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Memorandum

TO: Transit Finance Working Group

DATE: February 4, 2015

FR: Kristen Mazur

RE: Proposed ADA Circular, Amendment 2

On November 12, 2014, FTA released a partial draft of a proposed new circular regarding Americans with Disabilities Act (ADA) requirements (FTA C 4710.1). The seven proposed chapters that were released in Amendment 2 are part of a series of 12 chapters that will compose a complete ADA circular. **The deadline for submitting comments on Amendment 2 is February 11, 2015.** The proposed circular chapters and the Federal Register notice with instructions for submitting comments are found here: http://www.fta.dot.gov/legislation_law/12349_16212.html.

MTC discussed proposed Amendment 2 with the Bay Area Accessibility Working Group at their December 15, 2014 and January 12, 2015 meetings, and with TFWG at the January 7, 2015 meeting. As a result of those discussions, MTC drafted the following comments, which have been refined since the last TFWG meeting. Staff seeks the TFWG's feedback on these proposed comments and any other comments members want MTC to consider submitting.

There is still language within the “discussion” sections of the circular that blurs the line between regulations and best practices. All references to regulations, as well as language that suggests legal requirements and prohibitions (“must,” “required,” “cannot,” etc.) should be confined to the Requirement sections and removed from the Discussion sections. Further, the Discussion portions of the chapters frequently contain words and phrases that are ambiguous as to whether they are permissive or mandatory in nature. These words include “should,” “would be inappropriate,” and “it is important to.” It would be helpful for FTA to clarify the intent behind these words, or choose clearer words. It would also be helpful for FTA to clarify whether or not it intends words like “must” and “is not permitted” to signify a mandate, and words like “suggest,” “encourage,” “recommend,” “may,” “might,” “is optional,” “can,” and “typically include” to signify an option. See table on the next page for a complete list of words MTC has identified in the Discussion sections that need further clarification.

Words that seem to signify a recommendation/best practice	Words that seem to signify a requirement	Words that are unclear
<ul style="list-style-type: none"> • For example, • Suggest • Encourage • Recommend • May • Might • A good practice is/good practices include • Is optional • Typically include • Can 	<ul style="list-style-type: none"> • Must • Shall • Is not permitted 	<ul style="list-style-type: none"> • Should • Would be inappropriate • Is important to

Making it clear which portions of the circular are required would allow the transit operators to use their scarce resources to prioritize those recommendations and best practices that would best serve their riders. For example, in Section 8.8, the circular identifies a number of good practices related to data collection and monitoring; however, producing *all* of the reports on a regular basis would be very costly.

It is unclear what the relationship is between the proposed circular and FTA’s ADA Compliance Reviews. MTC and the transit operators in our region believe that transit operators’ compliance with the ADA should be evaluated based on the regulations, not on best practices or recommendations. If this is FTA’s intent, this should be clearly stated in the circular. Alternatively, if FTA *does* plan to use recommendations or best practices as a standard for compliance reviews, then the circular should make this clear and a basis in the regulations should be provided.

Exposure to litigation is a concern. While the circular states that “this Circular does not alter, amend, supersede, or otherwise affect the DOT ADA regulations themselves...” there is a concern that publishing this information in an FTA Circular could expose the transit operators to complaints and litigation from persons and organizations for whom it is not clear which portions of the circular are recommendations and which portions are required by law.

Engaging the local disability community should be an option when determining policies. The circular should acknowledge that decisions about how to best comply with the ADA regulations can also be made using a local planning process that engages the local disability community. For instance, the transit operators in our region would like to have the option of consulting the local disability community (e.g., the operator’s Accessibility Advisory Committee) when determining various policies, such as telephone hold time policies, no-show suspension policies, etc. Since local transit riders with disabilities will be directly affected by the length of time it takes to make a trip reservation, and by service delays that result from rider no-shows, it is logical for them to be involved in the decision-making process. In some cases engaging local advisory groups may be more appropriate than using a best practice from another dissimilar part of the country. Similarly—and consistent with the disability rights concept of “nothing about us without us”—a committee that includes members of the disabled community

should be formed to review the proposed circular (similar to the Access Board or the APTA Standards Working Group).

Background on the intent of the ADA regulations would be helpful. When introducing best practices, it would be helpful if the circular provided background information regarding the *intent* of the regulation, so that the transit operators can consider which option most effectively meets the intent in their particular service area. It is our understanding that background information regarding intent was available when the ADA regulations were initially implemented. Furthermore, with regard to best practices, it is helpful when the circular identifies *several* options; however, it is less helpful when the circular identifies just a *single* best practice and states that operators “should” adopt that practice. When introducing several effective practices to consider, it would be helpful if the circular characterized the type of service area when applicable. For instance, in Section 6.5, Stop Announcements and Route Identification, it would be helpful to identify how best practices might differ in small rural areas with very few transit routes versus large urban areas with very dense fixed route networks, and how each addresses the *intent* of orienting individuals with visual impairments or other disabilities to their location.

Examples of local practices that have proven effective. Per FTA’s request, the following is an example of a local practice that has proven effective. In the nine-county Bay Area, where there is a significant amount of intercounty travel, the transit operators have worked together to develop and maintain a Regional Eligibility Database (RED). When a rider is determined to be eligible for ADA paratransit by their “home” agency, they are entered into the RED, which is accessible by approximately 20 Bay Area operators. This allows any operator to verify the ADA eligibility of riders throughout the region so that riders do not need to apply individually with each agency.

Opportunity for additional review and comment. Consistent with APTA’s comment letter dated February 11, 2015, MTC requests that FTA re-publish all of the proposed chapters prior to finalizing any portion of the circular, so that stakeholders may have another opportunity to review and comment on changes that have been made.

If you have any feedback, or additional comments that you want MTC to consider submitting on the proposed ADA Circular, Amendment 2, please contact Kristen Mazur at 510-817-5789 or kmazur@mtc.ca.gov by Friday, February 6, 2015. Transit operators are also encouraged to submit their own comment letters if they have concerns about the proposed circular.