

## ALERTS

### Accessibility And Disability Law Alert - U.S. Department Of Justice Restarts ADA Title II Web Accessibility Rulemaking

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On April 29, 2016, the U.S. Department of Justice announced that it has withdrawn its Notice of Proposed Rulemaking (NPRM) under Title II of the Americans with Disabilities Act (ADA) to address accessibility requirements for web information and services of state and local government entities. The proposed rulemaking had been undergoing review at the Office of Information and Regulatory Affairs, a part of the Office of Management and Budget, pursuant to Executive Order 12866 since July 2014. Instead, the Department is issuing a [Supplemental Advance Notice of Proposed Rulemaking \(SANPRM\)](#) seeking additional public comment. The SANPRM was published in the Federal Register on May 9; public comments will be accepted until Aug. 8.

The Department's decision to withdraw its Title II NPRM is significant in that the Department had indicated in its most recent semiannual regulatory agenda issued on November 19, 2015, that it anticipated issuing the NPRM in January 2016. The Department's Title III NPRM is not anticipated until FY 2018. Additionally, notwithstanding the fact that it has not yet issued final regulations or standards to address a covered entity's obligations to make its website accessible under the ADA, the Department has entered into several settlement agreements under both Titles II and III of the ADA requiring entities to make their websites and mobile apps accessible. The Department also has taken the position in litigation that entities are required to make their websites accessible even though to date it has not issued regulations or standards addressing website accessibility. In the absence of such regulations or standards, entities subject to Titles II and III of the ADA have been eagerly awaiting issuance of the Title II NPRM to provide guidance on several key issues, particularly in light of the increasing litigation and/or threats of litigation by private parties.

The SANPRM seeks public comment and additional information on several issues, including, but not limited to, the following:

- The adoption of Web Content Accessibility Guidelines 2.0 (WCAG 2.0), Level A and AA Success Criteria
- Whether an effective date of two years from the date the final regulations are issued is appropriate
- Whether an effective date of three years for making live-audio content in synchronized media conform to WCAG 2.0, Level AA Success Criteria is appropriate
- Whether mobile apps should be addressed in the rulemaking, and

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**Teresa L. Jakubowski**

Partner  
Washington, D.C.

P 202-371-6366  
F 202-289-1330  
[teresa.jakubowski@btlaw.com](mailto:teresa.jakubowski@btlaw.com)

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if so, which standards should apply

- Whether certain third-party content should be excepted; the Department posits that third-party web content linked from the public entity's website would not be required to comply with the standards adopted unless the public entity uses the third-party website or web content to allow members of the public to participate in or benefit from the public entity's services, programs, or activities. The Department also is considering generally exempting content posted to a public entity's site by third parties, unless that content is essential for engaging in civic participation.
- Whether requirements for public entities' use of third-party social media platforms should be deferred to the Department's Title III rulemaking
- Whether "archived web content" should be covered and the definition for such content
- Whether preexisting conventional electronic documents (such as PDFs or Microsoft Word documents) already appearing on a website should be excepted
- The appropriateness of an exception for password protected web content of public educational institutions (such as learning management systems or other educational platforms), whereby such *content* would only have to be made accessible when an individual with a disability (or who has a parent with a disability) enrolls in such class or course, although the educational *platform* itself would have to be accessible.
- Circumstances under which providing an alternate conforming version would be appropriate
- The appropriateness of setting alternative requirements for small public entities (such as a longer timeline for compliance or applying only WCAG 2.0 Level A Success Criteria to very small entities)
- Information on the costs and benefits of website accessibility to aid the Department in preparing a regulatory impact analysis, including information on benefits to persons with particular types of disabilities, specific data on the costs of website accessibility, and how to measure both the costs and benefits of website accessibility

To obtain more information, please contact Teresa L. Jakubowski of Barnes & Thornburg's Washington, D.C., office at (202) 371-6366 or [teresa.jakubowski@btlaw.com](mailto:teresa.jakubowski@btlaw.com), or the Barnes & Thornburg Labor & Employment attorney with whom you work.

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