

September 6, 2002

Mr. Thurman M. Davis, Sr.
Chairman
Architectural and Transportation Barriers Compliance Board
1331 F Street, NW
Washington, DC 20004-1111

Dear Chairman Davis:

It is our understanding that the Architectural and Transportation Barriers Compliance Board (Compliance Board) is scheduled to vote on the Draft Final Rule to the Americans with Disabilities Act Accessibility Guidelines (ADAAG) on Tuesday, September 10, 2002.¹ The Office of Advocacy of the U.S. Small Business Administration² recommends that the Compliance Board postpone the vote due to unresolved deficiencies in the Compliance Board's Regulatory Assessment accompanying the Proposed Rule. The Office of Advocacy is currently working with the Compliance Board, the Department of Justice (DOJ), and the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) to address these deficiencies and to ensure that the rulemaking complies with the Regulatory Flexibility Act (RFA) and the President's Executive Order (EO) 13272.³

Prior to a vote on the Draft Final Rule, the Office of Advocacy urges the Compliance Board to further explore three important issues. First, the Regulatory Assessment prepared by the Compliance Board for the Proposed Rule does not analyze the costs of alterations. Such analysis is required by the RFA and EO 12866. We request the Regulatory Assessment to the Draft Final Rule to see what changes, if any, are necessary. Second, there are ongoing discussions between the Compliance Board, the Office of Advocacy, DOJ and OIRA regarding responsibility for analysis of alternatives and the costs imposed by the ADAAG revisions on existing facilities. The Compliance Board

¹ On November 16, 1999, the Compliance Board published a proposed rule in the *Federal Register* setting accessibility standards for disabled persons in public venues. See Compliance Board, Notice of Proposed Rulemaking, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines, 64 Fed. Reg. 62248 (Proposed Rule). The proposed rule was updated on April 2, 2002, in a "Draft Final" form, which the Compliance Board made available through its reading room in Washington, DC. See Compliance Board, Draft Final Accessibility Guidelines (Draft Final Rule).

² Congress established the Office of Advocacy of the U.S. Small Business Administration in 1976 to represent the views and interests of small businesses before Federal agencies and Congress. Pub. L. No. 94-305 (1976) (codified as amended at 15 U.S.C. §§ 634a-g, 637).

³ The Regulatory Flexibility Act (RFA) requires the Office of Advocacy to ensure that agencies comply with its provisions. 5 U.S.C. § 601 et seq.; EO 13272, 67 Fed. Reg. 53461 (2002) (also requiring agencies to share information with the Office of Advocacy and submit an overall written RFA compliance plan for all rulemakings).

should postpone its vote pending a resolution of this question which is expected in the near term.

Finally, we urge the Compliance Board to review the estimate of costs for new construction. The costs included in the Regulatory Assessment for the Proposed Rule are based upon an estimate of baseline costs attributed to state adoption of model building codes referencing the ANSI A117.1 standard. It is our understanding that the majority of states have *not* adopted this standard within their model codes, and therefore, this baseline is inaccurate.⁴ This should be addressed in the final Regulatory Assessment.

Due to these potential deficiencies in the Regulatory Assessment, the Office of Advocacy questions the accuracy of the Compliance Board's certification in the Regulatory Assessment that the Proposed Rule will not have a significant impact upon a substantial number of small entities. We are concerned that such a certification may be included in the Draft Final Rule.

Should the Compliance Board adopt the Draft Final Rule without further review, the Office of Advocacy is compelled to more formally raise the aforementioned issues with OIRA. If you have any questions or concerns regarding these comments, please do not hesitate to contact me or Michael See, Assistant Chief Counsel for Advocacy, by phone at (202) 205-6533, or by e-mail at Michael.See@sba.gov.

Sincerely,

Thomas M. Sullivan
Chief Counsel for Advocacy

Michael R. See
Assistant Chief Counsel for Advocacy

⁴ In comments dated May 12, 2000, Advocacy advised the Compliance Board that its certification did not comply with the RFA. *See* Letter from Jere Glover, Former Chief Counsel for Advocacy, to Office of Technical and Information Services, ATBCB (May 12, 2000) (Attached).

cc: Dr. John D. Graham, Administrator, Office of Information and Regulatory Affairs

Federal Agency Members of the Architectural and Transportation Barriers
Compliance Board:

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