FROM THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE:

NOTICE OF PROPOSED RULEMAKING ("NPRM"),

and request for comments from interested parties.

REGULATIONS EXTENDING RIGHTS AND PROTECTIONS UNDER THE AMERICANS WITH DISABILITIES ACT ("ADA") RELATING TO PUBLIC SERVICES AND ACCOMMODATIONS, NOTICE OF PROPOSED RULEMAKING, AS REQUIRED BY 2 U.S.C. § 1331, THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995, AS AMENDED ("CAA").

BACKGROUND:

The purpose of this Notice is to propose substantive regulations that will implement Section 210 of the CAA, 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.

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 ("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 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; and

(9) the Office of Compliance.

2 U.S.C. 1331(b).

Title II of the ADA generally prohibits discrimination on the basis of disability in the provision of services, programs, or activities by any "public entity". Section 210(b)(2) of the CAA defines the term "public entity" for Title II purposes as any entity listed above that provides public services, programs, or activities. 2 U.S.C. §1331(b)(2).

Title III of the ADA generally 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(f) 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(f)(1).

Section 210(f) of the CAA requires that the General Counsel of the Office of Compliance on a regular basis, and at least once each Congress, conduct periodic inspections of all covered facilities and report to Congress on compliance with disability access standards under section 210. 2 U.S.C. §1331(f).

Section 210(e) of the CAA requires the Board of Directors of the Office of Compliance ("the Board") established under the CAA to issue regulations implementing the section. 2 U.S.C. §1331(e). Section 210(e) further states 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) 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." *Id.* Section 210(e) further provides that the regulations shall include a method of identifying, for purposes of this section and for different categories of violations of subsection (b), the entity responsible for correction of a particular violation. 2 U.S.C. §1331(e).

Additional authority for proposing these regulations is found in CAA Section 304, which sets forth the procedure to be followed for the rulemaking process in general, including notice and comment; Board consideration of comments and adoption of regulations; transmittal to the Speaker and President Pro Tempore for publication in the Congressional Record; and approval by the Congress.

Are there ADA public access regulations already in force under the CAA?
Yes. The CAA was enacted on January 23, 1995. It applied to the legislative branch of the federal government the protections of 12 (now 13) statutes that previously had applied to the executive branch and/or the private sector, including laws providing for family and medical leave, prohibiting discrimination against eligible veterans, and affording labor-management rights and responsibilities, among others. The CAA established the Office of Compliance as an independent agency to administer and enforce the CAA. The OOC administers an administrative dispute resolution system to resolve certain disputes arising under the Act. The General Counsel of the OOC has independent investigatory and enforcement authority for other violations of the Act, including certain portions of the ADA, 42 U.S.C. §§12131-12150, 12182, 12183, & 12189.

As set forth in the previous answer, the CAA requires the Board to issue regulations implementing the statutory protections provided by the CAA. *See, e.g.*, CAA Sections 202(d) (Family and Medical Leave Act of 1993), 206(c) (Veterans' Employment and Reemployment), 212 (d) (Federal Service Labor Management Relations Act). 2 U.S.C. sections 1312(d), 1316(c), 1351(d). The Board's regulations "shall be the same as substantive regulations promulgated by the Attorney General and Secretary of Transportation...except insofar as 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)(2).

The CAA does not simply apply to the legislative branch the substantive protections of these laws, and direct that the implementing regulations essentially mirror those of the executive branch. The statute further provides that, while the CAA rulemaking procedure

is underway, the corresponding executive branch regulations are to be applied. Section 411 of the Act 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 statutory scheme makes plain that ADA public access regulations are presently in force. First, regulations virtually identical to these were adopted by the Board, presented to the House of Representatives and the Senate on September 19, 1996, and published on January 7, 1997. 142 Cong. Rec. S10984-11018 and 143 Cong. Rec. S30-66. No action was taken and thus the regulations were not issued. As set forth above, in these circumstances the CAA applies "the most relevant substantive executive agency regulations," i.e., the Departments of Justice ("DOJ) and Department of Transportation ("DOT") ADA public access regulations. 2 U.S.C §1411.

A contrary interpretation would render meaningless several sections of the CAA. For example, Congress directed the AOC and other employing offices to conduct an initial study of legislative branch facilities from January 23, 1995 through December 31, 1996, "to identify any violations of subsection (b) of [section 210], to determine the costs of compliance, and to take any necessary corrective action to abate any violations." 2 U.S.C. section 1331(f)(3). Congress instructed the OOC to assist the employing offices by "arranging for inspections and other technical assistance at their request." *Id.* The CAA was enacted on January 23, 1995. No implementing regulations could have taken effect as of that date. Plainly, Congress intended the employing offices and the OOC to look to the DOJ and DOT ADA public access regulations, with which the CAA explicitly required employing offices to comply, when conducting the initial study and abatement actions.

Other sections of the CAA support this reading. For example, the CAA requires the Board to exclude from labor relations regulations employees of Member offices, Senate and House Legislative Counsel, the Congressional Budget Office and several other employing offices if the Board finds a conflict of interest or appearance thereof. 2 U.S.C. §1351(e)(1)(B). Where, as here, a statute explicitly provides for certain regulatory exemptions, it would be illogical to interpret language that expressly provides for

regulatory compliance to mean anything else. When Congress intended to exempt employing offices from regulations, the CAA did so explicitly.

Why are these regulations being proposed at this time?
As set forth in the previous answer, 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. CAA section 210(e)(2). These proposed regulations will clarify that covered entities must comply with the ADA public access provisions applied to public entities and accommodations to implement Titles II and III of the ADA. Congressional approval and Board issuance of ADA public access under the CAA will also eliminate any question as to the ADA public access protections that are applicable in the legislative branch.

The Board adopted proposed regulations and presented them to the House of Representatives and the Senate in 1996. The regulations were published on January 7, 1997, during the 105th Congress. 142 Cong. Rec. S10984-11018 and 143 Cong. Rec. S30-66. No Congressional action was taken and therefore the regulations were not issued. The Board adopted the present proposal, with updated proposed regulations, to facilitate Congressional consideration of the ADA regulations..

Which ADA public access regulations are applied to covered entities in 2 U.S.C. § 1331(e)?
Section 210(e) of the CAA requires the Board to issue regulations that are "the same as substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions . . . 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).

Consistent with its prior decisions on this issue, the Board has determined that all regulations promulgated after a notice and comment by the DOJ and/or the DOT to implement the provisions of Title II and Title III of the ADA applied by section 210(b) of the CAA are "substantive regulations" within the meaning of section 210(e). See, e.g., 142 Cong.Rec. S5070, S5071-72 (daily ed. May 15, 1996) (NPRM implementing section 220(d) regulations); 141 Cong. Rec. S17605 (daily ed. Nov. 28, 1995) (NPRM implementing section 203 regulations).

See also *Reves v. Ernst & Young*, 494 U.S. 56, 64 (1993) (where same phrase or term is used in two different places in the same statute, it is reasonable for court to give each use a similar construction); *Sorenson v. Secretary of the Treasury*, 475 U.S. 851, 860 (1986) (normal rule of statutory construction assumes that identical words in different parts of the same act are intended to have the same meaning).

In this regard, the Board has reviewed the provisions of section 210 of the CAA, the sections of the ADA applied by that section, and the regulations of the DOJ and DOT, to determine whether and to what extent those regulations are substantive regulations which implement the provisions of Title II and Title III of the ADA applied by section 210(b) of the CAA. As explained more fully below, the Board proposes to adopt the following otherwise applicable regulations of the DOJ published at Parts 35 and 36 of Title 28 of the Code of Federal Regulations ("CFR") and those of the DOT published at Parts 37 and 38 of Title 49 of the CFR:

1. DOJ's regulations at Part 35 of Title 28 of the CFR: The DOJ's regulations at Part 35 implement subtitle A of Title II of the ADA (sections 201 through 205), the rights and protections of which are applied to covered entities under section 210(b) of the CAA. See 28 CFR §35.101 (Purpose). Therefore, the Board determines that these regulations will be adopted in the proposed regulations under section 210(e).

2. DOJ's regulations at Part 36 of Title 28 of the CFR: The DOJ's regulations at Part 36 implement Title III of the ADA (sections 301 through 309). See 28 CFR §36.101 (Purpose). Section 210(b) only applies the rights and protections of three sections of Title III with respect to public accommodations: prohibitions against discrimination (section 302), provisions regarding new construction and alterations (section 303), and provisions regarding examinations and courses (section 309). Therefore, only those regulations in Part 36 that are reasonably necessary to implement the statutory provisions of sections 302, 303, and 309 will be adopted by the Board under section 210(e) of the CAA.

3. DOT's regulations at Parts 37 and 38 of Title 49 of the CFR: The DOT's regulations at Parts 37 and 38 implement the transportation provisions of Title II and Title III of the ADA. See 49 CFR §§37.101 (Purpose) and 38.1 (Purpose). The provisions of Title II and Title III of the ADA relating to transportation and applied to covered entities by section 210(b) of the CAA are subtitle B of Title II (sections 221 through 230) and certain portions of section 302 of Title III. Thus, those regulations of the Secretary that are reasonably necessary to implement the statutory provisions of sections 221 through 230, 302, and 303 of the ADA will be adopted by the Board under section 210(e) of the CAA.

The Board proposes not to adopt those regulatory provisions of the regulations of the DOJ or DOT that have no conceivable applicability to operations of entities within the Legislative Branch or are unlikely to be invoked. See 141 Cong. Rec. at S17604 (daily ed. Nov. 28, 1995) (NPRM implementing section 203 regulations). Unless public comments demonstrate otherwise, the Board intends to include in the adopted regulations a provision stating that the Board has issued substantive regulations on all matters for which section 210(e) requires a regulation. See section 411 of the CAA, 2 U.S.C. §1411.

In addition, the Board has proposed to make technical changes in definitions and nomenclature so that the regulations comport with the CAA and the organizational structure of the Office of Compliance. In the Board's judgment, making such changes satisfies the CAA's "good cause" requirement. With the exception of these technical and nomenclature changes and additional proposed regulations relating to the investigation and inspection authority granted to the General Counsel under the CAA, the Board does not propose substantial departure from otherwise applicable regulations.

The Board notes that the General Counsel applied the above-referenced standards of Parts 35 and 36 of the DOJ's regulations and Parts 37 and 38 of the DOT's regulations during the past inspections of Legislative Branch facilities pursuant to section 210(f) of the CAA. In contrast to other sections of the CAA, which generally give the Office of Compliance only adjudicatory and regulatory responsibilities, the General Counsel has the authority to investigate and prosecute alleged violations of disability standards under section 210, as well as the responsibility for inspecting covered facilities to ensure compliance. According to the General Counsel's final inspection reports, the Title II and Title III regulations encompass the following requirements:

1. Program accessibility: This standard is applied to ensure physical access to public programs, services, or activities. Under this standard, covered entities must modify policies, practices, and procedures to ensure an equal opportunity for individuals with disabilities. If policy and procedural modifications are ineffective, then structural modifications may be required.

2. Effective communication: This standard requires covered entities to make sure that their communications with individuals with disabilities (such as in the context of constituent meetings and committee hearings) are as effective as their communications with others. Covered entities are required to make information available in alternate formats such as large print, Braille, or audio tape, or use methods that provide individuals with disabilities the opportunity to effectively communicate, such as sign language interpreters or the use of

pen and paper. Primary consideration must be given to the method preferred by the individual.

3. ADA Standards for Accessible Design: These standards are applied to architectural barriers, including structural barriers to communication, such as telephone booths, to ensure that existing facilities, new construction, and new alterations, are accessible to individuals with disabilities.

The Board recognizes that, as with other obligations under the CAA, covered entities will need information and guidance regarding compliance with these ADA standards as adopted in these proposed regulations, which the Office will provide as part of its education and information activities.

How do these regulations differ from those proposed by the Board on January 7, 1997?
These regulations are very similar to those proposed by the Board in 1997; however, there are three significant differences:

1. These regulations have been updated to incorporate the changes made in the DOJ and DOT regulations since 1997. One of the most significant changes made by the DOJ occurred on September 15, 2010 when the DOJ published regulations adopting the 2010 Standards for Accessible Design ("2010 Standards"). The 2010 Standards became fully effective on March 15, 2012 and replaced the 1991 Standards for Accessible Design ("1991 Standards") that were referenced in the regulations proposed by the Board in 1997. These regulations incorporate by reference the pertinent DOJ and DOT regulations that are in effect as of the date of the publication of this notice, which means that the 2010 Standards will be applied. The Board has also changed the format of the incorporated regulations. Rather than reprinting each of the regulations with minor changes to reflect different nomenclature used in the CAA (i.e., changing references to "Assistant Attorney General," "Department of Justice," "FTA Administrator," "FTA regional office," "Administrator," and "Secretary" to "General Counsel"), these regulations contain a definitional section in §1.105(a) which make these changes and incorporates the DOJ and DOT regulations by reference.

2. Unlike the Board in 1997, the current Board has decided not to propose adoption of the DOJ Title II regulation relating to employment discrimination, 28 C.F.R. §35.140. The Board notes that since 1997 most courts considering this issue have decided that employees of public entities must use the procedures in Title I of the ADA to pursue employment discrimination claims and that these claims cannot be pursued under Title II.

See, e.g., Brumfield v. City of Chicago, 735 F.3d 619 (7th Cir. 2013); *Elwell v. Okla. ex rel. Bd. of Regents of the Univ. of Okla.,* 693 F.3d 1303 (10th Cir. 2012); *Zimmerman v. Or. Dep't of Justice,* 170 F.3d 1169 (9th Cir. 1999). The prohibition against employment discrimination because of disability in Title I of the ADA is incorporated into section 201(a)(3) of the CAA. 2 U.S.C. §1311(a)(3). Under section 210(c) of the CAA, "with respect to any claim of employment discrimination asserted by any covered employee, the exclusive remedy shall be under section 1311 of this title." 2 U.S.C. §1331(c). Similarly, under section 225(e) of the CAA, "[o]nly a covered entity who has undertaken and completed the procedures in sections 1402 and 1403 of this title may be granted a remedy under part A of this subchapter." 2 U.S.C. § 1361(e). When taken together, these sections of the CAA make it clear that the exclusive method for obtaining relief for employment discrimination because of disability is under section 201, which involves using the counseling and mediation procedures contained in sections 402 and 403 of the CAA. For these reasons, the Board has found good cause not to incorporate the DOJ Title II regulation relating to employment discrimination, 28 C.F.R. §35.140, into these regulations.

3. In Parts 2 and 3 of these regulations, the Board has proposed regulations relating to the the two unique statutory duties imposed by the CAA upon the General Counsel of the Office of Compliance 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). Parts 2 and 3 of these regulations were not contained in the regulations proposed in 1997; however, the Board has determined that there is good cause to propose these regulations to fully implement section 210 of the CAA. *See,* 2 U.S.C. §1331(e)(1). In formulating the substance of these regulations, the Board has directed the Office's statutory employees to consult with stakeholders and has considered their comments and suggestions. The Board has also reviewed the biennial ADA reports from the General Counsel and considered what the General Counsel has learned since 1995 while investigating charges of discrimination and conducting and reporting upon ADA inspections. Of particular note is the regulation proposed as §3.103(d) which addresses concerns raised by oversight and appropriations staff over finding a cost-efficient process that would allow better identification and elimination of potential ADA compliance issues during the pre-construction phases of new construction and alteration projects.

Procedural Summary:

How are substantive regulations proposed and approved under the CAA?
Pursuant to Section 304 of the CAA, 2 U.S.C. § 1384, the procedure for proposing and approving such substantive regulations provides that:

> (1) the Board of Directors propose substantive regulations and publish 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. This Notice of Proposed Rulemaking is step (1) of the outline set forth above.

Are these proposed regulations also recommended by the Office of Compliance'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.

Has the Board of Directors previously proposed substantive regulations implementing the ADA public access provisions pursuant to 2 U.S.C. § 1331?
Yes. Proposed regulations were previously adopted by the Board and presented to the House of Representatives and the Senate on September 19, 1996. The regulations were published on January 7, 1997. 142 Cong. Rec. S10984-11018 and 143 Cong. Rec. S30-66. No Congressional action was taken on these regulations.

What is the approach taken by these proposed substantive regulations?
The Board will follow the procedure as enumerated above and as required by statute. 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.

What responsibilities would covered entities have in effectively implementing these regulations?
The CAA charges covered entities with the responsibility to comply with these regulations. CAA §210, 2 U.S.C. §1331.

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. 2 U.S.C. § 1331(e)(2).

Are these proposed substantive regulations available to persons with disabilities in an alternate format?
This Notice of Proposed Regulations is available on the OOC's web site, www.compliance.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 or Braille. Requests for this Notice in an alternative format should be made to: Annie Leftwood, Executive Assistant, Office of Compliance, 110 2nd Street, S.E., Room LA-200, Washington, D.C. 20540; 202-724-9250; TDD: 202-426-1912; FAX: 202-426-1913.

30 DAY COMMENT PERIOD REGARDING THE PROPOSED REGULATIONS

How long do I have to submit comments regarding the proposed regulations?
Comments regarding the proposed regulations of the OOC 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 Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA-200, Washington, D.C. 20540-1999. Those wishing to receive confirmation of the receipt of their comments are requested to provide a self-addressed, stamped post card with their submission. It is requested, but not required, that an electronic version of

any comments be provided either on an accompanying computer disk or e-mailed to the OOC via its web site. Comments may also be submitted by facsimile to the Executive Director at 202-426-1913 (a non-toll-free number).

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 web site at www.compliance.gov, and at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540-1999, on Monday through Friday (non-Federal holidays) between the hours of 9:30 a.m. and 4:30 p.m.

Summary:

The Congressional Accountability Act of 1995, PL 104-1, was enacted into law on January 23, 1995. The CAA, as amended, applies the rights and protections of thirteen federal labor and employment statutes to covered employees and employing offices within the legislative branch of the federal government. Section 210 of the CAA applies that the rights and protections against discrimination in the provision of public services and accommodations established by 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 ("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).

The Board of Directors of the Office of Compliance is now publishing proposed regulations to implement Section 210 of the Congressional Accountability Act of 1995 ("CAA"), 2 U.S.C. §§1301-1438, as applied to covered entities of the House of Representatives, the Senate, and certain Congressional instrumentalities listed below.

In addition to inviting comment in this Notice, the Board, through the statutory appointees of the Office, sought consultation with the stakeholders regarding the development of these regulations. The Board also notes that the General Counsel of the Office of Compliance has completed inspections of covered facilities for compliance with disability access standards under section 210 of the CAA during each Congress since the CAA was enacted and has submitted reports to Congress after each of these inspections. Based on information gleaned from these consultations and the experience gained from the General Counsel's inspections, the Board is publishing these proposed regulations, pursuant to section 210(e) of the CAA, 2 U.S.C. §1331(e).

The purpose of these regulations is to implement section 210 of the CAA. In this Notice of Proposed Rulemaking ("NPRM" or "Notice") the Board proposes that virtually identical

regulations be adopted for the Senate, the House of Representatives, and the seven Congressional instrumentalities. Accordingly:

(1) Senate. It is proposed that regulations as described in this Notice be included in the body of regulations that shall apply to entities within the Senate, and this proposal regarding the Senate entities is recommended by the Office of Compliance's Deputy Executive Director for the Senate.

(2) House of Representatives. It is further proposed that regulations as described in this Notice be included in the body of regulations that shall apply to entities within the House of Representatives, and this proposal regarding the House of Representatives entities is recommended by the Office of Compliance's Deputy Executive Director for the House of Representatives.

(3) Certain Congressional instrumentalities. It is further proposed that regulations as described in this Notice be included in the body of regulations that shall apply to the Office of Congressional Accessibility Services, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol (including the Botanic Garden), the Office of the Attending Physician, and the Office of Compliance; and this proposal regarding these six Congressional instrumentalities is recommended by the Office of Compliance's Executive Director.

Dates: Comments are due within 30 days after the date of publication of this Notice in the Congressional Record.

SUPPLEMENTARY INFORMATION

The regulations set forth below (Parts 1, 2, and 3) are the substantive regulations that the Board of Directors of the Office of Compliance are proposing pursuant to section 210(e) of the CAA. Part 1 contains the general provisions applicable to all regulations under section 210, the method of identifying entities responsible for correcting a violation of section 210, and 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. Part 2 contains the provisions pertaining to investigation and prosecution of charges of discrimination. Part 3 contains the provisions regarding the periodic inspections and reports to Congress on compliance with the disability access standards. These three parts correspond to the three general duties imposed upon the Office of Compliance by section 210 which are as follows:

1. Under section 210(e) of the CAA, the Board of Directors of the Office of Compliance must promulgate substantive regulations which implement the rights and protections provided by section 210. 2 U.S.C. §1331(e)(1).

2. Under Section 210(d) of the CAA, the General Counsel of the Office of Compliance must receive and investigate charges of discrimination alleging violations of the rights and protections provided by Titles II and III of the ADA, may request mediation of such charges upon believing that a violation may have occurred, and, if mediation has not succeeded in resolving the dispute, may file a complaint and prosecute the complaint through the Office of Compliance's hearing and review process 2 U.S.C. §1331(d).

3. Under section 210(f) of the CAA, the General Counsel of the Office of Compliance on a regular basis, and at least once each Congress, must conduct periodic inspections of all covered facilities and report to Congress on compliance with disability access standards under section 210. 2 U.S.C. §1331(f).

Regulations proposed in Part 1.

§1.101 Purpose and scope. This section references and cites the sections of Title II and III of the ADA incorporated by reference into the CAA, follows the statutory language of the CAA to identify the covered entities and the statutory duties of the General Counsel of the Office of Compliance and describes how the regulations are organized.

§1.102 Definitions. This section describes the abbreviations that are used throughout the regulations.

§1.103 Authority of the Board. This section describes the authority of the Board of Directors of the Office of Compliance to issue regulations under section 210 of the CAA and the intended effect of the technical and nomenclature changes made to the regulations promulgated by the Attorney General and Secretary of Transportation.

§1.104 Method for identifying the entity responsible for correcting violations of section 210. The regulation in this section is required by section 210(e)(3) of the CAA. This regulation hues very closely to the DOJ Title III regulation set forth in 28 C.F.R. §36.201 which in turn is based on the statutory language in 42 U.S.C. §12182(a) (one of the ADA statutory sections incorporated by reference in section 210(b) of the CAA). Under section 302 of the ADA, owners, operators, lessors and lessees are all jointly and severally liable for ADA violations. *See, e.g., Botosan v. McNally Realty*, 216 F.3d 827, 832 (9th Cir. 2000). The proposed regulation allows consideration of relevant statutes, contracts, orders, and other enforceable arrangements or relationships to allocate

responsibility. The term "enforceable arrangement" is used intentionally since certain indemnification and contribution contracts allocating liability under the ADA have been found to be unenforceable. *See, e.g., Equal Rights Center v. Archstone-Smith Trust*, 602 F.3d 597 (4th Cir. 2010, *cert denied,* 131 S. Ct. 504 (2010). Although the concepts of "ownership" or "leasing" do not appear to apply to Legislative Branch facilities on Capitol Hill, the Architect of the Capitol does have statutory superintendence responsibility for certain legislative branch buildings and facilities, including the Capitol Building, which includes duties and responsibilities analogous to those of a "landlord". See 40 U.S.C. §§ 163-166 (Capitol Building), 167-175 and 185a (House and Senate office buildings), 193a (Capitol grounds), 216b (Botanical Garden) and 2 U.S.C. § 141(a)(1) (Library of Congress buildings). The Board believes that, where two or more entities may have compliance obligations under section 210(b) as "responsible entities" under the proposed regulations, those entities should have the ability to allocate responsibility by agreement similar to the case of landlords and tenants with respect to public accommodations under Title III of the ADA. Thus, the proposed regulations adopt such provisions modeled after section 36.201(b) of the DOJ regulations. However, by promulgating this provision, the Board does not intend any substantive change in the statutory responsibility of entities under section 210(b) or the applicable substantive rights and protections of the ADA applied thereunder. See 142 Cong. Rec. at S270 (final rule under section 205 of the CAA substitutes the term "privatization" for "sale of business" in the Secretary of Labor's regulations under the Worker Adjustment Retraining and Notification Act).

§1.105 Regulations incorporated by reference. As explained above, consistent with its prior decisions on this issue, the Board has determined that all regulations promulgated after a notice and comment by the DOJ and/or the DOT to implement the provisions of Title II and Title III of the ADA applied by section 210(b) of the CAA are "substantive regulations" within the meaning of section 210(e). *See, e.g.*, 142 Cong.Rec. S5070, S5071-72 (daily ed. May 15, 1996) (NPRM implementing section 220(d) regulations); 141 Cong. Rec. S17605 (daily ed. Nov. 28, 1995) (NPRM implementing section 203 regulations). In this regard, the Board has reviewed the provisions of section 210 of the CAA, the sections of the ADA applied by that section, and the regulations of the DOJ and DOT, to determine whether and to what extent those regulations are substantive regulations which implement the provisions of Title II and Title III of the ADA applied by section 210(b) of the CAA.

In **section 1.105(a)(1)**, the Board has modified the nomenclature used in the incorporated regulations to comport with the CAA and the organizational structure of the Office of Compliance. In the Board's judgment, making such changes satisfies the CAA's "good cause" requirement. With the exception of these technical and nomenclature changes and additional proposed regulations relating to the investigation and inspection authority granted to the General

Counsel under the CAA, the Board does not propose substantial departure from otherwise applicable regulations. The dates referenced in section 1.105(a)(2) reflect that the ADA public access provisions of the CAA became effective on January 1, 1997 rather than effective date of the ADA which was January 26, 1992. 2 U.S.C. §1331(h). The three year provision in section 1.105(a)(3) was developed after consultation with the Office of the Architect of the Capitol regarding what would be a reasonable time frame for implementing these provisions of the regulations. In several portions of DOJ and DOT regulations, references are made to dates such as the effective date of the regulations or effective dates derived from the statutory provisions of the ADA. The Board proposes to substitute dates which correspond to analogous periods for the purposes of the CAA. In this way covered entities under section 210 may have the same time to come into compliance relative to the effective date of section 210 of the CAA afforded public entities subject to Title II of the ADA. In the Board's judgment, such changes satisfy the CAA's "good cause" requirement. In section 1.105(a)(4), which was also developed based upon consultations with the Office of the Architect of the Capitol ("AOC"), the Board modified the exception for "historic" property to include properties, buildings, or facilities designated as an historic or heritage assets by the AOC. This was necessary because the DOJ regulations limit the definition of historic properties to those "listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law" 28 C.F.R. §35.104. While there are certainly properties on Capitol Hill which have historically significant features that are worthy of preservation, these properties are not eligible for listing on the National Register of Historic Places or considered historic under State of local law. *See, Historic Preservation Act of 1966,* 16 U.S.C. 470g (exempting the White House and its grounds, the Supreme Court building and its grounds, and the United States Capitol and its related buildings and grounds from the provisions of the Historic Preservation Act).

In section **1.105(b)**, the Board has adopted a rule of interpretation to cover the few instances where there are differences between regulations implementing Title II and Title III of the ADA. The CAA is unique in that it applies both Title II and Title III provisions to covered public entities. The public accommodation provisions of Title III of the ADA are otherwise only applicable to private entities. *See,* 42 U.S.C. §12181(7). This section of the regulation reflects the Board's determination that Congress applied provisions of both Title II and Title III of the ADA to legislative branch entities to ensure that individuals with disabilities are provided the most access to public services, programs, activities and accommodations provided by law.

In section **1.105(c)**, the Board has listed the specific DOJ regulations incorporated into the regulations being issued under section 210 of the CAA. As noted earlier, the Board has adopted all of the DOJ regulations implementing Titles II and III of the ADA with the following exceptions:

1. The Board is not incorporating the DOJ regulations regarding retaliation or coercion (28 C.F.R. §§35.134 & 36.206). Sections 35.134 and 36.206 of the DOJ's regulations implement section 503 of the ADA, which prohibits retaliation against any individual who exercises his or her rights under the ADA. 28 CFR pt. 35, App. A at 464 & pt. 36, App. B at 598 (section-by-section analysis). Sections 35.134 and 36.206 are not provisions which implement a right or protection applied to covered entities under section 210(b) of the CAA and, therefore, they will not be included within the adopted regulations. The Board notes, however, that section 207 of the CAA provides a comprehensive retaliation protection for employees (including applicants and former employees) who may invoke their rights under section 210, although section 207 does not apply to nonemployees who may enjoy rights and protections against discrimination under section 210.

2. As noted above, unlike the Board in 1997, the current Board has decided not to propose adoption of the DOJ Title II regulation relating to employment discrimination, 28 C.F.R. §35.140. The Board notes that since 1997 most courts considering this issue have decided that employees of public entities must use the procedures in Title I of the ADA to pursue employment discrimination claims and that these claims cannot be pursued under Title II. *See, e.g., Brumfield v. City of Chicago,* 735 F.3d 619 (7th Cir. 2013); *Elwell v. Okla. ex rel. Bd. of Regents of the Univ. of Okla.,* 693 F.3d 1303 (10th Cir. 2012); *Zimmerman v. Or. Dep't of Justice,* 170 F.3d 1169 (9th Cir. 1999). The prohibition against employment discrimination because of disability in Title I of the ADA is incorporated into section 201(a)(3) of the CAA. 2 U.S.C. §1311(a)(3). Under section 210(c) of the CAA, "with respect to any claim of employment discrimination asserted by any covered employee, the exclusive remedy shall be under section 1311 of this title." 2 U.S.C. §1331(c). Similarly, under section 225(e) of the CAA, "[o]nly a covered entity who has undertaken and completed the procedures in sections 1402 and 1403 of this title may be granted a remedy under part A of this subchapter." 2 U.S.C. § 1361(e). When taken together, these sections of the CAA make it clear that the exclusive method for obtaining relief for employment discrimination because of disability is under section 201, which involves using the counseling and mediation procedures contained in sections 402 and 403 of the CAA. For these reasons, the Board has found good cause not to incorporate the DOJ Title II regulation relating to employment discrimination, 28 C.F.R. §35.140, into these regulations.

3. The Board has not incorporated Subpart F of the DOJ's regulations (28 C.F.R. §§ 35.170-35.189), which set forth administrative enforcement procedures under Title II.

Subpart F implements the provisions of section 203 of the ADA, which is applied to covered entities under section 210 of the CAA. Although procedural in nature, such provisions address the remedies, procedures, and rights under section 203 of the ADA, and thus the otherwise applicable provisions of these regulations are "substantive regulations" for section 210(e) purposes. See 142 Cong. Rec. at S5071-72 (similar analysis under section 220(d) of the CAA). However, since section 303 of the CAA reserves to the Executive Director the authority to promulgate regulations that "govern the procedures of the Office," and since the Board believes that the benefit of having one set of procedural rules provides the "good cause" for modifying the DOJ's regulations, the Board proposes to incorporate the provisions of Subpart F into the Office's procedural rules, to omit provisions that set forth procedures which conflict with express provisions of section 210 of the CAA or are already provided for under comparable provisions of the Office s rules, and to omit rules with no applicability to the Legislative Branch (such as provisions covering entities subject to section 504 of the Rehabilitation Act, provisions regarding State immunity, and provisions regarding referral of complaints to the Justice Department). See 142 Cong. Rec. at S5071-72 (similar analysis and conclusion under section 220(d) of the CAA).

4. The Board has not incorporated Subpart G of the DOJ's regulations, which designates the Federal agencies responsible for investigating complaints under Title II of the ADA. Given the structure of the CAA, such provisions are not applicable to covered Legislative Branch entities and, therefore, will not be adopted under section 210(e).

5. The Board has not incorporated the insurance provisions contained in 28 C.F.R. §36.212. Section 36.212 of the DOJ's regulations restates section 501(c) of the ADA, which provides that the ADA shall not be construed to restrict certain insurance practices on the part of insurance companies and employers, so long as such practices are not used to evade the purposes of the ADA. Section 501(c) of the ADA is not incorporated by reference into section 210 of the CAA. Because section 36.212 implements a section of the ADA which is not incorporated into the CAA and appears intended primarily to cover insurance companies which are not covered entities under the CAA, the Board finds good cause not to incorporate this regulation.

6. The Board has not incorporated Subpart E of the DOJ's regulations (sections 36.501 through 36.599) setting forth the enforcement procedures under Title III of the ADA. As the Justice Department noted in its NPRM regarding subpart E, the Department of Justice does not have the authority to establish procedures for judicial review and enforcement and, therefore, "Subpart E generally restates the statutory procedures for enforcement". 28 CFR pt. 36, App. B at 638 (section-by-section analysis). Additionally, the regulations derive from the provisions of section 308 of the ADA, which is not

applied to covered entities under section 210(b) of the CAA. Thus, the regulations in subpart E are not promulgated by the Attorney General as substantive regulations to implement the statutory provisions of the ADA referred to in section 210(b), within the meaning of section 210(e).

7. The Board has not incorporated Subpart F of the DOJ's regulations which establishes procedures to implement section 308(b)(1)(A)(ii) of the ADA regarding compliance with State laws or building codes as evidence of compliance with accessibility standards under the ADA. 28 CFR pt. 36, App. B at 640 (section-by-section analysis). Section 308 is not one of the laws applied to covered entities under section 210(b) of the CAA and, therefore, these regulations will not be adopted under section 210(e).

In section **1.105(d)**, the Board has listed the specific DOT regulations incorporated into the regulations being issued under section 210 of the CAA. As noted earlier, the Board has adopted all of the DOT regulations implementing Titles II and III of the ADA with the following exceptions:

1. Although the Board has adopted the definitions in section 37.3 of the DOT's regulations, relating to implementation of Part II of Title II of the ADA (sections 241 through 246), those definitions dealing with public transportation by intercity and commuter rail are not adopted because sections 241 through 246 of the ADA were not within the rights and protections applied to covered entities under section 210(b) and, therefore, the regulations implementing such sections are not substantive regulations of the DOT required to be adopted by the Board within the meaning of section 210(e). Accordingly, the Board will give no effect to the definitions of terms such as "commerce," "commuter authority," "commuter rail car," "commuter rail transportation," "intercity rail passenger car," and "intercity rail transportation," which relate to sections 241 through 246 of the ADA.

2. Although the Board has adopted the Nondiscrimination regulation set forth in section 37.5 of the DOT's regulations, subsection (f) of section 37.5 of the this regulation relates to private entities primarily engaged in the business of transporting people and whose operations affect commerce. This subsection implements section 304 of the ADA, which is not a right or protection applied to covered entities under section 210(b) of the CAA. See 56 Fed. Reg. 13856, 13858 (April 4, 1991) (preamble to NPRM regarding Part 37). Therefore, it is not a regulation of the DOT included within the scope of rulemaking under section 210(e) of the CAA and will not be considered by the Board to be included in these regulations.

3. Several portions of the DOT's regulations refer to obligations of entities regulated by

state agencies administering federal transportation funds. See, e.g., sections 37.77(d) (requires filing of equivalent service certificates with state administering agency), 37.135(f) (submission of paratransit development plan to state administering agency) and 37.145 (State comments on paratransit plans). Any references to obligations not imposed on covered entities, such as state law requirements and laws regulating entities that receive Federal financial assistance, will be considered excluded from these proposed regulations.

4. The Board has not adopted section 37.11 of the DOT's regulations relating to administrative enforcement because it does not implement any provision of the ADA applied to covered entities under section 210 of the CAA. Moreover, the enforcement procedures of section 210 are explicitly provided for in section 210(d) ("Available Procedures"). Accordingly, this section will not be included within the incorporated regulations. The subject matter of enforcement procedures is addressed in the Office's procedural rules and in Part 2 of these regulations.

5. Certain sections of Subparts B (Applicability) and C (Transportation Facilities) of the Secretary's regulations were promulgated to implement sections 242 and 304 of the ADA, provisions that are not applied to covered entities under section 210(b) of the CAA or are otherwise inapplicable to Legislative Branch entities. Therefore, the Board will exclude the following sections from its substantive regulations on that basis: 37.21(a)(2) and (b) (relating to private entities under section 304 of the ADA and private entities receiving Federal assistance from the Transportation Department), 37.25 (university transportation systems), 37.29 (private taxi services), 37.33 (airport transportation systems), 37.37(a) and 37.37(e)-(g) (relating to coverage of private entities and other entities under section 304 of the ADA), and 37.49-37.57 (relating to intercity and commuter rail systems). Similarly, the Board proposes modifying sections 37.21(c), 37.37(d), and 37.37(h) and other sections where references are made to requirements or circumstances strictly encompassed by the provisions of section 304 of the ADA and, therefore, not applicable to covered entities under the CAA. See, e.g., sections 37.25-37.27 (transportation for elementary and secondary education systems).

6. Subpart D (sections 37.71 through 37.95) of the DOT's regulations relate to acquisition of accessible vehicles by public entities. Certain sections of subpart D were promulgated to implement sections 242 and 304 of the ADA, which were not applied to covered entities under section 210(b) of the CAA, or are otherwise inapplicable to Legislative Branch entities. Therefore, the Board will exclude the following sections from its substantive regulations on that basis: 37.87-37.91 and 37.93(b) (relating to intercity and

commuter rail service).

7. Subpart E (sections 37.101 through 37.109) of the DOT's regulations relates to acquisition of accessible vehicles by private entities. Section 37.101, relating to acquisition of vehicles by private entities not primarily engaged in the business of transporting people, implements section 302 of the ADA, which is applied to covered entities under section 210(b). Therefore, the Board will adopt section 37.101 as part of its section 210(e) regulations. Sections 37.103, 37.107, and 37.109 of the regulations implement section 304 of the ADA, which is inapplicable to covered entities under the ADA. Therefore, the Board proposes not to include them within its substantive regulations under section 210(e) of the CAA.

8. Part 37 of the DOT's regulations includes several appendices, only two of which the Board proposes to adopt as part of these regulations. The Board proposes to adopt as an appendix to these regulations Appendix A (Modifications to Standards for Accessible Transportation Facilities, ADA Accessibility Guidelines for Buildings and Facilities), which provides guidance regarding the design, construction, and alteration of buildings and facilities covered by Titles II and III of the ADA. 49 CFR pt. 37, App. A. Such guidelines, where not inconsistent with express provisions of the CAA or of the regulations adopted by the Board, may be relied upon by covered entities and other in proceedings under section 210 of the CAA to the same extent as similarly situated persons may rely upon them in actions brought under Title II and Title III of the ADA. See 142 Cong. Rec. at S222 and 141 Cong. Rec. at S17606 (similar resolution regarding Secretary of Labor's interpretative bulletins under the Fair Labor Standards Act for section 203 purposes). The Board proposes not to adopt Appendix B, which gives the addresses of FTA regional offices. Such information is not relevant to covered entities under the CAA. The Board also proposes not to adopt Appendix C, which contain forms for certification of equivalent service. These forms appears to be irrelevant to entities covered by the CAA and therefore will not be adopted by the Board. Finally, the Board will adopt Appendix D to Part 37, the section-by-section analysis of Part 37. The Board notes that the section-by-section analysis may have some relevance in interpreting the sections of Part 37 that the Board has adopted.

9. The Board proposes to adopt, with minimal technical and nomenclature changes, the regulations contained in Part 38 and accompanying appendix, with the exception of the following subparts which the Board has determined implement portions of the ADA not applied to covered entities under section 210(b) of the CAA and/or the Board believe have no conceivable applicability to legislative branch operations: Subpart E, Commuter

Rail Cars and Systems; and Subpart F, Intercity Rail Cars and Systems.

In **section 1.105(d)**, the Board has proposed the adoption of one regulation promulgated by the Access Board, 36 C.F.R. §1190.34, relating to the accessibility of leased buildings and facilities. While the DOJ does not have a regulation pertaining to leased buildings and facilities, the Access Board has promulgated this regulation that sets minimal accessible standards whenever the federal government leases a building or facility (or a portion thereof). Generally, this regulation requires that fully accessible space be leased when available, but also sets some minimal accessibility requirements when fully accessible spaces are not available. These minimum requirements include at least one accessible entrance, an accessible route to major function areas, an accessible toilet, and accessible parking (if that is included in the rent). If there is no space available that meets even these minimal requirements, the regulation does contain an exception that would permit the short term leasing of spaces that do not even meet these minimal standards. The most common ADA public access complaint received by the General Counsel from members of the public relates to the lack of ADA access to spaces being leased by legislative branch offices. The Board therefore finds good cause to clarify the ADA access obligations regarding leased spaces by adopting 36 C.F.R. §1190.34.

Regulations proposed in Part 2.

§2.101 Purpose and scope. This section references and notes that Part 2 of these regulations implements section 210(d) of the CAA which requires that the General Counsel accept and investigate charges of discrimination filed by qualified individuals with disabilities who allege a violation of Title II or Title III of the ADA by a covered entity. It also notes that by procedural rule or policy, the General Counsel or the Office may further describe how the General Counsel *will* exercise the statutory authority provided by section 210(d) of the CAA. The Board notes that the Executive Director is proposing amendments to the Office's Procedural Rules that do include provisions relating to section 210(d) of the CAA.

§2.102 Definitions. This section provides definitions for the undefined terms used in section 210(d) of the CAA. In §2.102(a), the term "charge" is defined in a manner consistent with the Supreme Court's decision in *Fed. Express Corp. v. Holowecki,* 552 U.S. 389, 402 (2008). In §2.102(b), the definition of the term "file a charge" clarifies how charges can be presented to the General Counsel by listing the methods by which the General Counsel has accepted charges in the past. In §2.102(c), the term "occurrence of the alleged violation" is defined in a manner that includes both isolated acts of discrimination and continuing violations. *See, e.g., Havens Realty Corp. v. Coleman,* 455 U.S. 363, 380 (1982). In §2.102(d), the term "the rights and protections against discrimination in the provision of public services and accommodations" is defined by

referencing the specific sections of Titles II and III that are incorporated into the CAA in section 210(b)(1). 2 U.S.C. §1331(b)(1).

§2.103 Investigatory Authority. This section explains the investigatory methods that the General Counsel will use when investigating charges of discrimination and clarifies the duty of cooperation owed by all parties. The language used to describe the investigatory methods listed in §2.103(a) is derived from the Supreme Court's decision in *Dow Chemical Co. v. United States,* 476 U.S. 227, 233 (1986) which describes what is intended when an agency is granted investigatory authority that is not otherwise defined in the statute. The duty to cooperate with investigations described in §2.103(b) is implicit in the CAA. By empowering the General Counsel to investigate potential violations of the the ADA, Congress expressed its expectation that legislative branch employees and offices would cooperate fully with investigations conducted by the General Counsel pursuant to this authority. This regulation is consistent with prior policy guidance the General Counsel has provided to covered entities.

§2.104 Mediation. This section explains when the General Counsel will request mediation of a charge of discrimination. The language in §2.104(a) is derived from section 210(d)(2) of the CAA. 2 U.S.C. §1331(d)(2). The explanation of what happens when mediation results in a settlement is contained in §2.104(b) and is consistent with the language in section 210(d)(3) and with the General Counsel's past practice of closing cases that are resolved during mediation. The language in §2.104(c) is derived from section 210(d)(3) of the CAA. 2 U.S.C. §1331(d)(3).

§2.105 Complaint. The language in this section is is derived from section 210(d)(3) of the CAA. 2 U.S.C. §1331(d)(3).

§2.106 Intervention by charging individual. The language in this section is is derived from section 210(d)(3) of the CAA. 2 U.S.C. §1331(d)(3).

§2.107 Remedies and Compliance. This section describes the remedies available and the compliance dates when a violation of section 210 is found. The remedy language in §2.107(a) is based upon the statutory language in section 210(c) of the CAA. 2 U.S.C. §1331(d)(3). The allowance of attorney's fees and costs described in §2.107(a)(1) is based upon the language in 28 C.F.R. §§ 35.175 & 36.505 which recognize that attorney's fees may be awarded under both Titles II and III of the ADA. The availability of compensatory damages described in §2.107(a)(2) derives from sections 210(c) and of the CAA which incorporates by reference the remedies contained sections 203 and 308(a) of the ADA. Section 203 of the ADA provides that the remedies set forth in the Rehabilitation Act (at 29 U.S.C. §794a) shall be the remedies for violations of Title II of the ADA. The Supreme Court has made clear that the remedies available

under Title II of the ADA and the Rehabilitation Act are "coextensive with the remedies available in a private cause of action brought under Title VI of the Civil Rights Act of 1964" which includes compensatory, but not punitive, damages. *Barnes v. Gorman,* 536 U.S. 181, 185 (2002). The language in §§2.107(a)(1) & (a)(2) requiring that payment be made by the covered entity responsible for correcting the violation is from section 415(c) of the CAA which requires that funds to correct ADA violations "may be paid only from funds appropriated to the employing office or entity responsible for correcting such violations." 2 U.S.C. §1415(c). The compliance date set forth in §2.107(b) is from section 210(d)(5) of the CAA. 2 U.S.C. §1331(d)(5).

§2.108 Judicial Review. This section is from section 210(d)(4) of the CAA. 2 U.S.C. §1331(d)(4).

Regulations proposed in Part 3.

§3.101 Purpose and scope. This section references and notes that Part 3 of these regulations implements section 210(f) of the CAA which requires that the General Counsel, on a regular basis, at least once each Congress, inspect the facilities of covered entities to ensure compliance with the Titles II and III of the ADA and to prepare and submit a report to Congress containing the results of the periodic inspections, describing any violations, assessing any limitations in accessibility, and providing the estimated cost and time needed for abatement. It also notes that by procedural rule or policy, the General Counsel or the Office may further describe how the General Counsel will exercise the statutory authority provided by section 210(d) of the CAA. The Board notes that the Executive Director is proposing amendments to the Office's Procedural Rules that do include provisions relating to section 210(f) of the CAA.

§3.102 Definitions. This section defines terms used in section 210(f) of the CAA which are not defined in the statute. In §3.102(a), the term "facilities of covered entities" is defined. The term "facility" is defined in 28 C.F.R. §35.104, which is incorporated by reference into these regulations. See §1.105(c). "Facilities of covered entities" is defined to include all facilities where covered entities provide public programs, activities, services or accommodations, including those facilities designed, maintained, altered or constructed by a covered entity. Because the General Counsel's inspections under section 210(f) of the CAA are focused upon finding barriers to access in facilities, the term "violation" is defined in §3.102(b) as any barrier to access caused by noncompliance with the applicable standards. The definition of "estimated cost and time needed for abatement" was developed in consultation with Office of the Architect of the Capitol which proposed that reporting regarding estimated abatement cost and time be

provided using a range of dollar amounts and dates due to the difficulty in precisely estimating such costs and dates.

§3.103 Inspection authority. This section describes the general scope of the General Counsel's inspection authority [§3.103(a)] and recognizes that the General Counsel has the right to review information and documents [§3.103(b)], receive cooperation from covered entities [§3.103(c)], and become involved in pre-construction review of alteration and construction projects [§3.103(d)].

The general scope of authority in §3.103(a) is derived from the language in section 210(f)(1) of the CAA. 2 U.S.C. §1331(f)(1). This subsection also describes the discretion that the General Counsel has exercised when conducting these inspections since the enactment of the CAA.

The document and information review described in §3.103(b) recognizes that a thorough inspection of facilities can require the review of documents and other information to ascertain whether a covered entity is in compliance with the ADA. The language in this subsection is based upon prior policy guidance the General Counsel has provided to covered entities.

The duty to cooperate with inspections described in §3.103(c), like the duty to cooperate with investigations described in §2.103(b), is implicit in the CAA. By empowering the General Counsel to inspect all facilities for potential violations of the the ADA, Congress expressed its expectation that legislative branch employees and offices would cooperate fully with such inspections conducted by the General Counsel pursuant to this authority. This regulation is consistent with prior policy guidance the General Counsel has provided to covered entities.

The pre-construction review of alteration and construction projects described in §3.103(d) was developed after consultation with the Office of the Architect of the Capitol and addresses concerns raised by oversight and appropriations staff over finding a cost efficient process that would allow better identification and elimination of potential ADA compliance issues during the pre-construction phases of new construction and alteration projects.

§3.104 Reporting, estimating cost & time and compliance date. This section describes the reporting obligations of the General Counsel set forth in section 210(f)(2) of the CAA. 2 U.S.C. §1331(f)(2). The language in §3.104(a) is directly from section 210(f)(2) of the CAA. Subsection 3.104(b) merely recognizes that the General Counsel needs the cooperation of covered entities to provide the cost and time estimates for abatement required by section 210(f)(2). The compliance date set forth in §3.104(c) is from section 210(d)(5) of the CAA. 2 U.S.C. §1331(d)(5).

Proposed Regulations:

PART 1----MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 210 OF THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995

§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

§1.105 REGULATIONS INCORPORATED BY REFERENCE

§1.101 Purpose and scope.

(a) **CAA.** Enacted into law on January 23, 1995, 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 the provisions of Title 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 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; and

(9) the Office of Compliance;

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(f) 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(f)(1).

Section 210(d) of the CAA requires that the General Counsel of the Office of Compliance accept and investigate charges of discrimination filed by qualified individuals with disabilities who allege a violation of Title II or Title III of the ADA by a covered entity. If the General Counsel believes that a violation may have occurred, the General Counsel may file with the Office a complaint against any entity responsible for correcting the violation. 2 U.S.C. §1361(d).

Section 210(f) of the CAA requires that the General Counsel of the Office of Compliance on a regular basis, and at least once each Congress, conduct periodic inspections of all covered facilities and to report to Congress on compliance with disability access standards under Section 210. 2 U.S.C. §1331(f).

(b) **Purpose and scope of regulations.** The regulations set forth herein (Parts 1, 2, and 3) are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to Section 210(e) of the CAA. Part 1 contains the general provisions applicable to all regulations under Section 210, the method of identifying entities responsible for correcting a violation of Section 210, and 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. Part 2 contains the provisions pertaining to investigation and prosecution of charges of discrimination. Part 3 contains the provisions regarding the periodic inspections and reports to Congress on compliance with the disability access standards.

§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. 104-1, 109 Stat. 3, 2 U.S.C. §§1301-1438).

(b) ***ADA*** means the Americans With Disabilities Act of 1990 (42 U.S.C. §§12131-12150, 12182, 12183, and 12189) as applied to covered entities by Section 210 of the CAA.

(c) ***Covered entity and public entity*** include any of the entities listed in §1.101(a) that provide 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 Compliance.

(e) ***Office*** means the Office of Compliance.

(f) ***General Counsel*** means the General Counsel of the Office of Compliance.

§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 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 this section 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 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 Title II or Title III of the ADA may be determined by statute, contract, order, or other enforceable arrangement or relationship.

§1.105 Regulations incorporated by reference.

(a) **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 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. 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 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 would threaten or destroy the historic significance of the building or facility, the exceptions for alterations to qualified historic buildings or facilities for that element shall be permitted to apply.

(b) **Rule of Interpretation.** When a covered entity is subject to conflicting regulations implementing both Title II and Title III of the ADA, the regulation providing the most access shall apply.

(c) **Incorporated Regulations from 28 C.F.R. Parts 35 and 36.** The following regulations from 28 C.F.R. Parts 35 and 36 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:

§35.101 Purpose.
§35.102 Application.
§35.103 Relationship to other laws.

§35.104 Definitions.
§35.105 Self-evaluation
§35.106 Notice.
§35.107 Designation of responsible employee and adoption of grievance procedures.
§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.
§36.101 Purpose.
§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.
§36.207 Places of public accommodations located in private residences.
§36.208 Direct threat.
§36.209 Illegal use of drugs.
§36.210 Smoking.
§36.211 Maintenance of accessible features.
§36.213 Relationship of subpart B to subparts C and D of this part.
§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.
§36.306 Personal devices and services.
§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 -- Standards for Accessible Design.
Appendix B to Part 36 -- Preamble to Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations (Published July 26, 1991).

(d) **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.
§37.121 Requirement for comparable complementary paratransit service.
§37.123 ADA paratransit eligibility: Standards.
§37.125 ADA paratransit eligibility: Process.
§37.127 Complementary paratransit service for visitors.
§37.129 Types of service.
§37.131 Service criteria for complementary paratransit.
§37.133 Subscription service.
§37.135 Submission of paratransit plan.
§37.137 Paratransit plan development.
§37.139 Plan contents.
§37.141 Requirements for a joint paratransit plan.
§37.143 Paratransit plan implementation.
§37.147 Considerations during FTA review.
§37.149 Disapproved plans.
§37.151 Waiver for undue financial burden.
§37.153 FTA waiver determination.
§37.155 Factors in decision to grant an undue financial burden waiver.
§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.
§37.171 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.
§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.

(e) **Incorporated Regulation from 36 C.F.R. Part 1190.** The following regulation from 36 C.F.R. Part 1190 that is published in the Code of Federal Regulations on the effective date of these regulations is hereby incorporated by reference as though detail herein:

§1190.34 - Accessible buildings and facilities: Leased.

PART 2----MATTERS PERTAINING TO INVESTIGATION AND PROSECUTION OF CHARGES OF DISCRIMINATION.

§2.101 PURPOSE AND SCOPE

§2.102 DEFINITIONS

§2.103 INVESTIGATORY AUTHORITY

§2.104 MEDIATION

§2.105 COMPLAINT

§2.106 INTERVENTION BY CHARGING INDIVIDUAL

§2.107 REMEDIES AND COMPLIANCE

§2.108 JUDICIAL REVIEW

§2.101 Purpose and Scope.

Section 210(d) of the CAA requires that the General Counsel accept and investigate charges of discrimination filed by qualified individuals with disabilities who allege a violation of Title II or Title III of the ADA by a covered entity. Part 2 of these regulations contains the provisions pertaining to investigation and prosecution of charges of discrimination. By procedural rule or

policy, the General Counsel or the Office may further describe how the General Counsel will exercise the statutory authority provided by Section 210.

§2.102 Definitions.

(a) ***Charge*** means any written document from a qualified individual with a disability or that individual's designated representative which suggests or alleges that a covered entity denied that individual the rights and protections against discrimination in the provision of public services and accommodations provided in Section 210(b)(1) of the CAA.

(b) ***File a charge*** means providing a charge to the General Counsel in person, by mail, by electronic transmission, or by any other means used by the General Counsel to receive documents. Charges shall be filed within 180 days of the occurrence of the alleged violation.

(c) ***The occurrence of the alleged violation*** means the later of (1) the date on which the charging individual was allegedly discriminated against; or (2) the last date on which the service, activity, program or public accommodation described by the charging party was operated in a way that denied access in the manner alleged by the charging party.

(d) ***The rights and protections against discrimination in the provision of public services and accommodations*** means all of the rights and protections provided by Section 210(b)(1) of the CAA through incorporation of Sections 201 through 230, 203, 303, and 309 of the ADA and by the regulations issued by the Board to implement Section 210 of the CAA.

§2.103 Investigatory Authority.

(a) **Investigatory Methods.** When investigating charges of discrimination and conducting inspections, the General Counsel is authorized to use all the modes of inquiry and investigation traditionally employed or useful to execute this investigatory authority. The authorized methods of investigation include, but are not limited to, the following: (1) requiring the parties to provide or produce ready access to: all physical areas subject to an inspection or investigation, individuals with relevant knowledge concerning the inspection or investigation who can be interviewed or questioned, and documents pertinent to the investigation; and (2) requiring the parties to provide written answers to questions, statements of position, and any other information relating to a potential violation or demonstrating compliance.

(b) **Duty to Cooperate with Investigations.** Charging individuals and covered entities shall cooperate with investigations conducted by the General Counsel. Cooperation includes

providing timely responses to reasonable requests for information and documents (including the making and retention of copies of records and documents), allowing the General Counsel to review documents and interview relevant witnesses confidentially and without managerial interference or influence, and granting the General Counsel ready access to all facilities where covered services, programs and activities are being provided and all places of public accommodation.

§2.104 Mediation.

(a) **Belief that violation may have occurred.** If, after investigation, the General Counsel believes that a violation of the ADA may have occurred and that mediation may be helpful in resolving the dispute, prior to filing a complaint, the General Counsel may request, but not participate in, mediation under subsections (b) through (d) of Section 403 of the CAA between the charging individual and any entity responsible for correcting the alleged violation.

(b) **Settlement.** If, prior to the filing of a complaint, the charging individual and the entity responsible for correcting the violation reach a settlement agreement that fully resolves the dispute, the General Counsel shall close the investigation of the charge without taking further action.

(c) **Mediation Unsuccessful.** If mediation under (a) has not succeeded in resolving the dispute, and if the General Counsel believes that a violation of the ADA may have occurred, the General Counsel may file with the Office a complaint against any entity responsible for correcting the violation.

§2.105 Complaint.

The complaint filed by the General Counsel shall be submitted to a hearing officer for decision pursuant to subsections (b) through (h) of Section 405 of the CAA. The decision of the hearing officer shall be subject to review by the Board pursuant to Section 406 of the CAA.

§2.106 Intervention by Charging Individual.

Any person who has filed a charge may intervene as of right, with the full rights of a party, whenever a complaint is filed by the General Counsel.

§2.107 Remedies and Compliance.

(a) **Remedy.** The remedy for a violation of Section 210 of the CAA shall be such remedy as would be appropriate if awarded under Section 203 or 308(a) of the ADA.

(1) **Attorney Fees and Costs.** In any action commenced pursuant to Section 210 of the CAA by the General Counsel, when a charging individual has intervened, the hearing officer and the Board, in their discretion, may allow the prevailing charging individual a reasonable attorney's fee, including litigation expenses, and costs, and the covered entity responsible for correcting the violation shall pay such fees, expenses and costs from its appropriated funds as part of the funds to correct violations of Section 210 under Section 415(c) of the CAA.

(2) **Compensatory Damages.** In any action commenced pursuant to Section 210 of the CAA by the General Counsel, when a charging individual has intervened, the hearing officer and the Board, in their discretion, may award compensatory damages to the prevailing charging individual, and the covered entity responsible for correcting the violation shall pay such compensatory damages from its appropriated funds as part of the funds to correct violations of Section 210 under Section 415(c) of the CAA.

(b) **Compliance Date.** Compliance shall take place as soon as possible, but no later than the fiscal year following the end of the fiscal year in which the order requiring correction becomes final and not subject to further review.

§2.108 Judicial Review.

A charging individual who has intervened or any respondent to the complaint, if aggrieved by a final decision of the Board, may file a petition for review in the United States Court of Appeals for the Federal Circuit, pursuant to Section 407 of the CAA.

PART 3----MATTERS PERTAINING TO PERIODIC INSPECTIONS AND REPORTING.

§3.101 PURPOSE AND SCOPE

§3.102 DEFINITIONS

§3.103 INSPECTION AUTHORITY

§3.104 REPORTING, ESTIMATED COST & TIME AND COMPLIANCE

§3.101 Purpose and scope.

Section 210(f) of the CAA requires that the General Counsel, on a regular basis, at least once each Congress, inspect the facilities of covered entities to ensure compliance with the Titles II and III of the ADA and to prepare and submit a report to Congress containing the results of the periodic inspections, describing any violations, assessing any limitations in accessibility, and providing the estimated cost and time needed for abatement. Part 3 of these regulations contains the provisions pertaining to these inspection and reporting duties. By procedural rule or policy, the General Counsel or the Office may further describe how the General Counsel will exercise this statutory authority provided by Section 210.

§3.102 Definitions.

(a) ***The facilities of covered entities*** means all facilities used to provide public programs, activities, services or accommodations that are designed, maintained, altered or constructed by a covered entity and all facilities where covered entities provide public programs, activities, services or accommodations.

(b) ***Violation*** means any barrier to access caused by noncompliance with the applicable standards.

(c) ***Estimated cost and time needed for abatement*** means cost and time estimates that can be reported as falling within a range of dollar amounts and dates.

§3.103 Inspection authority.

(a) **General scope of authority.** On a regular basis, at least once each Congress, the General Counsel shall inspect the facilities of covered entities to ensure compliance with the Titles II and III of the ADA. When conducting these inspections, the General Counsel has the discretion to decide which facilities will be inspected and how inspections will be conducted. The General Counsel may receive requests for ADA inspections, including anonymous requests, and conduct inspections for compliance with Titles II and III of the ADA in the same manner that the General Counsel receives and investigates requests for inspections under Section 215(c)(1) of the CAA.

(b) **Review of information and documents.** When conducting inspections under Section 210(f) of the CAA, the General Counsel may request, obtain, and review any and all information or documents deemed by the General Counsel to be relevant to a determination of whether the covered entity is in compliance with Section 210 of the CAA.

(c) **Duty to cooperate.** Covered entities shall cooperate with any inspection conducted by the General Counsel in the manner provided by §2.103(b).

(d) **Pre-construction review of alteration and construction projects.** Any project involving alteration or new construction of facilities of covered entities are subject to inspection by the General Counsel for compliance with Titles II and III of the ADA during the design, pre-construction, construction, and post construction phases of the project. The Office of the Architect of the Capitol shall, within one year from the effective date of these regulations, develop a process with the General Counsel to identify potential barriers to access prior to the completion of alteration and construction projects that may include the following provisions:

(1) Design review or approval;

(2) Inspections of ongoing alteration and construction projects;

(3) Training on the applicable ADA standards;

(4) Final inspections of completed projects for compliance; and

(5) Any other provision that would likely reduce the number of ADA barriers in alterations and new construction and the costs associated with correcting them.

§3.104 Reporting, estimating cost & time and compliance date.

(a) **Reporting duty.** On a regular basis, at least once each Congress, the General Counsel shall prepare and submit a report to Congress containing the results of the periodic inspections conducted under §3.103(a), describing any violations, assessing any limitations in accessibility, and providing the estimated cost and time needed for abatement.

(b) **Estimated cost & time.** Covered entities shall cooperate with the General Counsel by providing information needed to provide the estimated cost and time needed for abatement in the manner provided by §2.103(b).

(c) **Compliance date.** All barriers to access identified by the General Counsel in its periodic reports shall be removed or otherwise corrected as soon as possible, but no later than the fiscal year following the end of the fiscal year in which the report describing the barrier to access was issued by the General Counsel.

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.

Signed at Washington, D.C., on this 9th day of September, 2014.

Barbara L. Camens

BARBARA L. CAMENS,
Chair of the Board, Office of Compliance.