

May 12, 2000

Office of Technical and Information Services  
Architectural and Transportation Barriers Compliance Board  
1331 F Street, NW  
Suite 1000  
Washington, DC 20004-1111

**Attention: ADA Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines**

Dear Sir or Madam:

The Office of Advocacy of the US Small Business Administration (SBA) is charged under the Regulatory Flexibility Act (RFA) with assuring that agencies take account of the impact that proposed regulations would have on small entities. We are pleased that in the preamble to the above notice of proposed rulemaking (published in the Federal Register November 16, 1999, at pps. 62248 - 62538), the Architectural and Transportation Barriers Compliance Board (ATBCB) has noted its responsibility under the RFA. However, we believe the ATBCB erred when it stated that the proposed rule "will have an economic impact, but not a significant economic impact, on small entities and therefore a regulatory flexibility analysis has not been prepared." 64 Fed. Reg. at 62284.

Given the extensive list of regulatory changes, ranging from drinking fountains to alarm systems to listening devices, which will apply to small businesses such as restaurants and small hotel franchisees, the Board's assertion that no significant economic impact will result is surprising.

The ATBCB asserts that small businesses are already covered by the model building codes and industry standards as set out by the American National Standards Institute (ANSI) A117.1 Committee. This is a national consensus standard that provides technical requirements for accessible buildings and facilities. The ATBCB asserts that because small businesses are covered by the ANSI in conjunction with local building codes, they will not incur any additional cost. This may not be the case for the following reasons: 1) the ANSI standard is voluntary, and may be adopted, rejected or modified by state or local jurisdictions and 2) the 1998 version of the ANSI 117.1 Committee guidelines have never been fully implemented and have actually been expanded in conjunction with recent revisions in the Americans with Disabilities Act Accessibility Guidelines (ADAAG) so that the two standards would be harmonized. These points are important because, for the Board to claim that the revisions to the ADAAG set forth in this proposed rule would impose no costs because the 1998 ANSI 117.1 Committee guidelines already apply, ignores the fact that the ANSI guidelines are voluntary and have actually been reworked together with the ADAAG revisions.

Thus, the Board should not ignore the very real confusion that will result from the fact that:

1. The ANSI guidelines are voluntary;
2. The Board does not know how many businesses have adopted the ANSI voluntary standards and;
3. The ANSI guidelines and the ADAAG guidelines have been harmonized to mirror each other.

The Board cannot assume that small businesses have adopted the ANSI voluntary guidelines. It needs to document with facts its certification. The ATBCB should use this notice to collect information by asking specific questions directed at measuring the impact of this proposed rule. These questions will elicit valuable information the Board needs before finalizing the rule.

An impact analysis under the Regulatory Flexibility Act is all the more critical because the Board's approach to accessibility issues is prescriptive, imposing a number of design requirements on public accommodations, instead of employing the alternative approach of mandating accessibility and permitting these businesses to develop cost-efficient means of achieving the same end.

I hope these comments will assist you in any further review of this proposed rule. I look forward to helping you craft a rule that will assure accessibility for all while not imposing an unnecessary burden on small businesses.

Sincerely,

Jere Glover  
Chief Counsel for Advocacy

Brendan McKeon  
Assistant Advocate