

DOJ Proposes Rule on Web Content Accessibility for Governmental Entities

October 2, 2023 | [Erica A.N. Kramer](#)

On August 4, 2023, the Department of Justice published its long-awaited notice of proposed rulemaking related to the Americans with Disabilities Act. The proposed rule would adopt new requirements regulating the accessibility of web content for public entities (i.e., state and local government entities), which are governed by Part II of the ADA. Though the rule, once finalized, will not be applicable to "public accommodations" (businesses that serve the public, such as banks, car dealerships, insurance offices, and others), familiarity with the proposed rule is prudent as it may foreshadow regulatory expectations for public accommodations, which are regulated under Part III of the ADA.

In the commentary provided with the proposed rule, the DOJ emphasizes the necessity of ensuring that people with disabilities be able to "access important web content and mobile apps quickly, easily, independently, and equally." This access is crucial to accomplish the ADA's goals of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

The proposed rule sets forth technical requirements for ensuring web content accessibility, including text, images, sounds, videos, controls, animations, navigation, menus, and documents. The technical requirements would also apply to mobile apps. The DOJ emphasizes that, though it has always made clear that services, programs, and activities of public entities, including those provided via the web, must be accessible, the proposed technical requirements are intended to give "greater clarity in exactly how to meet ... ADA obligations and to help ensure equal access ... for people with disabilities."

The DOJ proposes to adopt Level AA of the Web Content Accessibility Guidelines 2.1 as the technical guidelines for ensuring web content accessibility. The WCAG were designed to make web content more accessible to individuals with various disabilities, including visual, auditory, physical, speech, cognitive, language, learning, and neurological disabilities. The DOJ also proposes to stagger compliance dates based upon certain population measures in order to assist smaller entities with the potential compliance burden of adjusting their web content to the required conformance levels.


The proposed rule contains a helpful and thorough discussion of the impact, importance, and requirements of the rule, while also posing a number of questions for public comment. We think it is required reading for government entities and public accommodations alike. While application of, and alignment with, the WCAG may not yet

be required for public accommodations, the fact that these technical standards are incorporated into the DOJ's proposed rule for public entities further solidifies the likelihood that these same standards would be required in any future rulemaking that is applicable to public accommodations. Further, even absent such requirements, regulators and courts have a history of reading these requirements into the law as the best means of ensuring accessible web content (which is already required under the ADA, though technical standards have not yet been adopted).

So, how can you get ahead of the curve? Don't wait for a formal rulemaking. Instead, take a look at your website and mobile app now. Better yet, have a third-party auditor do so via an automated and manual review. Identify any accessibility barriers and remediate them, starting with the barriers that impact the most used and most encountered features, information, and services on your site and app. Consumer complaints can also be a helpful source of determining where barriers exist.

In addition, make certain that your website incorporates an accessibility statement affirming your commitment to accessibility and offering a 24-hour help desk solution that provides alternative points of contact to users encountering accessibility barriers. And make sure that your help desk is actually helpful—escalate these requests, and respond quickly!

Making accessibility a priority now will keep you from being caught off guard by a rulemaking in the future, will help you avoid regulatory scrutiny, and—best of all—will allow you to better serve your customers.

Comments on the proposed rule, which is published in the August 4, 2023, *Federal Register*, are due on or before October 3, 2023. 

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7037 Ridge Road, Suite 300, Hanover, Maryland 21076
410.684.3200

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