

**BROWN BAG**


**Public Access Under the Americans with Disabilities Act: Proposed Regulations**

Office of Congressional Workplace Rights


Office of the General Counsel

July 26, 2022

*advancing workplace rights, safety & health, and accessibility in the legislative branch*




**Welcome**



**Presenters**

- Hillary Benson, Deputy General Counsel
- Dynah Haubert, Senior Attorney

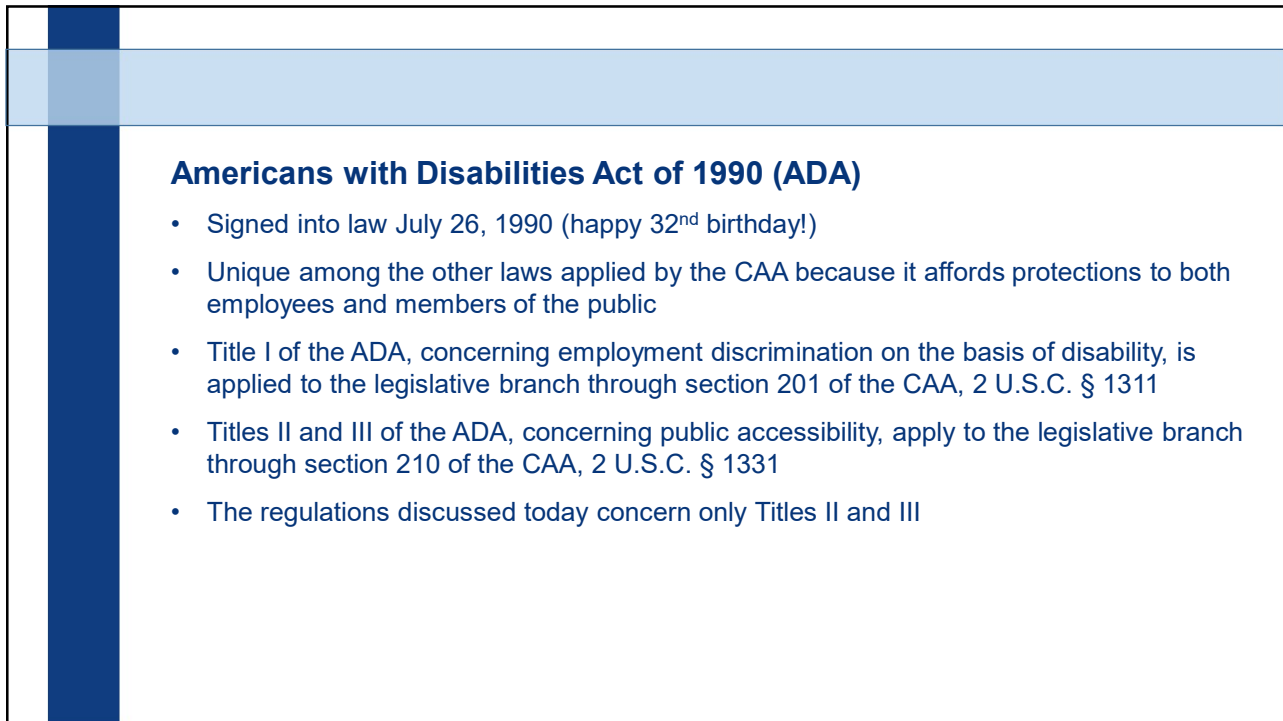


**Overview**

- ADA overview
- Updated proposed OCWR ADA public access regulations
- Rulemaking process and comments

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# ADA Overview

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- A slide with a dark blue vertical bar on the left and a light blue horizontal bar across the top. The text "Americans with Disabilities Act of 1990 (ADA)" is bolded and followed by a bulleted list.
- ## Americans with Disabilities Act of 1990 (ADA)
- Signed into law July 26, 1990 (happy 32<sup>nd</sup> birthday!)
  - Unique among the other laws applied by the CAA because it affords protections to both employees and members of the public
  - Title I of the ADA, concerning employment discrimination on the basis of disability, is applied to the legislative branch through section 201 of the CAA, 2 U.S.C. § 1311
  - Titles II and III of the ADA, concerning public accessibility, apply to the legislative branch through section 210 of the CAA, 2 U.S.C. § 1331
  - The regulations discussed today concern only Titles II and III

**ADA Titles II and III**

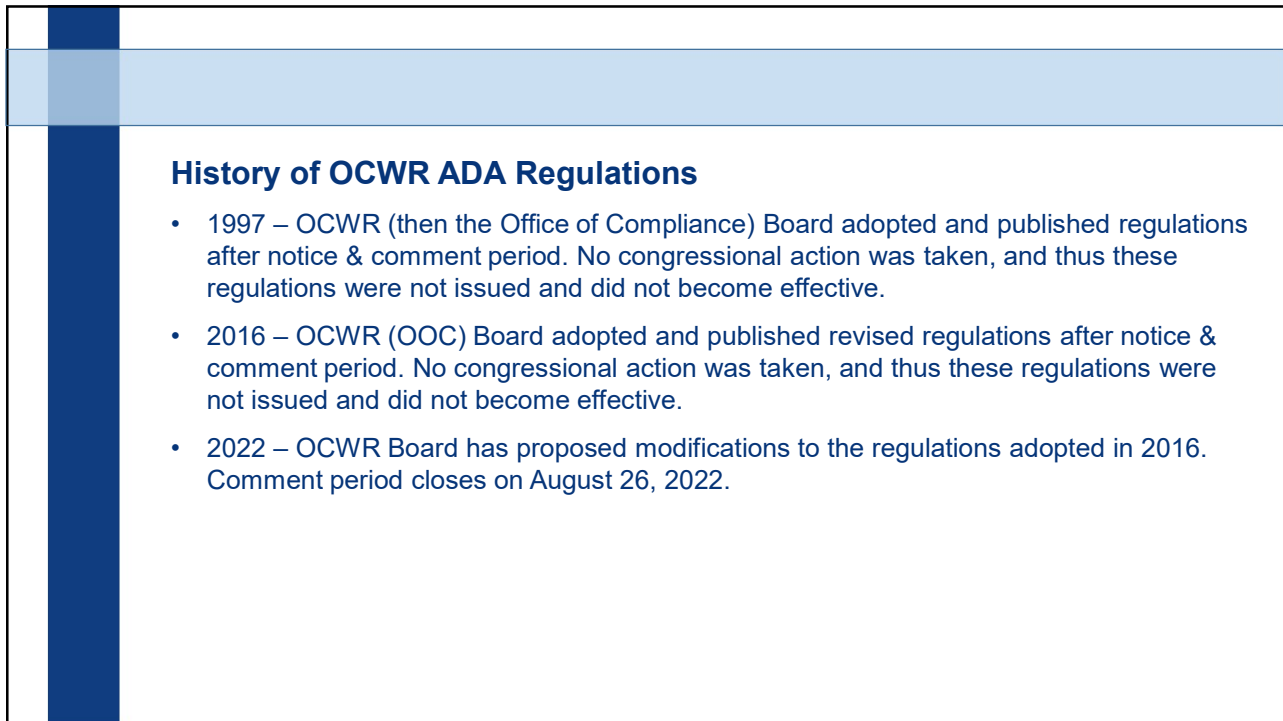
- Title II
  - Applies to state and local governments
  - “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132
- Title III
  - Applies to privately owned places of public accommodation
  - Prohibits discrimination “on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation...” 42 U.S.C. § 12182(a).

**Both Titles II and III of the ADA apply to the legislative branch**

- Congress applied both titles to provide to individuals with disabilities the greatest amount of access to public services, programs, activities and accommodations available under the law
- To clarify what this dual application means in practice, the Board of Directors of OCWR has explained that covered offices “must at all times provide services, programs and activities that are in compliance with Title II of the ADA and, when those services, programs, activities or accommodations are provided directly to the public (as in places of public accommodations), they must also comply with Sections 302, 303 and 309 of Title III of the ADA.”
- Put simply, employing offices must make their services, programs, and activities for the public – as well as the facilities where these services, programs, and activities are provided – accessible to individuals with disabilities



# Updated OCWR ADA Public Access Regulations

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- ## History of OCWR ADA Regulations
- 1997 – OCWR (then the Office of Compliance) Board adopted and published regulations after notice & comment period. No congressional action was taken, and thus these regulations were not issued and did not become effective.
  - 2016 – OCWR (OOC) Board adopted and published revised regulations after notice & comment period. No congressional action was taken, and thus these regulations were not issued and did not become effective.
  - 2022 – OCWR Board has proposed modifications to the regulations adopted in 2016. Comment period closes on August 26, 2022.

### Current Applicable Regulations – DOJ and DOT

- Section 411 of the CAA provides that, while the CAA rulemaking procedure is underway, the corresponding executive agency regulations are to be applied.
  - “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.” 2 U.S.C §1411.
- “[T]he most relevant substantive executive agency regulation[s]” are the Department of Justice (“DOJ”) and Department of Transportation (“DOT”) ADA public access regulations (28 C.F.R. Parts 35 and 36 and 49 C.F.R. Parts 37 and 38).

### Overview of updated regulations

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

§1.101 Purpose and scope

§1.102 Definitions

§1.103 Authority of the Board

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

PART 2----REGULATIONS INCORPORATED BY REFERENCE

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

§2.102 Rules of Interpretation.

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

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

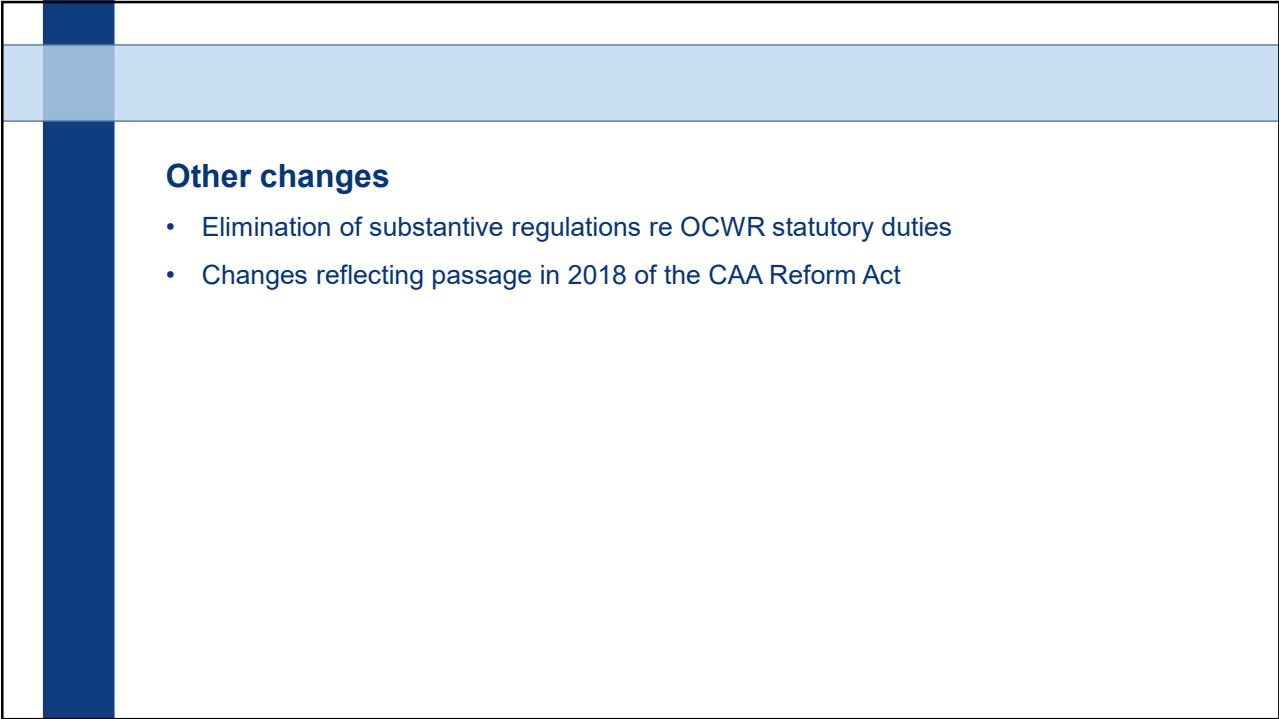
§2.105 Incorporated Standard from the Architectural Barriers Act Accessibility Standards (“ABAAS”) (May 17, 2005).

**Changes that reflect updates to executive agency regulations**

- ADA Amendments Act of 2008 final rule
- Captioning and audio description final rule
- Reasonable modification obligation in transportation

**Other changes to regulations incorporated by reference**

- Further elimination of duplication between titles
- Modification of §35.107(a), relating to ADA coordinator
- Adoption of §36.206, relating to retaliation
- Elimination of complementary paratransit requirements (49 C.F.R. Part 37, Subpart F)



**Other changes**

- Elimination of substantive regulations re OCWR statutory duties
- Changes reflecting passage in 2018 of the CAA Reform Act



**Rulemaking Process  
and Comments**



### Regulatory Process

- CAA section 304, 2 U.S.C. § 1384
- Notice of Proposed Rulemaking published in the *Congressional Record*
- 30-day period for public comment
- OCWR Board reviews all comments received, and may revise proposed regulations
- OCWR Board adopts regulations and publishes them in the *Congressional Record*
- Regulations become effective after approved by Congress, then issued by the OCWR Board and published in the *Congressional Record*

### Submitting Comments

- Comment period is 30 days after NPRM appears in the Congressional Record – **deadline is August 26, 2022**
- Submission of comments must be made in writing to the Acting Executive Director of the Office of Congressional Workplace Rights via email at [rule-comments@ocwr.gov](mailto:rule-comments@ocwr.gov)
- At this time the Board is soliciting comments on these revisions only, not the 2016 adopted amendments
- The NPRM may be requested in Braille, large print, or other alternative formats by emailing [adaaccess@ocwr.gov](mailto:adaaccess@ocwr.gov)
- Copies of submitted comments will be available for review on the OCWR website

