

NOTICE OF PROPOSED
RULEMAKING

U.S. CONGRESS,
OFFICE OF CONGRESSIONAL
WORKPLACE RIGHTS,
Washington, DC, July 26, 2022.

Hon. NANCY PELOSI,
Speaker of the House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: Section 210(e) of the Congressional Accountability Act (“CAA”), 2 U.S.C. §1331(e), requires the Board of Directors of the Office of Congressional Workplace Rights (“the Board”) to issue regulations implementing Section 210 of the CAA, relating to the rights and protections against discrimination in the provision of public services and accommodations established by sections 201 through 230, 302, 303, and 309 of the Americans with Disabilities Act of 1990 (42 U.S.C. §§12131–12150, 12182, 12183, and 12189), made applicable to the legislative branch by the CAA. 2 U.S.C. §1331(a).

Section 304(b)(1) of the CAA, 2 U.S.C. §1384(b)(1), requires that the Board issue a general notice of proposed rulemaking by transmitting “such notice to the Speaker of the House of Representatives and the President Pro Tempore of the Senate for publication in the *Congressional Record* on the first day of which both Houses are in session following such transmittal.”

On behalf of the Board, I am hereby transmitting the attached notice of proposed rulemaking to the Speaker of the House of Representatives. I request that this notice be published in the House section of the *Congressional Record* on the first day on which both Houses are in session following receipt of this transmittal. In compliance with Section 304(b)(2) of the CAA, a comment period of 30 days after the publication of this notice of proposed rulemaking is being provided before adoption of the rules.

Any inquiries regarding this notice should be addressed to Teresa James, Acting Executive Director of the Office of Congressional Workplace Rights, 110 Second Street SE, Room LA-200, Washington, DC. 20540-1999; telephone: 202-724-9250.

Sincerely,

BARBARA CHILDS WALLACE,

Chair of the Board of Directors,

Office of Congressional Workplace Rights.

Attachment.

NOTICE OF PROPOSED RULEMAKING
FROM THE BOARD OF DIRECTORS OF
THE OFFICE OF CONGRESSIONAL
WORKPLACE RIGHTS**Modification of Regulations Under the Americans With Disabilities Act Relating to Public Services and Accommodations, Notice of Proposed Rulemaking, as Required by 2 U.S.C. §1331, Congressional Accountability Act of 1995, As Amended.****Background:**

The purpose of this Notice of Proposed Rulemaking (“Notice”) is to propose modifications to the pending legislative branch Americans with Disabilities Act (“ADA”) substantive regulations under Section 210 of the Congressional Accountability Act (“CAA”) (2 U.S.C. §1331 et seq.), which provides that the rights and protections against discrimination in the provision of public services and accommodation under Titles II and III of the ADA shall apply to entities covered by the CAA.

The Congressional Accountability Act of 1995 (“CAA”), PL 104-1, was enacted into law on January 23, 1995. The CAA, as amended, applies the rights and protections of 14 federal labor and employment statutes to covered employees and employing offices within the legislative branch of the federal government. Section 210 of the CAA provides that

the rights and protections against discrimination in the provision of public services and accommodations established by Titles II and III (sections 201 through 230, 302, 303, and 309) of the Americans with Disabilities Act of 1990, 42 U.S.C. §§12131–12150, 12182, 12183, and 12189 (“ADA”), shall apply to legislative branch entities covered by the CAA. The above provisions of section 210 became effective on January 1, 1997. 2 U.S.C. §1331(h).

As set forth in detail below, the Board of Directors (“the Board”) of the Office of Congressional Workplace Rights (“OCWR”) adopted regulations implementing section 210 of the CAA in 2016. 162 Cong. Rec. H557-565, S624-632 (daily ed. February 3, 2016). These modified proposed regulations will bring OCWR’s ADA regulations in line with recent changes to the Department of Justice’s (“DOJ”) and Department of Transportation’s (“DOT”) ADA regulations and with the CAA of 1995 Reform Act of 2018, Pub. L. No. 115-397. These and other proposed changes are set forth fully in this Notice. Deletions are marked with square [brackets] and added text is within angled <<brackets>>. Therefore, if these regulations are approved as proposed, the deletions within square brackets will be removed from the regulations and the added text within angled brackets will remain.

What is the authority under the CAA for these proposed substantive regulations?

Section 210(b) of the CAA provides that the rights and protections against discrimination in the provision of public services and accommodations established by the provisions of Titles II and III (sections 201 through 230, 302, 303, and 309) of the Americans with Disabilities Act of 1990, 42 U.S.C. §§12131–12150, 12182, 12183, and 12189, shall apply to the following entities: (1) each office of the Senate, including each office of a Senator and each committee; (2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee; (3) each joint committee of the Congress; (4) the Office of Congressional Accessibility Services; (5) the Capitol Police; (6) the Congressional Budget Office; (7) the Office of the Architect of the Capitol (including the Botanic Garden); (8) the Office of the Attending Physician; (9) the Office of Congressional Workplace Rights; and (10) the Library of Congress. 2 U.S.C. §1331(a).

Section 210(e) of the CAA requires that the OCWR Board, pursuant to section 304 of the CAA, issue regulations implementing that section, and that such regulations “shall be the same as substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) [of section 210 of the CAA] except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.” 2 U.S.C. §1331(e).

Are there ADA public access regulations already in force under the CAA?

Yes. The first ADA regulations implementing section 210 of the CAA were adopted by the Board and published on January 7, 1997, 142 Cong. Rec. H10676-10711, S10984-11019 (daily ed. September 19, 1996) and 143 Cong. Rec. S30-61 (daily ed. January 7, 1997), after providing notice, and receiving and considering comments in accordance with section 304 of the CAA. No congressional action was taken and thus the 1997 regulations were not issued. Revised regulations were adopted by the Board and published on February 3, 2016, 160 Cong. Rec. H7363-7372, S5437-S5447 (daily ed. September 9, 2014) and 162 Cong. Rec.

H557-565, S624-632 (daily ed. February 3, 2016), after providing notice, and receiving and considering comments in accordance with section 304 of the CAA. No congressional action was taken and thus the regulations were not issued.

The CAA provides that, while the CAA rulemaking procedure is underway, the corresponding executive branch regulations are to be applied. Section 411 of the CAA (2 U.S.C. §1411) provides:

“Effect of failure to issue regulations.

In any proceeding under section 1405, 1406, 1407, or 1408 of this title . . . if the Board has not issued a regulation on a matter for which this chapter requires a regulation to be issued, the hearing officer, Board, or court, as the case may be, shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding.”

This makes plain that ADA public access regulations are presently in force. “[T]he most relevant substantive executive agency regulation[s]” are the DOJ and DOT ADA public access regulations.

Why are these regulations being proposed at this time?

As set forth above, the CAA requires employing offices to comply with ADA public access regulations issued by the DOJ and DOT pursuant to the ADA. The CAA also requires the Board to issue its own regulations implementing the ADA public access provisions of the CAA. The statute obligates the Board’s regulations to be the same as the DOJ and DOT regulations except to the extent that the Board may determine that a modification would be more effective in implementing ADA public access protections. 2 U.S.C. §1331(e)(2). These proposed regulations will clarify that covered entities must comply with the ADA public access provisions applied to public entities and public accommodations to implement Titles II and III of the ADA. Congressional approval and Board issuance of ADA public access regulations under the CAA will also eliminate any question as to the ADA public access protections that are applicable in the legislative branch.

As set forth above, the Board adopted ADA regulations in 1997 and 2016, but no congressional action was taken and therefore these regulations were not issued. The Board now proposes modifications to regulations adopted in 2016 to facilitate congressional consideration of the ADA regulations.

How do these regulations differ from those adopted by the Board on February 3, 2016?

This proposal consists of modifications to the regulations adopted by the Board in 2016. There are three significant types of changes:

1. Updates to DOJ and DOT regulations: The proposed regulations set forth herein incorporate by reference the pertinent DOJ and DOT regulations that are in effect as of the date of the publication of this Notice, and, as such, have been updated to incorporate the changes made in the DOJ and DOT regulations since 2014.

2. Modifications “for good cause”: Section 210(e) of the CAA requires that the regulations issued by the OCWR Board to implement Titles II and III of the ADA as applied by the CAA be the same as those promulgated by DOJ and DOT to implement the ADA except where the Board determines, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of CAA rights and protections. 2 U.S.C. §1331(e).

3. Unlike the Board in 2016, the current Board has decided not to propose adoption of

regulations relating to the two unique statutory duties imposed by the CAA upon the General Counsel of the OCWR that are not imposed upon the DOJ and DOT: (1) the investigation and prosecution of charges of discrimination using the Office's mediation and hearing processes (section 210(d) of the CAA) and (2) the biennial ADA inspection and reporting obligations (section 210(f) of the CAA). The current Board has determined that rules relating to these duties are best implemented by adopting and publishing amendments to the OCWR's Procedural Rules.

Procedural Summary:

How are substantive regulations proposed and approved under the CAA?

Section 304 of the CAA, 2 U.S.C. §1384, sets forth the following procedure for proposing and approving such substantive regulations:

(1) the Board of Directors proposes substantive regulations and publishes a general notice of proposed rulemaking in the Congressional Record;

(2) there be a comment period of at least 30 days after the date of publication of the general notice of proposed rulemaking;

(3) after consideration of comments by the Board of Directors, the Board adopt regulations and transmit notice of such action (together with the regulations and a recommendation regarding the method for congressional approval of the regulations) to the Speaker of the House and President [P]ro [T]empore of the Senate for publication in the Congressional Record;

(4) there be committee referral and action on the proposed regulations by resolution in each House, concurrent resolution, or by joint resolution; and

(5) final publication of the approved regulations in the Congressional Record, with an effective date prescribed in the final publication.

For more detail, please reference the text of 2 U.S.C. §1384.

What is the approach taken by these proposed substantive regulations?

The Board will follow the procedures as enumerated above and as required by statute. This Notice of Proposed Rulemaking is step (1) of the outline set forth above. The Board will review any comments received under step (2) of the outline above, and respond to the comments and make any changes necessary to ensure that the regulations fully implement section 210 of the CAA and reflect the practices and policies particular to the legislative branch. Because the Board's 2016 revised regulations were adopted pursuant to the CAA's procedures for proposing and approving substantive regulations, including providing a comment period of 30 days after publication of the proposed amendments in the Congressional Record, the Board is not soliciting additional comments on those adopted amendments at this time.

Are there substantive differences in the proposed regulations for the House of Representatives, the Senate, and the other employing offices?

No. The Board of Directors has identified no good cause for proposing different regulations for these entities and accordingly has not done so. Therefore, if these regulations are approved as proposed, there will be one text applicable to all employing offices and covered employees.

Are these proposed regulations also recommended by the OCWR's Executive Director, the Deputy Executive Director for the Senate, and the Deputy Executive Director for the House of Representatives?

As required by Section 304(b)(1) of the CAA, 2 U.S.C. §1384(b)(1), the substance of

these regulations is also recommended by the Executive Director, the Deputy Executive Director for the Senate, and the Deputy Executive Director for the House of Representatives.

Are these proposed substantive regulations available to persons with disabilities in an alternate format?

This Notice of Proposed Regulations is available on the OCWR's website, www.ocwr.gov, which is compliant with Section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. §794d. This Notice can also be made available in large print, Braille, or other alternative format. Requests for this Notice in an alternative format should be made to the Office of Congressional Workplace Rights, 202-724-9250 (voice); 202-426-1913 (fax); or adaaccess@ocwr.gov (e-mail).

How long do I have to submit comments regarding the proposed regulations?

Comments regarding the proposed regulations of the OCWR set forth in this Notice are invited for a period of thirty (30) days following the date of the appearance of this Notice in the Congressional Record.

How do I submit comments?

Comments must be made in writing to the Acting Executive Director, Office of Congressional Workplace Rights, via e-mail at rule-comments@ocwr.gov.

Am I allowed to view copies of comments submitted by others?

Yes. Copies of submitted comments will be available for review on the Office's website at www.ocwr.gov.

Section-by-Section Discussion of Proposed Changes to the ADA Regulations

The following is a section-by-section discussion of the proposed revisions to the Board's substantive ADA regulations that it adopted and submitted for publication in the Congressional Record on February 3, 2016. 162 Cong. Rec. H557-565, S624-632 (daily ed. February 3, 2016).

As noted above, because Congress has not acted on the Board's request for approval of its 2016 amendments, the Board will resubmit them for congressional approval when it submits its request for approval of these amendments. Because the Board's 2016 amendments were adopted pursuant to the CAA's procedures for proposing and approving substantive regulations, the Board is not soliciting additional comments on those adopted amendments at this time.

Regulations proposed in Part 1.

Changes have been made to reflect the enactment of the CAA Reform Act and ADA Amendments Act. Section 1.101(a), Purpose and scope, includes an updated list of covered entities in accordance with the Reform Act, and the reference to 2 U.S.C. §1361(e)(1) reflects a reorganization of subsections by the Reform Act. Section 1.101(b) now references two parts to the regulations, instead of three, as set forth in more detail below. Section 1.102 contains updated references to the CAA Reform Act and ADA Amendments Act.

Regulations proposed in Part 2.

Unlike the Board in 2016, the current Board has decided not to propose adoption of regulations relating to the two unique statutory duties imposed by the CAA upon the General Counsel of the OCWR that are not imposed upon the DOJ and DOT: (1) the investigation and prosecution of charges of discrimination using the Office's mediation and hearing processes (section 210(d) of the CAA) and (2) the biennial inspection and reporting obligations (section 210(f) of the CAA). The current Board has determined that rules relating to these duties are best implemented by adopt-

ing and publishing amendments to the OCWR's Procedural Rules. In the 2016 adopted regulations, such regulations are designated as Parts 2 and 3. Part 1 of the 2016 regulations, "Matters of General Applicability to All Regulations Promulgated Under Section 210 of the Congressional Accountability Act of 1995," includes a list of regulations incorporated by reference (designated §1.105). The Board now proposes to move the list of regulations incorporated by reference to their own part, where the former §1.105 subsections have been re-numbered as sections within the new Part 2.

In §2.103, the Board has listed the specific DOJ regulations incorporated by reference into the regulations being issued under section 210 of the CAA.

These proposed regulations reflect the pertinent DOJ regulations that are in effect as of the date of the publication of this Notice. As such, they incorporate changes in the DOJ regulations that have been made since the Board last proposed regulations in 2014. These changes are as follows:

1. On August 11, 2016, the DOJ published regulations incorporating the requirements of the ADA Amendments Act of 2008 ("ADA Amendments Act") into the ADA Title II and Title III regulations, which took effect on October 11, 2016. Amendment of Americans with Disabilities Act Title II and Title III Regulations to Implement ADA Amendments Act of 2008, 81 FR 53204-01 (August 11, 2016). Congress enacted the ADA Amendments Act to clarify the meaning and interpretation of the ADA definition of disability to ensure that the definition of disability would be broadly construed and applied without extensive analysis. Changes made by this final rule that the Board has incorporated include: amendment of §35.101, relating to the ADA's purpose and broad coverage; §35.108, relating to the definition of disability; appendices that provide explanation and guidance pertaining to the final rule.

2. A November 21, 2016 final rule revised the DOJ's Title III regulation to further clarify a public accommodation's obligation to provide appropriate auxiliary aids and services for people with disabilities. Non-discrimination on the Basis of Disability by Public Accommodations—Movie Theaters; Movie Captioning and Audio Description, 81 FR 87348-01 (December 2, 2016). Effective on January 17, 2017, the final rule codified longstanding DOJ policies in this area, and includes provisions based on technological advances and breakthroughs in the area of auxiliary aids and services that have occurred since the 1991 Title III regulation was published. As set forth below, the Board proposes to adopt §36.303, relating to auxiliary aids and services, which was revised by this final rule.

The Board has adopted all of the DOJ regulations implementing Titles II and III of the ADA with the exceptions detailed in the 2016 Notice (162 Cong. Rec. H557-565, S624-632 (daily ed. February 3, 2016)), plus the following revisions:

1. Since the DOJ's regulations implementing Titles II and III of the ADA regulate public entities and public accommodations, respectively, several regulations are very similar across the titles, applying a similar or identical requirement to either a Title II or a Title III-covered entity. Under the OCWR's proposed §1.102(c), "Covered entity and public entity include any of the entities listed in §1.101(a) that provides public services, programs, or activities, or operates a place of public accommodation within the meaning of Section 210 of the CAA. In the regulations implementing Title III, private entity includes covered entities." Therefore, it is not necessary for the OCWR Board to adopt both a Title II and a Title III regulation that are identical (or similar to the

point of being duplicative) except for the entity they would apply to in a non-CAA context. The Board will exclude the following sections from its substantive regulations on that basis: 35.103 (relating to the regulations' relation to laws other than the ADA), 36.105 (relating to the definition of disability), 36.208 (relating to direct threat), 36.302(c) (relating to service animals), and 36.302(f) (relating to ticketing).

2. The Board finds good cause to modify § 35.107(a) to list the House and Senate separately from other public entities and to reflect a slightly different requirement for them. In creating § 35.107, the DOJ wanted to ensure that individuals dealing with large agencies would be able to easily find a responsible person who is familiar with the ADA's requirements and can communicate those requirements to other individuals in the agency who may be unaware of their responsibilities (often referred to as an "ADA coordinator"). Nondiscrimination on the Basis of Disability in State and Local Government Services, 56 Fed. Reg. 35694-01 (July 26, 1991).

For purposes of section 210 of the CAA, the House and Senate are composed of a large number of separate entities (including each office of a Member and each committee). 2 U.S.C. § 1331(a). The Board's modification of § 35.107 allows the House and the Senate to each designate one employee to coordinate ADA compliance responsibilities, helping to ensure that individuals can easily find and get assistance to effectuate their rights under the ADA as applied by the CAA with regard to the House and Senate. The House and Senate ADA coordinators may, under the regulation as modified, be employees of the Office of Congressional Accessibility Services, which already works to provide services for individuals with disabilities.

The Board finds good cause not to incorporate the requirement at § 35.107(b) for entities to adopt their own grievance procedures, since the CAA specifies the available procedures for violations of the ADA as applied by the CAA at 2 U.S.C. § 1331(d). Section 35.107 will thus read, in its entirety, as detailed below.

3. The Board proposes to adopt § 36.206, relating to retaliation or coercion. While section 207 (2 U.S.C. § 1317) of the CAA provides comprehensive retaliation protection for employees (including applicants and former employees) who may invoke their rights under section 210, section 207 does not apply to non-employees who may enjoy rights and protections against discrimination under section 210. Additionally, § 36.206 contains a list of illustrations of prohibited conduct, which may be helpful to the Board.

4. The Board finds good cause to modify § 36.213, "Relationship of subpart B to subparts C and D of this part." This section references subparts without specifying which regulations comprise those subparts—information which is not conveyed in all formats. For example, the DOJ's ADA website breaks the list of regulations into subparts, but a reader of the list of regulations incorporated by reference below does not see that same information. Therefore, the Board finds good cause to modify this provision by inserting references to the provisions contained within each subpart. Section 36.213 will thus read as detailed below.

5. The Board proposes to adopt § 36.303, relating to auxiliary aids and services. Revised in a 2016 final rule, it now includes provisions based on technological advances and breakthroughs in the area of auxiliary aids and services that have occurred since the 1991 Title III regulation was published. Nondiscrimination on the Basis of Disability by Public Accommodations—Movie Theaters; Movie Captioning and Audio Description, 81

Fed. Reg. 87348 (December 2, 2016). These revisions were not made to the analogous Title II Regulation, § 35.160 General (Communications), so the Board has decided it is appropriate to propose adoption of both regulations, even though they concern similar subject matter.

In section 2.104, the Board has listed the specific DOT regulations incorporated into the regulations being issued under section 210 of the CAA.

These regulations reflect the pertinent DOJ regulations that are in effect as of the date of the publication of this Notice. As such, they incorporate changes in the DOT regulations that have been made since the Board last proposed regulations in 2014. Specifically, a DOT final rule effective July 13, 2015 clarified that public transportation entities are required to make reasonable modifications to their policies, practices, and procedures to avoid discrimination and ensure that their programs are accessible to individuals with disabilities. Transportation for Individuals with Disabilities; Reasonable Modification of Policies and Practices, 80 FR 13253-01 (March 13, 2015). Changes made by this final rule that the Board has incorporated include: amendment to § 37.5, relating to nondiscrimination; § 37.169, relating to the process to be used by public entities providing designated public transportation service in considering requests for reasonable modification; Appendix E to Part 37, which explains DOT's interpretation of sections 37.5(i) and 37.169 concerning reasonable modification requests.

As noted earlier, the Board has adopted all of the DOT regulations implementing Titles II and III of the ADA with the exceptions detailed in the 2016 Notice (162 Cong. Rec. H557-565, S624-632 (daily ed. February 3, 2016)), plus the following revision. Unlike the Board in 2016, the current Board has decided not to propose adoption of subpart F (sections 37.121 through 37.159) of the DOT's regulations, relating to paratransit as a complement to fixed route service. The current Board has determined that these regulations are unnecessary for CAA-covered transportation. Under the ADA, public entities operating fixed route transportation systems must provide comparable transportation services to people whose disabilities prevent their use of the fixed route system. Such "ADA complementary paratransit" is subject to many requirements detailed in DOT's implementing regulations. DOT reasons, in Appendix D to Part 37, that some types of fixed route systems are exempt from the requirement to provide ADA complementary paratransit because of characteristics of these systems such as no attempt to comprehensively cover a service area, limited route structure, limited origins and destinations, interface with another mode of transportation, and limited purposes of travel. Transportation services subject to the CAA share many of these characteristics, and in any event must still comply with requirements governing accessible vehicles and accessible service, so the Board has determined that it is not necessary to adopt the ADA complementary paratransit regulations.

Proposed regulations:

PART 1—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 210 OF THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995 AS AMENDED BY THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995 REFORM ACT

§ 1.101 PURPOSE AND SCOPE

§ 1.102 DEFINITIONS

§ 1.103 AUTHORITY OF THE BOARD

§ 1.104 METHOD FOR IDENTIFYING THE ENTITY RESPONSIBLE FOR CORRECTING VIOLATIONS OF SECTION 210

§ 1.101 Purpose and scope.

(a) CAA. Enacted into law on January 23, 1995 and amended on December 21, 2018, the Congressional Accountability Act ("CAA") in Section 210(b) provides that the rights and protections against discrimination in the provision of public services and accommodations established by sections 201 through 230, 302, 303, and 309 of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 12150, 12182, 12183, and 12189 ("ADA"), shall apply to the following entities:

- (1) each office of the Senate, including each office of a Senator and each committee;
- (2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;
- (3) each joint committee of the Congress;
- (4) the Office of Congressional Accessibility Services;
- (5) the United States Capitol Police;
- (6) the Congressional Budget Office;
- (7) the Office of the Architect of the Capitol (including the Botanic Garden);
- (8) the Office of the Attending Physician;
- (9) the Office of Congressional Workplace Rights; and
- (10) the Library of Congress.

Title II of the ADA prohibits discrimination on the basis of disability in the provision of public services, programs, activities by any "public entity." Section 210(b)(2) of the CAA provides that for the purpose of applying Title II of the ADA the term "public entity" means any entity listed above that provides public services, programs, or activities. Title III of the ADA prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with accessibility standards. Section 225(e) of the CAA provides that, "[e]xcept where inconsistent with definitions and exemptions provided in [this Act], the definitions and exemptions of the [ADA] shall apply under [this Act.]" 2 U.S.C. § 1361(e)(1).

(b) *Purpose and scope of regulations.* The regulations set forth herein (Parts 1 and 2) are the substantive regulations that the Board of Directors of the Office of Congressional Workplace Rights has promulgated pursuant to section 210(e) of the CAA. Part 1 contains the general provisions applicable to all regulations under section 210 and the method of identifying entities responsible for correcting a violation of section 210. Part 2 contains the list of executive branch regulations incorporated by reference which define and clarify the prohibition against discrimination on the basis of disability in the provision of public services and accommodations.

§ 1.102 Definitions.

Except as otherwise specifically provided in these regulations, as used in these regulations:

(a) *Act* or *CAA* means the Congressional Accountability Act of 1995, Pub. L. No. 104-1, amended by Congressional Accountability Act of 1995 Reform Act, Pub. L. No. 115-397.

(b) *ADA or Americans with Disabilities Act* means those sections of the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008 incorporated by reference into the CAA in section 210: 42 U.S.C. §§ 12131–12150, 12182, 12183, and 12189.

(c) *Covered entity* and *public entity* include any of the entities listed in § 1.101(a) that provides public services, programs, or activities, or operates a place of public accommodation within the meaning of section 210 of the CAA. In the regulations implementing Title III, private entity includes covered entities.

(d) *Board* means the Board of Directors of the Office of Congressional Workplace Rights.

(e) *Office* means the Office of Congressional Workplace Rights.

(f) *General Counsel* means the General Counsel of the Office of Congressional Workplace Rights.

§ 1.103 Authority of the Board.

Pursuant to sections 210 and 304 of the CAA, the Board is authorized to issue regulations to implement the rights and protections against discrimination on the basis of disability in the provision of public services and accommodations under the ADA. Section 210(e) of the CAA directs the Board to promulgate regulations implementing section 210 that are “the same as substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.” 2 U.S.C. § 1331(e). Specifically, it is the Board’s considered judgment, based on the information available to it at the time of promulgation of these regulations, that, with the exception of the regulations adopted and set forth herein, there are no other “substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) [of Section 210 of the CAA]” that need be adopted.

In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Attorney General and the Secretary of Transportation. Such changes are intended to make the provisions adopted accord more naturally to situations in the legislative branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Attorney General and/or the Secretary of Transportation from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulations or of the statutory provisions of the CAA upon which they are based.

§ 1.104 Method for identifying the entity responsible for correction of violations of section 210.

(a) *Purpose and scope.* Section 210(e)(3) of the CAA provides that regulations under section 210(e) include a method of identifying, for purposes of section 210 of the CAA and for categories of violations of section 210(b), the entity responsible for correcting a particular violation. This section sets forth the method for identifying responsible entities for the purpose of allocating responsibility for correcting violations of section 210(b).

(b) *Violations.* A covered entity may violate section 210(b) if it discriminates against a qualified individual with a disability within the meaning of Title II or Title III of the ADA.

(c) *Entities Responsible for Correcting Violations.* Correction of a violation of the rights and protections against discrimination is the responsibility of the entities listed in subsection (a) of section 210 of the CAA that provide the specific public service, program, activity, or accommodation that forms the basis for the particular violation of Title II or Title III rights and protections and, when the violation involves a physical access barrier, the entities responsible for designing, maintaining, managing, altering, or constructing the facility in which the specific public service program, activity, or accommodation is conducted or provided.

(d) *Allocation of Responsibility for Correction of Title II and/or Title III Violations.* Where more than one covered entity is found to be an entity responsible for correction of a violation of Title II and/or Title III rights and protections under the method set forth in this section, as between those parties, allocation of responsibility for correcting the violations of the ADA may be determined by statute, contract, or other enforceable arrangement or relationship.

PART 2—REGULATIONS INCORPORATED BY REFERENCE

§ 2.101 TECHNICAL AND NOMENCLATURE CHANGES TO REGULATIONS INCORPORATED BY REFERENCE.

§ 2.102 RULES OF INTERPRETATION.

§ 2.103 INCORPORATED REGULATIONS FROM 28 C.F.R. PARTS 35 AND 36.

§ 2.104 INCORPORATED REGULATIONS FROM 49 C.F.R. PARTS 37 AND 38.

§ 2.105 INCORPORATED STANDARD FROM THE ARCHITECTURAL BARRIERS ACT ACCESSIBILITY STANDARDS (“ABAAS”) (MAY 17, 2005).

§ 2.101 Technical and Nomenclature Changes to Regulations Incorporated by Reference.

The definitions in the regulations incorporated by reference (“incorporated regulations”) shall be used to interpret these regulations except: (1) when they differ from the definitions in § 1.102 or the modifications listed below, in which case the definition in § 1.102 or the modification listed below shall be used; or (2) when they define terms that are not used in the incorporated regulations. The incorporated regulations are hereby modified as follows:

(1) When the incorporated regulations refer to “Assistant Attorney General,” “Department of Justice,” “FTA Administrator,” “FTA regional office,” “Administrator,” “Secretary,” or any other executive branch office or officer, “General Counsel” is hereby substituted.

(2) When the incorporated regulations refer to the date “January 26, 1992,” the date “January 1, 1997” is hereby substituted.

(3) When the incorporated regulations otherwise specify a date by which some action must be completed, the date that is three years from the effective date of these regulations is hereby substituted.

(4) When the incorporated regulations contain an exception for an “historic” property, building, or facility, that exception shall also apply to properties, buildings, or facilities designated as an historic or heritage asset by the Office of the Architect of the Capitol in accordance with its preservation policy and standards and where, in accordance with its preservation policy and standards, the Office of the Architect of the Capitol determines that compliance with the requirements for accessible routes, entrances, or toilet facilities (as defined in 28 C.F.R. Parts 35 and 36) would threaten or destroy the historic significance of the property, building, or facility, the exceptions for alterations to qualified historic property, buildings, or facilities for that element shall be permitted to apply.

§ 2.102 Rules of Interpretation.

When regulations in § 2.103 conflict, the regulation providing the most access shall apply. The Board’s Notice of Adoption shall be used to interpret these regulations and shall be made part of these Regulations as Appendix A.

§ 2.103 Incorporated Regulations from 28 C.F.R. Parts 35 and 36.

The Office shall publish on its website the full text of all regulations incorporated by reference. The following regulations from 28 C.F.R. Parts 35 and 36 that are published in the Code of Federal Regulations on the date of the Board’s adoption of these regulations are hereby incorporated by reference as though stated in detail herein:

§ 35.101 Purpose and broad coverage.

§ 35.102 Application.

§ 35.104 Definitions.

§ 35.105 Self-evaluation.

§ 35.106 Notice.

§ 35.107 Designation of responsible employee.

But modify as follows:

<<The House of Representatives, the Senate, and any>> [A] public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including <<cooperation with an investigation by the General Counsel of a charge alleging non-compliance with the ADA or alleging any actions that would be prohibited by the ADA>> [any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part]. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph. <<The responsible employee designated by the House of Representatives and the Senate may be an employee of the Office of Congressional Accessibility Services, so long as that employee is responsible to carry out the duties in this section.>>

§ 35.108 Definition of disability.
 § 35.130 General prohibitions against discrimination.
 § 35.131 Illegal use of drugs.
 § 35.132 Smoking.
 § 35.133 Maintenance of accessible features.
 § 35.135 Personal devices and services.
 § 35.136 Service animals.
 § 35.137 Mobility devices.
 § 35.138 Ticketing.
 § 35.139 Direct threat.
 § 35.149 Discrimination prohibited.
 § 35.150 Existing facilities.
 § 35.151 New construction and alterations.
 § 35.152 Jails, detention and correctional facilities.
 § 35.160 General.
 § 35.161 Telecommunications.
 § 35.162 Telephone emergency services.
 § 35.163 Information and signage.
 § 35.164 Duties.

Appendix A to Part 35—Guidance to Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services.

Appendix B to Part 35—Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services Originally Published July 26, 1991.

APPENDIX C TO PART 35—GUIDANCE TO REVISIONS TO ADA TITLE II AND TITLE III REGULATIONS REVISING THE MEANING AND INTERPRETATION OF THE DEFINITION OF “DISABILITY” AND OTHER PROVISIONS IN ORDER TO INCORPORATE THE REQUIREMENTS OF THE ADA AMENDMENTS ACT

§ 36.101 Purpose and broad coverage.
 § 36.102 Application.
 § 36.103 Relationship to other laws.
 § 36.104 Definitions.
 § 36.201 General.
 § 36.202 Activities.
 § 36.203 Integrated settings.
 § 36.204 Administrative methods.
 § 36.205 Association.
 § 36.206 Retaliation or coercion.
 § 36.207 Places of public accommodations located in private residences.
 § 36.210 Smoking.
 § 36.213 Relationship of subpart B to subparts C and D of this part.

But modify as follows:

Subpart B of this part << (§ 36.201 through § 36.213) >> sets forth the general principles of nondiscrimination applicable to all entities subject to this part. Subparts C << (§ 36.301 through § 36.310) >> and D << (§ 36.405 through § 36.406) >> of this part provide guidance on the application of the statute to specific situations. The specific provisions, including the limitations on those provisions, control over the general provisions in circumstances where both specific and general provisions apply.

§ 36.301 Eligibility criteria.
 § 36.302 Modifications in policies, practices, or procedures.
 § 36.303 Auxiliary aids and services.
 § 36.304 Removal of barriers.
 § 36.305 Alternatives to barrier removal.
 § 36.307 Accessible or special goods.
 § 36.308 Seating in assembly areas.
 § 36.309 Examinations and courses.
 § 36.310 Transportation provided by public accommodations.
 § 36.402 Alterations.
 § 36.403 Alterations: Path of travel.
 § 36.404 Alterations: Elevator exemption.
 § 36.405 Alterations: Historic preservation.
 § 36.406 Standards for new construction and alterations.

Appendix A to Part 36—Guidance on Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and Commercial Facilities.

Appendix B to Part 36—Analysis and Commentary on the 2010 ADA Standards for Accessible Design.

Appendix C to Part 36—Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities Originally Published on July 26, 1991.

Appendix D to Part 36—1991 Standards for Accessible Design as Originally Published on July 26, 1991.

Appendix E to Part 36—Guidance to Revisions to ADA Title II and Title III Regulations Revising the Meaning and Interpretation of the Definition of “Disability” and Other Provisions in Order to Incorporate the Requirements of the ADA Amendments Act.

Appendix F to Part 36—Guidance and Section-By-Section Analysis.

§ 2.104 Incorporated Regulations from 49 C.F.R. Parts 37 and 38.

The following regulations from 49 C.F.R. Parts 37 and 38 that are published in the Code of Federal Regulations on the effective date of these regulations are hereby incorporated by reference as though stated in detail herein:

§ 37.1 Purpose.
 § 37.3 Definitions.
 § 37.5 Nondiscrimination.
 § 37.7 Standards for accessible vehicles.
 § 37.9 Standards for accessible transportation facilities.
 § 37.13 Effective date for certain vehicle specifications.
 § 37.21 Applicability: General.
 § 37.23 Service under contract.
 § 37.27 Transportation for elementary and secondary education systems.
 § 37.31 Vanpools.
 § 37.37 Other applications.
 § 37.41 Construction of transportation facilities by public entities.
 § 37.43 Alteration of transportation facilities by public entities.
 § 37.45 Construction and alteration of transportation facilities by private entities.
 § 37.47 Key stations in light and rapid rail systems.
 § 37.61 Public transportation programs and activities in existing facilities.
 § 37.71 Purchase or lease of new non-rail vehicles by public entities operating fixed route systems.
 § 37.73 Purchase or lease of used non-rail vehicles by public entities operating fixed route systems.
 § 37.75 Remanufacture of non-rail vehicles and purchase or lease of remanufactured non-rail vehicles by public entities operating fixed route systems.
 § 37.77 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public.
 § 37.79 Purchase or lease of new rail vehicles by public entities operating rapid or light rail systems.
 § 37.81 Purchase or lease of used rail vehicles by public entities operating rapid or light rail systems.
 § 37.83 Remanufacture of rail vehicles and purchase or lease of remanufactured rail vehicles by public entities operating rapid or light rail systems.
 § 37.101 Purchase or lease of vehicles by private entities not primarily engaged in the business of transporting people.
 § 37.105 Equivalent service standard.
 § 37.161 Maintenance of accessible features: General.
 § 37.163 Keeping vehicle lifts in operative condition: Public entities.
 § 37.165 Lift and securement use.
 § 37.167 Other service requirements.
 § 37.169 Process to be used by public entities providing designated public transportation service in considering requests for reasonable modification.
 § 37.171 Equivalency requirement for demand responsive service operated by private entities not primarily engaged in the business of transporting people.
 § 37.173 Training requirements.
 Appendix A to Part 37—Modifications to Standards for Accessible Transportation Facilities.
 Appendix D to Part 37—Construction and Interpretation of Provisions of 49 CFR Part 37.
 Appendix E to Part 37—Reasonable Modification Requests.

- § 38.1 Purpose.
- § 38.2 Equivalent facilitation.
- § 38.3 Definitions.
- § 38.4 Miscellaneous instructions.
- § 38.21 General.
- § 38.23 Mobility aid accessibility.
- § 38.25 Doors, steps and thresholds.
- § 38.27 Priority seating signs.
- § 38.29 Interior circulation, handrails and stanchions.
- § 38.31 Lighting.
- § 38.33 Fare box.
- § 38.35 Public information system.
- § 38.37 Stop request.
- § 38.39 Destination and route signs.
- § 38.51 General.
- § 38.53 Doorways.
- § 38.55 Priority seating signs.
- § 38.57 Interior circulation, handrails and stanchions.
- § 38.59 Floor surfaces.
- § 38.61 Public information system
- § 38.63 Between-car barriers.
- § 38.71 General.
- § 38.73 Doorways.
- § 38.75 Priority seating signs.
- § 38.77 Interior circulation, handrails and stanchions.
- § 38.79 Floors, steps and thresholds.
- § 38.81 Lighting.
- § 38.83 Mobility aid accessibility.
- § 38.85 Between-car barriers.
- § 38.87 Public information system.
- § 38.171 General.
- § 38.173 Automated guideway transit vehicles and systems.
- § 38.179 Trams, and similar vehicles, and systems.

Figures to Part 38.
Appendix to Part 38—Guidance Material.
§ 2.105 Incorporated Standard from the Architectural Barriers Act Accessibility Standards (“ABAAS”) (May 17, 2005).

The following standard from the ABAAS is adopted as a standard and hereby incorporated as a regulation by reference as though stated in detail herein:

§ F202.6 Leases.
Recommended Method of Approval:

The Board recommends that (1) the version of the proposed regulations that shall apply to the Senate and entities and facilities of the Senate be approved by the Senate by resolution; (2) the version of the proposed regulations that shall apply to the House of Representatives and entities and facilities of the House of Representatives be approved by the House of Representatives by resolution; and (3) the version of the proposed regulations that shall apply to other covered entities and facilities be approved by the Congress by concurrent resolution.

BARBARA CHILDS WALLACE,
Chair of the Board of Directors,
Office of Congressional Workplace Rights.

BUDGETARY EFFECTS ON PAYGO LEGISLATION

Pursuant to the Statutory Pay-As-You-Go Act of 2010 (PAYGO), Mr. YARMUTH hereby submits, prior to the vote on passage, for printing in the CONGRESSIONAL RECORD, that H.R. 310, to posthumously award the Congressional Gold Medal, collectively, to Glen Doherty, Tyrone Woods, J. Christopher Stevens, and Sean Smith, in recognition of their contributions to the Nation, as amended, would have no significant effect on the deficit, and therefore, the budgetary effects of such bill are estimated as zero.

Pursuant to the Statutory Pay-As-You-Go Act of 2010 (PAYGO), Mr. YARMUTH hereby submits, prior to the vote on passage, the attached estimate of the costs of H.R. 4590, the Promoting New and Diverse Depository Institutions Act, as amended, for printing in the CONGRESSIONAL RECORD.

ESTIMATE OF PAY-AS-YOU-GO EFFECT FOR H.R. 4590

	By fiscal year, in millions of dollars—												
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2022–2027	2022–2032
Statutory Pay-As-You-Go Impact	0	–3	2	0	0	0	0	0	0	0	0	–1	–1

Components may not sum to totals because of rounding.

Pursuant to the Statutory Pay-As-You-Go Act of 2010 (PAYGO), Mr. YARMUTH hereby submits, prior to the vote on passage, the attached estimate of the costs of H.R. 7132, the Safe Connections Act of 2022, as amended, for printing in the CONGRESSIONAL RECORD.

ESTIMATES OF PAY-AS-YOU-GO EFFECTS FOR H.R. 7132

	By fiscal year, in millions of dollars—												
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2022–2027	2022–2032
Statutory Pay-As-You-Go Impact	0	0	0	0	0	0	0	0	0	0	0	0	0

Components may not sum to totals because of rounding.

Pursuant to the Statutory Pay-As-You-Go Act of 2010 (PAYGO), Mr. YARMUTH hereby submits, prior to the vote on passage, for printing in the CONGRESSIONAL RECORD, that H.R. 8454, the Medical Marijuana and Cannabidiol Research Expansion Act, as amended, would have no significant effect on the deficit, and therefore, the budgetary effects of such bill are estimated as zero.