

## **ADA Title III Comments on Proposed Changes**

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### Safe Harbor

The 1% safe harbor for qualifying small businesses weakens the ADA tremendously. Most of the businesses in the United States qualify under the definition of a small business. This proposed change goes against Congress's initial intent because ADA exemptions should be decided on a case by case basis. This new blanket regulation will be a loophole for many businesses to not make ADA changes. If this regulation goes into effect, more details on what counts under the 1% of the business' gross income. Currently, most architectural improvements count, even if they were not completed to comply with the ADA. The regulations need to pay attention to whether the areas of the architecture structure were already in compliance. In this case, the improvement should not count under the safe harbor exemption. Please carefully review this area of the new regulations and make sure that there are no loopholes that would greatly weaken the ADA.

### Communications

The regulations and ADAAG specifications do not take into consideration the new technologies that people with disabilities use today. For example, videophones which are used widely by people who are deaf. The choice of auxiliary aids should be in the hands of people with disabilities who request the accommodation and not the business or provider of the public service. Without input from people with disabilities on what communication devices fit the situation best, there will be many more misunderstandings.

### Service Animals

The phrase "provide minimal protection" should not be removed from the definition of service animal, and rather it should exclude aggressive dogs. We agree with the Department's observation that the "provide minimal protection" language is necessary and appropriate when discussing individuals who experience seizures. This language is also appropriate and necessary for individuals with other types of disabilities, including people with diabetes whose service animals alert them to hypoglycemic episodes and protect them in the event of a low sugar event such as unconsciousness, disorientation or coma.

The phrase “do work or perform tasks” in the definition of service animal should remain unchanged as it is most inclusive of the various services provided by service animals on behalf of people with disabilities.

We do not oppose the exclusion of certain species from the definition of service animal. There are some animal categories that certainly cannot meet the “do work or perform tasks” part of the service animal definition (e.g. insects, rodents, amphibians). However, we do not support the exclusion of miniature horses. Miniature horses have been used as service animals by the disability community for some time, particularly the blind community. Miniature horses are able to be trained to do work or perform tasks for people with disabilities. Thus, we would oppose the specific exclusion of “farm animals” from the definition of service animal. Similarly, we would oppose the use of the phrase “or other common domestic animal” to narrow the definition of service animal. We do not support the imposition of size and weight limits for service animals. Whether an animal is a “service animal,” able to do work or perform tasks for an individual with a disability, is a determination that should be made independent of the animal’s size or weight.

We are pleased that the Department has proposed language formalizing its longstanding position that individuals with psychiatric, cognitive, or mental disabilities can use service animals. Confirmation of this fact will help reduce the backlash currently experienced by individuals with those types of disabilities whose service animals perform work and tasks that are oftentimes identical to those performed by service animals for individuals with other types of disabilities (e.g. picking up objects, warning of danger/alarms, assisting with balance). At the same time however, we oppose proposed language that specifically and categorically excludes individually trained “comfort” or “emotional support” animals from the definition of service animal. The active provision of comfort and/or emotional support to a qualified individual with a disability whose disability results in an inability to self-soothe or de-escalate and control emotions is “work” that benefits the individual with the disability and should be recognized as such. Moreover, in practice, it will be confusing to distinguish between psychiatric service animals and comfort animals. This confusion will undoubtedly lead to increased discrimination against and/or the excessive questioning of individuals with non-visible or non-apparent disabilities. The fact that other federal laws recognize access for emotional support animals (Fair Housing Act, Air Carriers Access Act), simply adds to this confusion.

We agree with the Department that formal training requirements and/or a formal certification process is unnecessary and would not serve the array of individuals with disabilities who use service animals.

## Hotel Reservations

We strongly support the proposed requirements for places of lodging and third-party reservation services to modify their policies, practices, or procedures, to identify and describe accessible features, and to guarantee the reservations for accessible rooms. We also strongly support the Department's adoption of a requirement to hold accessible rooms open until all other rooms are rented to ensure the availability of accessible guest rooms. Online hotel reservations systems should be able to reserve an accessible room and confirm features, such as a walk in shower. Some people with disabilities that need accessible rooms have speech impairments that make it hard to reserve rooms via telephone.

People with disabilities have continued to face substantial barriers created by the lack of available information, and the provision of incorrect information, by places of lodging about their accessible rooms and features, difficulty in reserving accessible guest rooms, and the failure to guarantee appropriate accessible rooms. These barriers are even more substantial when dealing with third-party reservation services. The record is clear that these requirements are achievable and there is no reason that places of lodging and third-party reservation services cannot comply with these requirements. These requirements will ensure that people with disabilities truly have equal access to places of lodging in the United States.

## Residential Units for Sale

The Department should require that the scoping for newly constructed housing, including dwelling units covered by the Fair Housing Act, that are built by or on behalf of public entities and intended for sale to individual owners should be subject to, at a minimum, the requirements of ADAAG. Those provisions require in new residential construction that at least five percent (5%), but no fewer than one of the dwelling units in residential facilities provide mobility features, and at least two percent (2%) but now fewer than one of the dwelling units provide communication features.

## Work Areas

We urge the Department to follow through on its proposal to adopt the 2004 ADAAG work area provisions. The Department's NPRM properly defends these provisions and explains why they are appropriate and well within the domain of the Titles III DOJ ADA regulations. The provisions, like the rest of the 2004 ADAAG, are carefully crafted to take the needs of covered entities into account.

As stated in the NPRM, the ADA statute and the 1991 DOJ regulation rightly addressed the employee sections of public accommodations and commercial facilities, as well as facilities of public entities. But the 1991 ADAAG had grossly insufficient coverage of employee work areas. As a result, owners of commercial facilities and public accommodations, including factories, warehouses, office buildings, stores, and other covered facilities often did not provide accessible routes within the work areas of these facilities. As a result, people with disabilities were denied employment opportunities in ways that employers could not have realistically accommodated under Title I of the ADA, because the buildings in which they were housed would have required such extensive changes, changes that would have been much easier and cheaper to provide when the buildings were newly built or altered. As one of many examples, some factories were built with enormous work areas that could easily have accommodated accessible circulation paths, but they were not required under the 1991 Standards.

The only way to effectively address this problem was for the 2004 ADAAG to require accessible common use circulation paths in work areas. When the Access Board did include this provision, it rightly pointed out that such a requirement would not be onerous because virtually all the covered buildings would be subject to state building codes that contain the same requirement. The 2004 ADAAG also includes exceptions that allow deviations from the common use circulation path requirement in situations where, as the Department states in its Analysis of the Proposed Standards, “it may be difficult to comply with the technical requirements for accessible routes due to the size or function of the area.” Though some of these exceptions are arguably too broad, the disability community is not recommending revision by the Access Board, due to the implementation delay that would result. The Department must adopt these requirements expeditiously so they may become effective in reducing barriers in employee work areas across the U.S. As the Department’s Initial Regulatory Assessment notes, the proposed provisions will result in better workplace accessibility, which will benefit people with disabilities and also increase business productivity.