



MEMORANDUM

DATE	September 9, 2022
TO	California Architects Board
FROM	Kimberly McDaniel, Regulations Manager Karen Halbo, Regulations Counsel, Attorney III
SUBJECT	Agenda Item M: Section 165, Article 10, Division 2, Title 16 of the California Code of Regulations (CCR)¹ Regarding Disability Access Continuing Education

Background

The California Architects Board (Board) Disability Access Continuing Education (CE) regulatory proposal was originally approved by the Board at its June 5, 2020 meeting. It was then brought back to the Board in September 2021 where the Board approved a text modification specifying the precise amount of CE required for renewal.

The package was [published](#) on November 12, 2021 for a 45-day public comment period that closed on December 27, 2021. The Board received four comments raising concerns. At the June 8, 2022 meeting, upon reviewing the comments and staff recommendations, the Board voted to adopt a Modification of Text that was sent out for public comment from June 27, 2022, to July 13, 2022. The Board received two public comments raising concerns (**Attachment 1**). Staff has prepared proposed responses to comments and a proposed Second Modified Text for the Board's consideration. If the Board adopts the Second Modified Text, Board staff will circulate the Second Modified Text for a 15-day public comment period, after which, if the Board adopts the proposed responses, Board staff will include the proposed responses in the Final Statement of Reasons (FSR), to be included in the final rulemaking package.

Summary of Concerns with the Proposal and Proposed Responses

In accordance with Government Code section [11346.9](#), subdivision (a)(3), the Board, in its final statement of reasons supporting the rulemaking, must summarize each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making no change.

¹ All references to the CCR are to title 16.

During the 15-day public comment period, the Board received comments from Janis Kent and Mark Christian expressing concerns with the proposal. The Board is asked to review the concerns raised in those comments summarized below, the proposed Second Modified Text, and the proposed responses thereto for inclusion in the Board's FSR for this rulemaking.

Comment #1: Janis Kent, FAIA, CASp, Architect

Ms. Kent's comment raised three concerns regarding the modified text. Her first concern asks that the Board revise 16 CCR section 165(d) to strike the phrase "or presented by recorded webinar" for clarity. Ms. Kent's next concern asks the Board to revise 16 CCR section 165(h) in an unspecified manner to clarify that those taking in-person or live webinars do not need to pass a test to be provided a certificate of completion. Ms. Kent's final concern asserts that the Board should require that a test given to those taking pre-recorded courses not presented live be based on the AIA National formula for Self-Assessment or equivalent.

Proposed Response: Ms. Kent's first and second concerns assert that as written, CCR section 165(d) could be misread to indicate that providers are not to issue certificates of completion to those who take in-person or live webinars. Should the Board agree with Ms. Kent's comment, the proposed regulatory language could be modified for a second time to address this concern (**Attachment 2**). Ms. Kent's last concern would have the Board direct course providers to follow the AIA formula for Self-assessment or equivalent when creating the test for a pre-recorded seminar or webinar. The Board does not want to direct providers on how to create their tests as a part of this rulemaking and opts not to modify the text.

Comment #2: Mark Christian, American Institute of Architects, CA, Director of Government Relations

Mr. Christian's comment asserts that the modified text at CCR section 165(d) only allows pre-recorded courses to qualify for the accessibility CE credit and that those attending in-person or live webinars are ineligible for a certificate of completion.

Proposed Response: Should the Board agree with Mr. Christian's comment, the proposed Second Modified Text (**Attachment 2**) addresses Mr. Christian's concern.

Proposed Second Modified Text:

The proposed Second Modified Text both addresses the first and second concerns raised in Ms. Kent's comment and the concern raised in Mr. Christian's comment, and also revises the structure and wording regarding provider issuance of certificates of completion in this Disability Access continuing education rulemaking to match the

structure and wording regarding provider issuance of certificates of completion in the Zero Net Carbon Design (ZNCD) continuing education rulemaking.

Staff has been working to move both Disability Access and ZNCD continuing education regulatory packages simultaneously through Legal and DCA's review process. The subsections regarding provider issuance of certificates of completion ((d) and (h) ~~has~~ ended up being worded differently in the two regulations s-sections. Licensees will be better served if the language regarding provider issuance of certificates of completion in these two continuing education regulations is substantially similar.

Attachment 2 provides the Proposed Second Modified Text with changes tracked per the regulatory rulemaking process. Attachment 3 provides the Proposed Second Modified Text where the changes have been accepted and is provided to demonstrate the readability of Attachment 2.

Action Requested

The Board is asked to consider the written comments received in response to the Modified Text, staff's proposed responses to the written comments and the Second Modified Text, and entertain a motion to approve and adopt the proposed responses and the Second Modified Text, direct staff to circulate the Second Modified Text for a 15-day public comment period and take all steps necessary to complete the rulemaking process and delegate to the Executive Officer the authority to make any technical or non-substantive changes to the proposed regulations that may be required in completing the rulemaking file, and to adopt the proposed regulatory changes.

Attachments:

1. Comments from: (1) Janis Kent, FAIA, CASp, Architect, and (2) Mark Christian, American Institute of Architects, CA, Director of Government Relations
2. Proposed Second Modified Text – Changes Tracked
- 2.3. Proposed Second Modified Text – Changes Accepted

From: [Janis Kent](#)
To: [McDaniel, Kimberly@DCA](#); [Mark Christian](#); [AIA Central Valley-Sacramento](#); [Clair, Ida@DGS](#); [Laura Knauss \(Laura.Knauss@lionakis.com\)](#); [Jackie Whitelam](#); [AIA-LB/SB](#); [Paul Menard](#); [sonnyward@junestreetarchitecture.com](#); [tfeng@bart.gov](#)
Cc: [Frank Bostrom](#); [Jerome Scott](#); [Susan Moe](#)
Subject: comments on proposed Section 165 Article 10 of Division 2 of Title 16 of the CA Code of Regs
Date: Wednesday, June 29, 2022 1:03:12 PM
Importance: High

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Ms McDaniel-

I have reviewed the modified text for the proposed Section 165 Article 10 of Division 2 of Title 16 of the CA Code of Regs and there are some discrepancies from the understanding of the last CAB meeting. The way it is currently worded, one can only get a certificate for a pre-recorded seminar, and then what would follow is a test is necessary.

I have added clarifying text in blue and struck out portions in grey to arrive at what was discussed - the understanding from the last CAB meeting was that a test would only be required for recorded, not live seminars and that one can either take a live or recorded to meet the requirements. If this same language is also being used for the environmental classes, it should also have the same language as below.

The way this section reads is the only certificate than can be provided is for a pre-recorded course.

(d) A provider shall only issue a certificate of completion to a participant who either 1) takes an in-person or live webinar upon completion of the course; or 2) takes a pre-recorded course not presented live ~~or presented by recorded webinar~~ upon the participant's successfully passing a test of the participant's knowledge and understanding of the CE coursework. "Successfully passing" shall mean a minimum cumulative passing score of at least seventy percent (70%).

The following section also reads that a certificate of completion is only provided upon passing the test.

(h) Within ten business days from the completion of the course, or the passing of the test of a recorded course, a provider shall issue a certificate of completion to each participant who either completes the course, or successfully passes the test described in subsection (d). The certificate of completion shall include the information specified in section 5600.05(b) of the code.

The other item not addressed is what is meant by a test, how many questions, can they be true or false, etc. I would suggest using the methodology that AIA National has used and implemented since the number of questions is based on the length of the recording, not true or false, and one also gets credited for time that gets calculated by number of questions for the test itself. You can use something like:

The test for a pre-recorded seminar/webinar should be based on the AIA National formula for Self-Assessment or equivalent.

Thank you for your attention to this. Appreciate it.

Janis Kent FAIA, CASp, Architect

Certified Access Specialist

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From: [Zuniga, Laura@DCA](mailto:Zuniga.Laura@DCA)
To: [McDaniel, Kimberly@DCA](mailto:McDaniel.Kimberly@DCA)
Subject: FW: Proposed Modified 165
Date: Thursday, July 21, 2022 3:36:35 PM
Attachments: [image001.png](#)

From: Mark Christian <MChristian@aiacalifornia.org>
Sent: Thursday, June 30, 2022 12:14 PM
To: Zuniga, Laura@DCA <Laura.Zuniga@dca.ca.gov>
Subject: Proposed Modified 165

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Hi Laura.

The proposed modified 165 text appears to go against what I think was the understanding of the CAB Members and AIA CA attendees. The modified text appears to allow only pre-recorded courses to qualify for the accessibility MCE (receive the certificate of completion); attendees of live courses appear to be ineligible to receive a certificate of completion.

I am pretty certain this was not the intent of the CAB.

Do you see this the same way?

(d) A provider shall only issue a certificate of completion to a participant who takes a pre-recorded course not presented live or presented by recorded webinar upon the participant's successfully passing a test summative assessment of the participant's knowledge and understanding of the CE coursework. The assessment shall have "Successfully passing" shall mean a minimum cumulative passing score of at least eightyseven percent (870%)

Thanks Laura.

Best,

Mark Christian, Hon. AIA CA | Director of Government Relations
American Institute of Architects, California

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Agenda Item M – Attachment 2
Department of Consumer Affairs
TITLE 16. CALIFORNIA ARCHITECTS BOARD

SECOND MODIFIED TEXT
Disability Access Continuing Education

Legend: Added text is indicated with an underline.
Deleted text is indicated by ~~strikeout~~.
Omitted text is indicated by (* * * *)

Modifications to the proposed regulatory language are shown in double-underline for new text and ~~double-strikeout~~ for deleted text.

Second Modifications in the proposed regulation text are shown in *italicized double underline* for new text and ~~italicized double strikethrough~~ for deleted text and are **yellow highlighted**.

* * * *

Adopt Section 165 of Article 10 of Division 2 of Title 16 of the California Code of Regulations as follows:

§ 165. Continuing education coursework regarding disability access requirements.

* * * *

(d) A provider shall only issue a certificate of completion to a participant **who:**

(1) completes an in-person or live webinar course, or

*(2) takes a **pre-**recorded course not presented live or presented by recorded webinar and ~~upon the participant's~~ successfully pass ~~es~~ **ingage** of a ~~test~~ **summative assessment** of the participant's knowledge and understanding of the CE coursework **at the end of the period of instruction (post-course test)**. ~~The assessment shall have~~ "Successfully passing" shall mean a minimum cumulative passing score of at least ~~seventy-eighty-~~percent (**87**0%).*

* * * *

(h) Within ~~five~~ten business days from the ~~administration~~completion of the ~~post~~-course, ~~test, or the passing of the test of a recorded course,~~ a provider shall issue ~~within~~ ~~five business days of the assessment~~ a certificate of completion to each participant ~~who successfully passes the test/assessment described.~~ ~~subject to the requirements~~ in subsection (d). The certificate of completion shall include the information specified in section 5600.05(b) of the code.

* * * *

Agenda Item M – Attachment 3

(d) A provider shall only issue a certificate of completion to a participant who:

- (1) completes an in-person or live webinar course, or
- (2) takes a recorded course not presented live or presented by recorded webinar and successfully passes a test of the participant's knowledge and understanding of the CE coursework at the end of the period of instruction (post-course test). "Successfully passing" shall mean a minimum cumulative passing score of at least seventy percent (70%).

* * * *

(h) Within ten business days from the completion of the course, a provider shall issue a certificate of completion to each participant, subject to the requirements in subsection (d). The certificate of completion shall include the information specified in section 5600.05(b) of the code.