



October 3, 2023

To: Rebecca B. Bond, Chief
Disability Rights Section
Civil Rights Division

U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Re: Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Government Entities, RIN 1190-AA79

Authors: Ariana Aboulafia, Hannah Quay-de la Vallee, Nick Doty, and Mallory Knodel

The Center for Democracy & Technology (CDT) appreciates the efforts of the Department of Justice in releasing this Notice of Proposed Rulemaking (NPRM) regarding the implementation of web accessibility standards under Title II of the Americans with Disabilities Act (ADA). CDT is a nonpartisan, nonprofit organization that focuses on the protection of civil rights and civil liberties in the digital age. CDT's Disability Rights project specifically focuses on centering disability rights in issues of technology policy. As web and mobile-app based accessibility is an extremely important issue within the fields of both technology policy and disability rights, CDT respectfully submits these comments to address the Department's question regarding the codification of technical standard WCAG 2.1 in the final rule.

We commend the Department for using the Web Content Accessibility Guidelines (WCAG) technical standard as the primary guidance for online accessibility. WCAG standards are developed through an open, multi-stakeholder consensus process and are rightly well-regarded for the expertise in their input and for the clarity and specificity of their guidelines. WCAG standards are freely available, and can be implemented without paying royalties or incurring patent licensing obligations. Furthermore, the development and decision-making have been done in public, and stakeholders can easily raise issues: both web accessibility issues that disabled people face and issues with ambiguity over guidelines – and they can do so at any time, not just during a notice of proposed rulemaking. WCAG standards have been widely, regularly and

successfully used to establish legal compliance for accessibility in many jurisdictions.¹ And in referring to widely-accepted international standards, the Department eases compliance for agencies by allowing them to use the services of existing vendors and to learn from documentation of other entities who have used these standards in their own laws and policies.

While we thus agree with the Department's proposed reliance on WCAG standards, we recommend that, rather than specifying WCAG 2.1 as the required standard in the final rule, the Department instead require that entities comply with the most recent WCAG standard. This approach will ensure that the rule remains relevant and most helpful to people with disabilities, without requiring frequent additional updates.

Question 3: *Are there technical standards or performance standards other than WCAG 2.1 that the Department should consider? For example, if WCAG 2.2 is finalized before the Department issues a final rule, should the Department consider adopting that standard? If so, what is a reasonable time frame for State and local compliance with WCAG 2.2 and why? Is there any other standard that the Department should consider, especially in light of the rapid pace at which technology changes?*

Tying regulation to a fixed version of a standard runs the risk of cementing an out-of-date standard, to the detriment of disabled people. WCAG standards are designed to be adjusted and updated over time; as a result, many new versions of WCAG standards are likely to be passed while this rule is in place, quickly making the rule outdated. The proposed regulations have taken over a decade to develop; this is too long of a timeline to enshrine one version of technical standards that must be updated to adapt to an evolving environment.

Codifying an older standard may actually be counterproductive, as it would allow entities to remain technically in compliance with the rule, while remaining out of compliance with best practices for web accessibility as determined by WCAG. For example, version 2.2 of the Web Content Accessibility Guideline is expected to be finalized and established as the active version in 2023, thus replacing version 2.1. Among other things, version 2.2 recommends that “for any action that involves dragging, provide a simple pointer alternative.”² This is intended to increase accessibility for those users who cannot drag items in an interface. In addition to adapting to changing technology, the guidelines also adapt to changing and expanding understandings of

¹ This non-exhaustive list of legal policies identifies many countries and laws that have cited WCAG 2.0, including Section 508 for federal government procurement. See *Web Accessibility Laws & Policies*, W3C (March 21, 2018). <https://www.w3.org/WAI/policies/>.

² *What's New in WCAG 2.2*, W3C Web Accessibility Initiative, Aug. 29, 2023, <https://www.w3.org/WAI/standards-guidelines/wcag/new-in-22/#changes-from-wcag-21-to-wcag-22>



disability. For instance, version 2.2 expands practices relating to cognitive disabilities, requiring that “help [be] in the same place when it is on multiple pages” and that users should not be required to “recognize objects or user-supplied images” in order to log into a website. Both of these updates serve to make websites more accessible for people with cognitive challenges, which is an expansion of more outdated approaches that address only physical disabilities. As new web technologies evolve and as societal understanding of disability deepens, WCAG accessibility guidelines will expand, and federal agencies should be expected to adhere to the most up-to-date best practices, as determined through the rigorous, multi-stakeholder process required to pass WCAG standards.

Using the most up-to-date standards will also provide benefits to state and local governments complying with the rule, letting them make use of the services of vendors who provide accessibility analysis and remediation against the current standards. It will also provide benefits to disabled people in accessing private services by establishing a consistent market for vendors providing services that satisfy the most up-to-date requirements.

If DOJ chooses not to change the rule to require adherence to the most current version of the accessibility guidelines, it should at minimum take a partial step towards longevity of the guidelines by pinning the regulations to the forthcoming version of the accessibility guidelines (version 2.2) instead of version 2.1, which would result in outdated requirements almost immediately. Further, it could provide for a less onerous process for expedited administrative review of new Recommendations and confirmation that the rules apply to the more recent published standards. In particular, future minor versions, which are additive and backwards-compatible with WCAG 2.1, should be adopted for Title II compliance as a matter of course, without requiring an additional lengthy rulemaking process. More fundamental changes (like the in-progress WCAG 3 standards) could later be analyzed for their appropriateness and the timeframe for migrating online services for compliance. This would allow for the regulation to continue supporting best practices as those practices evolve over time, rather than committing agencies to an outdated approach.

CDT urges the Department of Justice to reconsider codifying WCAG 2.1 as the standard for accessibility and instead to require adherence to the most recent version of the WCAG guidelines to enhance the impact and efficacy of the final rule. We look forward to the Department’s final rule on website and application accessibility, and appreciate the opportunity to submit these comments.