(Mr. FETTERMAN), and the Senator from West Virginia (Mr. MANCHIN) are necessarily absent.

Mr. THUNE. The following Senators are necessarily absent: the Senator from Kentucky (Mr. MCCONNELL) and the Senator from Alabama (Mr. TUBERVILLE).

The yeas and nays resulted—yeas 26, nays 68, as follows:

[Rollcall Vote No. 76 Leg.]

YEAS—26

Barrasso	Hagerty	Paul
Blackburn	Hawley	Schmitt
Braun	Hoeven	Scott (FL)
Britt	Johnson	Scott (SC)
Budd	Lee	Sinema
Cruz	Lummis	Sullivan
Daines	Marshall	Tester
Fischer	Moran	Vance
Graham	Ossoff	

NAYS—68

Baldwin	Hassan	Risch
Bennet	Heinrich	Romney
Blumenthal	Hickenlooper	Rosen
Booker	Hirono	Rounds
Boozman	Hyde-Smith	Rubio
Brown	Kaine	Sanders
Cantwell	Kelly	Schatz
Capito	Kennedy	Schumer
Cardin	King	Shaheen
Carper	Klobuchar	Smith
Casey	Lankford	Stabenow
Cassidy	Luján	Thune
Collins	Markey	Tillis
Cornyn	Menendez	Van Hollen
Cortez Masto	Merkley	Warner
Cotton	Mullin	Warnock
Cramer	Murkowski	Warren
Crapo	Murphy	Welch
Duckworth	Murray	Whitehouse
Durbin	Padilla	Wicker
Ernst	Peters	Wyden
Gillibrand	Reed	Young
Grassley	Ricketts	

NOT VOTING—6

Coons	Fetterman	McConnell
Feinstein	Manchin	Tuberville

The PRESIDING OFFICER (Mr. KELLY). On this vote, the yeas are 26, the nays are 68.

Under the previous order requiring 60 votes for the adoption of this amendment, the amendment is not agreed to.

The amendment (No. 40) was rejected.

The PRESIDING OFFICER. The Senator from New Hampshire.

NATIONAL WOMEN'S HISTORY MONTH

Mrs. SHAHEEN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 129, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The senior assistant legislative clerk read as follows:

A resolution (S. Res. 129) designating March 2023 as ''National Women's History Month''.

There being no objection, the Senate proceeded to consider the resolution.

Mrs. SHAHEEN. I know of no further debate on the resolution.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the resolution.

The resolution (S. Res. 129) was agreed to.

Mrs. SHAHEEN. I ask unanimous consent that the preamble be agreed to and that the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The preamble was agreed to.

(The resolution, with its preamble, is printed in today's RECORD under ''Submitted Resolutions.'')

RESOLUTIONS SUBMITTED TODAY

Mrs. SHAHEEN. Mr. President, I ask unanimous consent that the Senate now proceed to the en bloc consideration of the following Senate resolutions introduced earlier today: S. Res. 130, S. Res. 131, S. Res. 132.

There being no objection, the Senate proceeded to consider the resolutions en bloc.

REMEMBERING OLIVER LEAVITT

● Ms. MURKOWSKI. Mr. President, I want to take a few minutes to recognize the life of an extraordinary Alaska Native leader Oliver Aveogan Leavitt, who died January 9, 2023, at the age of 79. With the passing of Oliver Leavitt, Alaska has lost a highly respected Inupiaq leader and elder who dedicated his life to advocating for Inupiat and Alaska Native rights and ensuring that cultural and traditional knowledge will be passed down to younger generations.

Oliver Leavitt was born in 1943 in Utqiagvik and was raised in caribou and fish camps along the Arctic coast living a traditional Alaska Native subsistence lifestyle. Oliver was known as a statewide leader and was instrumental in the legislation and policy changes that he successfully advocated for, including the Alaska Native Claims Settlement Act—ANCSA—working in close partnership with dear friends and leaders such as the late Dr. Jacob Anagi Adams. Oliver not only lived in a time of rapid and monumental change, but he was also an agent of that change and progress for his people at a defining period in our State's history, leading discussions about rights to the land and resources and ensuring prosperity for the region as a founder and leader of Arctic Slope Regional Corporation.

Oliver Leavitt's staunch and storied dedication meant sacrificing time away from his family and cultural activities to camp out in DC, working on the passage of amendments to ANCSA that benefited all Alaska Native people for future generations, including legislation which authorized development on North Slope lands. Oliver also provided strong cultural leadership as a whaling captain, leading the Oliver Leavitt Crew, and sharing his skills as an expert skin boat maker. Oliver proudly served his community, State, and Nation at all levels, as an Army veteran, serving in the Vietnam war, and served on many local and early boards, such as Arctic Slope Regional Corporation, Alaska Federation of Natives, the U.S. Arctic Research Commission, Arctic Slope Native Association—which led his North Slope region in the fight about land claims—and First Alaskans Institute.

Dr. Leavitt is survived by his beloved wife Annie Hopson Leavitt; his two daughters, Mary Lou and Martina (Jamie); daughter-in-law Doreen; seven grandchildren; and three great-grandchildren. He is preceded in death by his and Mrs. Leavitt's son, William Jens Leavitt. Dr. Leavitt occupied a special place in Alaska's history and in the hearts of those who called him a friend. He prioritized mentoring the next generation. Oliver was loved in return, and Alaskans are immensely proud of all that he contributed to the State. My family and I extend our deepest condolences to his friends, family, and loved ones during this time as we reflect on the life a legendary Alaskan.●

Mrs. SHAHEEN. I ask unanimous consent that the resolutions be agreed to, the preambles, where appropriate, be agreed to, and that the motions to reconsider be considered made and laid upon the table, all en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 130) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in today's RECORD under ''Submitted Resolutions.'')

The resolution (S. Res. 131) was agreed to.

(The resolution is printed in today's RECORD under ''Submitted Resolutions.'')

The resolution (S. Res. 132) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in today's RECORD under ''Submitted Resolutions.'')

MORNING BUSINESS

NOTICE OF ADOPTION OF REGULATIONS FROM THE OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS

Mr. SCHUMER. Mr. President, I ask unanimous consent that the notice of adoption of regulations from the Office of Congressional Workplace Rights be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NOTICE OF ADOPTION OF REGULATIONS AND TRANSMITTAL FOR CONGRESSIONAL APPROVAL

U.S. CONGRESS, OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS,
Washington, DC, March 28, 2023.

Hon. PATTY MURRAY,
President Pro Tempore of the U.S. Senate,
The United States Capitol,
Washington, DC.

DEAR MADAM PRESIDENT: Section 304(b)(3) of the Congressional Accountability Act

(CAA), 2 U.S.C. §1384(b)(3), requires that, with regard to substantive regulations under the CAA, after the Board of Directors (''Board'') of the Office of Congressional Workplace Rights (''OCWR'') has published a general notice of proposed rulemaking as required by subsection (b)(1), and received comments as required by subsection (b)(2), ''the Board shall adopt regulations and shall transmit notice of such action together with a copy of such regulations to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the Congressional Record on the first day on which both Houses are in session following such transmittal.''

The OCWR Board has adopted the regulations in the Notice of Adoption of Substantive Regulations and Transmittal for Congressional Approval, which accompany this transmittal letter. The Board requests that the accompanying Notice be published in both the House and Senate versions of the Congressional Record on the first day on which both Houses are in session following receipt of this transmittal. The Board has adopted the same regulations for the Senate, the House of Representatives, and the other covered entities and facilities, and therefore recommends that the adopted regulations be approved by concurrent resolution of the Congress.

Any inquiries regarding this notice should be addressed to Patrick Findlay, Executive Director of the Office of Congressional Workplace Rights, Room LA–200, 110 2nd Street, S.E., Washington, D.C. 20540; 202–724–9250.

Sincerely,

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

Attachment.

FROM THE BOARD OF DIRECTORS OF THE OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS

NOTICE OF ADOPTION OF REGULATIONS AND TRANSMITTAL FOR CONGRESSIONAL APPROVAL

Modification of Regulations Extending Rights and Protections Under the Americans with Disabilities Act Relating to Public Services and Accommodations, Notice of Adoption of Regulations and Submission for Approval as Required by 2 U.S.C. §1331, Congressional Accountability Act of 1995, as Amended.

Procedural Summary:

Issuance of the Board's Initial Notice of Proposed Rulemaking.

On or about July 26, 2022, the Board of Directors (''the Board'') of the Office of Congressional Workplace Rights (''OCWR'') published a Notice of Proposed Rulemaking (''NPRM'') in the Congressional Record. 168 Cong. Rec. H7158–H7163, S3700–3705 (daily ed. July 26, 2022). The Board, after considering comments to the NPRM, has adopted, and is submitting for approval by the Congress, final modified regulations implementing section 210 of the CAA. As set forth in detail below, the OCWR Board previously adopted regulations implementing section 210 of the CAA in 2016. 162 Cong. Rec. H557–565, S624–632 (daily ed. February 3, 2016). Because Congress has not acted on the Board's request for approval of its 2016 amendments, the Board now resubmits them for congressional approval.

Why did the Board propose these new Regulations?

The Congressional Accountability Act of 1995, PL 104–1 (''CAA''), was enacted into law on January 23, 1995. The CAA, as amended, applies the rights and protections of fourteen federal labor and employment statutes to covered employees and employing offices within the legislative branch of the federal government. 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 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). Title II of the ADA 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 of the listed legislative branch offices that provide public services, programs, or activities. 2 U.S.C. §1331(b)(2). 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 the accessibility standards.

Section 210(e) of the CAA requires the OCWR Board to issue regulations implementing Section 210. 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) of this section 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)(3).

What procedure followed the Board's initial Notice of Proposed Rulemaking?

The July 26, 2022 Notice of Proposed Rulemaking included a thirty day comment period, which began on July 26, 2022. The OCWR received two sets of written comments to the proposed substantive regulations from stakeholders. The Board of Directors has reviewed these comments, has made certain changes to the proposed substantive regulations in response to the comments, has adopted the amended regulations, and is submitting these final regulations for approval by Congress.

What is the effect of the Board's adoption of these substantive regulations?

Adoption of these substantive regulations by the Board does not complete the promulgation process. Pursuant to section 304 of the CAA, 2 U.S.C. §1384, following the Board's adoption of the regulations, it must 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 pro tempore of the Senate for publication in the Congressional Record. This Notice of Adoption of Substantive Regulations and Submission for Congressional Approval completes this step.

What are the next steps in the process of promulgation of these regulations?

Pursuant to section 304(b)(4) of the CAA, 2 U.S.C. §1384(b)(4), the Board of Directors is required to ''include a recommendation in the general notice of proposed rulemaking and in the regulations as to whether the regulations should be approved by resolution of the Senate, by resolution of the House of Representatives, by concurrent resolution, or by joint resolution.'' The Board has adopted the same regulations for the Senate, the House of Representatives, and the other covered entities and facilities, and therefore recommends that the adopted regulations be approved by concurrent resolution of the Congress.

Has the Board previously adopted regulations implementing section 210 of the CAA?

Yes. The first ADA regulations implementing section 210 of the CAA were adopted by the Board and published on January 7, 1997, 142 Cong. Rec. H10676–10711, S10984–11019 (daily ed. September 19, 1996) and 143 Cong. Rec. S30–61 (daily ed. January 7, 1997), after providing notice, and receiving and considering comments in accordance with section 304 of the CAA. No congressional action was taken and thus the 1997 regulations were not issued. Revised regulations were adopted by the Board and published on February 3, 2016, after providing notice, and receiving and considering comments in accordance with section 304 of the CAA. 160 Cong. Rec. H7363 & 160 Cong. Rec. S5437 (daily ed., Sept. 9, 2014), 162 Cong. Rec. H557–565, S624–632 (daily ed. February 3, 2016). No congressional action was taken and thus the regulations were not issued. Because Congress has not acted on the Board's request for approval of its 2016 amendments, the Board now resubmits them for congressional approval.

The Board's Responses to Comments:

A. Commenters' incorporation of 2014 comments

Both commenters incorporated by reference comments submitted in response to the Board's 2014 ADA NPRM. In the 2022 NPRM, the Board only solicited comments on the modifications being made to the ADA regulations adopted in 2016. Because the Board has already considered all of the comments made to the 2014 ADA NPRM and responded to them in its 2016 ADA Notice of Adoption, the Board will not further respond to those comments at this time. 162 Cong. Rec. H557–565, S624–632 (daily ed. February 3, 2016).

The Board notes that the Department of Justice (''DOJ'') regulations now incorporated by reference into the regulations being adopted under section 210 of the CAA have not undergone drastic changes since the opportunity for comments pursuant to the 2014 ADA NPRM. The DOJ regulations, originally published on July 26, 1991 and revised on September 15, 2010, have since undergone only specified changes explained in detail in the July 2022 NPRM involving the definition of ''disability'' as well as movie theater accessibility. The few changes to the pertinent Department of Transportation (''DOT'') regulations since 2014 are described in detail in the July 2022 NPRM as well, and relate to public transportation entities' obligation to make reasonable modifications.

The Board has modified section 2.102, regarding rules of interpretation, to specify that both the Board's 2016 Notice of Adoption and the instant Notice of Adoption shall be used to interpret the regulations and shall be made part of these Regulations as Appendix A.

B. Removal of substantive regulations in favor of procedural rules to govern procedure

Both commenters expressed concern over the Board's proposal to remove certain substantive regulations in favor of procedural rules to govern unique procedural issues in implementing the ADA mandate under the CAA. Unlike in 2016, the Board's substantive regulations no longer address the procedures

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

Both commenters suggested that this approach is in direct contradiction to the statutory requirement in 2 U.S.C. §1331(e)(1) that the Board use the procedures of 2 U.S.C. §1384 to adopt substantive regulations to implement section 210 of the CAA, rather than the simpler standard for adopting procedural rules under 2 U.S.C §1383. The Board has determined that rules relating to procedures belong in the procedural rules, not the substantive regulations. Nothing in the CAA prevents the Executive Director, subject to the approval of the Board, from adopting procedural rules pursuant to 2 U.S.C. §1383 with respect to any particular part of the CAA. Section 1383 does not prescribe what subjects may be addressed in the procedural rules, beyond that they are ''rules governing the procedures of the Office.'' 2 U.S.C §1383(a). Indeed, as the Rules' Scope states, ''These Rules of the [OCWR] govern the procedures for considering and resolving alleged violations of the laws made applicable by the Congressional Accountability Act of 1995 (CAA), as amended by the Congressional Accountability Act of 1995 Reform Act of 2018 (CAARA).'' Procedural Rules of the Office of Congressional Workplace Rights as Amended June 2019, §1.01. The Board notes that (1) the investigation and prosecution of charges of discrimination using the Office's mediation and hearing processes and (2) the biennial ADA inspection and reporting obligations relate to ''the procedures of the Office,'' the CAA's only requirement for the content of OCWR's Procedural Rules. 2 U.S.C §1383(a).

Both commenters suggested that issuing procedural rules relating to section 210 would deny Congress the authority to assess whether the Board has properly defined the scope of powers it intended to give the General Counsel. The Board responds by noting that the CAA's process for adoption of procedural rules includes publication in the Congressional Record of a notice of proposed rulemaking and a comment period of at least 30 days after publication before adopting rules. 2 U.S.C §1383(b). Thus, when the Board proposes procedural rules relating to the ADA, employing offices and other parties will have an opportunity to review the proposed procedural rules and provide comments. At this time, the Board has not determined whether the proposed procedures will be the same as what was proposed in the 2016 ADA Notice of Adoption.

C. Concerns relating to specific regulations incorporated by reference

1. §35.105 (Self-evaluation)

One commenter suggested that incorporation of section 35.105 regarding self-evaluation would impose on covered entities an obligation not included in or authorized by the CAA, and that the CAA does not authorize the Board to delegate the General Counsel's inspection duty to covered entities. Section 35.105 was adopted by the Board in 1997 and 2016. 143 Cong. Rec. S30–61 (daily ed. January 7, 1997) and 162 Cong. Rec. H557–565, S624–632 (daily ed. February 3, 2016). Because the Board's 1997 and 2016 regulations were adopted pursuant to the CAA's procedures for proposing and approving substantive regulations, including a comment period of 30 days after publication of the proposed regulations in the Congressional Record, and because the Board has not reopened the comment period on the 2016 adopted regulations that have not been modified, as indicated in the NPRM, the Board will not and has not considered additional comments on those adopted regulations.

The Board notes that its adoption in 1997 and 2016 of section 35.105's self-evaluation obligation merely incorporates a DOJ regulation that clarifies a legal duty imposed by the ADA as applied by the CAA and that helps ensure covered entities remain accessible even when the General Counsel is unable to inspect a particular facility. By adopting section 35.105 in 1997 and 2016, the Board did not delegate the General Counsel's inspection duty to covered entities (which, as the commenter correctly notes, is not authorized under the CAA). The General Counsel, in accordance with section 210(f)(1) of the CAA (2 U.S.C. §1331(f)(1)), inspects the facilities of covered entities to ensure compliance with section 210(b) at least once each Congress; adoption of section 35.105 has not changed this. Nor does the General Counsel's inspection responsibility under 2 U.S.C. §1331(f)(1) relieve employing offices of one of their primary duties under the ADA as applied by the CAA: to identify and remove barriers to access.

The Board additionally notes that adoption of section 35.105's self-evaluation obligation promotes increased accessibility of legislative branch facilities. Due to very limited inspection resources, the General Counsel is unable to conduct ADA inspections of every facility used by covered entities each Congress. The General Counsel is unable to inspect all of the facilities located in the Washington, D.C. area, much less all of the facilities used by the district and state offices that are also covered by Section 210 of the CAA. In light of the General Counsel's limited resources and the large number of facilities that are covered by the CAA, the General Counsel must prioritize its ADA inspections. Adoption of section 35.105 clarifies that the duty of covered entities to identify and remove barriers to access includes a duty to self-evaluate their compliance with the ADA as applied by CAA.

2. §35.107 (Designation of Responsible Employee)

A commenter suggested that the Board's modification of section 35.107 to impose a duty to designate an employee to coordinate ADA responsibilities on the ''House of Representatives'' as a body and the ''Senate'' as a body is not supported by good cause because those bodies are not among the covered entities enumerated in 2 U.S.C. §1331(a). Accordingly, the Board has changed its modification of section 35.107 to more closely reflect the language of 2 U.S.C. §1331(a). Deletions are marked with square [brackets] and added text is within angled <<brackets>>. Therefore, if these regulations are approved by Congress as adopted, the deletions within square brackets will be removed from the regulations and the added text within angled brackets will remain.

A commenter suggested that the duty section 35.107 would impose on covered entities employing 50 or more employees—to designate an employee ''to coordinate its efforts to comply with and carry out its responsibilities under this part''—is not included in or authorized by the CAA.

The Board notes that section 35.107, without modification, was adopted by the Board in 1997 and 2016 pursuant to the CAA's procedures for proposing and approving substantive regulations 143 Cong. Rec. S30–61 (daily ed. January 7, 1997) and 162 Cong. Rec. H557–565, S624–632 (daily ed. February 3, 2016). Since the Board has already responded to this comment in its 2016 Notice of Adoption, no further response is warranted at this time.

The Board additionally notes that the duty imposed by section 35.107 is, in fact, included in and authorized by the CAA: Section 210(e) of the CAA requires that the regulations issued by the OCWR Board, pursuant to section 304 of the CAA, ''shall be the same as substantive regulations promulgated by the Attorney General and the Secretary of Transportation to implement the statutory provisions referred to in subsection (b) [of section 210 of the CAA][,]'' 2 U.S.C. §1331(e). It is pursuant to this requirement of the CAA that the Board adopted section 35.107 in 1997 and 2016, and does so again now.

3. §36.206 (Retaliation)

The Board has not responded to comments regarding this regulation because it has not been incorporated into the adopted regulations. The Board intends to propose that Congress amend the CAA to incorporate section 503 of the ADA, on which 28 C.F.R. §36.206 is based.

4. Architectural Barriers Act Accessibility Standards ("ABAAS") §F202.6 (Leases)

One commenter suggested that incorporation of §F202.6 is inconsistent with the Board's authority under 2 U.S.C. §1384 of the CAA and does not consider current appropriations, procurement, and leasing practices and requirements of the House. Section F202.6 was adopted by the Board in 2016. 162 Cong. Rec. H557–565, S624–632 (daily ed. February 3, 2016). Because the Board's 2016 regulations were adopted pursuant to the CAA's procedures for proposing and approving substantive regulations, including a comment period of 30 days after publication of the proposed regulations in the Congressional Record, and because the Board has not reopened the comment period on the 2016 adopted regulations that have not been modified, as indicated in the NPRM, the Board has not considered comments to regulations already adopted.

The Board also notes that the recent comments to §F202.6 are largely the same as those made in response to its 2014 NPRM and that its response remains the same as stated in the 2016 Notice of Adoption, which is summarized as follows:

This Access Board regulation is based on 36 C.F.R. §1190.34 (2004) which since July 23, 2004 has been incorporated into the Access Board's Architectural Barriers Act Accessibility Guidelines (''ABAAG''). The ABAAG became the ABA Accessibility Standards (''ABAAS'') on May 17, 2005 when the General Services Administration adopted them as the standards. See 41 C.F.R. §102–76.65(a) (2005). This regulation provides that buildings and facilities leased with federal funds shall contain certain specified accessible features (including at least one accessible route to primary function areas, accessible toilet facilities, and accessible parking spaces). Buildings or facilities leased for 12 months or less are not required to comply with the regulation as long as the lease cannot be extended or renewed.

Under §F202.6, ''Buildings or facilities for which new leases are negotiated by the Federal government after the effective date of the revised standards issued pursuant to the Architectural Barriers Act, including new leases for buildings or facilities previously occupied by the Federal government, shall comply with F202.6.'' F202.6 then proceeds to describe the requirements for an accessible route to primary function areas, toilet and bathing facilities, parking, and other elements and spaces.

The Access Board's leasing regulation implements a key provision of the Architectural Barriers Act (''ABA'') which Congress

originally passed in 1968 and amended in 1976 to require accessibility of facilities leased (in addition to those owned) by the federal government. Since 1976, a hallmark of federal policy regarding people with disabilities has been to require accessibility of buildings and facilities constructed or leased using federal funds. Although, in the CAA, Congress required legislative branch compliance with only the public access provisions of the ADA rather than the Rehabilitation Act of 1973 or the ABA, the ADA itself was enacted in 1990 to expand the access rights of individuals with disabilities beyond what was previously provided by the Rehabilitation Act and the ABA. One of the sections of the ADA that Congress incorporated into the CAA is Section 204. Section 204 requires that the regulations promulgated under the ADA with respect to existing facilities ''shall be consistent'' with the regulations promulgated by the DOJ in 28 C.F.R. Part 39. 42 U.S.C. §12134(b). Under 28 C.F.R. §39.150(b), a covered entity is required to meet accessibility requirements to the extent compelled by the ABA and any regulations implementing it.

As the commenter noted, when the DOJ promulgated its ADA regulations in 1991, it stated in its guidelines that it had intentionally omitted a regulation that required public entities to lease only accessible facilities because to do so ''would significantly restrict the options of State and local governments in seeking leased space, which would be particularly burdensome in rural or sparsely populated areas.'' 29 C.F.R. Pt. 35, App. B. In these same guidelines, however, the DOJ also noted that, under the Access Board's regulations, the federal government may not lease facilities unless they meet the minimum accessibility requirements specified in 36 C.F.R. §1190.34 (2004) (and now in ABAAG §F202.6). This is true even if the facilities are located in rural or sparsely populated areas. The commenter did not provide any specific examples of how complying with a regulation regarding leased facilities otherwise applicable to the federal government would be unduly burdensome. Since the supply of accessible facilities has increased during the past thirty-one years through alterations and new construction, the burdensomeness of this regulation is certainly much less than it was in 1991.

The commenter also noted that attempting to apply the ABA to cover district office leases entered into by Members of Congress could result in violations of both the Antideficiency Act, 31 U.S.C. §1341, and the Adequacy of Appropriations Act, 41 U.S.C. §11, where an individual Member office does not have funding to address potential noncompliance with ABA standards. The Board reiterates its 2016 response to the similar comment received in response to the 2014 NPRM, that under the current House rules a Member may not use representational funds to obtain reimbursement for capital improvements and this might affect the removal of barriers in facilities that are inaccessible. The proposed regulation does not require that any Member specifically pay for alterations to ensure compliance with ABA standards. Instead, prior to entering into a lease with a Member for a facility that is in need of alterations to meet the minimum accessibility requirements, the landlord is obligated to make the needed alterations as a condition of doing business with Congress. While it is likely that the landlord will recover some of the costs associated with these alterations by increasing the rent paid by federal tenants, Congress determined when it amended the ABA to provide coverage for all leased facilities that the increased cost associated with requiring the federal government to lease only accessible facilities would be minimal and well worth the benefit gained by improving accessibility to all federal facilities. H.R. Rep. No. 1584–Part II, 94th Cong., 2d Sess. 9, reprinted in 1976 U.S. Code Cong. & Admin. News 5566, 5571–72. The Board notes that one of the most common ADA public access complaints received by the OCWR General Counsel from constituents relates to the lack of ADA access to spaces being leased by legislative branch offices. Given the frequency of these complaints and the clear Congressional policy embodied in the ABA requiring leasing of only accessible spaces by the United States, the Board finds good cause to adopt the Access Board's regulation formerly known as 36 C.F.R. §1190.34 (2004) and now known as §F202.6 of the ABAAG and the ABAAS. Because, under section 210(e)(2) of the CAA, the Board is authorized to adopt a regulation that does not follow the DOJ regulations when it determines ''for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section,'' the Board has decided to require the leasing of accessible spaces as required in §F202.6 of the ABAAS.

In an additional comment that is somewhat different from the comments received in 2014, the commenter noted that the method of incorporation of §F202.6 Leases is problematic because the subsection includes language that is not relevant to House offices and because adoption of only §F202.6 fundamentally distorts the intended scope of application of the requirements set forth in that subsection. The Board notes that this method of incorporation is inherent in the way the CAA incorporates the ADA. Rather than incorporate the ADA in its entirety, the CAA incorporates select sections of the ADA. 2 U.S.C. §1331(b)(1). The CAA further obligates the Board's regulations to be the same as the DOJ and DOT regulations promulgated to implement those select sections (except to the extent that the Board may determine that a modification would be more effective in implementing ADA public access protections). 2 U.S.C. §1331(e)(2). Congress therefore did not intend that the ADA regulations applicable to the executive branch would apply wholesale through the CAA, but rather that only specific regulations would be adopted. Accordingly, the Board has only adopted specified regulations incorporated from 28 C.F.R. Parts 35 and 36, 49 C.F.R. Parts 37 and 38, and, with the adoption of §F202.6, the Architectural Barriers Act Accessibility Standards.

Adopted 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.

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

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Office of Congressional Accessibility Services;

(5) the United States Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Botanic Garden);

(8) the Office of the Attending Physician;

(9) the Office of Congressional Workplace Rights; and

(10) the Library of Congress.

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

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

§1.102 Definitions.

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

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

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

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

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

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

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

§1.103 Authority of the Board.

Pursuant to sections 210 and 304 of the CAA, the Board is authorized to issue regulations to implement the rights and protections against discrimination on the basis of disability in the provision of public services and accommodations under the ADA. Section 210(e) of the CAA directs the Board to

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

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

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

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

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

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

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

PART 2—REGULATIONS INCORPORATED BY REFERENCE

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

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

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

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

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

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

§2.102 Rules of Interpretation.

When regulations in §2.103 conflict, the regulation providing the most access shall apply. The Board's 2016 Notice of Adoption and the instant Notice of Adoption shall be used to interpret these regulations and shall be made part of these Regulations as Appendix A.

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

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

But modify as follows:

<<Each entity enumerated at 2 U.S.C. § 1331(a)>> [*A public entity*] that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including <<cooperation with an investigation by the General Counsel of a charge alleging noncompliance with the ADA or alleging any actions that would be prohibited by the ADA>> [*any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part*]. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph. <<The entities listed at 2 U.S.C. §1331(a)(1) (''each office of the Senate, including each office of a Senator and each committee'') may designate one such employee collectively, as may the entities listed at 2 U.S.C. § 1331(a)(2) (''each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee''). The responsible employee designated by the 2 U.S.C. §1331(a)(1) and (2) entities may be an employee of the Office of Congressional Accessibility Services, so long as that employee is responsible to carry out the duties in this section.>>

But modify as follows:

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

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

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

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

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

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

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

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

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

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

§37.1 Purpose.
§37.3 Definitions.
§37.5 Nondiscrimination.
§37.7 Standards for accessible vehicles.
§37.9 Standards for accessible transportation facilities.
§37.13 Effective date for certain vehicle specifications.
§37.21 Applicability: General.
§37.23 Service under contract.
§37.27 Transportation for elementary and secondary education systems.
§37.31 Vanpools.
§37.37 Other applications.
§37.41 Construction of transportation facilities by public entities.
§37.43 Alteration of transportation facilities by public entities.
§37.45 Construction and alteration of transportation facilities by private entities.
§37.47 Key stations in light and rapid rail systems.
§37.61 Public transportation programs and activities in existing facilities.
§37.71 Purchase or lease of new non-rail vehicles by public entities operating fixed route systems.
§37.73 Purchase or lease of used non-rail vehicles by public entities operating fixed route systems.
§37.75 Remanufacture of non-rail vehicles and purchase or lease of remanufactured non-rail vehicles by public entities operating fixed route systems.
§37.77 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public.
§37.79 Purchase or lease of new rail vehicles by public entities operating rapid or light rail systems.
§37.81 Purchase or lease of used rail vehicles by public entities operating rapid or light rail systems.
§37.83 Remanufacture of rail vehicles and purchase or lease of remanufactured rail vehicles by public entities operating rapid or light rail systems.

§37.101 Purchase or lease of vehicles by private entities not primarily engaged in the business of transporting people.
§37.105 Equivalent service standard.
§37.161 Maintenance of accessible features: General.
§37.163 Keeping vehicle lifts in operative condition: Public entities.
§37.165 Lift and securement use.
§37.167 Other service requirements.
§37.169 Process to be used by public entities providing designated public transportation service in considering requests for reasonable modification.
§37.171 Equivalency requirement for demand responsive service operated by private entities not primarily engaged in the business of transporting people.
§37.173 Training requirements.

Appendix A to Part 37—Modifications to Standards for Accessible Transportation Facilities.

Appendix D to Part 37—Construction and Interpretation of Provisions of 49 CFR Part 37.

Appendix E to Part 37—Reasonable Modification Requests.

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

Figures to Part 38.

Appendix to Part 38—Guidance Material.

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

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

§F202.6 Leases.

TRIBUTE TO JEFF WRASE

Mr. CRAPO. Mr. President, I pay tribute to Jeff Wrase, the U.S. Senate Finance Committee's deputy staff director and chief economist, who recently left the committee after more than 11 years of service.

For more than 20 years, Jeff served in what many consider to be the ''wonkiest'' committees in Congress: the Senate Finance, Banking, and Budget Committees, the Joint Economic Committee, and the House Budget Committee. Jeff's strong background in economics and career in academics made him a natural fit for each committee, with a unique skill set for thoroughly briefing and advising members on everything from macroeconomics, to international finance, to Federal debt management.

As a member of the Finance, Banking, and Budget Committees, I have had the opportunity to work closely with Jeff on many issues for more than a decade. When I became ranking member of the Senate Finance Committee at the onset of the 117th Congress, I knew I needed Jeff Wrase on my team. This decision proved invaluable over the next 2 years, as Jeff spent much of his time fighting to protect the progrowth tax and regulatory changes that had been implemented by the Finance Committee in recent years.

Jeff was instrumental in reducing the scope and damage posed by multiple tax-and-spend packages proposed during the 117th Congress. From arguing before the Senate Parliamentarian about arcane budget rules or helping to educate members or the American people about pitfall-laden policy proposals, Jeff immersed himself in each issue, asking the tough, smart questions about the feasibility, purpose, and practicality of each proposal. He crafted several important pieces of legislation to protect hard-working taxpayers, usually countering edicts and government overreach from the executive branch. One provision would have stricken a directive included in the American Rescue Plan Act that forbids States from using relief funds to provide any form of tax relief. Jeff picked apart the vague, unenforceable nature of the legislation, noting its interference in a State's ability to provide tax relief to citizens to reduce the burden on hard-working families. It was a strong argument, as several lower courts have agreed.