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Understanding the New ADA Web Accessibility Requirements for State and Local Governments

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On April 24, 2024, the United States Department of Justice (DOJ) issued a **final rule** updating its regulations for Title II of the Americans with Disabilities Act (ADA). The Final Rule requires state and local government entities to make their services, programs, and activities offered through websites and mobile applications ("apps") accessible to people with disabilities. The Final Rule became effective June 24, 2024, but compliance for some local governments in North Carolina is required starting as of **April 24, 2026**.

Title II and the Purpose of the Final Rule on Web Accessibility

Title II of the ADA requires public entities not to discriminate against a qualified individual with a disability or to exclude such an individual from participation in or the benefits of the services, programs, or activities of the public entity based on the individual's disability. **42 U.S.C. 12132**. "Public entity" is defined as any state or local government, as well as to any department, agency, special purpose district, or other instrumentality of a state or local government. **28 CFR 35.104**. This requirement applies to all services, programs, and activities of state and local government entities, including government services provided via websites and mobile apps. 28 CFR 35.200.

While the fundamental accessibility and non-discrimination requirement of Title II is not new, what *is* new in the Final Rule is a much more specific, rigorous set of technical requirements that government entities must meet to ensure that their websites and apps are accessible. These new requirements are found at **28 CFR Part 35 Subpart H**.

While people with various types of disabilities may face obstacles in accessing online content, navigating websites and mobile apps poses a particular challenge for individuals who are vision impaired. The DOJ provides the following example in its Title II **guidance**:

> [I]ndividuals who are blind may use a screen reader to deliver visual information on a website or mobile app as speech. A state or local government might post an image on its website that provides information to the public. If the website does not include text describing the image (sometimes called "alternative text" or "alt text"), individuals who are blind and who use screen readers may have no way of knowing what is in the image because a screen reader cannot "read" an image.

Government entities are increasingly offering more of their services through online platforms, including platforms for applying for benefits, submitting service requests or complaints, applying for professional licenses and permits, bidding on contracts, watching public meetings, and obtaining election information, among other activities. The purpose of the Final Rule is to ensure that people with disabilities are not excluded from access to these online services, benefits, and activities. As the preamble to the Final Rule explains, "Just as stairs can exclude people who use wheelchairs from accessing government buildings, inaccessible web content and mobile apps can exclude people with a range of disabilities from accessing government services."

Compliance Deadlines

The deadline for compliance with the Final Rule will depend on the population size of the government in question. *See* **28 CFR 35.200(b)**.

- For North Carolina state government, as well as counties and municipalities with a population of 50,000 or more persons, the compliance deadline is **April 24, 2026**.
- For local governments with a population of 0 to 49,999 persons, the compliance deadline falls just over a year later: **April 26, 2027**.
- For "special district governments," the compliance deadline is also **April 26, 2027**. A "special district government" is defined in the Final Rule to mean "a public entity—other than a county, municipality, township, or independent school district—

authorized by State law to provide one function or a limited number of designated functions with sufficient administrative and fiscal autonomy to qualify as a separate government and whose population is not calculated by the United States Census Bureau in the most recent decennial Census or Small Area Income and Poverty Estimates." **28 CFR 35.104**. My colleague Kara Millonzi has a blog post about the various types of "special-purpose" local governments in North Carolina available here: **Special Purpose Local Governments and Public Authorities.**

Requirements of the Final Rule

Beginning on the applicable compliance deadline, each public entity must ensure that all web content and mobile apps that the entity "provides or makes available, directly or through contractual, licensing, or other arrangements" are readily accessible to and usable by individuals with disabilities. **28 CFR 35.200(a)**. This means that the new web accessibility requirements not only apply to websites and apps hosted or created by a public entity, but also to websites and apps operated or created on behalf of a public entity by a third-party vendor.

What does it mean for web content and apps to be accessible and usable for individuals with disabilities? The Final Rule sets a concrete standard. The new **28 CFR 35.200(b)** establishes **The Web Content Accessibility Guidelines (WCAG) Version 2.1, Level AA** as the technical standard for state and local governments' web content and mobile apps. All public entities must ensure that their web content and mobile apps 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 these requirements "would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens." 28 CFR 35.200(b). To reiterate, this also applies to content and apps developed or operated by third-party vendors. For example, as the **DOJ guidance** explains, if a city lets people pay for public parking using a mobile app, that mobile app must meet WCAG 2.1 Level AA criteria *even if* the app is run by a private company.

There are 86 different "success criteria" set forth in WCAG 2.1, available here: **Web Content Accessibility Guidelines (WCAG) 2.1**. Each is labeled with a different "conformance level": Level A, Level AA, or Level AAA. Level A establishes the most basic accessibility requirements, while Level AA (the standard now required for ADA compliance) sets more rigorous accessibility requirements, and Level AAA sets the highest, most demanding level of accessibility requirements (and will not be possible to achieve for all types of content). The conformance levels are *cumulative*, meaning that to comply with Level AA criteria, a public entity must comply with all Level A *and* Level AA requirements.

The Final Rule does *not* require that government entities comply with Level AAA success criteria—the highest level in WCAG 2.1. For example, WCAG 2.1 Success Criterion 3.1.5 states, "When text requires reading ability more advanced than the lower secondary education level after removal of proper names and titles, supplemental content, or a version that does not require reading ability more advanced than the lower secondary education level, [must be made] available." Because that particular success criterion is designated as Level AAA, government entities are *not* required to satisfy it in order to comply with the new ADA requirements. Government entities must, however, look carefully at each WCAG 2.1 success criterion labeled "Level A" or Level AA," because *compliance with each of these criteria is required for Title II compliance* as of the deadlines described above.

Exceptions to the Web Accessibility Requirements

The Final Rule's accessibility requirements do not apply to the following five categories of web content. **28 CFR 35.201**.

Exception 1: Archived web content. Archived web content, defined in **28 CFR 35.104**, means content that:

1. Was created before the date the public entity is required to comply with the new **28 CFR Part 35 Subpart H** requirements (described above), reproduces paper documents created before that compliance date, or reproduces the contents of other physical media created before the compliance date;

2. is retained exclusively for reference, research, or recordkeeping;

3. is not altered or updated after the date of archiving; and

4. is organized and stored in a dedicated area or areas clearly identified as being archived.

DOJ guidance in the Final Rule explicitly warns that "public entities may not circumvent their accessibility obligations by merely labeling their web content as 'archived' or by refusing to make accessible any content that is old." **28 CFR Pt. 35, App. D**. Rather, the archived content exception is meant to be narrowly applied to content that meets *all* of the criteria described above. If any one of those criteria is not met, the content does not qualify for the exception. For example, if a local government maintains web content for any purpose other than "reference, research, or recordkeeping," that content would not fall within this exception, regardless of the date it was created or how it is stored or labeled on the website.

The DOJ's guidance does, however, identify a couple of illustrative examples showing how the archived web content exception might be used.

- "[A] town may create a web page for its annual parade. In addition to providing current information about the time and place of the parade, the web page might contain a separate archived section with several photos or videos from the parade in past years. The images and videos would likely be covered by the exception," so long as they met the four criteria for archived web content.

- Similarly, a court may have a web page that includes links to download PDF documents that contain photos and short biographies of past judges who are retired. The PDF documents would likely be covered by the exception, so long as they met the four criteria for archived web content.

Exception 2: Preexisting conventional electronic documents. The term "conventional electronic documents" is defined in **28 CFR 35.104** to mean web content or content in mobile apps that is in the following electronic file formats: portable document formats (i.e., PDFs), word processor file formats (e.g., Word files), presentation file formats (e.g., PPT files), and spreadsheet file formats (e.g., Excel files).

Any documents in these formats that are already available as part of the public entity's web content or mobile apps *before the applicable Final Rule compliance date* fall under this exception to the accessibility requirements, unless the documents are "currently used to apply for, gain access to, or participate in the public entity's services, programs, or activities." 28 CFR 35.201(b).

The DOJ provides some additional explanation of this exception in the Final Rule (**28 CFR Pt. 35, App. D**):

> Because of the substantial number of conventional electronic documents that public entities make available through their web content and mobile apps, and because of the personnel and financial resources that would be required for public entities to remediate all preexisting conventional electronic documents to make them accessible after the fact, the Department believes public entities should generally focus their personnel and financial resources on developing new conventional electronic documents that are accessible and remediating existing conventional electronic documents that are currently used to access the public entity's services, programs, or activities. For example, if before the [compliance date] the entity's website contains a series of out-of-date PDF reports on local COVID–19 statistics, those reports generally need not conform to WCAG 2.1 Level AA. Similarly, if a public entity maintains decades' worth of water quality reports in conventional electronic documents on the same web page as its current water quality report, the old reports that were posted before the [compliance date] generally do not need to conform to WCAG 2.1 Level AA. As the public entity posts new reports going forward, however, those reports generally must conform to WCAG 2.1 Level AA.

Unlike the "archived web content" exception, there is no requirement that these conventional electronic documents be organized and stored in a dedicated area of a website or app in order to qualify for the exception. However, like the archived web content exception, if the files are uploaded, edited, or altered after the compliance date, they would no longer qualify for this exception.

Exception 3: Content posted by a third party. This exception applies to content posted by a third party, *unless* the third party is posting due to contractual, licensing, or other arrangements with the public entity. 28 CFR 35.201. This exception is a bit more complicated than it may appear at first blush. Remember, the new web accessibility requirements in the Final Rule apply to any content a public entity "provides or makes available, directly or through contractual, licensing, or other arrangements," *including content created on behalf of a public entity by a third party vendor.* 28 CFR 35.200. Accordingly, this exception does not apply to all content created by third parties, but rather, only to third-party content that was not created on behalf of a public entity through some pre-existing contractual or other arrangement.

This exception applies when members of the public post on a public entity's online message boards, wikis, social media, or other interactive web forums. Likewise, this exception would apply to documents filed by independent third parties in administrative, judicial, and other legal proceedings that are available on a public entity's web content or mobile apps. *See* 28 CFR Pt. 35, App. D.

The third-party-posting exception does not excuse compliance with the *existing* core obligations of a public entity under Title II of the ADA to make its services, programs, and activities accessible to people with disabilities. For example, even though third party filings in a judicial proceeding via a state court's website or platform qualify for this "content posted by a third party" exception to the new web accessibility requirements, if a party to a case has a disability and specifically requests access to inaccessible filings submitted by a third party, the court generally must provide those filings in an accessible format.

Exception 4: Individualized conventional electronic documents that are password-protected or otherwise secured. The new accessibility requirements in the Final Rule do not apply to "conventional electronic documents" (e.g., PDFs, Word files, PPT files, Excel files) that are:

1. about a specific individual, their property, or their account; and

2. password-protected or otherwise secured.

28 CFR 35.201(d). Guidance to the Final Rule (28 CFR Pt. 35, App. D) provides a couple examples of instances where this might apply, such as public utility companies providing a website where customers can log in and view a PDF version of their latest bill or public hospitals offering a virtual platform where healthcare providers can send conventional electronic document versions of test results and scanned medical records to their patients. Examples of individualized documents might include medical records about a specific patient, receipts for purchases, utility bills concerning a specific residence, or Department of Motor Vehicles records for a specific person or vehicle. Conversely, "content that is broadly applicable or otherwise for the general public (i.e., not individualized) is not subject to this exception." Moreover, the exception applies only to "conventional electronic documents." It does not apply to HTML content, even if that HTML content is about a specific individual and is password-protected or otherwise secured. *See* 28 CFR 35.104 (defining "conventional electronic documents").

Like the exception for third-party content, this exception for individualized content does not excuse compliance with the *existing* accessibility obligations of state and local governments under Title II of the ADA. Public entities still have an obligation "to provide accessible versions of individualized, password-protected or otherwise secured conventional electronic documents in a timely manner *when those documents pertain to individuals with disabilities, or otherwise provide the information contained in the documents to the relevant individual*" (emphasis added). 28 CFR Pt. 35, App. D. While this exception recognizes that it may be too burdensome for some government entities to make *all* such documents conform to WCAG 2.1 Level AA, it does not relieve government entities of their broader, existing Title II obligation to make their services, programs, and activities accessible to individuals with disabilities. *See* **42 U.S.C. 12132**; **28 CFR 35.130**.

Phrased another way, an exception to the new WCAG 2.1 conformance requirements does not equate to an exception to Title II's accessibility requirements as a whole. For example, if a local government has reason to know that an individual citizen is blind and needs accessibility modifications in order to be able to read a password-protected PDF document for enrollment in a local Parks & Rec program, the local government must provide a way for the citizen to be able to access the information in the document. In other words, even though the local government is not required proactively to make *every* password-protected PDF for individual Parks & Rec program enrollees comply with the WCAG 2.1 Level AA requirements, the local government does have a separate, pre-existing obligation under Title II of the ADA to ensure on a case-by-case basis that individual citizens with disabilities are not excluded from participation in or denied the benefits of the services, programs, or activities of the government entity. *See* **28 CFR 35.130**.

Exception 5: Preexisting social media posts. The Final Rule's accessibility requirements do not apply to a public entity's social media posts if they were posted before the applicable Final Rule compliance date. 28 CFR 35.201(e). Guidance to the Final Rule makes clear, however, that government social media posts made *after* the applicable compliance date must comply with the new web accessibility requirements:

> The [DOJ] believes public entities should not be relieved from their duty under subpart H to provide accessible content to the public simply because that content is being provided through a social media platform. The [DOJ] was particularly persuaded by the many examples that commenters shared of emergency and time-sensitive communications that public entities share through social media platforms, including emergency information about toxic spills and wildfire smoke, for example. The Department believes that this information must also be accessible to individuals with disabilities....[I]f an entity believes information is worth posting on social media for members of the public without disabilities, it is no less important for that information to reach members of the public with disabilities. Therefore, the entity cannot deny individuals with disabilities equal access to that content, even if it is not about an emergency.

Conforming Alternate Versions, Equivalent Access, and "Minimal Impact" Noncompliance

Careful readers of the WCAG criteria will notice that even if web content does not meet the WCAG standards, it can still be considered WCAG-compliant if a "conforming alternate version" of the content is provided. *See* **WCAG § 5.2.1**. A "**conforming alternate version**" is a separate web page that meets the WCAG 2.1 Level AA criteria, contains the same information and functionality as the inaccessible web page, is as up to date as the non-conforming content, and is at least as accessible as the non-conforming content (i.e., the conforming version can be reached from the non-conforming page via an accessibility-supported mechanism, the non-conforming version can be reached from the conforming version, or both versions can be reached from a conforming page).

Conforming alternate versions are allowable under WCAG, but their use by government entities to comply with the new Title II accessibility requirements is limited by the Final Rule. Per **28 CFR 35.202**, a public entity may use a conforming alternate version only where it is not possible to make web content directly accessible due to "technical or legal limitations."

However, the new Title II web accessibility regulations also go on to say that nothing prevents government entities from using "designs, methods, or techniques as alternatives to those prescribed [in WCAG 2.1], provided that the alternative designs, methods, or techniques result in substantially equivalent or greater accessibility and usability of the web content or mobile app." **28 CFR 35.203**. In other words, if a public entity can demonstrate that its web content is substantially as accessible and usable for

individuals with disabilities as it would be when complying with all of the WCAG 2.1 Level AA criteria, then it will be in compliance with the core web accessibility requirement of **28 CFR 35.200(a)**, even if not using all of the designs, methods, and techniques required by WCAG 2.1.

Likewise, noncompliance with the WCAG 2.1 Level AA criteria will not be deemed a violation of the Final Rule's core web accessibility requirement (**28 CFR 35.200(a)**) if that noncompliance has "such a minimal impact on access that it would not affect the ability of individuals with disabilities to use the public entity's web content or mobile app to do any of the following in a manner that provides substantially equivalent timeliness, privacy, independence, and ease of use:

> (a) Access the same information as individuals without disabilities;
>
> (b) Engage in the same interactions as individuals without disabilities;
>
> (c) Conduct the same transactions as individuals without disabilities; and
>
> (d) Otherwise participate in or benefit from the same services, programs, and activities as individuals without disabilities. 28 CFR 35.205.

The Fundamental Alteration/Undue Burden Determination

Readers familiar with Title I of the ADA, which prohibits discrimination against individuals with disabilities in the employment context, are likely aware of the "undue hardship" standard: a covered employer must provide a reasonable accommodation to a qualified applicant or employee with a disability unless doing so would create an "undue hardship" on the employer. 42 USC 12112(b)(5)(A). If bringing all web content into compliance with WCAG 2.1 Level AA criteria creates a hardship for a public entity, does this same exception apply?

In short, not exactly, though Title II uses language that is somewhat similar. Specifically, a public entity need not comply with the web accessibility requirements of 28 CFR **35.200** to the extent that the public entity can demonstrate that such compliance would result in:

1. a fundamental alteration in the nature of a service, program, or activity or
2. undue financial and administrative burdens.

See **28 CFR 35.204**. In circumstances where personnel of the public entity believe that the proposed accessibility changes would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, the public entity has the burden of proving that compliance would result in such alteration or burdens.

The regulations also specify exactly who must make this judgment call and how it must be done. The decision that compliance would result in a fundamental alteration or undue burden must be made by "the head" of the public entity in question or their designee, after considering all resources available for use in the funding and operation of the service, program, or activity. The regulations do not define "head," but DOJ guidance provides some clarity:

> The [DOJ] recognizes the difficulty of identifying the official responsible for this determination, given the variety of organizational forms that may be taken by public entities and their components. The intention…is that the determination must be made by a high level official, no lower than a department head, having budgetary authority and responsibility for making spending decisions.

The decision must be accompanied by a written statement of the reasons for reaching the conclusion. **28 CFR 35.204**. Though not required by the regulations, it would be prudent for the head of a public entity to consult with legal counsel when making a fundamental alteration or undue burden determination.

The regulations also clarify that even if an action would result in a fundamental alteration or undue burden, a public entity must "nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible." 28 CFR 35.204. In other words, a public entity must comply to the extent it is able to do so without incurring a fundamental alteration or undue burden, even if *full* compliance may not be possible.

Remedies for Noncompliance

What happens if a public entity fails to comply with the new Final Rule? As with other violations of Title II of the ADA, a private individual may sue a state or local government pursuant to **42 USC 12133**, seeking injunctive relief, compensatory damages (in some cases), and attorney's fees. The DOJ's Civil Rights Division also has its own enforcement process (see **28 CFR Pt. 35, Subpart**

F), including a process for receiving ADA discrimination complaints, investigating such complaints, entering into voluntary compliance agreements, and filing lawsuits to achieve compliance where necessary.

Changes Ahead?

More changes to these regulations may be coming soon. On September 22, 2025, a notice was published in the **Federal Register** regarding the DOJ's regulatory agenda, stating that the DOJ intends to publish a Notice of Proposed Rulemaking (NPRM) "to reconsider whether some of the regulatory provisions imposed by the April 24, 2024 [web accessibility] rule could be made less costly." The April 2024 Final Rule was issued by the DOJ under the Biden administration. The September 2025 notice was issued by the DOJ under the Trump administration and may indicate the DOJ's intent to relax some of the Final Rule's accessibility requirements. The NPRM has not yet been published (notice in the Federal Register indicated the timing was "To Be Determined") and it remains to be seen whether the DOJ will publish it in advance of the initial compliance date, which is only a few months away. It is also possible that an interested party could raise a legal challenge to the Final Rule's enforcement prior to that date.

Moving Towards Compliance

For now, state and local governments that are subject to the initial April 24, 2026 compliance date (those with a population of 50,000 or more persons) should review their web and mobile app content to ensure that it complies with the WCAG 2.1 Level AA criteria, including assessing whether some of that content may fall within the exceptions described above. Government entities should also consult with their vendors to ensure that any web content or apps operated or created by vendors on the government's behalf complies with the WCAG 2.1 Level AA criteria as well.

A step-by-step guide to compliance for state and local governments is available from the DOJ at this link: **State and Local Governments: First Steps Toward Complying with the Americans with Disabilities Act Title II Web and Mobile Application Accessibility Rule | ADA.gov**. Digital accessibility resources, including accessibility testing tools, are available on this North Carolina Department of Information Technology website: **Digital Accessibility Resources | NCDIT**. State agencies may request web accessibility support here: **Expert Accessibility Help | NCDIT**. Local governments should consult with their IT departments on how to achieve compliance, which may include using **web accessibility evaluation tools** or contracting with a vendor to perform an accessibility review. Government employees may also want to begin routinely using built-in **accessibility check features** in apps such as Microsoft Word, Excel, and PowerPoint.