



Safety, Fire, and Environmental Programs Office
Ford House Office Building, Room H2-573
Washington, DC 20515

www.aoc.gov

October 9, 2014

Ms. Barbara Sapin
Executive Director
Office of Compliance
110 Second Street, SE
Room LA-200, John Adams Building
Washington, D.C. 20540-1999

Subject: Architect of the Capitol Comments Regarding Notice of Proposed Rulemaking

Dear Ms. Sapin:

I am pleased to provide the following comments in response to the September 9, 2014 Congressional Record Notice of Proposed Rulemaking regarding Section 210 of the Congressional Accountability Act (CAA) relating to provisions of Titles II and III of the Americans with Disabilities Act (ADA).

- 1) Supplementary Information Regulations Proposed in Part 3, Section 3.103 Inspection Authority. Representatives from the Office of Compliance (OOC) General Counsel consulted with representatives from the Architect of the Capitol (AOC) regarding improving CAA compliance in all phases of alteration and construction projects. The AOC appreciates OOC's outreach and collaboration in this regard.
- 2) Supplementary Information Regulations Proposed in Part 3, Section 3.103 Inspection Authority. The AOC does not dispute the OOC General Counsel's authority under the CAA to perform periodic inspections of covered facilities. However, we would appreciate your detailed analysis on the specific legal authority that authorizes the OOC to be involved in the pre-construction review of alteration and construction projects as discussed in section 3.103(d).
- 3) Proposed Regulation Section 1.102(c) Definitions. Applying the proposed definitions of "public entity," "private entity," or "covered entity" to the AOC in the proposed regulations incorporated by reference creates conflicting requirements because the requirements for these different entities vary.

- 4) **Proposed Regulation Section 1.103 Authority of the Board.** The Board has determined that, "... 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 to be adopted." While the 2010 ADA Standards for Accessible Design are the referenced standard in the regulations, these standards do not adequately address the exterior, natural world where many elements are not within the control of the covered entity. The Pedestrian Right of Way Accessible Guidelines are widely viewed as the more appropriate standard for the public rights-of-way, including sidewalks, intersections, street crossings, and on-street parking. Although these guidelines have not been approved by the Department of Justice, the proposed regulation does not provide an appropriate avenue for their future adoption or incorporation.
- 5) **Proposed Regulations Section 1.105 Regulations Incorporated by Reference.**
- a. The AOC cannot commit to a three year implementation timeframe as provided for in section 1.105(a) (3). As you are aware, construction and alteration work requires Congressional funding and authorization. And, although an early draft of the proposed regulation was provided to the AOC, there was no detailed discussion of what construction, alteration, transportation, or other regulatory implementation entails or the timeframe necessary to implement. The AOC requests a meeting with the OOC General Counsel as soon as possible to understand 'implementation' expectations.
 - b. The exception associated with an "historic property" in Section 1.105(a)(4) should read: "When the incorporated regulations contain an exception for an "historic" property, building, or facility, that exception shall 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, restrooms or any other facility (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."

- c. Many of the regulations incorporated by reference do not provide an exemption based on historic or heritage asset. For any proposed regulations or those incorporated by reference that are related to modification, alteration, maintenance, change, construction and new construction for any facilities (including those related to transportation), the Office of the Architect of the Capitol should be provided the ability to determine that compliance with the requirements for accessible routes, entrances, restrooms or any other facility (as defined in 28 C.F.R. Parts 35 and 36) would threaten or destroy the historic significance of the property, building or facility and the exceptions for alterations to qualified historic property, buildings or facilities for that element should be permitted to apply.
- 6) Proposed Regulation Section 3.103(d). In the interest of regulation simplicity and timelessness, suggest shortening the second sentence to read: "The Office of the Architect of the Capitol shall, within one year from the effective date of these regulations, develop a process with the OOC General Counsel to identify potential barriers to access prior to the completion of alteration and construction projects." The list of potential provisions will be unnecessary after the first year.
- 7) Proposed Regulation Section 3.104(b) Estimated Cost and Time. In order to provide strong cost and abatement time estimates, the AOC requires adequate time. As of October 1, 2014, the AOC has not received ADA inspection findings for the 113th Congress inspections. We continue to encourage the OOC General Counsel to provide findings in a timely manner.

We look forward to continued collaboration to remove barriers and improve access across the U.S. Capitol campus. Should you have any questions or comments, please contact me by telephone at 202.226.0630 or electronic mail at sadams@aoc.gov.

Sincerely,



Susan P. Adams
Director of Safety, Fire and Environmental Programs

Cc: Amy Dunning, General Counsel, Office of Compliance