

Web and App Accessibility: Understanding the U.S. Justice Departments New Rules

YuJa

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Introduction

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Traditionally, the focus was on accessibility around providing physical accommodations, such as installing ramps and elevators so those with physical disabilities could navigate campuses. Now, the spotlight has shifted to digital accessibility on websites and apps.

This shift has become even more pronounced with the integration of online learning platforms, virtual classrooms, and web-based resources. The digitalization of educational content—from course materials to administrative resources—has made web accessibility an imperative that the Department of Justice considers critical. To help guide entities that serve the public and provide clarity on meeting legal obligations under the Americans with Disabilities Act (ADA), the Justice Department has adopted technical standards for web and mobile accessibility.[1] "Just as steps can exclude people who use wheelchairs, inaccessible web content can exclude people with a range of disabilities from accessing government services."[2]

This whitepaper outlines the Justice Department's final rule revising ADA Title II regulations, which establishes specific technical requirements to ensure that state and local government websites and mobile apps are accessible to individuals with disabilities.

Background on New Rules for Website and App Accessibility

In August 2023, the Justice Department proposed a revision of the regulation that implements Title II of the ADA to include requirements and technical standards for making services, programs, and activities offered by state and local government entities accessible on both the web and mobile applications.[3] Title II of the ADA prohibits discrimination on the basis of disability in programs, services, and activities provided by public entities, including public schools, community colleges, and public universities.[4]

"Across the United States, people routinely rely on web and mobile apps to access a variety of vital public programs and services like employment and educational resources, voting information, health and emergency services, parking, and transit schedules," a press release announcing the Notice of Proposed Rulemaking (NPRM) noted, adding that the rule is even more significant as essential services and programs are offered through web and mobile apps. "It is critical for these technologies to be accessible for people with disabilities."[6]

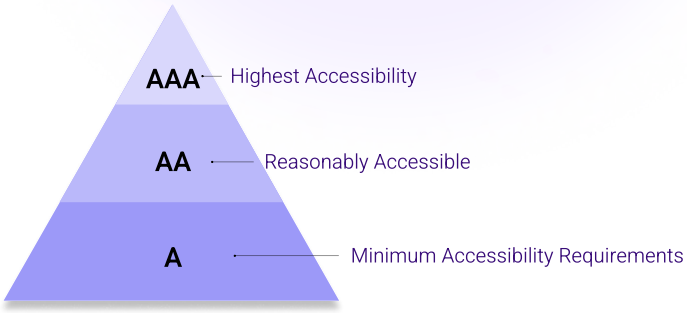
Attorney General Merrick B. Garland noted that this marks the first time in the history of the Americans with Disabilities Act that the Justice Department has issued a rule on website accessibility.[7] Garland signed the final rule in April 2024, and it became effective on April 24, 2024.



Once the regulation was finalized, he lauded its approval. "This final rule marks the Justice Department's latest effort to ensure that no person is denied access to government services, programs, or activities because of a disability," he said. "By issuing clear and consistent accessibility standards for state and local governments' digital content, this rule advances the ADA's promise of equal participation in society for people with disabilities. I want to thank the many public servants across the Department, led by the Civil Rights Division, for their tremendous work on this rule."[5]

Key Provisions of the Final Rule

1. The adoption of Web Content Accessibility Guidelines (WCAG) 2.1 Level AA as an internationally recognized technical standard for web content under Title II of the ADA.



Developed by the World Wide Web Consortium, WCAG defines how to make web content more accessible to those with disabilities, “including visual, auditory, physical, speech, cognitive, language, learning, and neurological disabilities.”[8]

Level AA is the middle tier of WCAG compliance sandwiched by A and AAA. If a website or application meets Level AA compliance, it also meets Level A compliance and is considered "reasonably accessible for most users," according to the Bureau of Internet Accessibility.[9] Each level has its own compliance criteria. The highest level of conformance will not be required because, according to the World Wide Web Consortium (W3C), it is not always possible to achieve in all instances.[10]

COMPLIANCE DATES FOR WCAG 2.1 LEVEL AA

STATE & LOCAL GOVERNMENT SIZE	COMPLIANCE DATE
0 to 49,999 persons	April 26, 2027
Special district governments	April 26, 2027
50,000 or more persons	April 24 2026

2. Staggered compliance dates for implementation based on the entity's population according to the U.S. Census Bureau.

Developed by the World Wide Web Consortium, WCAG defines how to make web content more accessible to those with disabilities, "including visual, auditory, physical, speech, cognitive, language, learning, and neurological disabilities."

Level AA is the middle tier of WCAG compliance sandwiched by A and AAA. If a website or application meets Level AA compliance,

3. There are several exemptions with limitations.

According to the U.S. Department of Justice Civil Rights Division, there are five exemptions, which include[12]:



Archived web content if it meets all the following requirements:

- The content was created before the compliance date of the rule or reproduces paper documents or the contents of other physician media that were created before the compliance date;
- The content is kept for reference, research, or recordkeeping;
- The content is kept in a special area for archived content; and
- The content has not been changed since it was archived.



Pre-existing conventional electronic documents if it meets both of the following criteria and is not currently being used to apply for, access, or participate in services, programs or activities:

- The documents are word processing, presentation, PDF, or spreadsheet files; and
- They were available on the website or mobile app before the compliance date of the rule.



Individualized documents that are password protected if it meets all three of the following points:

- The documents are word processing, presentation, PDF, or spreadsheet files;
- The documents are about a specific person, property, or account; and
- The documents are password-protected or otherwise secured



Pre-existing social media posts.



Content posted by a third party on the website or app.

In addition, the regulation states that entities must comply with "Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1, unless the public entity can demonstrate that compliance with this section would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens."[13]

Higher education institutions must still comply with other laws, such as the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act.[14]

Final Rule Benefits are Considerable

$5.3 Billion

The Department evaluated the financial benefits of making public entity websites and mobile apps accessible, which include time savings for users, especially those with disabilities, and additional earnings resulting from improved educational attainment. Annual benefits, beginning once the rule is fully implemented, total $5.3 billion.[15]



In addition to outlining quantifiable benefits in the Final Regulatory Impact Analysis (FRIA), the Justice Department highlights "unquantified benefits" of implementing the new regulation, which "can be difficult or impossible to quantify yet provide tremendous benefit to society."[16] Unqualified benefits to individuals, including those with disabilities, include:[17]

Increased independence, flexibility, and dignity:
Because individuals will be able to access websites and mobile applications without the aid of another individual and on their own time, the new rule promotes independence, flexibility and dignity.

Reduced frustration:
The inability to access websites and mobile apps is a source of frustration for those with disabilities. "In addition to the inconvenience of not being able to complete a task, this frustration can lead to a lower-quality user experience," the rule states.[18]

Increased privacy:
When individuals can access websites and mobile apps independently, they do not need to share personal information with a third party, such as a caregiver or aide, reducing the risk of theft or misuse.



Decreased assistance by companions:

The rule also notes that when an individual can complete tasks without the help of friends or family members, the quality of those relationships may benefit as the person with disabilities is no longer dependent on their companions.

Increased program participation:

Inaccessibility can discourage disabled individuals from participating in government services, programs, and activities. By reducing barriers to access, more people with disabilities may choose to participate in various programs.

Increased civic engagement and inclusion:

According to the FRIA, "Increased program participation in many civic activities will result in an unquantified benefit of greater community involvement, which will allow people with relevant disabilities to advocate for themselves and others and participate more actively in the direction of their communities."[19]

Frequently Asked Questions

What's the definition of web content?

Web content is information. or a sensory experience accessed via a web browser or other software, including text, images, sounds, videos, controls, animations, navigation menus, and documents. The rule would apply to any content made available to the public, unless it were "excepted."

What is a Rule?

A regulation, also called a "rule," is a set of requirements issued by a federal agency for laws passed by Congress. "When Congress passed the ADA, it gave the Department the authority to make regulations that explain the rights and requirements for Titles II and III of the ADA."[21]

What is the penalty for noncompliance with any Final Rule?

According to an article in JD Supra, “The DOJ enforces Title II of the ADA through lawsuits and settlement agreements, which often require the public entity to revise its policies and procedures and, in some cases, pay substantial damages to impacted individuals. The DOJ may also participate in private suits including class actions that it determines may impact the interpretation and application of the ADA.”[22] In general, noncompliance with the ADA can lead to substantial penalties.

What is the Americans With Disabilities Act?

The Americans with Disabilities Act (ADA) is a landmark civil rights law that prohibits discrimination against individuals with disabilities. Enacted in 1990, the ADA aims to ensure equal opportunities and access to goods, services, employment, and public facilities for people with disabilities. The law prohibits discrimination on the basis of disability in various areas, including employment, public accommodations, transportation, and telecommunications.

What entities must comply with the rule?

According to the U.S. Department of Justice Civil Rights Division, "Like the rest of Title II," the final rule applies to all state and local government entities. Examples include:

- State and local government offices that provide benefits and/or social services, like food assistance, health insurance, or employment services
- Public schools, community colleges, and public universities
- State and local police departments
- State and local courts
- State and local election offices
- Public hospitals and public healthcare clinics
- Public parks and recreation programs
- Public libraries
- Public transit agencies

Endnotes

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02 https://www.federalregister.gov/d/2023-15823/p-737

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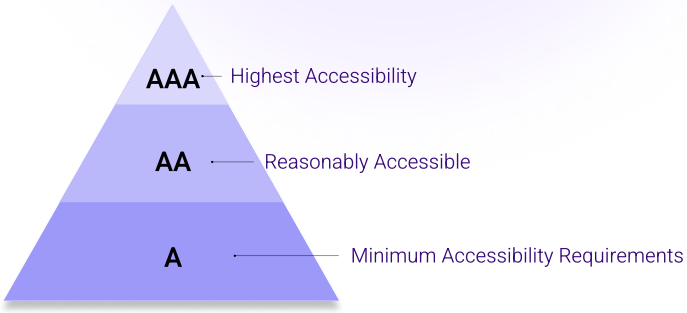
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Endnotes

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