



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 24, 2008
(House Rules)

STATEMENT OF ADMINISTRATION POLICY

H.R. 3195 – ADA Amendments Act of 2008

(Rep. Hoyer (D) MD and 251 cosponsors)

The Administration supports passage of legislation that improves the Americans with Disabilities Act of 1990 (“ADA”) and protects the rights of individuals with disabilities. At the outset of this Administration, the President announced the New Freedom Initiative, a comprehensive set of goals and a plan of action to ensure that people with disabilities are able to enjoy full participation in our economy and society, and this Administration remains committed to reducing barriers for those with disabilities.

The Administration strongly supports the overall intent of H.R. 3195, as well as a number of the specific changes it would make. For example, the bill strikes the appropriate balance with respect to use and consideration of mitigating measures in evaluating disabilities. Moreover, the bill as reported represents a significant improvement over H.R. 3195 as introduced, and the Administration appreciates the sponsors’ willingness to address many of the concerns that were previously raised. However, the Administration still has significant concerns with the bill as reported. Specifically, the Administration is concerned that a few of the provisions could unduly expand ADA coverage, would result in a significant increase in litigation, and would be difficult to implement.

The ADA provides protection to individuals with disabilities. A person has a disability if he or she qualifies under one of the following three prongs: (1) the person has an impairment that substantially limits a major life activity; (2) the person has a record of having such an impairment; or (3) the person is “regarded as” having such an impairment.

First, H.R. 3195 redefines the existing ADA term “substantially limits” to mean “materially restricts,” a term that is currently undefined under the ADA and other law and would not be defined in the bill. The Administration anticipates that this will result in significant avoidable litigation to develop a clear and universally accepted interpretation.

Second, the legislation substantially expands the “regarded as” prong of the definition of disability. Under the bill’s definition, an individual qualifies for protection if he or she is treated differently because of a real or perceived *impairment*, regardless of whether it limits a major life activity. This approach is unnecessary because other provisions of the bill will provide coverage to those inappropriately excluded under current law. The bill does exclude impairments that are *both* transitory *and* minor; however, those that are one or the other would be covered. As a result, the bill could extend ADA protection to a short bout with the flu or a mild seasonal allergy. The Administration believes that the bill should exclude from coverage impairments that are *either* transitory *or* minor.

Finally, the placement of the “transitory and minor” exception of the “regarded as” prong within H.R. 3195 could lead to an unintended and undesirable interpretation of the definition of disability. Specifically, the bill does not explicitly apply the “transitory and minor” exception to the definition of disability in general. This means that some transitory and minor impairments could be covered as actual disabilities.

The Administration supports legislation that improves the ADA and recognizes that H.R. 3195 represents a significant effort towards that end. The Administration looks forward to working with Congress to address these concerns regarding H.R. 3195 and to amending the ADA this year.

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