

### 9.3.3 Temporary Eligibility

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#### Requirement

“Individuals may be ADA paratransit eligible on the basis of a permanent or temporary disability” ([§ 37.123\(c\)](#)).

#### Discussion

Individuals who experience a temporary loss of functional ability that prevents them from using fixed route service may apply for temporary ADA paratransit eligibility. For example, an individual may need to undergo two months of treatment for a health condition, resulting in severe fatigue that prevents him or her from using fixed route service. This individual would be ADA paratransit eligible for the duration of the treatment period.

Temporary eligibility may also be appropriate if changes in functional ability are probable in the short term. For example, an individual who has had a stroke may be using a manual wheelchair immediately after the stroke and may not be able to independently self-propel the wheelchair to get to or from bus stops. If the individual were undergoing a year of prescribed therapy, one year of eligibility for all trips would be appropriate, with a review at the end of the year to determine if therapy or a change in mobility devices has changed the individual’s functional ability to use fixed route service.

## 9.4 Eligibility Determination Process

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#### Requirement

“Each public entity required to provide complementary paratransit service by § 37.121 of [Part 37] shall establish a process for determining ADA paratransit eligibility” ([§ 37.125](#)).

#### Discussion

While the DOT ADA regulations are specific in terms of who is ADA paratransit eligible, the regulations do not prescribe the determination process. Transit agencies, with input from the communities they serve, are to devise the specifics of their individual eligibility processes, while following the broad requirements in § 37.125 pertaining, for example, to timelines for decisions and appeal practices.

The following discussion covers the broad process requirements and considerations and provides examples of processes transit agencies have established.

### 9.4.1 Strictly Limiting Eligibility

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#### Requirement

“The process shall strictly limit ADA paratransit eligibility to individuals specified in § 37.123 of [Part 37]” ([§ 37.125\(a\)](#)).

#### Discussion

Transit agencies must strictly limit ADA paratransit eligibility to individuals who meet the regulatory criteria for eligibility. (See Circular Section 9.2.1.) This limitation supports the requirement in Title II of the ADA for agencies to provide services in the most appropriate integrated setting and is consistent with the concept that complementary paratransit is a “safety net” for those individuals unable to use fixed route

service. The requirement to strictly limit ADA paratransit eligibility, however, does not preclude agencies from providing paratransit service to other individuals. As explained in [Appendix D](#) to § 37.123:

This section sets forth the minimum requirements for eligibility for complementary paratransit service. All fixed route operators providing complementary paratransit must make service available at least to individuals meeting these standards. The ADA does not prohibit providing paratransit service to anyone. Entities may provide service to additional persons as well.

## 9.4.2 Types of Eligibility Determination Processes

Designing eligibility processes that reflect local needs and circumstances is appropriate as long as these processes comply with the § 37.125 requirements. It is up to transit agencies and the communities they serve to design eligibility determination processes that meet the regulatory requirements.

Transit agencies that originally designed their eligibility determination processes as part of their complementary paratransit plans did so with the input of individuals with disabilities. Subsequently, if agencies implement new processes, or make significant changes to the existing process, FTA expects them to also incorporate a level of public participation that meets the [§ 37.137\(c\)](#) requirements.

## 9.4.3 Approaches for Determining Eligibility

Transit agencies generally use any or a combination of the following three basic sources of information to determine eligibility:

- Information provided by applicants in the form of paper applications, responses to interview questions, or both.
- Information provided by qualified professionals familiar with the applicants. Transit agencies can provide applicants with forms for collecting the information or can accept information that the individuals may already have received from professionals. Alternatively, agencies can obtain the information by directly contacting professionals whom the applicants identify.
- Assessments of functional abilities. Transit agencies may ask applicants to participate in assessments designed to determine their functional abilities specific to the use of fixed route transit services.

This Circular does not comprehensively address the specifics of these determination approaches since they are not outlined in the regulations; general guidance is below. For technical assistance on the various types of eligibility determination processes, see Easter Seals Project ACTION, “[Determining ADA Paratransit Eligibility: An Approach, Guidance and Training Materials](#).<sup>5</sup>”

### Supplementing Paper Applications

FTA notes that many transit agencies find that appropriate determinations of ADA paratransit eligibility, including the application of conditional trip-by-trip eligibility, often require more than a paper application. In-person interviews and functional assessments may be necessary to determine whether a particular individual can perform the functional tasks needed to use fixed route service independently. Interviews, whether in person or by phone, allow those making eligibility determinations to solicit additional information from applicants as needed. Properly designed and administered assessments can provide independent and objective measures of specific functions related to fixed route transit use. These can be important in determining the abilities of applicants who have never used fixed route transit and who may not be sure of their abilities to use these services.

<sup>5</sup> This document, published in 2014, also includes a section on administering the Functional Assessment of Cognitive Transit Skills (FACTS).

## Information Provided by Professionals

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Appropriate determinations of ADA paratransit eligibility are based on an applicant's functional abilities, not medical diagnoses of health conditions or disabilities. [Appendix D](#) to § 37.125 explains:

The substantive eligibility process is not aimed at making a medical or diagnostic determination. While evaluation by a physician (or professionals in rehabilitation or other relevant fields) may be used as part of the process, a diagnosis of a disability is not dispositive. What is needed is a determination of whether, as a practical matter, the individual can use fixed route transit in his or her own circumstances. That is a transportation decision primarily, not a medical decision.

At the same time, eligibility is based on functional limitations due to disability. Individuals must have a disability to qualify for ADA paratransit eligibility. Obtaining information about disability is therefore appropriate, particularly if a disability is not apparent, such as a psychiatric disability or a seizure condition. Information about the disability can also help transit agencies better understand and confirm the likely associated functional issues.

For transit agencies that solicit professional verification of disability and supporting information regarding pertinent functional abilities, an optional good practice is to accept professional verification from a wide array of professionals, rather than limiting the types of practitioners from whom verification is acceptable (e.g., only licensed physicians). Orientation and mobility specialists, therapists, clinical social workers, job coaches, and registered nurses, among others, may be able to verify the existence of a disability and may provide the best information about an applicant's functional abilities relevant to fixed route transit use.

## List of Functional Tasks and Skills

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Regardless of the specific determination approach a transit agency adopts, an optional good practice is for the agency to work with individuals with disabilities and disability service organizations to develop a master list of functional transit tasks and skills. Such lists identify the various functional tasks involved in using the local area fixed route transit service and the various functional abilities needed to do so (e.g., physical abilities, cognitive abilities, and sensory abilities). Such lists benefit those involved in making eligibility determinations to ensure that they consider all appropriate issues during the determination process. Attachment 9-1 provides a sample task and skills list. An optional good practice is to refine and customize the sample list with input from individuals with disabilities to reflect local fixed route services and policies.

## Emphasizing Ability to Use Fixed Route Transit

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Another optional good practice is to develop an eligibility determination process that stresses ability rather than disability. Transit agencies may elect to design holistic processes that assist applicants in identifying their abilities to use fixed route service and all available travel options, rather than processes that focus on applicants' limitations. To this end, some agencies refer to the process as a "transportation assessment" rather than an "ADA paratransit assessment" and incorporate other services into their process. For example, some agencies have co-located travel training and eligibility determination functions, which permits them to provide travel training to applicants who indicate an interest. Other agencies provide applicants with information about accessible fixed route service or other transportation programs as appropriate.

### 9.4.4 Avoiding Unreasonable Burdens and User Fees

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Given the nature of ADA paratransit eligibility, an inherent degree of rigor and complexity in the process is often unavoidable. However, as discussed in [Appendix D](#) to § 37.125, "The process may not impose

unreasonable administrative burdens on applicants, and, since it is part of the entity’s nondiscrimination obligations, may not involve ‘user fees’ or application fees to the applicant.”

Examples of process requirements FTA considers burdensome include:

- Requiring applicants to appear in person for interviews on one day and then participate in functional assessments on a different day
- Requiring applicants to appear in person for interviews or functional assessments and then make a second trip to another location to have a photo taken for an ID card
- Requesting extraneous or irrelevant information that has no bearing on ADA paratransit eligibility
- Using complex application forms that require applicants to apply for multiple transportation programs or services (e.g., state transportation programs in addition to complementary paratransit)
- Requiring medical documentation unrelated to functional ability to use the fixed route transit service

Effective practices for minimizing administrative burdens include:

- Performing in-person interviews and any needed functional assessments at the same location on the same day
- Taking photos for ID cards during interviews and assessments and then creating and sending IDs to those determined eligible

[Appendix D](#) to § 37.125 also explains that the determination process may not involve “user fees” or “application fees.” This position is based on [§ 37.5\(d\)](#), which prohibits agencies from imposing “special charges, not authorized by [Part 37], on individuals with disabilities, including individuals who use wheelchairs, for providing services required by [Part 37] or otherwise necessary to accommodate them.”

The prohibition against fees applies to transportation costs. For transit agencies that require applicants to travel to an interview or assessment center as part of their process, this means offering transportation to and from the center at no charge. If agencies use the complementary paratransit service for this transportation, fares must be waived for applicants.

## 9.5 Eligibility Decisions

Once a transit agency has received a complete application from an individual, the DOT ADA regulations specify timelines for making a determination of eligibility and for notifying the applicant regarding the determination, as discussed in this section.

### 9.5.1 Making Timely Determinations

#### Requirement

“If, by a date 21 days following the submission of a complete application, the entity has not made a determination of eligibility, the applicant shall be treated as eligible and provided service until and unless the entity denies the application” ([§ 37.125\(c\)](#)).

#### Discussion

The requirement for timely determination is explained in [Appendix D](#) to § 37.125:

When the application process is complete—all necessary actions by the applicant taken—the entity should process the application in 21 days. If it is unable to do so, it must begin to provide

service to the applicant on the 22nd day, as if the application had been granted. Service may be terminated only if and when the entity denies the application.

FTA encourages transit agencies to make decisions within 21 days. If decisions take longer, however, agencies must have a process to automatically grant provisional eligibility and provide service beginning on the 22nd day. FTA expects agencies to include information about this right to provisional service in public information describing the ADA paratransit eligibility process, in cover letters accompanying application forms, and/or letters acknowledging the receipt of applications.

As is the case throughout the regulations, “days” means calendar days (unless indicated otherwise). The 21-day timeframe begins at “submission of a completed application.” For transit agencies that require in-person interviews and functional assessments, applications are considered complete at the conclusion of interviews and assessments, not when applications are received. As discussed in [Appendix D](#) to § 37.125, the application process is complete when the applicant has taken all necessary actions.

When scheduling interviews and assessment appointments, transit agencies are not responsible for delays created by applicants. For example, suppose an agency offers an appointment within seven days, but the applicant indicates he or she will be away and requests an appointment in 17 days. Although the interview is delayed in this case, the agency has met its obligation to offer an appointment within a reasonable period.

In designing eligibility determination processes, it is important to consider the total time necessary for applicants to complete the process, including time to schedule any required in-person interviews or assessments. FTA expects transit agencies that require applicants to first submit paper applications and then appear for in-person interviews or functional assessments to offer these appointments promptly (e.g., within 7–10 days) once applications have been received. FTA considers long wait times for interview appointments to be an unreasonable administrative burden.

### Treatment of Incomplete Applications

Some applicants may start but not complete the process of applying for ADA paratransit eligibility. They may submit application forms but leave out required information or they may submit an application form but fail to schedule or appear for a required interview or functional assessment. In such cases, FTA recommends returning the applications and explaining to applicants that the process cannot continue until they supply the missing information. When determining whether application forms are complete, it is important to distinguish between information needed to make an eligibility determination and other requested information such as emergency contact information. Secondary information, not pertinent to the determination, can be obtained at a later time in order to continue the processing of the application.

If applicants submit a completed application but fail to schedule or appear for in-person interviews or assessments, FTA recommends retaining the submitted information for a reasonable period and informing applicants of the time within which they need to complete the process. If applicants do not complete the process within that time, agencies can require them to reapply.

### 9.5.2 Written Notice of Eligibility Decisions

#### Requirement

“The entity’s determination concerning eligibility shall be in writing. If the determination is that the individual is ineligible, the determination shall state the reasons for the finding” ([§ 37.125\(d\)](#)).

“The public entity shall provide documentation to each eligible individual stating that he or she is ‘ADA Paratransit Eligible.’ The documentation shall include the name of the eligible individual, the name of the transit provider, the telephone number of the entity’s paratransit coordinator, an expiration date for

eligibility, and any conditions or limitations on the individual's eligibility including the use of a personal care attendant” ([§ 37.125\(e\)](#)).

## Discussion

This requirement obligates transit agencies to transmit eligibility determinations to applicants in writing, and in accessible formats as applicable per [§ 37.125\(b\)](#). (See Circular Section 9.10.1.)

### Documentation Provided to Applicants Found Eligible

For applicants found eligible, § 37.125(e) requires the documentation provided by the transit agency to specifically state that the individuals are “ADA paratransit eligible” and also include:

- The name of the eligible individual
- The name of the transit agency issuing the documentation
- The telephone number of the transit agency’s paratransit coordinator
- An expiration date of the eligibility (if applicable)
- Any limitations or conditions placed on the individual’s eligibility
- Whether the applicant travels with a personal care attendant

FTA notes that while § 37.125 specifically calls for the telephone number of the transit agency’s paratransit coordinator, agencies may provide any appropriate telephone number. (See Circular Section 9.9.)

### Identification Cards

Although not required, many transit agencies issue identification cards to eligible riders. While agencies have the option to choose which information to include on these cards, § 37.125(e) obligates agencies to also issue letters of determination containing all of the required information if the cards contain some but not all of the required information.

### Determination Letters Provided to Applicants Found Ineligible

When informing applicants that they are ineligible, § 37.125(d) obligates transit agencies to explain the reasons for the determination. FTA considers determinations of less than unconditional eligibility (i.e., conditional and temporary eligibility) to be degrees of ineligibility and therefore this requirement applies to any decision other than unconditional eligibility.

As explained in [Appendix D](#) to § 37.125, in the determination letter “the reasons must specifically relate the evidence in the matter to the eligibility criteria of this rule and of the entity’s process. A mere recital that the applicant can use fixed route transit is not sufficient.”

For example, an applicant may claim that arthritis affecting the knees prevents him or her from walking to and from bus stops, but information gathered from professionals or through functional assessments did not substantiate this claim. Section 37.125(d) requires the determination letter to provide specific reasons for the denial. For example, “You indicated that you could not use fixed route services because arthritis in your knees prevented you from walking to and from bus stops. However, information from the professional you identified for verification of your disability indicated that you had mild osteoarthritis that did not limit your ability to walk to or from bus stops. The physical therapist who conducted the assessment of your walking ability also reported that you walked the 1/2-mile route at the assessment center without any apparent discomfort or change in gait.” In contrast, it would not be appropriate, for example, to offer the following explanation for a denial: “The information we obtained indicated that you were not prevented from using fixed route transit service.”

FTA recommends that those preparing determination letters put themselves in the applicant's position and ask, "Am I providing enough details to allow an applicant to adequately prepare for an appeal should they choose to do so?" If determination letters do not identify which pieces of information were critical in making the decision, then applicants do not know how to challenge that decision.

When denying or granting less than unconditional eligibility (i.e., conditional or temporary eligibility), FTA requires the written determination to also explain an applicant's right to appeal the decision and how to request an appeal. (See Circular Section 9.7.)

Attachment 9-2 provides sample determination letters that illustrate what information to include when making different types of determinations. This attachment includes sample letters for determinations of unconditional eligibility, conditional eligibility, temporary eligibility, and full eligibility denials.

## 9.6 Recertification

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### Requirement

"The entity may require recertification of the eligibility of ADA paratransit eligible individuals at reasonable intervals" ([§ 37.125\(f\)](#)).

### Discussion

Section 37.125(f) allows agencies to recertify the eligibility of ADA paratransit riders at reasonable intervals, recognizing that many factors might change over time that could affect the ability of individuals with disabilities to use fixed route transit service. These could include changes in the physical environment, changes in the accessibility of the fixed route system, or changes in riders' functional abilities.

[Appendix D](#) to § 37.123 provides guidance on establishing reasonable intervals for recertification, noting that requiring recertification too frequently (e.g., more than once per year) would probably be overly burdensome to riders. Too frequent recertification may also prove costly to transit agencies. On the other hand, granting eligibility for very long periods might not be adequate to capture changes in riders' abilities and conditions. Many agencies require recertification every 3 to 5 years as a balance between the need to determine current abilities and conditions and the cost of managing the recertification process.

Regardless of the recertification policies adopted, eligible individuals have the right to reapply at any time. [Appendix D](#) to § 37.123 explains that "a user of the service can apply to modify conditions on his or her eligibility at any time." For example, individuals initially granted conditional eligibility might feel that their functional abilities have changed and the conditions established no longer reflect their abilities. They can request reconsideration of their eligibility by submitting new documentation or reapplying during their current term of eligibility. Determinations made during existing terms of eligibility, whether based on additional documentation or new applications, are considered new decisions and, as such, are appealable. (See Circular Section 9.7.) This right to reapply extends to anyone, including those denied eligibility.

Similarly, transit agencies may request that eligible individuals reapply if information shows a significant change in their functional abilities. For example, an individual may initially apply while using a manual wheelchair. At some point during the term of eligibility, the individual might obtain a power wheelchair that could overcome a previous inability to get to and from transit stops and stations. In this case, it would be acceptable for the agency to ask the individual to reapply so that eligibility could be appropriately adjusted. It would not be acceptable to ask or require an individual to reapply for eligibility based on casual anecdotal observations by people not trained in making eligibility determinations, such as drivers or other riders.