarily adhere to a simple linear order. For example, when the judges were asked to introduce themselves in one focus group, one of the first responses included a reference to the accessibility features in his courtroom. All the subsequent responses included references to accessibility features and a few unsolicited remarks about the ADA and the kind of reasonable accommodations that it required of courts and other entities, although no one brought up any specific ADA case¹ or section of the law. For the purposes of building trust and encouraging a thoughtful and frank discussion, the participants were not constrained to answer relevant topics in strict order.

¹ The discussion of accessibility and policy accommodation features in the participants' respective courthouses was likely prompted at some level by the Supreme Court's finding in *Tennessee v. Lane*, 124 S.Ct. 1978 (2004) that Title II of the ADA, as applied to cases implicating the fundamental right of access to the courts, constitutes a valid exercise of congressional enforcement power under the Fourteenth Amendment.

Appendix E – Public Awareness Research Methods and Findings

This appendix provides detailed background information about the research methods and findings that were used in the development of the Easy Access prototype public information campaign, including the formative evaluation research that led to targeting the campaign at small business owners. In addition, important concepts from social marketing are reviewed in the context of the Easy Access campaign. These concepts including branding; guerilla marketing; laser targeting; media-audience mix; emerging digital communication technology; global marketing; and the Three E's of education, engineering, and enforcement. This appendix also provides a situation analysis, which converts the findings of the formative evaluation into an action-directed agenda for campaign planning.

NCD's recent efforts to pinpoint ADA implementation challenges and gaps identified the critical and unmet need to increase general public awareness about the ADA. The prevalence of negative ADA media stories and continued misperceptions about people with disabilities that pervade print, television, Internet, and other media underscored the importance of asserting a new message that portrays the ADA and people with disabilities in a different light. Identifying creative, proactive methods to achieve this goal became a central theme of NCD's current initiative and a specific task assigned to the ADA Implementation Study team.

The challenges to ADA implementation come from multiple sources and cannot be solved by a simplistic, one-size-fits-all approach. Effectively addressing them calls for a multipronged approach, an important element of which can be a public information campaign designed to address challenges to ADA implementation that arise from a lack of public awareness or from incomplete or inaccurate information. For example, if the challenge is that misconceptions exist about who is covered by the ADA, the most effective approach may be to develop a campaign that addresses these misconceptions head-on and presents information that counteracts and corrects them. In another example, if businesses have fears about the expense of providing public access, these fears might be alleviated by communicating the information that many accommodations are not expensive and that making them can attract more customers to the business.

A public information campaign will not by itself address all challenges or solve all problems related to ADA implementation. To be most effective, such a campaign would be one of a comprehensive set of strategies, including providing incentives for compliance (for example, expedited business licenses for businesses that demonstrate compliance with the ADA) or increasing enforcement of the requirements of the ADA.

Formative Research Activities

To assess current ADA public awareness activities and inform the development of a public awareness campaign, the following three formative research activities took place:

- An assessment of the state of the art in public information campaigns, which provided not only the most up-to-date thinking about how to reach a target population with a well-designed message but also a framework for analyzing the current state of ADA awareness and guiding the development of the prototype.
- A situation analysis; that is, an analysis of existing awareness of the ADA and of the ADA information environment, based on the following sources:
 - The stakeholder dialogues (see Part 1), in which members of key stakeholder groups discussed their awareness and knowledge of the ADA, and recommended messages and message strategies to encourage ADA implementation.
 - Focus groups with small business stakeholders to determine what they know about the ADA and what communication strategies they could suggest that would foster more effective implementation of the ADA.
 - Other ADA-related information in the existing information environment.
- An assessment of publicly funded information campaigns on the ADA that have been conducted by government agencies and other entities, to identify effective strategies and considerations for developing a successful public information campaign.

Following the formative evaluation, an additional focus group was conducted with small business owners to determine their reactions to a variety of proposed messages and logos. The results of that group were incorporated into the final communication products that were developed for the prototype.

State of the Art in Public Information Campaigns

Campaign Goals

Fundamental to any public information campaign is an overall goal or goals that identify the end state or condition that the campaign is designed to accomplish. Perhaps the best metaphor is to consider the difference between a flashlight and a laser beam. Ineffective public information campaigns are like flashlights, seeking to illuminate the so-called “general public” across a wide range of issues. The net effect is no effect, much like shining a flashlight at the moon. This is especially the case with prosocial or cause-based public information campaigns with small budgets and large mandates to “change the world.” Because resources are limited, effective prosocial public information campaigns must be constructed like a laser beam: Highly focused illumination is targeted at narrowly defined and homogeneous target populations with carefully crafted message strategies designed to resonate with that population.

Defining Target Populations

Defining target populations involves identifying specific segments of the public that will be the targets of the public information campaign. Campaigns are most effective if they speak directly to the interests of a clearly defined population and use messages that are tailored to the existing knowledge, attitudes, and behaviors of that population. Campaigns that are not targeted must take into account large differences in what people know, how they feel, and the way they behave; such campaigns often lack focus and clarity. When a public information campaign tries to speak to everyone at once, it is not likely that it will communicate effectively with anyone.¹ While the messages of a targeted campaign can be relevant for people outside the target group, the messages must be tailored for specific audiences, rather than assuming that a single message will work for everyone.

Setting Objectives

In commercial marketing campaigns, the practitioners set very specific measurable outcomes for their campaigns. In many prosocial public information campaigns, efforts are sometimes less than effective because no clear outcomes are specified in advance, and the campaign becomes an end in itself rather than a means to an end.² Such campaigns are regarded by the sponsoring organization as “successful” simply because they were implemented, not because they achieved a worthwhile objective. A state-of-the-art public information campaign, on the other hand, seeks to accomplish its overall goals through measurable objectives for each target population.

Defining Messages

Intuitively, a public information campaign starts with defining messages that communicate information deemed important by the organization sponsoring the campaign. However, effective message definition also requires a thorough understanding of the current awareness, knowledge, attitudes, behavioral predispositions, and behaviors of populations that are the focus of the campaign. A large body of research in marketing and public relations has shown that messages are most effective when they speak clearly to a homogeneous audience.³ For example, although large transnational corporations and small mom-and-pop enterprises are both “businesses,” they vary considerably with regard to such issues as financial resources, scope of operations, and personnel. Messages that resonate with decision makers in transnational corporations will probably not resonate with small business owners.

Branding

Branding is a concept borrowed from consumer marketing, where many products that differ little or not at all from each other compete for customers. Branding strategies seek to establish memorable connections between a particular brand and things that consumers value.⁴ For example, an automobile manufacturer may use various branding techniques to

link a particular brand (e.g., Toyota) with the concept of reliability. Branding is relevant for a prosocial public information campaign because, in the cluttered, saturated information environment of the typical American, messages must be memorable, even iconic, and message strategies must be innovative.⁵ No prosocial public information campaign will ever have the spending power of Madison Avenue and its multibillion-dollar clientele, and they cannot depend solely on repetition and media saturation to cut through the clutter.⁶

Media-Audience Mix

In the context of a prosocial public information campaign, many of the best media buys (e.g., daily full page ad in the *Wall Street Journal* for six months) are not financially feasible. Therefore, prosocial public information campaigns must resort to smart media buys instead of expensive ones and must invent unique, memorable vehicles to deliver their messages to the appropriate target populations.

Emerging Communication Technologies

Emerging technologies may provide useful channels of dissemination when prosocial public information campaigns cannot compete head-to-head in the cluttered mainstream communication environment with multimillion dollar campaigns. The Internet, perhaps the most transformative medium since television,⁷ can level the playing field. It can provide the platform for distributing messages through e-mail, listservs, and the massive searchable library of publicly available documents, and can serve as the “superhighway” for corollary technologies such as podcasting, which uses the Internet to transmit audio or video files (multimedia) for downloading to personal computers or mobile devices such as iPods.⁸ (Another term coming into use is “vodcasting,” for the use of the Internet to transmit video content.)

If the campaign is disseminating messages via the Internet and related technologies, it must motivate members of the target population to seek the information and must make it easy for them to access. Both accessibility and usability must be considered.⁹ In addition, while the Internet provides a powerful device for storage and retrieval of information on a global, instantaneous basis, the sheer volume of information makes cross-channel promotion—the use of one medium to direct the target populations’ attention to another—essential. This kind of promotion is widely practiced in commercial marketing campaigns, where the URL for the company Web site is prominently displayed in print advertising, billboards, direct marketing pieces, and promotional merchandise (e.g., the ubiquitous refrigerator magnet). For less sophisticated users, the Web site can provide materials that are easily accessed online or downloaded for offline use. When using the World Wide Web as the repository of information in a public information campaign, cross-channel promotion is essential to the overall success of the campaign.

Timing

The successful execution of a public information campaign depends on the sequencing and timing of key program components. Sequencing and timing should be regarded as a work in progress, as unexpected factors can dictate a change in plans. The following sequence is organized around large conceptual issues: (1) formative evaluation and design; (2) planning, including development of message strategies for each target population and selection of appropriate media to deliver those messages; (3) implementation; and (4) evaluation.

Globalization

Paradoxically, as emerging communication technologies can more easily reach larger, more global audiences, the need to target and segment messages becomes all the more critical. In the United States, the population is becoming more heterogeneous, and care must be taken when developing messages for audiences with regard to language, culture, socioeconomic status, ethnicity, and disabilities. Careful formative evaluation allows campaign planners and executors to bridge the gaps between various diverse audiences that may have little in common with each other, or with those conducting the campaign.

Guerilla Marketing

From the outset, the prototype campaign followed a “guerilla marketing” approach to bringing about social change, using unconventional marketing tools and strategies to maximize results with minimal resources. The Internet and the array of available digital technology create great opportunities for guerilla marketing. This approach is ideal for advocates seeking to bring about positive social change with limited budget resources. The prototype campaign, when implemented, will do more with less by being smart about how resources are used.

Laser Targeting of Audiences

Related to guerilla marketing, laser targeting means transmitting campaign messages to narrowly defined audiences that share many common characteristics (for example, small business owners). This concept is best illustrated using the previously mentioned metaphor of the difference between a flashlight and a laser beam. A campaign on ADA implementation must know precisely who the target is, what barriers must be overcome to implement the ADA, and whether audience issues have to do with knowledge, motivation, or behavior.

Promoting Behavioral Change Using the Three E's

One requirement of laser targeting is a clear understanding of the target audience. Although compliance with the ADA is the overarching goal of the prototype campaign,

this behavioral change is most likely to occur when education, engineering, and enforcement work together. No public information campaign, by itself, can persuade small business owners to comply voluntarily with the ADA and make their businesses accessible to people with all kinds of disabilities.

The example of seat belts shows the importance of the Three E's. To promote behavior change—that is, to get people to use seat belts—the Three E's were addressed in the following ways:

- Education has involved many public information campaigns, over decades, telling people to “Buckle Up for Safety.”
- Engineering—such as seat belt warning lights and alarms—made it difficult for automobile riders *not* to buckle their seat belts.
- Enforcement reinforced education and engineering by making it a motor vehicle violation to drive or ride without your seat belt fastened. The education message became “Click It or Ticket.”

All three elements are important. To effect significant changes in behavior, an education strategy such as a public information campaign must be combined with engineering and enforcement.

Situation Analysis

The situation analysis conducted for planning a prototype ADA public information campaign focused on understanding the external environment that exists with the publics or audiences for messages related to implementation of the ADA. In conducting this analysis, information was obtained from a variety of data sources to identify major issues related to the following:

- public awareness of the ADA (both knowledge and perceptions);
- knowledge/information gaps;
- communication media used for the ADA and other topics;
- information-related implementation challenges;
- differences in perspectives across stakeholder groups; and
- stakeholder suggestions for communication media and messages.

Data sources for the situation analysis include stakeholder dialogues, focus groups held with small businesses, and a review of other research on the communication environment for messages about ADA implementation. Findings from these sources are summarized in Figures 1 and 2.

Stakeholder Dialogues

Stakeholders addressed these public awareness and public relations topics: Sources of Information, Gaps in Awareness, and Key Message Concepts. Participants were asked to discuss the following questions:

- What sources of information on the ADA do you and your colleagues use?
- What gaps in awareness and knowledge of the ADA exist among people who hold positions similar to yours?
- What sources do you use to find information about other topics related to your business?
- Ideally, where would you go for information about the ADA?
- What are the key messages that would be most effective in capturing the attention of your target group?
- What are the key messages that would most effectively increase ADA awareness among your peers? Think of yourself as developing a billboard or television commercial targeted at people in jobs like yours. What would the headline be?

Awareness of the ADA

Most of the stakeholders are generally familiar with the ADA, and most have a basic grasp of what it requires, but the specific knowledge they have depends on who they are. Large private businesses and government agencies, for example, tend to have internal resources that provide them with considerable and detailed knowledge about the ADA's access and employment requirements, while small business representatives are likely to be knowledgeable about the existence of the law but quite unsure about the details of how to implement it. People with disabilities also varied widely in their understanding of the specifics of the law.

ADA Knowledge Gaps

Significant differences among stakeholder groups are key to identifying gaps in knowledge of the ADA. People with disabilities are not necessarily familiar with the ADA. For example, there is a lack of information on the part of people with mental illness or substance abuse as to whether the ADA applies to them. Other knowledge gaps include these:

- Businesses of all sizes feel that they have insufficient information to help them achieve compliance, but smaller businesses feel this lack much more strongly than larger businesses.
- Small businesses are especially likely to have many misconceptions about the ADA, such as the notion that small businesses, because of their size, are not required to

follow public access or employment requirements of the ADA, or that they are somehow “grandfathered” and thus do not need to comply with the ADA.

- A number of participants in all the stakeholder dialogues indicated that, although a lot of information is available, it is not detailed enough for their needs. Small businesses in particular expressed a need for detailed, customized material, although they agreed that it would be difficult to provide the information they needed except through very targeted sources.

For more detail on specific knowledge gaps, see Figure 1.

Sources of Information About the ADA

Stakeholders identified communication media and other information sources they used to learn about the ADA and get information in general. Numerous information sources were identified, including: peers and personal communications (most frequently mentioned); government Web sites; other online services (search engines, online news, blogs, Google alerts, etc.); newspapers and magazines; and, especially in rural areas, public libraries, which also offer computer access.

Businesses reported that they use the following information sources in particular:

- Networking, peer-to-peer communications
- Trade associations; for example, the Society for Human Resource Management (SHRM)
- Trade publications, magazines, newspapers
- Internal company sources (HR department general counsels/attorneys)
- Industry-specific newsletters (online, e-mail, and print)
- Employer workshops and trainings
- Department of Justice (DOJ), ADA Accessibility Guidelines (ADAAG)
- Organizations such as the Job Accommodation Network (JAN) and the Disability and Business Technical Assistance Centers (DBTACs) (for questions about resources, where to find tools and equipment, etc.)
- Community identification of problems and issues

Recommended Communication Channels for the ADA

Primary communication channels that participants in the stakeholder dialogues recommended using for the ADA were quite varied, which is not surprising, given that the primary information channel for information about ADA implementation depends on what information needs to be communicated, what the specific message is, and to whom it is directed. However, there was general agreement that personal communication is

generally more effective than mass media or print material. Most of the stakeholders said they relied heavily on interpersonal, peer-to-peer contacts and networks: “It’s important to have resources to draw from, but you need to look for people.”

The discussions of recommended communication channels for messages about implementation of the ADA usually led to discussions of overall communication strategies that did not rely on a single medium or channel. Across all the stakeholder dialogues, recommendations of communication strategies for the general population included these:

- National media campaign in partnership with a celebrity spokesperson (Robert David Hall, Michael J. Fox, John Hockenberry, BD character in Doonesbury, etc.)
- Media recognition of best practices; promotion of companies that do the right thing
- Product advertising (store mannequins, catalogs, etc.) using models with disabilities
- Partnerships (e.g., with disabled veterans organizations)
- Partnerships with private sector (e.g., Verizon and SBC have approached the disability community to see how they can work together)
- Extreme home makeover TV show for universal access
- Public service signage similar to “This highway brought to you by the ADA”
- Public service announcement at the beginning of a video or DVD
- Seal of approval decal similar to that used by AAA; decals that say, “We welcome service animals”

In particular, participants recommended using emerging technologies, including the following:

- Cell phone ads
- Podcasts
- Internet ads
- Standard symbols for online maps that indicate which of the nearby businesses on the map are accessible (in partnership with Web sites that provide maps and directions, such as MapQuest and Yahoo)
- Mobile GPS systems. Some companies advertise on the GPS systems in cars (such as OnStar) so that when you are getting directions, they tell you about nearby businesses. It might be possible to include information on nearby businesses that indicates whether or not they are accessible.

Business participants suggested a number of business- and industry-related communication channels, including these:

- Business networks
- Trade publications, articles in trade magazines
- Trade groups, including some not commonly thought of (e.g., Stadium Managers Association, International Association for Assembly Managers)
- Professional associations, student associations (the California Bar Association requires that lawyers take a continuing education course on bias)
- Business associations (local, not industry-specific)

A number of suggestions emerged for “specialty” strategies or informational materials that target specific subpopulations, such as these:

- Magazine articles aimed at teens and youth
- Wedding magazines
- “The Golden Rules for PWDs” video and other videos—send them out to HR offices and HR conventions; make them available on the Web so they can be downloaded
- An easy-to-read book on universal design principles that nonarchitects could understand and follow
- Fact sheet on how to hire an architect
- Boilerplate language for leases, contracts, and so on (as part of a toolkit for businesses)
- Emergency planning materials
- Teacher training
- National disability curriculum for use in general education

Focus Groups with Business Owners

In an effort to obtain additional information on stakeholder awareness of the ADA—and to assess the appeal and effectiveness of messages developed for previous information campaigns—two stakeholder dialogue groups (focus groups) were held with local business owners in Hilo, Hawaii. Participants in these groups were small business owners as defined under the requirements of the Title III Public Accommodations section of the ADA.

This focus group research was essential to the strategic planning of the Easy Access prototype campaign. Public information campaigns are most effective if they use messages tailored to the existing knowledge, motivations, and behaviors of a specific target population. Campaigns that lack a clear target audience must take into account

large differences in what people know, how they feel, and how they behave; such campaigns often lack focus and clarity. When a public information campaign tries to speak to everyone at once, it is not likely that it will communicate effectively to anyone.

The stated purpose of these focus groups was to obtain input on (1) what stakeholders know—and do not know—about the ADA; (2) how business owners get information about the ADA and related topics; and (3) stakeholder reactions to messages about the ADA. A Topic Guide was designed to guide the discussion and probe for participants' opinions regarding videos, print materials, and slogans intended to improve awareness and understanding of the ADA. Focus group participants discussed questions that included these:

- How knowledgeable do you think you are about the ADA?
- Where would you go to look for more information about the ADA?
- What is the hardest thing about understanding or implementing the ADA?
- For each information piece reviewed:
 - What seemed to be the main message of this piece?
 - What did you like about this? Why?
 - What did you not like about this? Why?
 - Which methods of disseminating this would best reach the community of small business owners/operators?
- For each slogan reviewed:
 - Which of these gets across the most important message?
 - What do you like about this slogan? Why?
 - What don't you like about this slogan? Why?

Knowledge of the ADA

All the small businesspeople in the focus groups were familiar with the ADA to some extent, citing knowledge of the recent refitting of a school to comply with the ADA (with the addition of ramps and repainting of yellow zones) and the need to modify a downtown business doorway that was not wide enough. A construction company owner had experience with building plans that included wheelchair access, and other participants reported having learned about the ADA through their work situations (as a teacher or pharmacy worker) or personal experiences (in the community technology center, for example).

Sources of Information about the ADA

Focus group participants used a variety of sources for information about the ADA, especially downtown associations, Rotary and other service clubs, chambers of commerce, newsletters from industry associations, and local small business associations (although one person felt that a local 500-member small business organization was not as informative about the ADA as it could be). Several reported relying on contractors and architects with whom they worked for information about the requirements of the ADA. Other information sources cited were online sources, the county information phone line, and Federal Government listings in the phone book.

ADA Knowledge Gaps

Participants reported difficulties with understanding or implementing the ADA owing to a lack of information about “how it is enforced” or a lack of clarity about the law’s requirements (who is required to comply, what happens if there is a change of ownership of the business, etc.). One person reported being confused by seeing “lots of empty handicapped parking stalls.” Several said they simply didn’t know where to get information.

Reaction to Messages about the ADA

The focus groups also provided the opportunity to test information materials about the ADA from previous campaigns by the Department of Justice (DOJ) and get participants’ reactions to the different types of media, messages, and slogans. Participants’ reactions included the following:

Myths and Facts

Participants were given a few minutes to look over a 1½-page excerpt from DOJ’s *Myths and Facts*. The message of this printed piece was understood by participants as follows:

- The ADA is intended to benefit people with disabilities rather than punish businesses.
- The ADA is willing to work with business owners.
- The ADA is common sense. If you own a business, make it open to everyone.
- The ADA is easy to comply with and is “not the big bad wolf.”
- “There are not a lot of teeth in the ADA.”

What they liked about the piece was that it “cleared up misconceptions” and dispelled common myths in plain language and with a sense of humor. They disliked that it seemed wordy and would be difficult for English language learners to read (although one person thought it was “easy to skim”). They suggested revising the format of the piece to include bold headings and color, to make it more “flashy.” They thought it would be a good piece

for a business association to distribute. Other suggestions were to promote it on the radio, as a news report, or to include it on a Web site.

Ten Small Business Mistakes

Participants viewed segments from this DOJ video and reported the following as the messages they understood or took away from the piece:

- It is not “overbearing” to comply with the ADA.
- Tax incentives are available.
- You could miss out on a lot of business if you don’t comply.

What they liked about the piece was that it was visually stimulating, informative, and used plain language. They also liked that it included images of real people with disabilities struggling with barriers: “That could be me.” They disliked the headshots of people talking, and thought it went on a little too long. They suggested using the video to do a workshop about the ADA.

ADA Accessibility Checklist

Participants were asked to look quickly at this piece, and were asked questions without being allowed time for reading it. What they liked about the piece was the amount of detail on specific measures that could be taken to achieve ADA accessibility. They also liked that it said right up front that checking off the items on the checklist was “not the be-all and end-all.” They disliked how long it was (“Divide it into sections”) and thought that some of the language (e.g., “stable”) was vague. They thought it could be disseminated by having a local business association give it to all members and to new members as they join.

Small Business Guide

Participants were asked to look quickly at this piece, and were asked questions without being allowed time for reading it. They liked that they were shown ideas for building design; for example, pictures of what different entrances look like and what would/wouldn’t work. They disliked that it was too long and too much to read.

Slogans

The facilitator explained that a slogan can be a useful public relations tool, giving the example of “Click it or ticket” (the seat belt campaign, with which all participants were familiar). Participants looked at several slogans from past ADA information campaigns and discussed what they liked and disliked about each. They noted that none of the slogans included a direct reference to ADA, which they considered to be a negative. Other opinions about the slogans reviewed included these:

- “Enable the Disabled”: Some participants felt this could be seen as insulting, and one thought that the word “enable” was not right because it suggested the negative connotations of “enabling.”
- “Accessibility is an open door for everyone”: This was considered to be inoffensive, but too long and “not too catchy.” An alternative might be “Open door for everyone,” or the local slogan, “The ADA—We all need it.”
- “Bridging the Gap Leaves No One Behind”: Both “bridging the gap” and “leaves no one behind” are clichés, and the latter reminded people of “No Child Left Behind,” which has a negative connotation, especially for teachers.
- “Open Doors Open Lives”: This reminded some participants of preschool literacy programs. Suggested alternatives to improve the syntax were “Opening Doors Will Open Lives” or “Opening Doors Opens Lives.”
- “Accessibility – It’s Just Good Business”: This was considered straightforward, simple, and familiar, although somewhat clichéd. One person suggested substituting, “It’s Just Good Sense”; another, who liked the phrase, “It’s Just Good Business” suggested adding “Cents” to that phrase.

Other ADA-related Information

The participants took a brief look at strategies and materials from other countries regarding disability rights, to see if any were relevant to developing the prototype for the ADA public information campaign. These included—

- OUCH Web site. The Web site (www.bbc.co.uk/ouch/) is sponsored by the British Broadcasting Corporation (BBC) for people with disabilities; it contains multiple opportunities for sharing information, including podcasts, a monthly online talk show, a blog, a message board, an e-newsletter, and downloadable articles and other documents.
- The Gateway Web site. Gateway is the Web site (www.gateway-uk.org) of a group in the UK that is working to give people with visual disabilities better access to library and information services. Intended to serve as a one-stop resource, the Web site provides information on all accessible library services available and how they can be accessed, as well as information from libraries on how they have improved their services to meet the needs of people with visual disabilities. Gateway has a helpdesk, reachable by phone or e-mail, that serves as a single contact point for library staff and people with visual disabilities.
- The Disability Debate. The Disability Rights Commission (DRC) is an independent statutory body in the United Kingdom that is responsible for tackling disability discrimination. To “put disability equality at the heart of public policy” and to create a new agenda for government and the community, the DRC sponsors the Disability Debate on a dedicated Web site (www.disabilitydebate.org). The debate encourages public input, online polls, forums, and other public discourse on the need for disability equality and on the DRC’s 10 priorities for change. On January 30, 2006, the DRC

launched a £1.2M national poster, press, radio, and online campaign: “Are We Taking the Dis?” The campaign aimed to show how society’s “low expectations culture” condemns many people with disabilities or long-term health conditions to poverty, unfair treatment, and marginalization.

Conclusions

The following conclusions are based on focus groups that evaluated the knowledge, motivational, and behavioral issues related to ADA implementation among small business owners. These research findings are supplemented by a review of previous efforts to seek compliance with the ADA.

- Most small business owners are aware of the ADA, but few have an in-depth understanding of how to comply with it, and few know where to go for step-by-step help to make their businesses more accessible.
- Some businesses are unaware that the law applies to them.
- Few are aware of the business opportunities that compliance provides.
- Fear of compliance expenses and government litigation probably result from insufficient or incorrect knowledge.
- Detailed knowledge of how to comply is not enough; you need to be motivated as well.
- Many small business owners may lack motivation to seek more detailed information on the ADA.
- Past efforts (e.g., in San Francisco and Chicago) to bring about change in ADA compliance behavior were not successful, perhaps because they focused on education without the benefit of engineering and enforcement, or because they didn’t adequately sell the smart business and easy access messages. Or perhaps the messages were not sold from a variety of different perspectives. The prototype involves different types of players delivering the messages in different voices, including the voices of small business owners themselves.
- The sheer number of U.S. businesses makes forced compliance difficult.
- The law itself insists on persuasion and negotiation before litigation.

Assessment of Previous ADA Public Information Campaigns: Implications for a Prototype Campaign

The third formative research activity was to review strategies government agencies and other entities have used in the past to educate the public about the ADA, in order to identify effective approaches and potential pitfalls in developing a public information campaign for improving the implementation of the ADA. Figures 3 and 4 summarize the strategies analyzed and assess their strengths and weaknesses. The examination included

specific materials used to educate the public about the ADA; descriptions and assessments of these materials are presented in Figures 5 and 6.

Figures 2, 4, and 6 include a preliminary assessment of the implications of the different analyses conducted in developing a prototype public information campaign to improve awareness and knowledge of the ADA. The following section presents the most important of these implications for each of the key components of the conceptual framework.

Campaign Goals

A state-of-the-art public information campaign must identify the overall goal (or goals) that it seeks to accomplish. Findings relevant to establishing the goal of this campaign include these:

- Information about the ADA is available, but the people who need it may not know how to obtain or use it. A goal of the campaign is to increase awareness of and/or disseminate existing materials.
- A number of participants in the stakeholder dialogues indicated that although a lot of information is available, it is not detailed enough or specifically tailored to their needs. Another goal may be to create more useful and usable information for specific target populations.
- The increased visibility of people with disabilities, accessible buildings, curb cuts, and so on in recent years has contributed to changes in awareness and attitude, and an attitudinal foundation exists (although it is not large) on which to build. A goal might be to build on the current general awareness that people with disabilities are a part of the community and enjoy many of the same activities as everyone else.

Defining the Target of the Campaign

Defining a target population focuses the campaign (like a laser) and facilitates decisions about which media to use when communicating the message. Because the ADA includes many different provisions that affect many different entities and aspects of daily life, defining the target of this campaign also involves identifying a specific topic focus as well as a target population. On the basis of the issues raised and strategies identified for addressing them, and mindful of the advantages of defining specific target populations, the project team has identified implementation of Title III by small businesses as an appropriate focus for developing a prototype public information campaign. Title III lends itself to this purpose—architectural barriers and guidelines for removing them have been well defined; public accommodations can benefit from expanding their customer base to include the disability community; and, because public accommodations are visible to the community at large, their increased efforts to create access increase disability awareness among the general population. Targeting small businesses not only addresses covered entities identified as being in need of better access to good information but also offers the

opportunity to achieve greater access to public accommodations in small towns and rural areas, as well as in the cities that are served by both large and small businesses.

The small business community will be the primary target population for the campaign; however, it may not be the only target. For example, business owners voiced frustration about relying on architects and the building permit process to ensure that construction and remodeling efforts are in compliance; in some cases, architects and planning department staff are not fully knowledgeable about the relevant regulations and building codes. This suggests that architects and those who review blueprints and building permits might be a secondary target audience. People with disabilities might be another important secondary audience, as their understanding of the business community's obligations can be important to support effective implementation in their own communities.

Setting Objectives

The way to tell that a public information campaign has accomplished its overall goal (or goals) is by establishing measurable objectives, preferably ones that specify a change over the course of the campaign. While it may not be feasible to collect data to measure effectiveness as part of the prototype campaign, it is important to recommend measures that might be included in a scale-up of the campaign for full implementation.

Defining Messages

The formative research elicited existing awareness and knowledge of the populations that are the focus of the campaign, provided suggestions for message design, and helped develop communication strategies that will resonate with the target populations. Important themes that emerged as potential messages for the campaign include these:

- With businesses, emphasize the benefits of compliance with the ADA, such as increased customer base and positive customer experience for everyone, not just for people with disabilities.
- The theme of universality is not only important, it is a winning strategy— everyone benefits from implementation of the ADA, not just people with disabilities.
- Personalize the message and bring it home so the audience can identify with it.
- Look for ways to minimize “us vs. them” and emphasize that the ADA provides opportunities for everyone.

Based on the summary message points above, the following message strategies were developed. In campaign communication products, messages regarding ADA compliance were developed from the small business owner's viewpoint and from what the research says about the important knowledge, motivational, and behavioral issues. For example, research findings from stakeholder dialogues and focus groups showed that messages

such as “people with disabilities are a significant market” and “ADA compliance really isn’t that hard” are attractive and compelling.

Research also suggested that using a combination of carrots and sticks—with more emphasis on the carrot than the stick—can be effective. Carrots include the business revenues and positive public image small business owners can enjoy if they make the effort to improve access for people with disabilities. The campaign can tell small businesses that providing access is not necessarily expensive and can have a very big payoff for them. The prototype campaign can also use the stick of informing the small business owner about the risks of not complying with the ADA, including litigation, boycotts, and poor public image.

The Message: “Access Is Good Business”

As with any other marketing effort, the best way to sell an idea is to focus on the benefits. For selling ADA compliance to small business, this is a relatively easy job, as the benefits are many. For example—

- Making a small business accessible increases the number of customers who can use the business and increases gross sales and profits. Providing access for customers with disabilities can mean a significant market increase. People with disabilities are a very large market: They are at least 20 percent of all potential customers; this percentage will climb to 25 percent by 2020. Americans with disabilities have a collective annual income of \$1 trillion and \$175 billion in discretionary spending power.
- Making a business accessible creates a competitive advantage over other businesses that do not have access, because it creates opportunity for customers and because it makes the business a good citizen in the local community.
- People with disabilities are likely to become loyal repeat customers of a business that welcomes them and makes it easy for them to do business. This is ideal for small businesses that offer personalized service.
- People with disabilities are likely to offer endorsements to people they know (and perhaps, through message boards and blogs, even to people they don’t know) and bring in more customers through a “ripple effect.” Word-of-mouth endorsement from satisfied customers is the single most powerful marketing tool in any business.

The Message: “It’s Easier Than You Think”

Small business owners may have fears and prejudices that result from lack of knowledge, especially with regard to the cost of providing access to their businesses. They may not know that the ADA takes business costs into account, requiring only that businesses make readily achievable changes that they can accomplish without much difficulty or expense. They may not realize that small businesses may stretch their limited resources by phasing changes in over a period of years rather than attempting to make them all at

once. Many also are unaware of tax incentives that help small businesses cover the expenses associated with compliance.

- The Easy Access campaign tells small business owners that resources devoted to compliance are an investment in increasing their customer base, just like other types of marketing investments they make.
- Small businesses may fear litigation if they start down the path toward increasing access but don't get it just right. The Easy Access campaign tells small business owners that litigation is the instrument of last resort, after all persuasion and negotiation fails, and that most complaints are resolved through negotiation.

The Message: “It’s the Law”

With an emphasis on carrot rather than stick strategies, the Easy Access campaign includes “It’s the Law” as a secondary theme rather than making it a central message. The small business community must realize that the law does apply to them, even if they are not currently aware of customers with disabilities seeking to access their products and services.

Branding

A number of themes are emerging from the research that suggest a role for branding in this prototype campaign. For example—

- Frequent mention of the fact that the target audience doesn't know how to find the information they need or how to determine which information is accurate suggests branding as a way to label or identify current, accurate information that the audience can rely on to steer them toward compliance and greater access.
- A strong theme emerged regarding the value of embedding ADA information in the information the audience already receives about related topics. One possible strategy is to include some form of branding (such as a marginal logo) that flags ADA-related information enclosed in materials such as business license or tax information, OSHA compliance materials, applications for building permits, and so on.
- The idea of a seal of approval for promoting accessible services/businesses lends itself to branding as a way of supporting increased public awareness and widespread acceptance of the symbol.

Media-Audience Mix

One of the most important considerations in identifying the most appropriate media for a specific audience is taking into account the sources the audience already turns to for similar or related information. Using existing information channels is one of the most efficient means for disseminating information, and one of the most effective. For example, small businesses often look to their neighborhood business associations for

information on legal issues and ideas for reaching specific market segments. Providing a PowerPoint presentation to neighborhood associations and civic clubs might be a good match of media with audience.

Matching media to the audience also involves assessing the quantity and level of detail to be disseminated. Small business respondents indicated an interest in two different needs: (1) very focused small bites of information about where information can be found and (2) detailed information about specific requirements. The latter would obviously be best delivered using a different medium and communication channel than the former.

Emerging Communication Technologies

Participants in the stakeholder dialogues recommended using a range of different types of emerging technologies to take full advantage of current trends in information flow. The following are some of the suggested technologies:

- Cell phone ads
- Podcasts
- Internet ads
- In partnership with Web sites that provide maps and directions, such as MapQuest and Yahoo, standard symbols that indicate which of the nearby businesses on the map are accessible.
- Mobile GPS systems. Some companies advertise on the GPS systems in cars (such as OnStar), so when you get directions, they tell you about nearby businesses. It might be possible to have additional information on the businesses that indicates whether or not they are accessible.

Timing

The sequencing and timing of program components is key to the successful execution of a public information campaign. When the formative data has been gathered, the next step is to take that information and develop specific goals and objectives for the campaign. The time frame for developing the prototype campaign did not allow for full implementation or testing the effectiveness of the campaign, but those steps are described in the prototype, including suggestions for who might implement the campaign and how long it might take to launch.

Globalization

The impact of globalization on increasing cultural and ethnic diversity is one U.S. trend that needs to be addressed directly in the development of the campaign. It is probably most practical to design the prototype to reach broad multicultural audiences rather than

being segmented to reach different cultural groups. Even when designing a cross-cultural campaign, there are a number of important considerations, including these:

- Use of clear language that is not too heavily laden with slang, idioms, or other language that is difficult for non-native English speakers to understand or difficult to translate.
- Use of multicultural images rather than showing only middle-class white Americans.
- Use of bilingual or translated materials to reach audiences of English language learners.
- Focusing the message on concepts that are universally accepted and understood, and avoiding cultural bias or culture-specific concepts.

Figure 1. Situation Analysis: Stakeholder Knowledge of the ADA				
Data Source	Stakeholders Involved	Knowledge of ADA	Gaps in Information/Awareness	Implications for Public Information Campaign
Stakeholder Dialogue Feb. 10, 2006 (Sacramento, CA)	Disability community	All were very familiar with issues related to the ADA	Participants did not have significant knowledge gaps themselves, but felt that other stakeholders lacked adequate knowledge or were completely unaware	<ul style="list-style-type: none"> • The increased visibility of people with disabilities, accessible buildings, curb cuts, etc., have increased awareness and shifted attitudes – build on this attitudinal foundation • Don't assume that people with disabilities are necessarily familiar with the ADA • Identify ways to include disability issues with other issues related to equity and fairness
Stakeholder Dialogue April 7, 2006 (Washington, DC)	Disability community	All were very familiar with issues related to the ADA	Participants did not have significant knowledge gaps themselves, but felt that some PWDs (e.g., people with psychiatric disabilities) are unaware of the ADA or unaware that it applies to them	<ul style="list-style-type: none"> • Critical to build bridges with the aging community • Counteract negative media portrayals of PWDs • Educate public entities about “nonwheelchair issues” and their liability if they don't serve all PWDs • Promote coordination between government and nongovernment sources of ADA information • Highlight the universality of the ADA • Promote disability awareness and destigmatize disability
Stakeholder Dialogue Feb. 21–22, 2006 (San Francisco)	Title III Large businesses, business associations, and Title II entities	All were familiar with issues related to Title III of the ADA	Operational information that relates to the ADA is entirely missing from internal sources such as company intranets	<ul style="list-style-type: none"> • Few people know how to find and use information that is available – consider making it a focus of the campaign to increase awareness of existing materials and/or disseminate existing materials more widely • Business community responds to “pushed” information rather than to information they must seek out
Stakeholder Dialogue	Title III	All were familiar with “the basics” of Title III	Businesses have insufficient information	Information about how to find information on ADA topics relevant to small businesses would

Figure 1. Situation Analysis: Stakeholder Knowledge of the ADA				
Data Source	Stakeholders Involved	Knowledge of ADA	Gaps in Information/Awareness	Implications for Public Information Campaign
Feb. 23–24, 2006 (San Francisco)	Small businesses, business associations		to achieve compliance or to determine whether or not they're in compliance	be very useful
Stakeholder Dialogue May 2–3, 2006 (Chicago)	Title III Large businesses, business associations, and Title II entities	All were familiar with “the basics” of Title III	<ul style="list-style-type: none"> • Business owners don't know what they must do • Businesses don't know when they've done enough 	<ul style="list-style-type: none"> • Need clearer guidelines and information, perhaps industry-specific, telling businesses clearly what is required • Tell businesses and employers how they can get the business of the disability community • Offer newsletter/magazine items to trade associations
Stakeholder Dialogue May 4–5, 2006 (Chicago)	Title III Small businesses, business associations	All were familiar with “the basics” of Title III	<ul style="list-style-type: none"> • Businesses don't know if they're in compliance or not • Confusion exists about difference compliance requirements (ADA, state building codes, ANSI standards, ADAAG requirements, standards for new vs. older buildings, etc.) • Small businesses run by immigrants need information and education about ADA and civil rights of PWDs • PWDs either don't 	<ul style="list-style-type: none"> • Need to get people to understand that the ADA is more than a building code; access is about enabling PWDs to interact with all aspects of a business • Message should come from the stakeholder group itself (e.g., business to business), not from the outside • Reach out to people of color in a way that takes into account how their culture receives information • Emphasize that PWDs are consumers • Frame ADA message as being about inclusion in general, not just a special consideration for PWDs

Figure 1. Situation Analysis: Stakeholder Knowledge of the ADA				
Data Source	Stakeholders Involved	Knowledge of ADA	Gaps in Information/Awareness	Implications for Public Information Campaign
			<p>know the ADA exists or assume it covers everything</p> <ul style="list-style-type: none"> • Architects don't know about universal design • Lots of information and resources out there, but "it's not getting out on the street" 	
Stakeholder Dialogue April 4–5, 2006 (Washington, DC)	Transportation Public and private providers, transportation associations	All were extremely familiar with the ADA and how it related to their services and programs	Paratransit requirements are still unclear to some providers	<ul style="list-style-type: none"> • Focus on universal improvements for a system, not on "handicapped only" accessibility • The public (especially people with disabilities) should understand that different providers have different obligations under ADA (e.g., Greyhound does not have the same obligations as Amtrak)
Stakeholder Dialogue May 8, 2006 (Washington, DC)	Title IV Telecommunications	<ul style="list-style-type: none"> • Companies covered by Title IV mandates are well acquainted with their obligations • Outreach to the deaf and hard of hearing has generally been successful 	<ul style="list-style-type: none"> • Most people associate the ADA with accessible buildings, not accessible telecommunications • Deaf-blind individuals are largely unaware of relay services and their function • Most of the general public—and even most people with speech disabilities—do not know that STS 	<ul style="list-style-type: none"> • Nearly every relay call also involves a hearing person, so although outreach to the deaf and hard of hearing has generally been successful, there is a need to shift the focus of outreach to the hearing community • Many states have budgets for outreach, but these are inconsistent and often inadequate – need to pool resources, develop templates, etc. • Lots of information out there already, but it's all over the place – need a portal for information about Title IV

Figure 1. Situation Analysis: Stakeholder Knowledge of the ADA				
Data Source	Stakeholders Involved	Knowledge of ADA	Gaps in Information/Awareness	Implications for Public Information Campaign
			relay services exist • Information needed about how to file a complaint (e.g., coaching or a template)	
Stakeholder Dialogue April 18–19, 2006 (San Francisco)	Title I Employers	All were familiar with the basics of Title I	• Need to know how to carry out the law with their employees: “We have all the information about what needs to be done, we just need help in how to do it” • Lack of information about “how to respond” due to lack of infrastructure (e.g., no legal or HR department)	• Most employers <i>want</i> to accommodate people with disabilities, but have fears that must be addressed, for example, • Cost of ADA compliance (although some employers worry more about the cost of making a change than about the actual cost of ADA compliance) • Risk of “going too far” and then having to go that far with all other employees • If employers feel that they’re getting something in return, they have less fear • Communicate that accommodations should be part of a flexible workplace, not an “extra” for PWDs
Stakeholder Dialogue May 16–17, 2006 (Houston)	Title I Employers	All were familiar with the basics of Title I Employers felt that the ADA was just one of the many laws they must deal with	• Employers and employees are not motivated to learn about the ADA • Employers have limited familiarity with the range of accommodations • PWDs don’t know enough about the law to advocate	• Provide information about the ADA as a basic human resources management skill • Emphasize both “human capital” and the bottom line; show real-life examples of employees with disabilities who meet the bottom line • Normalize the depiction of disability in all areas of life and through all types of media (e.g., TV shows) • Use alternative forms of “media” (BBB, chambers of commerce, Rotary Clubs, mayors’

Figure 1. Situation Analysis: Stakeholder Knowledge of the ADA

Data Source	Stakeholders Involved	Knowledge of ADA	Gaps in Information/Awareness	Implications for Public Information Campaign
			<p>effectively for themselves</p> <ul style="list-style-type: none"> • False information abounds (e.g., “You can’t fire an employee with a disability”) • Disability awareness courses needed in colleges and business schools 	<p>offices, etc.)</p> <ul style="list-style-type: none"> • Partner with job boards (Monster, HotJobs, etc.) to provide information to employers about potential employees with disabilities
Focus Groups November 5 and November 10, 2005 (Hilo, Hawaii)	Small businesses	<p>All were moderately familiar with the ADA</p> <p>Specific points noted: Buildings should be physically accessible (recent refitting of a school to comply with the ADA was cited) Aware of accessible parking spaces in town</p>	<ul style="list-style-type: none"> • What responsibilities they have if they have no current customers with disabilities • Where to get information • How ADA is enforced • The fact that the ADA is more than architectural barriers • Business tenant vs. landlord responsibilities • Disability etiquette: When is it okay to offer to help a customer who has a disability? 	<ul style="list-style-type: none"> • Emphasize the message that people with disabilities are a huge customer base • Businesses need to know some ADA basics: <ul style="list-style-type: none"> ○ ADA applies whether businesses currently serve customers with disabilities or not ○ Businesses are responsible for access whether they own property or not ○ ADA is about civil rights
Focus Groups November 15, 2005 (Reno, NV)	State Judges	All were familiar with the ADA and with relevant state laws	No need for specific knowledge of ADA unless a case is brought	ADA/disability rights law is a highly specialized area of law; hence, the target audience for detailed information about the law is small

Figure 1. Situation Analysis: Stakeholder Knowledge of the ADA

Data Source	Stakeholders Involved	Knowledge of ADA	Gaps in Information/Awareness	Implications for Public Information Campaign
		Specific points noted: All were very familiar with issues related to accessibility of courts Associated ADA with physical accessibility and disability rights	before them; none had yet seen a case based on state law	(primarily attorneys who have an ADA/disability rights practice)

Figure 2. Situation Analysis: Media and Messages for ADA Public Information Campaign

Data Source	People Involved	Information Sources	Recommended Primary Communication Channels for the ADA	Ideas for Public Information Campaign
Stakeholder Dialogue Feb. 10, 2006 (Sacramento, CA)	Disability community	<ul style="list-style-type: none"> • Personal communication • Government Web sites • Online news, blogs, Internet search engines, other Web resources • Libraries – critical source of information and computer access, especially in rural areas • Trade publications, magazines, newsletters • Employer workshops and trainings 	<ul style="list-style-type: none"> • National media campaign/celebrity spokesperson • Magazine articles aimed at teens and youth • Articles in trade magazines • Educational programs and teacher training (e.g., national disability curriculum) • Disability awareness month • Web mechanism/search engine to organize ADA- and disability-related search terms 	<ul style="list-style-type: none"> • Emphasize universal design concepts; show the benefits of accessibility for people who do not have disabilities • Get past the “us vs. them” model, and emphasize common needs and goals instead • Establish partnerships with affinity organizations such as disabled veterans organizations, teachers’ associations • Dispel myths that people with mental and developmental disabilities pose a danger • Ally ADA with related causes, such as the environment (“If it’s not accessible, it’s not green”) • Show that people with disabilities come in all forms; do product advertising using models with disabilities • Target youth, using technologies such as text messaging, podcasts, Internet ads, and perhaps cell phone ads • Highlight model businesses in promotional campaigns • Access is good business; access equals profit
Stakeholder Dialogue April 7, 2006 (Washington, DC)	Disability community	<ul style="list-style-type: none"> • Sources at work • Blogs (e.g., Ragged Edge, Sam Bagenstos) • Google alerts • DBTACs 	<ul style="list-style-type: none"> • Web sites and blogs • Disability history month • Educational programs (e.g., include disability awareness in 	<ul style="list-style-type: none"> • Focus on universality of message: The ADA is good for everyone • Any entity that has ADA obligations should post what they do to meet those requirements on the Web • Need for pride in being part of the community,

Figure 2. Situation Analysis: Media and Messages for ADA Public Information Campaign

Data Source	People Involved	Information Sources	Recommended Primary Communication Channels for the ADA	Ideas for Public Information Campaign
			diversity curriculums)	but don't allow it to create separateness, further stereotypes <ul style="list-style-type: none"> • Send message to kids – self-perception is critical
Stakeholder Dialogue Feb. 21–22, 2006 (San Francisco)	Title III Large businesses, business associations, and Title II entities	<ul style="list-style-type: none"> • DOJ, ADAAG, etc. • Company HR and legal departments • Attorneys' sources (e.g., law review articles) • Community identification of problems/issues 	<ul style="list-style-type: none"> • Existing business networks • Trade groups, trade publications • Books/articles for laypeople (e.g., universal design for non-architects) • Celebrity spokesperson 	<ul style="list-style-type: none"> • Focus on customer service and inclusion • Stay away from "us vs. them" ("The ADA: Providing Opportunities for Everyone") • Make sure to use high production quality • Include diverse images (not just men in wheelchairs) • Blogs and podcasts • Seal of approval promoting accessible services/businesses
Stakeholder Dialogue Feb. 23–24, 2006 (San Francisco)	Title III Small businesses, business associations	Trade associations	Small business information resources (e.g., U.S. SBA and other government agencies)	Add information on ADA to small business information resources, especially those that provide information on new legislation deemed relevant to small businesses
Stakeholder Dialogue May 2–3, 2006 (Chicago)	Title III Large businesses, business associations, and Title II entities	<ul style="list-style-type: none"> • Access Board • BNA pieces • Westlaw, Lexis, bar associations • Trade associations • Mainstream media • Informal peer networks 	<ul style="list-style-type: none"> • Trade associations • Mainstream media • Informal peer networks 	<ul style="list-style-type: none"> • Zagat restaurant ratings (soon after New Orleans Zagat added accessibility ratings, restaurants showed a clear increase in business from people with mobility disabilities) • "You [businesses] are leaving money on the table by not serving PWDs" • Accommodations don't hurt • Accommodations don't take away from anybody • PWDs spend money

Figure 2. Situation Analysis: Media and Messages for ADA Public Information Campaign

Data Source	People Involved	Information Sources	Recommended Primary Communication Channels for the ADA	Ideas for Public Information Campaign
				<ul style="list-style-type: none"> • Everybody is temporarily abled • Disability is a human rights issue • We're not all the same; we learn from one another • Accommodate, don't litigate • "I'd like to buy the world a ramp" • Access is good business • "Ramp up your profits"
Stakeholder Dialogue May 4–5, 2006 (Chicago)	Title III Small businesses, business associations	<ul style="list-style-type: none"> • Trade associations • Mainstream press • No single authoritative source of accurate information about multiple aspects of ADA compliance • Much of the material on ADA is text-based only; not useful for people with cognitive disabilities 	<ul style="list-style-type: none"> • Go to everyday places where people go (churches, etc.) • Communicate with faith-based organizations that think they are exempt from the ADA • Blogs and Internet • Q&A for small businesses on a safe Internet site • Radio is still a viable way to get messages out 	<ul style="list-style-type: none"> • "Access is a civil right" • Branding message: "Disability is Life" – similar to the "what is life" media messages (having a credit card, owning a Lexus, etc.) • Aim accessibility campaigns at children – use furry animals as marketing tools and symbols • Portray a small business owner pulling out a portable ramp, and in come customers with various mobility disabilities; pull the camera back, and numerous other businesses on the street are doing the same thing
Stakeholder Dialogue April 4–5, 2006 (Washington, DC)	Transportation Public and private providers, transportation associations	<ul style="list-style-type: none"> • Industry-specific materials • Professional meetings and conferences 	<ul style="list-style-type: none"> • Providers' Web sites • Magazine/newsletter ads for seniors and PWDs 	<ul style="list-style-type: none"> • Incorporate the idea of accessibility in all ads and outreach; get rid of "us vs. them" • Have DOT provide a chart displaying the regulations that cover each mode of transportation

Figure 2. Situation Analysis: Media and Messages for ADA Public Information Campaign

Data Source	People Involved	Information Sources	Recommended Primary Communication Channels for the ADA	Ideas for Public Information Campaign
Stakeholder Dialogue May 8, 2006 (Washington, DC)	Title IV Telecommunications	<ul style="list-style-type: none"> • FCC Web site, ADA.gov Web site (Department of Justice) • Internet, including online support groups, blogs, Google • Print media, magazines, newspapers, brochures • Deaf clubs • National Exchange Carriers Administration • ADA Information Centers • State relay business partnership programs • Word of mouth • Federal Register • PUCs • Helen Keller National Center, American Association of the Deaf-Blind 	<ul style="list-style-type: none"> • TV ads, PSAs • Captioned television • Radio talk shows • Information clearinghouses • Shopping center kiosks • Billboards • Social/religious groups, senior centers, services (e.g., when you register to vote or get a driver's license) • Web banners • Public transportation ads • Readers' Digest articles • Trade publication articles • Workshops on the ADA • Distribution of information by state equipment distribution programs • Chambers of commerce • Bathroom door ads 	<ul style="list-style-type: none"> • ADA/Title IV is not just for people with disabilities • Message to businesses: "You are going to broaden your market and make money" • A specific national outreach campaign by the FCC that includes media advertising (as the FCC did for V-chips and the "do not call" list) • Celebrity spokespeople, comedians • Relay promotes independence, control, and safety • It is a matter of fairness and equality to provide equal telephone access to everyone • Before and after ads (similar to Weight Watchers ads) • Technology can help all people • Providing communication access to disability communities adds to your bottom line – it brings consumers to your door, just like a ramp does • Job opportunities for PWDs lead to more taxpayers • Use snappy catch phrases, such as "Do you know your N11 numbers?" (referencing 911, 411, 711 relay access) or "Have you noticed that grandma doesn't answer the phone anymore?" • Messages can also focus on the family: "Give the gift of getting back on the telephone again." • People who are deaf-blind can make a phone

Figure 2. Situation Analysis: Media and Messages for ADA Public Information Campaign

Data Source	People Involved	Information Sources	Recommended Primary Communication Channels for the ADA	Ideas for Public Information Campaign
		<ul style="list-style-type: none"> • TV, radio, PSAs • Public transportation ads • Direct mail (from, e.g., telephone companies) 	<ul style="list-style-type: none"> • Coloring books for children • Telephone bill inserts 	call
Stakeholder Dialogue April 18–19, 2006 (San Francisco)	Title I Employers	<ul style="list-style-type: none"> • Society for Human Resource Management (SHRM) • JAN (questions about resources, where to find tools, equipment, accommodations, etc.) 	<ul style="list-style-type: none"> • Personal interactions • Bus ads, bumper stickers, billboards, posters, etc. • “The Golden Rules for PWDs” video: • Send out to HR offices, conventions for HR administrators, etc. • Make available on Web so it can be downloaded • TV and newspaper ads • Educational programs for high school students (e.g., EEOC Youth at Work program) 	<ul style="list-style-type: none"> • Promote universality message – make your business friendly to PWDs, and it’s more friendly to everyone; flexibility in the workplace benefits everyone, etc. • Promote message that PWDs are people first • Portray people with various disabilities in the uniforms of various occupations • Develop/promote an ADA Web site • Create a symbol that brands the ADA; use symbol to identify a location as being open to people of all abilities • Use Internet in creative ways (e.g., blogging) • Put PSAs on wireless services • Airline magazine articles • News stories • Ads, brochures, booths at professional conferences • Leverage other funding for PR campaign
Stakeholder Dialogue May 16–17, 2006 (Houston)	Title I Employers	<ul style="list-style-type: none"> • Professional publications • Accreditation newsletters 	<ul style="list-style-type: none"> • Normalized media and popular entertainment portrayals of PWDs (i.e., job and social 	<ul style="list-style-type: none"> • “ADA-tude” • “It’s what I can do for you” • TV ad campaign showing various PWDs doing everyday jobs, ending with a statistic about X

Figure 2. Situation Analysis: Media and Messages for ADA Public Information Campaign

Data Source	People Involved	Information Sources	Recommended Primary Communication Channels for the ADA	Ideas for Public Information Campaign
		<ul style="list-style-type: none"> • DBTACs • Internet, including ADA.gov Web site • Peer networking • Legal and HR information sources 	<p>interactions with PWDs as colleagues and friends)</p> <ul style="list-style-type: none"> • E-mail • Trade shows and exhibits • Trainings, presentations • Broadcast media • Small businesses need SCORE or SBA to work with them • The best way to get messages to legal and HR people is through continuing education • Team up with critical political or business forces and produce joint communications 	<p>million PWDs working in this country over an image of the entire country</p> <ul style="list-style-type: none"> • Bracelets, other trends • Get big company sponsors to include ADA logo on their products (co-branding) • Send “nuggets” of information to the media (e.g., weekly tip sheets or story ideas) – give them the leads, the contact info, the basic story, etc. • Create a media guide with specific information sources to turn to whenever a disability issue or link comes up • Get home repair shows to show accessibility remodels • PWDs as employees make businesses successful; PWDs are capable and effective employees; PWDs as employees add value • “The disabled job force: ready, willing and able” • Market tax incentives, value of human capital • Advertise on Monster, HotJobs, etc. • Publicity for good ADA implementation/collaboration • Accommodations are not necessarily expensive • Show what would happen if PWDs were taken away from the workforce – show a table with many people around it at work, then have people start disappearing, leaving just a few people to continue the work

Figure 2. Situation Analysis: Media and Messages for ADA Public Information Campaign

Data Source	People Involved	Information Sources	Recommended Primary Communication Channels for the ADA	Ideas for Public Information Campaign
				<ul style="list-style-type: none"> • Create an information clearinghouse for employers on insurance implications of the ADA; Market a model insurance plan with Blue Cross/Blue Shield, Aetna, etc.: “We don’t exclude any of your workers”
Focus Groups November 5 and November 10, 2005 (Hilo, Hawaii)	Small businesses	<ul style="list-style-type: none"> • Architects and contractors • Customers with disabilities 	<ul style="list-style-type: none"> • Local business associations • Online resources • County/Federal Government listings in phone book • Architects and contractors 	<ul style="list-style-type: none"> • Use visuals/graphics that show what good ramps, doorways, etc., look like • Keep written materials short • TV commercial with “Contact your DBTAC” message • Provide specifics (e.g., ADA Accessibility Checklist) • Provide mail inserts, presentation materials for business associations, Rotaries, etc. • Create downloadable videos
Focus Groups November 15, 2005 (Reno, NV)	State judges	Administrative office for accommodations for courtrooms	Westlaw’s research tab on the ADA	<ul style="list-style-type: none"> • Develop formal training and information for judges who need to develop expertise in ADA/disability rights law

Figure 3. Strategies Used to Educate the Public About the ADA

Information/Outreach Strategy	Implemented/ Conducted By	Target Audience	Focus (Aspect of ADA)	Purpose	Desired Outcome / Action	Information Channels / Mechanisms
Department of Justice ADA Technical Assistance Programs <ul style="list-style-type: none"> • ADA Speakers Bureau • ADA Information Line • ADA Technical Assistance CD-ROM • ADA Online Course • ADA Materials Available Online • ADA Mediation Program 	DOJ ADA TA Program (ADA Mediation Program now operates under a contract with the Key Bridge Foundation)	General public, particularly employers and the business community	All aspects, especially employment	Provide TA on ADA requirements, DOJ regulations, and architectural design standards	Increased compliance with DOJ regulations and ADA requirements	<ul style="list-style-type: none"> • Toll-free ADA Information Line 800-514-0301 800-514-0383 (TTY) • Free CD-ROM • Free publications • Online course at: www.ada.gov/reachingout/intro1.htm
ADA & IT Technical Assistance Centers 10 regional centers provide TA to PWDs and people with ADA responsibilities. Mandate also includes “public awareness,” addressed via online information resources for the media. Also known as DBTACS (Disability and Business Technical Assistance Centers)	Funded by U.S. ED’s National Institute on Disability and Rehabilitation Research (NIDRR)	<ul style="list-style-type: none"> • Business community • State/local governments • Disability community • The media 	<ul style="list-style-type: none"> • Employment of PWDs • Public services • Public accommodations • Communications 	<ul style="list-style-type: none"> • Provide TA, education and training, materials dissemination, referral networks, and training 	Improved accessibility for PWDs	<ul style="list-style-type: none"> • Toll free phone 800-949-4232 (V/TTY) • Online resources www.adata.org • Print materials
ADA Document Portal						

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www.adaportal.org						
DisabilityInfo.gov Federal interagency collaborative effort to build a one-stop interagency Web portal and comprehensive online resource to provide people with disabilities with the information they need	Coordinated by U.S. DOL Office of Disability Employment Policy (ODEP)	<ul style="list-style-type: none"> • PWDs and their families • Employers • Service providers • Other community members 	All aspects of ADA	One-stop resource to provide PWDs with information on all subjects	Improved opportunities for PWDs in all areas	One-stop Web portal and online resource http://disabilityInfo.gov
Employer Assistance and Recruiting Network (EARN) National toll-free telephone and electronic information referral service. Service became available to the public March 2001.	Service of ODEP	<ul style="list-style-type: none"> • Employers 	Employment of PWDs	<ul style="list-style-type: none"> • Help employers locate and recruit qualified workers with disabilities • Provide TA on general disability employment-related issues 	Employment of PWDs	<ul style="list-style-type: none"> • Toll-free phone 866-EARN NOW (327-6669) • Web site www.earnworks.com
Job Accommodation Network (JAN) Comprehensive information source providing information and practical ideas on job accommodations, self-employment, small business opportunities, ADA compliance,	Free service of ODEP	<ul style="list-style-type: none"> • Employers • Employment providers • People with disabilities, their family members • Other 	Employment of PWDs	Facilitate the employment and retention of workers with disabilities	Employment, including self-employment and small business ownership, of PWDs	Web site www.jan.wvu.edu

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Information/Outreach Strategy	Implemented/ Conducted By	Target Audience	Focus (Aspect of ADA)	Purpose	Desired Outcome / Action	Information Channels / Mechanisms
and related subjects. Founded in 1983; providing ADA information to employers since it went into effect (1992)		interested parties				
DOL Women's Bureau (WB)	Collaboration with ODEP	Women with disabilities who are interested in self-employment	Employment of PWDs	Facilitate the self-employment of women with disabilities	Women with disabilities obtain self-employment	Print materials (fact sheets) and Web site materials www.dol.gov/wb/welcome.html
Office of Small Business Programs (OSBP) Vendor outreach sessions (at least two procurements) ----- Training targeted for veterans with disabilities in the new small business procurement initiatives	DOL	Businesses owned by PWDs ----- Veterans with disabilities (both service- and non-service-connected)	Employment of PWDs	Facilitate the employment of people with disabilities	Business owners and veterans with disabilities obtain employment	FedBizOpps Web site
Olmstead Project Jointly conducted by Independent Living Research Utilization (ILRU) project and Brain Injury Association, Inc. (BIA)	Joint ED, HHS, and DOL project In FFY 2000 and 2001, ED-OSERS offices (NIDRR, RSA,	Selected cross-disability leaders and advocates to be trained to work with state staff to develop, implement, and	<i>Olmstead</i> decision	Promote grass-roots advocacy by training a core group of cross-disability leaders to help states implement	Trained grassroots advocates provide states with TA on their state plans for consumer-directed home/	Training/staff development

Figure 3. Strategies Used to Educate the Public About the ADA

Information/Outreach Strategy	Implemented/ Conducted By	Target Audience	Focus (Aspect of ADA)	Purpose	Desired Outcome / Action	Information Channels / Mechanisms
	and OSEP) pooled funding to support this project	evaluate their comprehensive state plans		<i>Olmstead</i>	community- based services for people with significant disabilities	
Regional Rehabilitation Continuing Education Programs (RCEPs): University of Arkansas San Diego State University Training includes learning objectives to ensure that rehabilitation professionals and community organizations have a working knowledge of the <i>Olmstead</i> decision and its applicability to the VR process.	Funded by RSA Rehabilitation Training Program	<ul style="list-style-type: none"> • VR and IL professionals • Community organizations 	<i>Olmstead</i> decision	Develop training on <i>Olmstead</i> implementation for VR and IL professionals and community organizations	<ul style="list-style-type: none"> • Increased capacity of VR programs & CILs to serve potential consumers and coordinate w/ other agencies • Increased staff ability to recognize potential consumers’ needs and offer effective intervention strategies 	Training/staff development
Office for Civil Rights (OCR) TA to states in undertaking efforts to develop plans for community integration, as outlined in <i>Olmstead</i> .	U.S. ED Office for Civil Rights (OCR)	<ul style="list-style-type: none"> • States • Disability and aging communities 	<i>Olmstead</i> decision	Help states implement <i>Olmstead</i>	Increased access to consumer- directed home/communi- ty-based	TA from ADA experts at OCR headquarters and regional offices, and from external

Figure 3. Strategies Used to Educate the Public About the ADA

Information/Outreach Strategy	Implemented/ Conducted By	Target Audience	Focus (Aspect of ADA)	Purpose	Desired Outcome / Action	Information Channels / Mechanisms
					services for people with significant disabilities	experts on long-term care.
Center for an Accessible Society A communications clearinghouse that provides journalists with credible information and quotable sources on national disability policy and independent living issues	Funded by NIDRR from October 1999 through May 2004	Journalists	Disability and independent living issues	Provide disability issues information for journalists	Focus public attention on disability and IL issues	Web site www.accessible-society.org/casindex.shtml
HHS Fact Sheets for Consumers	HHS National Mental Health Information Center	PWDs	Access to services and to protection and advocacy	Provide information on rights to people with MI	Improved services for people with MI	“Know Your Rights” FAQs and resource guide
HHS Technical Assistance to States HHS-CMS has created a repository of Promising Practices in Home and Community-Based Services (HCBS) to highlight state efforts that enable people of any age who have a disability or long-term illness to live in the most integrated community setting appropriate to their individual support requirements and preferences, exercise meaningful choices, and obtain quality services.	HHS Centers for Medicare and Medicaid Services	<ul style="list-style-type: none"> • States • Disability and aging communities 	<i>Olmstead</i> decision	<ul style="list-style-type: none"> • Maximize use of existing Medicaid authority to promote community participation and employment for PWDs • Strengthen community long-term supports for implementing 	Increased opportunities for PWDs to enjoy community living, community participation, and productive employment	Series of reports on promising practices in home- and community-based services Located at www.cms.hhs.gov/PromisingPractices/HCBSPPR/list.asp#TopOfPage

Figure 3. Strategies Used to Educate the Public About the ADA

Information/Outreach Strategy	Implemented/ Conducted By	Target Audience	Focus (Aspect of ADA)	Purpose	Desired Outcome / Action	Information Channels / Mechanisms
				<i>Olmstead</i>		
<p>Assistive Technology (AT) Act projects</p> <p>The AT Act of 1998 provides grants to states to provide information, training, awareness, TA, and materials related to the benefits, availability, and uses of assistive technology. The 56 AT Act projects have been operational since 1989.</p>	Administered by NIDRR	PWDs, their families, and representatives	Independence of individuals with disabilities	Increase access to and provision of AT services and devices	Improved independence of PWDs	AT Act projects

Figure 4. Assessment of Strategies Used to Educate the Public About the ADA			
Information/Outreach Strategy	Strengths	Weaknesses/ Information Gaps	Implications for Public Information Campaign
Department of Justice ADA Technical Assistance Programs	<ul style="list-style-type: none"> • ADA Speakers Bureau provides expert speakers at national/regional conferences and training sessions • All materials provided free • Documents on the CD-ROM are provided in a variety of formats, to enable people with disabilities and others to gain easy access, translate materials to Braille, or use screen readers • The CD-ROM is designed for use on computers without high-speed Internet access • Online course is divided into 10 lesson modules to fit into a busy schedule 	Vast amount of material on Web site might seem overwhelming	<ul style="list-style-type: none"> • Make materials available in multiple formats for maximum accessibility for PWDs. • Remember that not everyone has high-speed Internet access or the latest version of common software. • Take advantage of existing conference and training sessions.
ADA and IT Technical Assistance Centers (DBTACS)	<ul style="list-style-type: none"> • Each DBTAC works closely with local businesses, and with government, rehabilitation, disability, and other professional networks to provide ADA information and assistance • Useful media kit 	Provides materials upon request; not proactive	Encourage collaboration with local businesses, and with government, rehabilitation, disability, and other professional networks to provide ADA information and assistance.
DisabilityInfo.gov	One-stop center for resources on all issues relevant to PWDs	Vast amount of material on Web site might seem overwhelming	Make sure that Web sites containing a great deal of information are easy to navigate and that links, cross-references, etc., are clear and easy to use.
Employer Assistance and Recruiting Network (EARN)	<ul style="list-style-type: none"> • Prominently advertises the message “What EARN Can Do for You” • Connects employers looking for 	Job seekers have no direct access or interface, must go through an employment	Don’t make acting on the information received too complicated or time-consuming.

Figure 4. Assessment of Strategies Used to Educate the Public About the ADA			
Information/Outreach Strategy	Strengths	Weaknesses/ Information Gaps	Implications for Public Information Campaign
	quality employees with skilled job candidates	service provider. It may be necessary for a job seeker to go through several steps to find a provider who receives postings from EARN employers or to have his/her current provider become part of EARN.	
Job Accommodation Network (JAN)	<ul style="list-style-type: none"> • Good print materials, e.g., “Practical Guides” for employers and employees on reasonable accommodation under the ADA • SOAR (Searchable Online Accommodation Resource) for exploring workplace accommodation options by moving through a 5-step process that includes FAQs and links to additional information • JAN Presentation Library provides training resources for JAN users • Long-standing excellent reputation, well-known in the field 	No significant weaknesses	<ul style="list-style-type: none"> • Web sites must have searchable features. • Ideally, Web sites will have interactive features. • Take advantage of name recognition, good reputation, and credibility of known entities in the field—link from their Web sites, solicit testimonials and references.
DOL Women’s Bureau (WB)	Comprehensive, detailed Web site with many topics of interest	Recent changes to the Web site have made it difficult to find previously bookmarked materials on employment of women with disabilities	<ul style="list-style-type: none"> • Web sites must be easily searchable • Careful, professional maintenance of Web sites is important; take care when updating materials or changing links.
Office of Small Business Programs (OSBP)	Detailed, specialized information	No significant weaknesses	Information sources for specialized audiences can be more detailed and focused than those for the general public.
Vendor outreach sessions			

Figure 4. Assessment of Strategies Used to Educate the Public About the ADA			
Information/Outreach Strategy	Strengths	Weaknesses/ Information Gaps	Implications for Public Information Campaign
(at least two procurements) ----- Training targeted for veterans with disabilities in the new small business procurement initiatives			
Olmstead Project	<ul style="list-style-type: none"> • Collaboration across relevant agencies • Cross-disability focus • Provides how-to information on developing, implementing, and evaluating state plans • Meets important need for ADA information 	No significant weaknesses	<ul style="list-style-type: none"> • Importance of meeting stated information needs. • Value of providing how-to information. • Having a cross-disability focus for the overall campaign is important, although there may be components of the campaign that focus on just one disability group.
Regional Rehabilitation Continuing Education Programs (RCEPs)	Comprehensive training for VR and IL professionals	No significant weaknesses	Information sources for specialized audiences can be more detailed and focused than those for the general public.
Office for Civil Rights (OCR)	Large, comprehensive, central location for ADA information	No significant weaknesses	Make sure that Web sites containing a great deal of information are easy to navigate and that links, cross-references, etc., are clear and easy to use.
Center for an Accessible Society	<ul style="list-style-type: none"> • Good coverage of topics • Links to Expert Sources • Enough detail for journalists to understand issues in depth yet does not overwhelm them with more than they need 	Outdated material, broken links due to end of funding	<ul style="list-style-type: none"> • Web links or other connections to Expert Sources is a great idea. • Important to pay attention to level/amount of detail provided; it needs to be just right for the intended audience. • Might be useful not only to note that Web sites or other information materials are fully accessible but also to provide

Figure 4. Assessment of Strategies Used to Educate the Public About the ADA			
Information/Outreach Strategy	Strengths	Weaknesses/ Information Gaps	Implications for Public Information Campaign
			information on what makes them accessible.
HHS Fact Sheets for Consumers	Know Your Rights materials are clear, concise, and up to date	No significant weaknesses	Make sure resource lists are easily updatable so they always remain current.
HHS Technical Assistance to States	<ul style="list-style-type: none"> • Promising Practices Reports are brief (usually 2–3 pages) • Reports are focused on discrete components of home- and community-based service systems, such as person-centered planning, eligibility systems, or personal assistance services • Reports are intended to disseminate timely information on program and policy innovation 	No significant weaknesses	According to CMS, “these reports are intended to stimulate HCBS program changes, spark creative ideas, and serve as a launching pad for the next generation of program innovations”—good objectives for an information campaign.
Assistive Technology (AT) Act projects	Detailed, specialized information	No significant weaknesses	Information sources for specialized audiences can be more detailed and focused than those for the general public.

Figure 5. Materials Used to Educate the Public About the ADA						
Material	Developed/ Disseminated By	Target Audience	Aspect of ADA Focused On	Purpose	Desired Outcome / Action	Type of Material/How Obtained
<i>ADA Technical Assistance CD-ROM</i> Department of Justice ADA Technical Assistance Programs	DOJ ADA TA Programs	General public, particularly employers and the business community	All titles	Provide TA on ADA requirements, DOJ regulations, and architectural design standards	Increased compliance with DOJ regulations and ADA requirements	CD-ROM www.ada.gov/adatacd1.htm or by phone
<i>ADA Checklist for Barrier Removal</i> Department of Justice ADA Technical Assistance Programs	Adaptive Environments Center; DOJ ADA TA Programs	Business community	Title III	Provide TA on making existing facilities accessible	Improved accessibility to public accommodations	Document www.usdoj.gov/crt/ada/checkweb.htm
<i>Myths and Facts about the Americans with Disabilities Act</i> Department of Justice ADA Technical Assistance Programs	DOJ ADA TA Programs	<ul style="list-style-type: none"> • Business community • State and local governments 	All titles	<ul style="list-style-type: none"> • Increase understanding of the ADA • Dispel some common misconceptions about the ADA's requirements and implementation 	Covered entities make increased efforts to comply	Online document www.usdoj.gov/crt/ada/pubs/mythfct.txt

Figure 5. Materials Used to Educate the Public About the ADA

Material	Developed/ Disseminated By	Target Audience	Aspect of ADA Focused On	Purpose	Desired Outcome / Action	Type of Material/How Obtained
<i>ADA Guide for Small Businesses</i> Small Business Administration and Department of Justice	DOJ ADA TA Programs	Small businesses	Title III	<ul style="list-style-type: none"> • Help small business achieve compliance 	<ul style="list-style-type: none"> • Small businesses take an active role in ensuring their own compliance • Improved accessibility to public accommodations 	Document www.usdoj.gov/crt/ada/smbusgd.pdf
Ten Small Business Mistakes Department of Justice ADA Technical Assistance Programs	DOJ ADA TA Programs	Small businesses	Titles I and III	<ul style="list-style-type: none"> • Increase understanding of the ADA • Dispel some common misconceptions about the ADA's requirements and implementation 	Covered entities make increased efforts to comply	Online video www.usdoj.gov/crt/ada/videogallery.htm#anchor10mistakes990
ADA Tax Incentive Packet for Businesses U.S. Attorney General's Office	DOJ	Business community	Title III	Increase awareness of tax incentives for increasing accessibility	Covered entities make increased efforts to comply	Text or PDF document www.usdoj.gov/crt/ada/taxpack.htm

Figure 5. Materials Used to Educate the Public About the ADA

Material	Developed/ Disseminated By	Target Audience	Aspect of ADA Focused On	Purpose	Desired Outcome / Action	Type of Material/How Obtained
<i>Reaching Out to Customers with Disabilities</i> Department of Justice ADA Technical Assistance Programs	DOJ ADA TA Programs	Business community	Title III	<ul style="list-style-type: none"> • Help businesses increase their PWD customer base • Increase awareness of PWDs as a valued customer base. 	Increased business from customers with disabilities	Online course www.ada.gov/reachingout/intro1.htm
<i>Expanding Your Market: Customers with Disabilities Mean Business</i> Civil Rights Division, Department of Justice	DOJ, Civil Rights Division, Disability Rights Section	Business community	Title III	Increase awareness of PWDs as customer base	Increased interest among businesses in attracting customers with disabilities	Online document www.usdoj.gov/crt/ada/busstat.htm
<i>Media Kit</i> ADA & IT Technical Assistance Centers (DBTACs)	Funded by U.S. ED's National Institute on Disability and Rehabilitation Research (NIDRR)	The media	General	<ul style="list-style-type: none"> • Provide content for reporters • Provide insights about positive ways to present PWDs in the media 	Publish positive stories about PWDs and the ADA	Online resources www.adata.org

Figure 5. Materials Used to Educate the Public About the ADA

Material	Developed/ Disseminated By	Target Audience	Aspect of ADA Focused On	Purpose	Desired Outcome / Action	Type of Material/How Obtained
<i>Employer Newsletter</i> Employer Assistance and Recruiting Network (EARN)	Service of U.S. DOL Office of Disability Employment Policy (ODEP)	Employers	Employment of PWDs	<ul style="list-style-type: none"> • Help employers locate and recruit qualified workers with disabilities • Provide TA on general disability employment-related issues 	<ul style="list-style-type: none"> • Increase knowledge of employment issues • Keep referral and contact information handy 	Electronic newsletter www.earnworks.com
<i>E-News</i> Job Accommodation Network (JAN)	Free service of ODEP	<ul style="list-style-type: none"> • Employers • Employment service providers 	Employment of PWDs	Facilitate the employment and retention of workers with disabilities	<ul style="list-style-type: none"> • Increase knowledge of accommodation issues • Keep information handy 	Electronic newsletter www.jan.wvu.edu
<i>Your Rights Under the Americans with Disabilities Act</i> Office for Civil Rights (OCR), HHS	HHS Fact Sheets for Consumers, OCR	PWDs	Access to services, and to protection and advocacy	Provide information on the ADA's protection of civil rights	Increased awareness of rights among people with disabilities	On OCR/HHS Web site www.hhs.gov/ocr/ada.html

Figure 5. Materials Used to Educate the Public About the ADA

Material	Developed/ Disseminated By	Target Audience	Aspect of ADA Focused On	Purpose	Desired Outcome / Action	Type of Material/How Obtained
<i>Accessibility and Businesses and Service Providers Web page</i> DisabilityInfo.gov	Federal interagency collaborative effort to build a one-stop interagency Web portal and comprehensive online resource	<ul style="list-style-type: none"> • PWDs and their families • Employers • Service providers • Other community members 	Civil rights, education, employment, housing, health, income support, technology, transportation, and community life	Increase awareness of ADA access issues and provide implementation information to Title III entities.	Increase access to public accommodations and services	Web site http://disabilityinfo.gov/digov-public/public/DisplayPage.do?parentFolderId=212
<i>Access Currents</i> U.S. Access Board	The Access Board is an independent federal agency devoted to accessibility for people with disabilities.	<ul style="list-style-type: none"> • Attorneys • Advocates • Others involved in implementing the ADA 	Is very broad and addresses all titles. Focuses mostly on the legal aspects of compliance	Disseminate up-to-date information on compliance issues	Increase compliance	Electronic newsletter www.access-board.gov/news/Access%20Currents/General.cfm
<i>Providing Quality Services to Customers with Disabilities</i> DOL Office of Disability Employment Policy	ODEP	<ul style="list-style-type: none"> • Businesses that provide public accommodations • Direct customer service staff 	Title III (although some of the tips are transferable to contact with PWDs in other contexts)	<ul style="list-style-type: none"> • Increase understanding of how to effectively interact with customers with disabilities • Increase awareness of the size of the customer base 	<ul style="list-style-type: none"> • Increase access to public accommodations • Improve quality of services to PWD 	Online document www.dol.gov/odep/pubs/ek98/provide.htm

Figure 5. Materials Used to Educate the Public About the ADA

Material	Developed/ Disseminated By	Target Audience	Aspect of ADA Focused On	Purpose	Desired Outcome / Action	Type of Material/How Obtained
<i>Myths and Facts</i> DOL Office of Disability Policy	ODEP	Employers	Title I	<ul style="list-style-type: none"> • Increase understanding of the ADA • Dispel some common misconceptions about the ADA's requirements and implementation 	Reduce discrimination in the workplace	Online document www.dol.gov/PrinterFriendly/PrinterVersion.aspx?url=http://www.dol.gov/odep/pubs/fact/ada.htm
<i>Public Accommodation Awareness Web site</i> Wheel Me On	<i>Wheel Me On</i> is a nonprofit organization dedicated to promoting greater access for people with disabilities.	PWDs and their families	Public accommodations	Increase awareness of Title III issues and encourage increased access	Encourage PWDs to patronize accessible services and advocate for increased access	Online document www.wheelmeon.org/accommodations.html

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Appendix F – Summary of ADA Implementation Recommendations by Targeted Audience

I. Employment (Title I)

Recommendations for Congress

- Congress must enact legislation that reverses the Supreme Court decision narrowing the definition of disability so individuals with disabilities who were intended to be covered by the law are again eligible to use it to challenge discrimination.

Recommendations for Educational Institutions and Accreditation Organizations

- As a requirement for accreditation of programs that prepare students for careers in management and business, organizations such as the Association to Advance Collegiate Schools of Business should include course content or courses that explore the principle of workplace flexibility—and why it is beneficial to employers and employees alike—and that introduce the concept of reasonable accommodation for people with disabilities as a template for workplace flexibility.
- Workplace Flexibility 2010—an initiative of Georgetown University Law Center that supports the development of a comprehensive national policy on workplace flexibility at the federal, state, and local levels—should increase attention to the concerns facing workers with disabilities.
- Accreditation bodies such as the Association to Advance Collegiate Schools of Business should require as a condition for accreditation that a disability curriculum module be incorporated in professional training programs related to business administration, leadership, and management. The module should contain elements on the requirements of Title I of the ADA, disability awareness, and the inclusion of people with disabilities in discussions of workplace diversity.

Recommendations for Federal Agencies

- The Equal Employment Opportunity Commission should develop partnerships with public agencies such as employment development departments; Department of Labor One-Stop Career Centers; state departments of rehabilitation; and national, state, and local disability organizations to develop training modules and deliver targeted training to job seekers and employees with disabilities. Modules should be developed that recognize and respond to the specific and unique needs of subgroups of people with disabilities, such as youth, workers seeking entry-level employment, reentering workers, older workers, and individuals who are changing careers. Training should enable people with disabilities to understand their ADA employment rights and should promote skills and methods whereby they can use this

information to advocate for themselves successfully during all aspects of the job search, as well as in the workplace. Training should be offered as an ongoing service of the collaborating agencies and organizations.

- The Office of Disability Employment Policy (ODEP) of DOL should collaborate with leaders in the field of mentoring—such as the National Mentoring Partnership and Netmentors—to identify methods to ensure that youth with disabilities are fully included and accommodated in all mentoring programs, and that mentoring program staff receive appropriate ADA training and information to ensure that they have the capacity to meet the needs of youth with disabilities.
- The EEOC, DOL, SBA, and other federal agencies concerned with employment of people with disabilities should acknowledge the substantial need for ADA training by employers at all levels and should join forces to create a campaign that responds to this need. Such an initiative must have adequate financial resources and the commitment of key federal agency, business, and industry leaders; associations; and trade unions. The goal would be to foster commitment to a systematic, nationwide, annual ADA and disability awareness training for boards of directors, management and human resources staff, union stewards and representatives, and others involved in the hiring and retention of workers. The initiative could be launched in concert with an existing public awareness campaign focused on promoting workplace diversity that includes employees with disabilities. The initiative should develop training modules that
 - are targeted to specific industries (for example, health care, hospitality, manufacturing);
 - contain a complete package of substantive ADA information and materials, handouts, and multimedia resources;
 - contain materials and recommendations for presenting updates throughout the year that can be delivered by e-mail, Web site referral, and newsletters, and that can be integrated with other ongoing training provided by the employer or union;
 - are easily obtained from a Web site; and
 - are available in alternative formats.
- The SBA should establish partnerships with disability organizations and institutions of higher education to develop and add an ADA Title I training course to its roster of free online courses for small businesses. The SBA should sponsor local and regional ADA Title I trainings as an ongoing element of its national training seminars for small businesses.
- The SBA should identify methods to ensure that participants in the SCORE project—retired executives who advise small businesses—possess adequate knowledge of the employment provisions of the ADA, and incorporate this knowledge and information when they consult with small business owners and executives.
- The DOL Office of Disability Employment Policy (ODEP) should identify methods to promote the message that people with disabilities represent a significant pool of available labor that can be drawn upon to fill jobs when there are labor shortages.

- ODEP should consider new ways to expand advertising and promotion of the services of the Job Accommodation Network (JAN) and to educate employers about the availability of the service. ODEP should ensure that funding for JAN meets the demand for its services.
- The Government Accountability Office (GAO) should update its 2002 tax credit study (which was based on 1999 business tax returns) to determine whether businesses have increased their use of the tax credits and other incentives related to hiring individuals with disabilities. On the basis of the study results, the IRS—in consultation with relevant federal agencies, businesses, and disability community representatives—should make recommendations to NCD and Congress for changes in the tax credit system, which could include increasing the credits as an incentive to improve employment opportunities for people with disabilities.
- The IRS and other federal agencies concerned with implementation of the ADA should launch an educational campaign that informs businesses about the financial incentives and tax credits associated with hiring individuals with disabilities. This information should be widely disseminated in tax filing information and through other channels to small and large business networks, the U.S. Chamber of Commerce, local and regional chambers, online sources, unions, and disability organizations.
- The EEOC should step up its efforts to ensure that business partners in the Youth at Work program proactively identify, reach out to, and include youth with disabilities in all their activities.
- The EEOC, DOL, SBA, and other federal agencies concerned with employment of people with disabilities; business trade and membership organizations such as regional chambers of commerce and the Society for Human Resource Management (SHRM); and disability organizations should collaborate to develop and disseminate model policies for establishing entity-wide funding mechanisms that can be used by divisions, departments, and cost centers to pay for accommodations. These models should include provisions for compensating managers for the time they spend identifying and acquiring accommodations, so that time allocations for these tasks can be calculated accurately and factored into long-range financial planning. The models should promote the principle that providing accommodations is a standard and ordinary cost of doing business.
- The EEOC, SBA, DOL, SSA, IRS, and other federal agencies concerned with enforcement of the ADA and employment of people with disabilities should collaborate with large Internet job boards such as Monster, HotJobs, and others of similar size and scope on methods to increase awareness of the ADA by employers and methods to encourage increased outreach to and hiring of people with disabilities. Areas for collaboration could include the following:
 - Development of an online column featuring information of interest to employers and job seekers alike (e.g., examples of effective accommodation, hiring and tax incentives, Ticket to Work).
 - Adding informational resources for employers and job seekers alike, such as the Job Accommodation Network, location and function of the One-Stop Career Centers, and Frequently Asked Questions about ADA rights and responsibilities.

- EEOC, DOL, and other federal agencies concerned with implementation of the ADA and employment of people with disabilities should foster methods whereby employers such as those who participate in business leadership networks and organizations such as SHRM and the National Association of Workforce Boards (NAWB) can engage in peer-to-peer discussions about ADA implementation. The goal is for business leaders themselves to demonstrate that the ADA can be implemented in a meaningful way and to illustrate by example the beneficial outcomes of implementation, which will serve as a model for others.
- EEOC, DOL, and other relevant federal agencies concerned with employment of people with disabilities should explore the feasibility of establishing a national alternative dispute resolution program, possibly in connection with existing private mediation services, that would help employers and people with disabilities resolve workplace disputes related to ADA rights and responsibilities. Financing could be secured from a combination of public funding and private subscription fees from businesses.
- The federal agencies charged with improving employment opportunities for people with disabilities should convene a working group of agency leaders, disability leaders, insurance company representatives, and others to develop strategies to address the impact on working people with disabilities of decreasing benefits from employer-sponsored health care insurance. Subjects for discussion should include the increasing prevalence of benefit caps on durable medical equipment and restrictions on mental health services and prescription drugs.

Recommended Research Topics for ADA Federal Enforcement Agencies

- Key federal agencies charged with a role in enforcement of the ADA (for example, EEOC and the Departments of Justice, Health and Human Services, and Education) should establish a center of excellence either within the agency or through a qualified contractor. Each center's mission would be to conduct research and collect information about effective methods of ADA implementation related to the agency's sphere of concern, rigorously evaluate those methods to determine their quantifiable impact on people with disabilities, and report and widely disseminate results that will serve as models. Specifically, the centers established to evaluate Title I implementation practices should build collaborative relationships with businesses, which could include providing technical assistance and other incentives to help them develop methods to collect relevant data, for example, on the effectiveness of procedures for requesting job accommodations, the number and type of requests, and outcomes. (The EEOC's employment best practices research with nine state governments is an example of the type of initial work that is needed.)

Recommendations for Government and Business Organizations, Associations, and Unions

- The U.S. Chamber of Commerce, state and local chambers, fraternal organizations such as Rotary International and Lions Clubs, and national trade and membership associations such as the Society for Human Resource Management (SHRM) should proactively disseminate information to their members and partners about the ADA and employment generally. These

organizations should specifically announce, promote, and disseminate training modules developed in response to the annual ADA training initiative previously discussed.

- Trade union leaders should proactively disseminate information to representatives and stewards about the ADA and employment, and should specifically announce, promote, and disseminate training modules developed in response to the annual ADA training initiative previously discussed. Unions should be encouraged to promote training at worksites where they represent workers in order to build capacity to solve problems and prevent them from escalating.
- The U.S. Chamber of Commerce, regional and local chambers, and national trade and membership associations such as SHRM should proactively include people with disabilities in all informational and promotional materials, including podcasts, listservs, and other relevant online discussions of topics with broad interest to the business community.
- The National Conference of State Legislators should work with national disability organizations and employers to develop and adopt a position that urges members to propose state legislation that would require anyone who either receives a promotion or accepts a job requiring supervision of others to undergo mandatory training on the ADA, just as certain states currently require such training on sexual harassment. (*Supra* note 3.)

Recommendations for City and County Governments

- When businesses apply for a new license, or renewal of an existing business license, they should receive basic information about the ADA and where to obtain additional information.
- Cities and counties should consider placing funds collected from fines when people park illegally in spaces designated for drivers with disabilities in an accommodation pool.

Recommendation for Disability Advocacy Groups

- Disability advocacy groups should educate state legislators about the impact on working people with disabilities of private health insurance coverage limitations and should advocate for legal and policy reforms at the state level that prohibit coverage caps for durable medical equipment and other necessary services.

II. Public and Private Transportation (Title II and III)

Recommendations for Congress

- Congress should provide additional resources for enforcement of the ADA transportation provisions. Additional staff to conduct complaint investigations, additional funds for ADA compliance reviews, and funding for a complaint reporting mechanism could have a real impact on implementation.

Recommendations for Federal Agencies

- The Department of Transportation should work with the Department of Education to include training on riding public transportation as a component in Individualized Education Programs (IEPs) of students with disabilities. Vocational rehabilitation clients should also receive training on public transportation skills.
- DOT should distribute periodic announcements that the ADA allows paratransit providers to exceed the regulation limit of 50 percent of capacity to be dedicated to their subscription service, if the demand is present, as long as there are no capacity constraints on the service.
- The Access Board should consider whether visual announcements should be required when audible announcements are present on buses, in trains, and on train platforms.
- Federal Transit Administration rules for the New Freedom Initiative should not preclude voucher and volunteer driver programs, which have been effective in bringing additional transportation to rural areas.

Recommendation for States

- When an over-the-road vehicle is licensed, the licensing agency should include information with the license that explains the ADA requirements for that type of vehicle.

Recommendations for Transit Agencies and Operators

- ADA Transportation providers should harness the power of their riders with disabilities to report information about ADA implementation and compliance problems with drivers, equipment, and service through brochures and posters giving riders information on their rights and how to reach the provider's ADA compliance office.
- Transit agencies should include ADA training for boards, managers, and politicians as well as frontline staff who are delivering service.
- As a condition of the program, contracts between transit agencies and taxis that participate in an ADA paratransit service using a voucher system or other arrangement must include mandatory training on the ADA for the taxi service provider.
- Transit agencies should provide strong oversight of drivers and other staff responsible for stop announcements.
- Transit agencies should use progressive discipline in cases of operator failure to announce required stops.
- Transit agencies should initiate secret rider programs to assess compliance with the ADA stop announcement provisions.
- Transit agencies should acquire equipment such as lapel and sleeve microphones to help drivers announce stops.

- To improve securement of mobility equipment in transit vehicles, transit agencies should institute voluntary programs to install securement straps, if needed, on riders' wheelchairs and to mark the wheelchairs' best securement points.
- Transit agencies should encourage use of the fixed-route service by offering incentives such as free or reduced-fare rides on the fixed-route system, discounts to local venues for fixed-route riders, and symbolic awards such as tickets and dinner passes for former paratransit riders who are now using the fixed-route service.
- Paratransit programs should investigate whether offering same-day taxi voucher rides in combination with next-day service leads to reduced costs.
- Transit agencies should equalize the salary and benefits of their fixed-route and paratransit drivers as much as possible, and provide them with the same or similar training components. If possible, operators should have experience driving in both systems rather than only one.
- Transit agencies should recognize and compensate their paratransit managers at a level equal with other management positions in the agencies.
- Transit agencies should award contracts according to best value, not necessarily the lowest bid.
- Transit operators should communicate information on elevator outages using a variety of accessible methods. Examples include a centralized phone system to report out-of-service elevators, signage at each station to provide information on elevator service throughout the system, system-wide announcements made over a public address system when an elevator goes into or out of service, and sending an e-mail to a list of interested riders if a particular elevator is out of service.

Recommendations for Independent Transportation Research

- Document the extensive unmet needs of people with disabilities for transportation.
- Document the social and financial benefits of an accessible, integrated society. For example, when transportation and other services are not available, institutionalization can be the result, at a high cost to the individual and society.
- Document the hidden costs to people with disabilities of the lack of transportation or of transportation systems that are not in compliance with the ADA.
- Research best practices in paratransit contracting.
- Research the reasons companies purchase wheelchair-accessible taxis. Are there specific incentives that motivate the purchase?
- Document the link between stable transit agency personnel and the quality of transit service.

III. Public Accommodations (Title III)

Recommendations for Federal Agencies

- The Department of Justice should devote substantially more resources and time to investigate Title III complaints, especially those regarding small businesses, in light of widespread noncompliance by these covered entities.
- Key federal agencies and private community development organizations should convene an experts meeting to explore methods for using various sources of community development funding—such as the community investment tax, small business administration loans, Federal Emergency Management Agency (FEMA) disaster relief funding, and community development block grants—to help bring about ADA compliance changes. This could be accomplished by requiring ADA compliance as a term and condition of funding, which would be supported with some financial help from the funding agency toward achieving the required accessibility features and by dedicating specific amounts of money from development funds to accomplish high-priority barrier-removal projects in the target communities.
- Decision makers from key federal agencies charged with implementing the ADA should convene to explore methods to advance the principles of universal design beyond what is currently being supported by the National Institute on Disability and Rehabilitation Research (NIDRR).
- The U.S. Small Business Administration should establish partnerships with disability organizations and institutions of higher education to develop and add an ADA Title III training course to its roster of free online courses for small businesses. The SBA should also be urged to sponsor local and regional ADA Title III training as an ongoing element of its national training seminars for small businesses.
- The SBA should identify methods to ensure that participants in the SCORE project—retired executives who advise small businesses—are provided with information about the Title III public accommodation provisions of the ADA, and incorporate this knowledge and information when they consult with small business owners and executives.
- The SBA, in collaboration with participating lenders, should require ADA compliance as a term and condition of eligibility for small business loans. In concert with this requirement, the SBA should provide additional low-interest loan assistance to businesses to help them provide the required accessibility features.
- The federal agencies that have ADA implementation and enforcement roles should join in a collaborative effort to fund a substantial nationwide ADA training initiative for people with disabilities. Training should accomplish the following:
 - Increase ADA awareness in low-income communities.
 - Raise awareness among people from diverse racial and ethnic backgrounds.
 - Develop advocacy capacity among youth.
 - Increase awareness of the ADA’s potential to increase independence and community participation among seniors.

- Promote leadership development.
 - Target specific areas in which ADA implementation has lagged behind (for example, health care and small businesses).
- Each key federal agency charged with a role in enforcement of the ADA (for example, the Departments of Justice, Health and Human Services, Education, Labor, and Transportation) should establish a center of excellence, either within the agency or through a qualified contractor. Each center's mission would be to conduct research and collect information about effective methods of ADA implementation related to the agency's sphere of concern, rigorously evaluate the methods to determine their quantifiable impact on people with disabilities, support activities that will enhance covered entities' capacity to collect and report data on implementation activities that have the potential to become best practice models, and report and widely disseminate results.
 - NCD should undertake a robust, independent qualitative and quantitative research project that identifies ADA implementation issues related to health care institutions and providers, and should make recommendations for reform.
 - ADA federal enforcement and allied agencies (for example, DOJ, the Access Board, NIDRR) should join forces to commission research (e.g., focus groups, surveys, interviews) designed to elicit structured responses from a variety of Title III entities about the extent to which specific technical assistance and informational materials currently available from DOJ and others provide the ADA implementation guidance these entities seek. The research should include specific recommendations for content, formats, and distribution mechanisms that would meet the needs of these entities.
- DOJ and the Access Board should convene a work group composed of businesses, representatives from the disability community, disability law experts, city building officials, architects, and others with related knowledge and expertise to evaluate whether the federal interpretive guidance currently available on methods to comply with the readily achievable barrier-removal provisions of Title III provides sufficient information and detail to covered entities, and to determine whether the material should be revised or expanded. If the work group determines that new material should be created or the existing material revised, it should submit a detailed recommendation to that effect to DOJ and the Access Board.
- Federal agencies charged with ADA implementation or ensuring full community participation for people with disabilities (for example, DOJ, the Access Board, NIDRR, HHS) should form a consortium to generate funding to commission research on the following general themes:
 - Identify obstacles and barriers to implementation of the ADA's provisions related to programmatic access (for example, modification of policies and practices, provision of materials and information in alternative formats, and provision of auxiliary aids and services) by representative Title III entities such as social service organizations and health care providers, and recommend solutions.
 - Understand the extent to which the programmatic access needs of people with disabilities (for example, modification of policies and practices, provision of materials and information in alternative formats, and provision of auxiliary aids and services) are being met to enable them to enjoy or benefit from the programs

and services offered by selected Title III entities such as social service organizations and health care providers, and recommend solutions.

- The IRS should allow federal tax credits available for architectural barrier removal to be used to make existing Web sites accessible.

Recommendation for Collaboration Among Businesses, the Disability Community, and Government Organizations and Associations

- Disability community, government, and other leaders and experts in accessibility should partner with the following key organizations to identify legislative, regulatory, and other methods to embed ADA information, incentives, and, where appropriate, penalties in interactions they have with Title III covered entities:
 - National Association of State Fire Marshals: Marshals tend to be responsible for fire safety code adoption and enforcement, fire and arson investigation, fire incident data reporting and analysis, public education, and advising governors and state legislatures on fire protection. Methods should be identified and implemented that empower fire marshals, when they conduct routine fire and safety inspections, to inspect businesses and facilities for ADA-related accessible exits and paths of travel, evacuation plans, and any other ADA oversight that is relevant to fire safety for people with disabilities, and to inform the business about any problems.
 - City health departments: Department staff enforce laws and regulations that protect health and ensure safety. Methods should be identified and implemented that would empower health department officials to determine whether sanitary facilities also meet ADA accessibility requirements when they conduct routine inspections of businesses and facilities, and inform the entity about any identified problems.
 - Mortgage and construction lenders: If mortgage and construction lenders conduct plan reviews or undertake other compliance oversight as a routine part of processing a loan application for entities that would be covered by Title III, methods should be identified and implemented that would require lenders to require compliance with all applicable ADA requirements as a condition of loan approval for businesses and other covered entities. Lenders who do not otherwise conduct plan reviews or undertake other compliance oversight should provide information to prospective Title III borrowers about the ADA. State mortgage lender associations should adopt model policies on ADA compliance oversight and information dissemination that could help guide the practices of member lenders.
 - Associations of city and county government: Associations of city and county government—such as the League of Cities, National Association of Cities, and National Association of Counties—should provide leadership on the recommended initiatives related to state and local government by convening meetings with key experts, developing model policies, supporting any required legislative or regulatory initiatives, and disseminating information to members.

Recommendations for Business Organizations and Associations

- Leading business associations such as the U.S. Chamber of Commerce, Council of Better Business Bureaus, the National Federation of Independent Businesses, and the National Restaurant Association should explore initiating a new ADA education project with their members. This would involve notifying members about the ADA through mailings; providing information on their respective Web sites and at conferences and regional and national meetings; and informing them that the organization can distribute ADA implementation materials published by DOJ and other federal agencies upon request.
- The Small Business Council of the U.S. Chamber of Commerce should endorse and support the dissemination of information related to ADA implementation to Chamber members, and should identify the most effective ways the Council and the Chamber can engage in member education that comports with its mission and capacity.
- To explore the feasibility of creating a certification or seal of approval program that would indicate that a business has met its ADA barrier-removal obligations for existing buildings and facilities, the Council of Better Business Bureaus should convene a working group of stakeholder representatives, such as neighborhood business networks, individual small businesses, and representatives from the disability community. The Council should invite representatives from DOJ and the Access Board, as well as architects and other technical and policy experts familiar with barrier-removal issues in existing facilities, to serve as advisors. The group should be charged with determining the need, benefit to stakeholders, and feasibility of such a program. If it is determined that the concept should go forward, the group should recommend possible mechanisms for testing one or more program ideas in several pilot studies that include methods for evaluating outcomes. The following questions could serve as a starting point:
 - What is the purpose of the program (for example, promoting customer service, attracting customers with disabilities, avoiding liability)?
 - What are the criteria for participation?
 - What is the process for determining whether a business is eligible to participate?
 - Who would administer the program?
 - What are the qualifications of those who determine eligibility?
 - What is the frequency and process for renewal?
 - What is the cost of the program, and who pays?

Recommendations for State and Local Government

- When businesses apply for a new license, or renewal of an existing business license, they should receive information about complying with the ADA and where to obtain additional information.

- When health care professionals apply for a new license, or renewal of an existing business license, they should receive specific information about complying with provisions of the ADA that relate to health professionals.
- Cities should make incentives available to small and medium-sized businesses that want to remove architectural barriers in existing buildings and facilities by expediting the building permitting and approval process when the purpose of the project is solely to achieve accessibility. Locales routinely provide various incentives to businesses as methods to attract them to a particular neighborhood or prevent them from leaving; thus, precedent exists for expediting the permit and approval process.
- States should consider creating a credentialed access specialist program for expediting the permit and approval process, as Texas has done and California is in the process of doing. The program must have rigorous qualification and training standards, and methods to conduct ongoing evaluation of specialist knowledge and expertise. Specialists should be required to review and approve construction drawings when building permits are required, and should be trained to conduct site inspections and to advise businesses about barriers that can easily be removed.
- When a business seeks a permit to undertake a general renovation, the request should trigger an ADA compliance review so the owner will know which, if any, aspects of ADA accessibility are required. For example, the City of Chicago requires every business to pay a fee for an accessibility review each time an application is made for a building permit.
- Entities that contract for services (e.g., states and cities) should require that entities with which they contract have accessible Web sites as a requirement to receive contracts.

Recommendations for Professional Building Code, Architecture, and Related Organizations

The Building Officials and Code Administrators International Inc. (BOCA), known as the International Code Council (ICC), should amend ICC International Codes to bar the addition of non-barrier-removal items by building officials when an entity seeks a permit solely for the purpose of removing an architectural barrier that prevents the full enjoyment and participation of individuals with disabilities. California has embedded such a requirement in the state access code, which serves as a model and a precedent.

- As a condition of ongoing licensing, everyone involved in design, construction, engineering, landscape architecture, architecture, and city planning should be required to take universal design courses that include explanations of access codes and standards, and these courses should be offered through continuing education programs. Sponsorship should be provided by state and national trade and member organizations such as the ICC and the American Institute of Architects (AIA).
- The AIA should establish a task force empowered to make recommendations about activities the AIA should undertake to promote universal design, and ensure that members and others become educated on the subject, and have access to appropriate and effective resources.

- The National Architectural Accrediting Board (NAAB), American Society of Landscape Architects (ASLA), National Association of Schools of Art and Design (NASAD), and other accreditation bodies should require that schools they accredit teach a required course on universal design that includes a component that focuses on accessibility codes and guidelines. A model for this requirement is the current trend toward requiring environmentally friendly (“green”) architecture courses as a condition of accreditation.

Recommendations for Disability Community, Government, and Business Partnerships

- Local partnerships made up of community disability groups and various business associations should regularly recognize entities that have been especially successful at achieving architectural and programmatic access by publishing information about them on industry and community Web sites and in print publications, and by honoring them at public events attended by their peers.
- Key organizations concerned with ensuring that civil rights for individuals with disabilities are protected (for example, DOJ, American Diabetes Association, The ARC, National Disability Rights Network, and mental health consumer organizations) should collaborate with certain businesses (e.g., theaters, stadiums, performance centers, amusement parks) to create training and informational materials that provide practical, realistic information and guidance for businesses and entities, dispel stereotypes, and recommend policies the entities should adopt to guide their conduct if a bona fide safety risk arises. Policy guidelines must acknowledge that standards for behavior and conduct will differ according to the context and the situation, but a process must be set forth for determining whether a risk exists and whether an accommodation can be provided that will mitigate the risk.

Recommendations for Franchises

- Organizations such as the American Association of Franchisees and Dealers (AAFD), a national nonprofit trade association that defines and promotes quality in franchising practices, and the International Franchise Association (IFA), which works to increase the knowledge and professional standards of the franchising community, should work with the disability community, DOJ, and representative businesses—
 - To include ADA implementation obligations in the Fair Franchising Standards created by AAFD and the Franchise Association Code of Ethics, which is intended to establish a framework for the implementation of best practices in the IFA’s relationship with its members. The Fair Franchising Standards provide the basis for objective accreditation of franchising companies seeking the endorsement of and membership in AAFD. The Fair Franchising Seal is conferred by AAFD on franchisors who demonstrate that they meet certain standards.
 - To ensure that all franchisors require that franchisees with whom they contract meet all applicable ADA implementation obligations. These should be spelled out to the extent possible, and any necessary technical assistance or informational materials—including facility plans that include ADA access features—should be made available when the contract is finalized.

- To ensure that the annual monitoring carried out by the franchisor includes a review of ADA obligations to verify that the facility is fulfilling its architectural accessibility requirements and that it is capable of meeting the needs of customers with communication, alternative format, and other needs.
- To ensure that a business owner who sells a franchise or chain company be required to show in the sales contract that the facility meets all applicable ADA accessibility requirements.

Recommendations for Professional Medical Organizations

- The Association of American Medical Colleges (AAMC) and the Liaison Committee on Medical Education (LCME) should require that, in order to gain accreditation, medical schools increase disability knowledge and programmatic access awareness among prospective health care professionals by incorporating disability and ADA implementation issues and methods into curricula. The AAMC works to ensure that the structure, content, and conduct of medical education meet the highest standards, and accreditation by the LCME is required for schools to receive federal grants for medical education and to participate in federal loan programs.
- The Institute of Medicine of the National Academies should call for the AAMC and the LCME to require that disability knowledge and ADA programmatic access awareness be included in curricula for prospective health care professionals as a qualification for accreditation.

Recommendations for Entities That Register Internet Domain Names

- Entities that register domain names should provide Web access information to applicants and a link to World Wide Web Consortium (W3C) information about Web site accessibility.
- Entities that register domain names should require assurances that Web sites that plan to sell goods and services online will be accessible as a condition of acquiring the domain.

Recommendations for Accreditation Programs and Industry Associations

- Accreditation programs and industry associations (for example, the American Association of Museums) should require Web accessibility as a criterion for membership.
- Accreditation organizations should require educational institutions that offer information technology programs to include disability and Web site accessibility courses as mandatory curriculum requirements.

Recommendations for Nonpartisan, Independent Research Bodies

- An independent insurance research body should commission or undertake a study to determine whether it is feasible for the insurance industry to offer reduced premiums for

certain products (for example, property insurance, business interruption, and liability) as a method of rewarding ADA implementation. Such research should determine how the strategy to offer reduced premiums can be implemented and whether such action is permitted under current state legislative and regulatory schemes or if amendments would be required to state insurance laws and regulations, and should make recommendations for achieving this requirement. Research results should be widely disseminated through industry publications, on the Internet, and to DOJ.

- A nonpartisan real estate research body should commission or undertake research on selected state laws and regulations governing the sale of commercial property to determine to what extent they would permit a requirement that those who are selling commercial property disclose all known areas of ADA noncompliance, and should make recommendations for achieving this requirement. Research results should be widely disseminated through industry publications, on the Internet, and to DOJ.

IV. Telecommunications (Title IV)

Recommendation for Congress and the Federal Communications Commission

- Congress and the FCC should consider regulatory or legislative actions that include Internet-based providers in the categories of companies that must contribute to state and interstate relay support to ensure the viability of relay funding and to distribute costs fairly among all subscribers of communication services.
- The introduction of new technologies has expanded both the need and the role of equipment distribution programs. Now, along with relay users, other people with disabilities often need specialized equipment to obtain access to technology and telecommunications. Because this means that more people are competing for limited state funds, new funding sources need to be identified. Disability advocates are interested in making universal service funding available to subsidize the cost of the expensive specialized customer premises equipment (SCPE) that is needed by people with disabilities to access broadband technologies. Such “broadband bucks” would allow these people to select the accessible equipment they need to accommodate their specific disabilities.
- Congress should amend the Communications Act or the FCC should initiate a rule change regarding its provisions governing universal access. As people with disabilities migrate from the public switched telephone network to Internet-based text and video communications, state utility regulators should allow universal service subsidies that are used to defray the high costs of telephone service for low-income people—such as subsidies available under the Lifeline program (which provides a monthly discount for telephone service) or the Link-Up program (which provides a discount for initial telephone connection charges)—to help defray the costs of broadband service.

Recommendations for Federal Agencies

- The FCC should accelerate approval for new relay technologies and should establish clear guidelines to govern new technologies when they are approved.
- Rather than deal with new technologies on a piecemeal basis, the FCC should look at the big picture and chart a forward-looking course for telecommunications relay services (TRS) over the next 5–10 years that considers new mainstream technologies and that drives decisions that responds to these innovations. The communication technology that relay users now need and want is melding with the technology desired by mainstream consumers, such as videoconferencing, VoIP services, and enhanced multimedia that provides text and video. It is important to get on the technology bandwagon to ensure that people with disabilities become players in the development of mainstream technologies.
- The FCC should supplement the current TRS complaint procedure, which requires consumers to first bring complaints to the states and then—only after 180 days—to the FCC, with new procedures for Internet-based calls. This would be consistent with the FCC’s new certification process for Internet-based and video relay service (VRS) providers.
- The FCC should develop a reliable and consistent funding methodology to ensure the stability of VRS, as well as all other types of TRS. The funding mechanism currently used by the FCC for interstate relay services—especially VRS—has been in a state of flux since 2003.
- Additional oversight of Internet-based relay services is needed, either through a new structure at the FCC or through a new federal-level advisory body that can monitor Internet relay activity and provide regular feedback to the FCC on the need for revisions to the agency’s relay standards.
- Greater efforts need to be made to prosecute individuals who misuse Internet relay services. In the nonrelay context, when fraud is committed by telephone, law enforcement officials can obtain subpoenas that allow them to secure the telephone records of the alleged perpetrators. The same can be done here. At the same time, because the communication assistants (CAs) in these situations are mere conduits for relay conversations, care must be taken not to break the transparency of relay calls. The FCC currently has an open rulemaking proceeding to explore the most effective ways of curbing Internet relay misuse.
- Technical solutions are needed to automate the identification of the location of someone initiating an Internet-based relay call. This will help deter abuse, facilitate calls to 911, and permit accurate billing. The FCC should track these technical developments so they can be implemented as this function becomes available.
- An FCC rule change may be needed to require connections for outgoing and incoming relay calls that are automated to the same extent as those for conventional voice telephone calls. The technology for automatic connections through all relay modalities already exists but is not mandated by the FCC.
- The FCC has an open proceeding to determine how VRS and Internet text-based providers can best handle incoming emergency calls. At the same time, the Department of Transportation has been designated the point agency for the development and testing of next-generation technology for 911. The two agencies should coordinate with one another to ensure

that relay providers are able to accept and swiftly connect incoming calls with appropriate public safety answering points.

- An FCC rule change would be needed to enable all relay users to automatically and simultaneously be connected to both the relay service and the party they are trying to reach at the time they dial that party, so they do not need to dial the relay service first. Not having to first dial a relay number before reaching the desired party would save time and resources for both the caller and the relay service
- The FCC should clarify that all relay calls must be handled and are eligible for compensation from the Interstate TRS Fund, even when more than one type of relay service is needed to complete the call.
- Petitions requesting the FCC to mandate captioned telephone relay service and approve an Internet version of this service (filed on October 31, 2005) should be granted, because a far greater number of individuals will be able to receive functionally equivalent telephone services. Internet-based captioned telephone relay services also would eliminate the need for separate captioned telephone equipment, because users simply would be able to install software on their computers to access these services.
- The FCC should approve a global database for proxy numbers. Each Internet-based relay customer should be given a single number that can be used to receive Internet-based calls through all relay providers. Such a universal approach to numbering—by which the assigned number would be neutral with respect to both the provider and the equipment the customer uses—is commonplace for conventional telephone users. Although telephone subscribers have different local exchange companies that provide their service and telephone wiring, the telephone number that each person is assigned is used to receive calls through any telephone company. Universal numbering is especially important in emergencies such as hurricanes, where consumers cannot rely on a single provider to receive incoming calls. The FCC currently has an open rulemaking proceeding to address the need for a global database of proxy numbers that can be used to connect hearing individuals to their dynamic IP or VRS calling destinations.
- The FCC should issue standards to ensure standard interpreter qualifications across providers. One way of evaluating is to use qualified interpreters and deaf relay consumers to assess the ability of video relay interpreters to effectively facilitate communication. While some, if not most, VRS providers already require compliance with minimum certification standards or test interpreters to assess the effectiveness of their signing, voice presentation, finger spelling, and so on, FCC standards are needed to ensure consistency across providers. VRS stakeholders also report that it would be helpful for them to be able to receive some type of feedback during calls (for example, through captions) that would let them know what the interpreters are voicing, to build trust in the interpreter's ability.
- The FCC should establish a mechanism whereby consumers can contact an Internet-based relay provider when they have a complaint about that provider or wish to report relay misuse. One way of enabling consumers to identify the provider on any given relay call is to assign each provider a series of unique numbers for each of its CAs. For example, Sprint could be given the 1000 series of numbers, Verizon the 2000 series, MCI the 3000 series, and so on. That way, the employer of every CA could be easily identified by the enforcing agency.

- DOJ, the Access Board, and agencies concerned with digital and communication security should amend the Title II and Title III/ADAAG guidelines to address the problem of the use of firewalls for security, which can inadvertently block VRS calls. Businesses and government agencies need to have an accessibility guideline that requires them to make video communications possible when they use firewalls. If there is an ADAAG guideline on this matter, technology will be designed to fix this dilemma. In the meantime, employers should obtain a separate broadband line that can be opened for VRS users.

Recommendations for Telecommunications Carriers

- The telecommunications companies could establish a national nonprofit organization to advance the use of speech-to-speech (STS) relay. (One such organization, Speech Communication Assistance by Telephone, Inc. (SCAT), provides general education and training in assistive technology for people with disabilities.)
- Vendors should videophone equipment in public areas frequently visited by people who are deaf, such as in dormitories and activity rooms in residential schools for the deaf, vocational rehabilitation offices, and community service centers for the deaf (such as the California Coalition of Agencies Serving the Deaf). At the latter sites, people who are deaf or hard of hearing also can make arrangements to acquire telecommunications equipment through state distribution programs. At all the locations, people who cannot afford the high-speed connectivity needed for direct access to videophones can follow up on business related to the services provided at these locations, seek advocacy services related to ADA-related complaints, or use the phones for other purposes.
- State relay administrators and relay service providers should instruct communications assistants (CAs) to be more patient with deaf-blind callers, who, because they use refreshable Braille, often read more slowly than other relay users. In addition, CAs should be permitted to instruct call recipients about the caller's needs and the fact that the call may take a bit longer to complete. Technologies that may enable tactile communication over the Internet through robots are being explored and could facilitate access in the future for people who are deaf-blind.

Recommendation for State Equipment Distribution Programs

- State equipment distribution programs need to take a harder look at the needs of the consumers they serve. These programs should reevaluate the scope of their offerings in light of new computer, electronic, and Internet-based technologies, and should allow consumers to trade in their equipment sooner. One state that has already made some of these changes is Missouri; in 2000, it began distributing adaptive computer equipment for access to the Internet and e-mail. Finally, state programs should coordinate with one another to ensure that they are consistent and uniform in providing the best options for relay consumers.

Recommendations for State Relay Administrators and State Relay Service Providers

- The underutilization of speech-to-speech (STS) relay services can be reversed by identifying and training potential STS users. Training of this type, which typically takes three hours in the person's home, must be done on a one-on-one basis.
- States should release information about STS call volume so consumers can determine where outreach is needed. In the past, some states have been reluctant to give out this information; for example, in a 2006 call volume study, only 26 states provided this information.
- State relay administrators, state relay service providers, and other telecommunications providers should educate businesses about how and where to report Internet relay misuse. This can be done in part through programs such as Maryland's relay partner program, which educates businesses about the functions and purposes of relay services.
- State relay administrators, state relay service providers, and other telecommunications carriers should identify and implement methods to educate the general public and, in particular, business establishments about the purpose and function of relay services to put an end to the resistance coming from the business community.

V. Disability Community

Recommendations for Federal Agencies

- Federal agencies that have ADA implementation and enforcement roles should join in a collaborative effort to fund a substantial nationwide ADA training initiative for people with disabilities.
- DOJ should step up its enforcement efforts in rural communities. Using Project Civic Access as a model, DOJ should initiate compliance activities in selected small towns and rural areas that are tailored to the needs and stated goals of the disability communities in these areas.
- Federal agencies charged with ADA implementation and enforcement should create a rural monitoring and enforcement project in collaboration with regional DBTACs, protection and advocacy organizations, local disability organizations, individual leaders with disabilities, and civic and community leaders. The goal would be to identify and test effective methods for achieving ADA implementation in small towns and rural areas that could be publicized and replicated.

Recommendation for Collaboration Between Government Agencies and Disability Community Organizations

- Key agencies and organizations concerned with disability policy (for example, DOJ, the National Disability Rights Network, mental health consumer organizations) should create training and informational materials that provide practical, realistic information and guidance for specific public safety entities (e.g., police, sheriffs, firefighters), and that dispel

stereotypes. The key organizations should recommend policies the entities should adopt that would guide their conduct in situations involving individuals with disabilities, especially psychiatric disabilities. Policy guidelines must acknowledge that standards for behavior and conduct differ according to the context and the situation, but a process must be set forth to determine whether a risk exists and whether an accommodation can be provided that will mitigate the risk.

Recommendation for Joint Projects Between Regional ADA & IT Technical Assistance Centers and State Protection and Advocacy Organizations

- Regional ADA & IT Technical Assistance Centers and state Protection and Advocacy organizations should develop a model project by collaborating with disability organizations and individuals with disabilities from selected small towns and rural areas to develop an education and information campaign that promotes public awareness and accessibility. One key strategy would be to distribute targeted ADA materials to the public—for example, libraries, job training centers, hiring programs, and unions—and include ADA information with all business transactions and local business tax invoices involving licensing, building and occupancy permits, business permits, and inspections. (See related recommendations for urban areas in the section on Title III.)

VI. Culturally Diverse Community

Recommendations for Federal Agencies and Departments

- The Department of Justice should dedicate additional resources for developing culturally competent information materials on the ADA and should support development of culturally competent outreach activities.
- The National Institute on Disability and Rehabilitation Research should establish a program similar to the regional ADA and IT Centers but focused on culturally competent outreach and technical assistance to culturally diverse communities. The goal of these new centers would be to enhance culturally diverse covered entities' capacity to implement the ADA. With support from and collaboration with local community leaders and organizations, the centers would conduct outreach and provide technical assistance, information, and training to small businesses and organizations in their project area.

Recommendations for Collaboration Between the Disability and Culturally Diverse Communities, including Businesses

- Disability advocates associated with local independent living centers and other disability organizations should research and initiate contact with leaders in the community and discuss local needs from both perspectives.
- Disability advocates, with the assistance of local leaders, should contact local chambers of commerce, merchant associations, and social service clubs in their communities and build partnerships for outreach and education.

- In conducting outreach to culturally diverse communities, disability advocates and organizations should use popular local media outlets that target those communities.

Recommendation for Collaboration Between Federal Agencies and Private Community Development Organizations

- Key federal agencies and private community development organizations should convene an experts meeting to explore methods for using various sources of community development funding—such as the community investment tax, Small Business Administration loans, Federal Emergency Management Agency disaster relief funding, and community development block grants—to help bring about ADA compliance changes. This could be accomplished by requiring ADA compliance as a term and condition of funding, which would be supported with some financial help from the funding agency toward achieving the required accessibility features and by dedicating specific amounts of money from development funds to accomplish high-priority barrier-removal projects in the target communities.

Recommendation for Collaboration Among Disability Groups, Businesses, and Elected Officials

- Local partnerships made up of community disability groups, local business associations, and elected officials should regularly recognize entities that have been especially successful at achieving architectural and programmatic access by publishing information about them on community Web sites and in publications, and by honoring them at public events attended by their peers.

Recommendations for Disability Community Organizations and Advocates

- The leaders of local independent living centers and other disability organizations should seek out leaders in culturally diverse neighborhoods to hold discussions on ADA implementation and to understand the needs of citizens and businesses. The objective is to raise awareness about important cultural traditions that may affect perceptions of disability, to inform leaders about the benefits of the ADA, and to build partnerships that provide mutual benefit for the disability and culturally diverse communities. The goals are for local leaders to demonstrate that the ADA can be implemented in a meaningful way in their communities, to promote implementation, and to serve as a model for others.
- Local independent living centers and other disability organizations should seek out individuals from culturally diverse backgrounds to mentor people with disabilities.
- For ADA implementation to remain a priority in the community, disability advocates must make regular informational visits to state and regional public office holders, especially caucuses dedicated to specific diverse communities.

VII. Legal and Enforcement Tools—Class Actions and Settlements

Recommendations for Title III Stakeholders

- The accessibility requirements of civil rights law must be publicly broadcast, acknowledged, and respected at the same level as other applicable regulations and laws, and equally acknowledged as a make-or-break issue in running a business. When business and industry associations work together to foster the idea that the law is unfair and lobby for legislative change that will weaken the private right of action overall, they are not doing their constituents any favors and certainly are harming the prospect for achieving voluntary Title III compliance.
- Title III compliance cannot depend only on voluntary compliance from those few business owners who are motivated by a personal familiarity with disability or the determination to do the right thing legally and ethically, regardless of the cost. Nor can compliance depend only on litigation and the minority of people with disabilities who are willing and able to bring lawsuits. If private litigation remains virtually the only means of external enforcement motivating business compliance with Title III, it will likely continue to bear the brunt of public backlash and industry lobbying. Widespread Title III compliance cannot be achieved without business and public outreach, a visible and efficient administrative enforcement procedure, the wide availability of qualified accessibility expertise, and economic incentives such as tax and other credits.

Legal and Enforcement Tools—Private Right of Action

Recommendations for Congress

- Congress must enact legislation that effects a statutory repair of *Buckhannon*'s condition of a “judicially sanctioned” change in the parties’ relationship for the recovery of attorney fees under Title III, so that attorney fee-shifting rules will apply if a Title III plaintiff or would-be plaintiff has been the catalyst for a public accommodation’s coming into compliance with its Title III obligations.
- Congress must make compensatory damages available under Title III.
- Congress must establish a statutory minimum damages amount for the denial of access rights under Title III.

Legal and Enforcement Tools—Class Actions and Settlements

Recommendations for Legal Advocates

- Continue monitoring for abuse, but also explore any possibility for strengthening the current system by creating at least the possibility of recovering attorney fees for raising reasonable objections to national and regional class action settlements.

- Encourage education of and intervention by DOJ and state attorney generals in states where citizens with disabilities would be adversely affected by these settlements. This option is especially reasonable to explore given the new Class Action Fairness Act (CAFA) provisions requiring notice to “appropriate” state officials with the settlement of federal class actions.
- Consider ways to link the CAFA notice provisions to state and federal officials to actual notice to cross-disability groups with a legal component and to Protection and Advocacy agencies in all affected states
- Educate the judiciary on the need for vigilance concerning national ADA class settlements that would allow public accommodations to avoid or water down ADAAG requirements and bind an overly broad class of people with disabilities to a settlement that gives many of them inadequate or no relief
- Disseminate information about the structured negotiation approach and its possibilities for avoiding the inefficiencies of initiating and sustaining a litigious approach to enforcing Title III against corporate defendants that operate multiple public accommodations.

Appendix G – Mission of the National Council on Disability

Overview and Purpose

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

Specific Duties

The current statutory mandate of NCD includes the following:

- Reviewing and evaluating, on a continuing basis, policies, programs, practices, and procedures concerning individuals with disabilities conducted or assisted by federal departments and agencies, including programs established or assisted under the Rehabilitation Act of 1973, as amended, or under the Developmental Disabilities Assistance and Bill of Rights Act, as well as all statutes and regulations pertaining to federal programs that assist such individuals with disabilities, to assess the effectiveness of such policies, programs, practices, procedures, statutes, and regulations in meeting the needs of individuals with disabilities.
- Reviewing and evaluating, on a continuing basis, new and emerging disability policy issues affecting individuals with disabilities in the Federal Government, at the state and local government levels, and in the private sector, including the need for and coordination of adult services, access to personal assistance services, school reform efforts and the impact of such efforts on individuals with disabilities, access to health care, and policies that act as disincentives for individuals to seek and retain employment.
- Making recommendations to the President, Congress, the Secretary of Education, the director of the National Institute on Disability and Rehabilitation Research, and other officials of federal agencies about ways to better promote equal opportunity, economic self-sufficiency, independent living, and inclusion and integration into all aspects of society for Americans with disabilities.
- Providing Congress, on a continuing basis, with advice, recommendations, legislative proposals, and any additional information that NCD or Congress deems appropriate.
- Gathering information about the implementation, effectiveness, and impact of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 12101 et seq.).
- Advising the President, Congress, the commissioner of the Rehabilitation Services Administration, the assistant secretary for Special Education and Rehabilitative Services within the Department of Education, and the director of the National Institute on Disability

and Rehabilitation Research on the development of the programs to be carried out under the Rehabilitation Act of 1973, as amended.

- Providing advice to the commissioner of the Rehabilitation Services Administration with respect to the policies and conduct of the administration.
- Making recommendations to the director of the National Institute on Disability and Rehabilitation Research on ways to improve research, service, administration, and the collection, dissemination, and implementation of research findings affecting people with disabilities.
- Providing advice regarding priorities for the activities of the Interagency Disability Coordinating Council and reviewing the recommendations of this council for legislative and administrative changes to ensure that such recommendations are consistent with NCD's purpose of promoting the full integration, independence, and productivity of individuals with disabilities.
- Preparing and submitting to the President and Congress an annual report titled *National Disability Policy: A Progress Report*.

International

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

Consumers Served and Current Activities

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

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

Statutory History

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

