Billing Code: 4410-13

DEPARTMENT OF JUSTICE

28 CFR Part 35

[CRT Docket No. 144; AG Order No. 5729-2023]

RIN 1190-AA79

Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice ("Department") is proposing to revise the regulation implementing title II of the Americans with Disabilities Act ("ADA") in order to establish specific requirements, including the adoption of specific technical standards, for making accessible the services, programs, and activities offered by State and local government entities to the public through the web and mobile apps.

DATES: Written comments must be postmarked, and electronic comments must be submitted, on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Commenters should be aware that the electronic Federal Docket Management System ("FDMS") will accept comments submitted prior to midnight Eastern Time on the last day of the comment period. Written comments postmarked on or before the last day are considered timely even though they may be received after the end of the comment period. Late comments are highly disfavored. The Department is not required to consider late comments.

ADDRESSES: You may submit comments, identified by RIN 1190-AA79 (or Docket ID No. 144), by any one of the following methods:

- Federal eRulemaking website: *www.regulations.gov*. Follow the website's instructions for submitting comments.

- Regular U.S. mail: Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 440528, Somerville, MA 02144.
- Overnight, courier, or hand delivery: Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 150 M St. N.E., 9th Floor, Washington, D.C. 20002.

FOR FURTHER INFORMATION CONTACT: Rebecca B. Bond, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307-0663 (voice or TTY). This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514-0301 (voice) or 1-833-610-1264 (TTY). You may obtain copies of this NPRM in an alternative format by calling the ADA Information Line at (800) 514-0301 (voice) or 1-833-610-1264 (TTY). A link to this NPRM is also available on *www.ada.gov*.

Electronic Submission of Comments and Posting of Public Comments

Interested persons are invited to participate in this rulemaking by submitting written comments on all aspects of this rule via one of the methods and by the deadline stated above. When submitting comments, please include "RIN 1190-AA79" in the subject field. The Department also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing this rule will reference a specific portion of the rule or respond to a specific question, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Please note that all comments received are considered part of the public record and made available for public inspection at *https://www.regulations.gov*. Such information includes personally identifiable information ("PII") (such as your name and address). Interested persons are not required to submit their PII in order to comment on this rule. However, any PII that is submitted is subject to being posted to the publicly accessible *https://www.regulations.gov/* site without redaction.

Confidential business information clearly identified in the first paragraph of the comment as such will not be placed in the public docket file.

The Department may withhold from public viewing information provided in comments that they determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov*. To inspect the agency's public docket file in person, you must make an appointment with the agency. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for agency contact information.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of Proposed Rule and Need for the Rule

Title II of the ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a State or local government entity.[1] The Department uses the phrases "State and local government entities" and "public entities" interchangeably throughout this Notice of Proposed Rulemaking ("NPRM") to refer to "public entities" as defined in 42 U.S.C. 12131(1) that are covered under part A of title II of the ADA. The Department has consistently made clear that the title II nondiscrimination provision applies to *all* services, programs, and activities of public entities, including those provided via the web. It also includes those provided via mobile applications ("apps"), which, as discussed in the proposed definition, are software applications that are designed to be downloaded and run on mobile devices such as smartphones and tablets. In this NPRM, the Department proposes technical standards for web content and mobile app accessibility to give public entities greater clarity in exactly how to meet their ADA obligations and to help ensure equal access to public entities' services, programs, and activities (also referred to as "government services") for people with disabilities.

[1] 42 U.S.C. 12132.

Public entities are increasingly providing the public access to government services through their web content and mobile apps. For example, government websites and mobile apps often allow the public to obtain information or correspond with local officials without having to wait in line or be placed on hold. Members of the public can also pay fines, apply for State benefits, renew State-issued identification, register to vote, file taxes, request copies of vital records, and complete numerous other tasks via government websites. Individuals can often perform many of these same functions on mobile apps. Additionally, as discussed further, web- and mobile app-based access to these programs and activities has become especially critical since the start of the COVID-19 pandemic. Often, however, State and local government entities' web- and mobile app-based services are not designed accessibly and as a result are not equally available to individuals with disabilities.

It is critical to ensure that people with disabilities can access important web content and mobile apps quickly, easily, independently, and equally. Just as steps can exclude people who use wheelchairs, inaccessible web content can exclude people with a range of disabilities from accessing government services. For example, access to voting information, up-to-date health and safety resources, and mass transit schedules and fare information may depend on having access to websites and mobile apps. With accessible web content and mobile apps, people with disabilities can access government services independently and in some cases with more privacy. By allowing people with disabilities to engage more fully with their governments, accessible web content and mobile apps also promote the equal enjoyment of fundamental constitutional rights, such as the rights to freedom of speech, assembly, association, petitioning, and due process of law.

Accordingly, the Department is proposing technical requirements to provide concrete standards to public entities on how to fulfill their obligations under title II to provide equal access to all of their services, programs, and activities that are provided via the web and mobile apps. The Department believes the requirements described in this rule are necessary to ensure

"equality of opportunity, full participation, independent living, and economic self-sufficiency" for individuals with disabilities, as set forth in the ADA.[2]

B. Legal Authority

On July 26, 1990, President George H.W. Bush signed into law the ADA, a comprehensive civil rights law prohibiting discrimination on the basis of disability.[3] Title II of the ADA, which this rule addresses, applies to State and local government entities. Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to all activities of State and local government entities regardless of whether the entities receive Federal financial assistance.[4] Part A of title II protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. Section 204(a) of the ADA directs the Attorney General to issue regulations implementing part A of title II but exempts matters within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244.[5]

The Department of Justice is the only Federal agency with authority to issue regulations under title II, part A, of the ADA regarding the accessibility of State and local government entities' web content and mobile apps. In addition, under Executive Order 12250, the Department of Justice is responsible for ensuring consistency and effectiveness in the implementation of section 504 across the Federal Government (aside from provisions relating to equal employment). Given Congress's intent for parity between section 504 and title II of the ADA, the Department must also ensure that any interpretations of section 504 are consistent with title II (and vice versa).[6] The Department, therefore, also has a lead role in coordinating

---

[2] 42 U.S.C. 12101(a)(7).
[3] 42 U.S.C. 12101–12213.
[4] 42 U.S.C. 12131–65.
[5] *See* 42 U.S.C. 12134. Section 229(a) and section 244 of the ADA direct the Secretary of Transportation to issue regulations implementing part B of title II, except for section 223. *See* 42 U.S.C 12149, 12164.
[6] Memorandum for Federal Agency Civil Rights Directors and General Counsels from the Office of the Assistant Attorney General, Civil Rights Division, Department of Justice, *https://www.justice.gov/crt/file/1466601/download* [*https://perma.cc/YN3G-J7F9*].

interpretations of section 504 (again, aside from provisions relating to equal employment), including its application to websites and mobile apps, across the Federal Government.

C. Overview of Key Provisions of this Proposed Regulation

In this NPRM, the Department proposes to add a new subpart H to the title II ADA regulation, 28 CFR part 35, that will set forth technical requirements for ensuring that web content that State and local government entities make available to members of the public or use to offer services, programs, and activities to members of the public is readily accessible to and usable by individuals with disabilities. Web content is information or sensory experience that is communicated to the user by a web browser or other software. This includes text, images, sounds, videos, controls, animations, navigation menus, and documents. Examples of sensory experiences include content like visual works of art or musical performances.[7] Proposed subpart H also sets forth technical requirements for ensuring the accessibility of mobile apps that a public entity makes available to members of the public or uses to offer services, programs, or activities to members of the public.

The Department proposes to adopt an internationally recognized accessibility standard for web access, the Web Content Accessibility Guidelines ("WCAG") 2.1[8] published in June 2018, *https://www.w3.org/TR/WCAG21/* [*https://perma.cc/H2GG-WJVK*], as the technical standard for web content and mobile app accessibility under title II of the ADA. As will be explained in more detail, the Department is proposing to require that public entities comply with the WCAG 2.1 Level AA success criteria and conformance requirements. The applicable technical standard will be referred to hereinafter as "WCAG 2.1." The applicable conformance level will be referred to hereinafter as "Level AA." To the extent there are differences between WCAG 2.1 Level AA and the standards articulated in this rule, the standards articulated in this rule prevail.

---

[7] *See* W3C®, Web Content Accessibility Guidelines 2.1 (June 5, 2018), *https://www.w3.org/TR/WCAG21/#dfn-specific-sensory-experience* [*https://perma.cc/5554-T2R2*].

[8] Copyright © 2017 2018 W3C® (MIT, ERCIM, Keio, Beihang). This document includes material copied from or derived from *https://www.w3.org/TR/WCAG21/* [*https://perma.cc/H2GG-WJVK*].

As noted below, WCAG 2.1 Level AA is not restated in full in this rule but is instead incorporated by reference.

In recognition of the challenges that small public entities may face with respect to resources for implementing the proposed new requirements, the Department is proposing to stagger the compliance dates for public entities according to their total population. Total population refers to the size of the public entity's population according to the U.S. Census Bureau or, if the public entity does not have a specific population but belongs to another jurisdiction that does, the population of the jurisdiction to which the entity belongs. This NPRM proposes that a public entity with a total population of 50,000 or more must ensure that web content and mobile apps it makes available to members of the public or uses to offer services, programs, or activities to members of the public, comply with WCAG 2.1 Level AA success criteria and conformance requirements two years after the publication of the final rule. A public entity with a total population of less than 50,000 would have three years to comply with these requirements. In addition, all special district governments would have three years to comply with these requirements.

Table 1: Compliance Dates for WCAG 2.1 Level AA

Public entity size	Compliance date
Fewer than 50,000 persons/Special district governments	Three years after publication of the final rule
50,000 or more persons	Two years after publication of the final rule

In addition, the Department is proposing to create an exception from the web accessibility requirements for certain categories of web content, which are described in detail in the section-by-section analysis.

If web content is excepted, that means that the public entity does not need to make the content conform to WCAG 2.1 Level AA, unless there is an applicable limitation to the exception. The proposed limitations describe situations in which the otherwise excepted content

must conform to WCAG 2.1 Level AA.

As will be explained more fully, the Department is proposing seven exceptions with some limitations: (1) archived web content; (2) preexisting conventional electronic documents; (3) web content posted by third parties on a public entity's website; (4) third-party web content linked from a public entity's website; (5) course content on a public entity's password-protected or otherwise secured website for admitted students enrolled in a specific course offered by a public postsecondary institution; (6) class or course content on a public entity's password-protected or otherwise secured website for students enrolled, or parents of students enrolled, in a specific class or course at a public elementary or secondary school; and (7) conventional electronic documents that are about a specific individual, their property, or their account and that are password-protected or otherwise secured. The proposed exception for preexisting conventional electronic documents would also apply to conventional electronic documents available through mobile apps. As discussed further, if one of these exceptions applies without a limitation, then the public entity's excepted web content or mobile app would not need to comply with the proposed rule's accessibility requirements. However, each exception is limited in some way. If a limitation applies to an exception, then the public entity would need to ensure that its web content or mobile app complies with the proposed rule's accessibility requirements. The Department is proposing these exceptions—with certain limitations explained in detail later in this NPRM—because it believes that requiring public entities to make the particular content described in these categories accessible under all circumstances could be too burdensome at this time. In addition, requiring accessibility in all circumstances may divert important resources from providing access to key web content and mobile apps that public entities make available or use to offer services, programs, and activities. However, upon request from a specific individual, a public entity may have to provide web content or content in mobile apps to that individual in an accessible format to comply with the entity's existing obligations under other regulatory provisions implementing title II of the ADA, even if an exception applies without a limitation.

For example, archived town meeting minutes from 2011 might be excepted from the requirement to comply with WCAG 2.1 Level AA. But, if a person with low vision, for example, requests an accessible version, then the town would still need to consider the person's request under its existing effective communication obligations in 28 CFR 35.160. The way that the town does this could vary based on the facts. For example, in some circumstances, providing a large print version of the minutes might satisfy the town's obligations, and in other circumstances it might need to provide an electronic version that partially complies with WCAG.

The NPRM also proposes to make clear the limited circumstances in which "conforming alternate versions" of web pages, as defined in WCAG 2.1, can be used as a means of achieving accessibility. A conforming alternate version is a separate web page that is accessible, up to date, contains the same information and functionality as the inaccessible web page, and can be reached via a conforming page or an accessibility-supported mechanism. The Department understands that, in practice, it can be difficult to maintain conforming alternate versions because it is often challenging to keep two different versions of web content up to date. For this reason and others discussed later, conforming alternate versions are permissible only when it is not possible to make websites and web content directly accessible due to technical or legal limitations. Also, the NPRM would allow a public entity flexibility to show that its use of other designs, methods, or techniques as alternatives to WCAG 2.1 Level AA provides substantially equivalent or greater accessibility and usability. Additionally, the NPRM proposes that compliance with WCAG 2.1 Level AA is not required under the ADA to the extent that such compliance imposes undue financial and administrative burdens or results in a fundamental alteration of the services, programs, or activities of the public entity. More information about these proposals is provided in the section-by-section analysis.

D. Summary of Costs and Benefits

To estimate the potential costs and benefits associated with this proposed rule, the Department conducted a Preliminary Regulatory Impact Analysis ("PRIA"). The purpose of the

PRIA is to inform the public about how the proposed rule creates costs and benefits to society, taking into account both quantitative and qualitative costs and benefits. A more detailed summary of the PRIA is included in section VI of this preamble. The results of the Department's economic analysis indicate that monetized benefits of this rulemaking far exceed the costs. Further, the proposed rule will benefit individuals with disabilities uniquely and in their day-to-day lives in many ways that could not be quantified due to unavailable data. Table 2 below shows a high-level overview of the Department's monetized findings. Non-monetized costs and benefits are discussed in the text.

The Department calculated a variety of estimated costs, including: (1) one-time costs for familiarization with the requirements of the rule; (2) initial testing and remediation costs for government websites; (3) operating and maintenance ("O&M") costs for government websites; (4) initial testing and remediation costs for mobile apps; (5) O&M costs for mobile apps; (6) school course remediation costs; and (7) initial testing and remediation costs for third-party websites that provide services on behalf of State and local governments. School course content, despite primarily being hosted on websites, is estimated as a separate remediation cost due to its unique structure and content, and because it is primarily on password-protected pages and therefore unobservable to the Department. The remediation costs include both time and software components. Annualized costs are calculated over a 10-year period that includes both the three-year implementation period and the seven years post-implementation. Annualized costs over this 10-year period are estimated at $2.8 billion assuming a 3 percent discount rate or $2.9 billion assuming a 7 percent discount rate. This includes $15.8 billion in implementation costs accruing during the first three years (the implementation period), undiscounted, and $1.8 billion in annual O&M costs during the next seven years. All values are presented in 2021 dollars as 2022 data were not yet available.

To consider the relative magnitude of the estimated costs of this proposed regulation, the Department compares the costs to revenues for public entities. Because the costs for each

government entity type are estimated to be well below 1 percent of revenues, the Department does not believe the rule will be unduly burdensome or costly for public entities.[9]

Benefits of this rulemaking will accrue particularly to individuals with certain types of disabilities. For purposes of the PRIA, the Department has determined that WCAG 2.1 Level AA primarily benefits individuals with vision, hearing, cognitive, and manual dexterity disabilities because the WCAG 2.1 standards are intended to address barriers that often impede access for people with these disability types.[10] The Department quantified benefits to individuals with these four types of disabilities. Individuals with other types of disabilities may also benefit but, due to data limitations and uncertainties, benefits to these individuals are not directly quantified. Additionally, because accessibly designed web content and mobile apps are easier for everyone to use, benefits will also accrue to people without relevant disabilities[11] who access State and local government entities' web content and mobile apps.

The Department monetized benefits for people with vision, hearing, cognitive, and manual dexterity disabilities as well as people without these disabilities. These benefits included time savings for current users of State and local government entities' web content; time savings for those who switch from other modes of accessing State and local government entities' services, programs, or activities (*e.g.*, phone or in person) to web access or begin to participate in these

---

[9] As a point of reference, the United States Small Business Administration advises agencies that a potential indicator that the impact of a proposed regulation may be "significant" is whether the costs exceed 1 percent of the gross revenues of the entities in a particular sector, although the threshold may vary based on the particular types of entities at issue. The Department estimates that the costs of this rulemaking for each government entity type are far less than 1 percent of revenues. *See* Small Bus. Admin., *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* 19 (Aug. 2017), https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf [https://perma.cc/MZW6-Y3MH]; *see also* EPA, *EPA's Action Development Process: Final Guidance for EPA Rulewriters: Regulatory Flexibility Act* 24 (Nov. 2006), https://www.epa.gov/sites/default/files/2015-06/documents/guidance-regflexact.pdf [https://perma.cc/9XFZ-3EVA] (providing an illustrative example of a hypothetical analysis under the RFA in which, for certain small entities, economic impact of "[l]ess than 1% for all affected small entities" may be "presumed" to have "no significant economic impact on a substantial number of small entities").

[10] *See* W3C®, *What's New in WCAG 2.1* (Aug. 13, 2020), https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/ [https://perma.cc/W8HK-Z5QK]; W3C®, *Web Content Accessibility Guidelines 2.1* (June 5, 2018), https://www.w3.org/TR/WCAG21/ [https://perma.cc/29PG-YX3N].

[11] Throughout this proposed rule, the Department uses the phrase "individuals without relevant disabilities" to refer to individuals without vision, hearing, cognitive, or manual dexterity disabilities. Individuals without these disabilities may have other types of disabilities, or they may be individuals without disabilities, but to simplify the discussion in this proposed rule, "individuals without relevant disabilities" will be used to mean individuals without one of these four types of disabilities.

services, programs, or activities for the first time; time savings for current mobile app users; time savings for students and their parents; and earnings from additional educational attainment. Annual benefits, beginning once the rule is fully implemented, total $11.4 billion. Benefits annualized over a 10-year period that includes both three years of implementation and seven years post-implementation total $9.3 billion per year, assuming a 3 percent discount rate, and $8.9 billion per year, assuming a 7 percent discount rate.

There are many additional benefits that have not been monetized due to a lack of data availability. Benefits that cannot be monetized are discussed qualitatively in the PRIA. These qualitative benefits are central to this proposed rule's potential impact. They include concepts at the core of any civil rights law, such as equality and dignity. Other benefits to individuals include increased independence, increased flexibility, increased privacy, reduced frustration, decreased reliance on companions, and increased program participation. This proposed rule will also benefit governments through increased certainty about what constitutes accessible web content, potential reduction in litigation, and a larger labor market pool.

Comparing annualized costs and benefits, the monetized benefits to society of this rulemaking far outweigh the costs. Net annualized benefits over the first 10 years after publication of this proposed rule total $6.5 billion per year using a 3 percent discount rate and $6.0 billion per year using a 7 percent discount rate (Table 2). Additionally, beyond this 10-year period, benefits are likely to continue to accrue at a greater rate than costs because many of the costs are upfront costs and benefits tend to have a delay before beginning to accrue. Moreover, the Department expects the net annualized benefit estimate is an underestimate, as it does not include the significant qualitative benefits that the Department was unable to monetize. For a complete comparison of costs and benefits, please see Section 1.2, Summary of Benefits and Costs, in the corresponding PRIA.

Table 2: 10-Year Average Annualized Comparison of Costs and Benefits

Benefit Type	3% Discount Rate	7% Discount Rate
Average annualized costs (millions)	$2,846.6	$2,947.9
Average annualized benefits (millions)	$9,316.3	$8,937.2
Net benefits (millions)	$6,469.7	$5,989.3
Cost-to-benefit ratio	0.3	0.3

II. Relationship to Other Laws

Title II of the ADA and the Department of Justice's implementing regulation state that except as otherwise provided, the ADA shall not be construed to apply a lesser standard than title V of the Rehabilitation Act of 1973 (29 U.S.C. 791) or its accompanying regulations.[12] They further state that the ADA does not invalidate or limit the remedies, rights, and procedures of any other laws that provide greater or equal protection for people with disabilities or people associated with them.[13]

The Department recognizes that entities subject to title II of the ADA may also be subject to other statutes that prohibit discrimination on the basis of disability. Compliance with the Department's title II regulation does not necessarily ensure compliance with other statutes and their implementing regulations. Title II entities are also obligated to fulfill the ADA's title I requirements in their capacity as employers, and those requirements are distinct from the obligations under this rule.

Education is another context in which entities have obligations to comply with other laws imposing affirmative obligations regarding individuals with disabilities. The Department of Education's regulations implementing the Individuals with Disabilities Education Act ("IDEA") and section 504 of the Rehabilitation Act provide longstanding, affirmative obligations on covered schools to identify children with disabilities, and both require covered schools to provide a Free Appropriate Public Education ("FAPE").[14] This rulemaking would build on, and would not supplant, those preexisting requirements. A public entity must continue to meet all of its

[12] 42 U.S.C. 12201(a); 28 CFR 35.103(a).
[13] 42 U.S.C. 12201(b); 28 CFR 35.103(b).
[14] *See* 20 U.S.C. 1412; 34 CFR 104.32–104.33.

existing obligations under other laws. A discussion of how this rule adds to the existing educational legal environment is included under the preamble discussion of the relevant educational exception.

III. Background

A. ADA Statutory and Regulatory History

The ADA broadly protects the rights of individuals with disabilities in important areas of everyday life, such as in employment, access to State and local government entities' services, places of public accommodation, and transportation. The ADA also requires newly designed and constructed or altered State and local government entities' facilities, public accommodations, and commercial facilities to be readily accessible to and usable by individuals with disabilities.[15] Section 204(a) of title II and section 306(b) of title III direct the Attorney General to promulgate regulations to carry out the provisions of titles II and III, other than certain provisions dealing specifically with transportation.[16] Title II, part A, applies to State and local government entities and protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities.

On July 26, 1991, the Department issued its final rules implementing title II and title III, which are codified at 28 CFR part 35 (title II) and part 36 (title III), and include the ADA Standards for Accessible Design ("ADA Standards").[17] At that time, the web was in its infancy and was thus not used by State and local government entities as a means of providing services or information to the public. Thus, web content was not mentioned in the Department's title II regulation. Only a few years later, however, as web content of general interest became available,

---

[15] 42 U.S.C. 12101 *et seq.*

[16] 42 U.S.C. 12134, 12186(b).

[17] Title III prohibits discrimination on the basis of disability in the full and equal enjoyment of places of public accommodation (privately operated entities whose operations affect commerce and fall within at least one of 12 categories listed in the ADA, such as restaurants, movie theaters, schools, day care facilities, recreational facilities, and doctors' offices) and requires newly constructed or altered places of public accommodation—as well as commercial facilities (facilities intended for nonresidential use by a private entity and whose operations affect commerce, such as factories, warehouses, or office buildings)—to comply with the ADA Standards. 42 U.S.C. 12181–89.

public entities began using web content to provide information to the public.

B. History of the Department's Title II Web-Related Interpretation and Guidance

The Department first articulated its interpretation that the ADA applies to websites of covered entities in 1996.[18] Under title II, this includes ensuring that individuals with disabilities are not, by reason of such disability, excluded from participation in or denied the benefits of the services, programs, and activities offered by State and local government entities, including those offered via the web, such as education services, voting, town meetings, vaccine registration, tax filing systems, and applications for benefits.[19] The Department has since reiterated this interpretation in a variety of online contexts.[20] Title II of the ADA also applies when public entities use mobile apps to offer their services, programs, and activities.

Many public entities now regularly offer many of their services, programs, and activities through web content and mobile apps, and the Department describes in detail the ways in which public entities have been doing so later in this section. To ensure equal access to such services, programs, and activities, the Department is undertaking this rulemaking to provide public entities with more specific information about how to meet their nondiscrimination obligations in the web and mobile app contexts.

As with many other statutes, the ADA's requirements are broad and its implementing regulations do not include specific standards for every obligation under the statute. This has

---

[18] *See* Letter for Tom Harkin, U.S. Senator, from Deval L. Patrick, Assistant Attorney General, Civil Rights Division, Department of Justice (Sept. 9, 1996), *https://www.justice.gov/crt/foia/file/666366/download* [*https://perma.cc/56ZB-WTHA*] .

[19] *See* 42 U.S.C. 12132.

[20] *See* U.S. Dep't of Just., *Guidance on Web Accessibility and the ADA*, ADA.gov (Mar. 18, 2022), *https://www.ada.gov/resources/web-guidance/* [*https://perma.cc/WH9E-VTCY*]; Settlement Agreement Between the United States of America and the Champaign-Urbana Mass Transit District (Dec. 14, 2021), *https://www.ada.gov/champaign-urbana_sa.pdf* [*https://perma.cc/VZU2-E6FZ*]; Consent Decree, *United States v. The Regents of the Univ. of Cal.* (Nov. 20, 2022), *https://www.justice.gov/opa/press-release/file/1553291/download* [*https://perma.cc/9AMQ-GPP3*]; Consent Decree, *Dudley v. Miami Univ.* (Oct. 17, 2016), *https://www.ada.gov/miami_university_cd.html* [*https://perma.cc/T3FX-G7RZ*]; Settlement Agreement Between the United States of America and the City and County of Denver, Colorado Under the Americans with Disabilities Act (Jan. 8, 2018), *https://www.ada.gov/denver_pca/denver_sa.html* [*https://perma.cc/U7VE-MBSG*]; Settlement Agreement Between the United States of America and Nueces County, Texas Under the Americans with Disabilities Act (effective Jan. 30, 2015), *https://www.ada.gov/nueces_co_tx_pca/nueces_co_tx_sa.html* [*https://perma.cc/TX66-WQY7*]; Settlement Agreement Between the United States of America, Louisiana Tech University, and the Board of Supervisors for the University of Louisiana System Under the Americans with Disabilities Act (July 22, 2013), *https://www.ada.gov/louisiana-tech.htm* [*https://perma.cc/78ES-4FQR*].

been the case in the context of web accessibility under the ADA. Because the Department has not adopted specific technical requirements for web content through rulemaking, public entities have not had specific direction on how to comply with the ADA's general requirements of nondiscrimination and effective communication. However, public entities still must comply with these ADA obligations with respect to their web content and mobile apps, including before this rule's effective date.

The Department has consistently heard from members of the public—especially public entities and people with disabilities—that there is a need for additional information on how to specifically comply with the ADA in this context. In June 2003, the Department published a document titled "Accessibility of State and Local Government Websites to People with Disabilities" (*https://www.ada.gov/websites2.htm* [*https://perma.cc/Z7JT-USAN*]), which provides tips for State and local government entities on ways they can make their websites accessible so that they can better ensure that people with disabilities have equal access to the services, programs, and activities that are provided through those websites.

In March 2022, the Department released additional guidance addressing web accessibility for people with disabilities.[21] This technical assistance expanded on the Department's previous ADA guidance by providing practical tips and resources for making websites accessible for both title II and title III entities. It also reiterated the Department's longstanding interpretation that the ADA applies to all services, programs, and activities of covered entities, including when they are offered via the web.

The Department's 2003 guidance on State and local government entities' websites noted that "an agency with an inaccessible website may also meet its legal obligations by providing an alternative accessible way for citizens to use the programs or services, such as a staffed telephone information line," while also acknowledging that this is unlikely to provide an equal

[21] U.S. Dep't of Just., *Guidance on Web Accessibility and the ADA*, ADA.gov (Mar. 18, 2022), *https://www.ada.gov/resources/web-guidance/* [*https://perma.cc/874V-JK5Z*].

degree of access.[22] The Department's March 2022 guidance did not include 24/7 staffed telephone lines as an alternative to accessible websites. Given the way the modern web has developed, the Department no longer believes 24/7 staffed telephone lines can realistically provide equal access to people with disabilities. Websites—and often mobile apps—allow the public to get information or request a service within just a few minutes. Getting the same information or requesting the same service using a staffed telephone line takes more steps and may result in wait times or difficulty getting the information. For example, State and local government entities' websites may allow members of the public to quickly review large quantities of information, like information about how to register for government services, information on pending government ordinances, or instructions about how to apply for a government benefit. Members of the public can then use government websites to promptly act on that information by, for example, registering for programs or activities, submitting comments on pending government ordinances, or filling out an application for a government benefit. A member of the public could not realistically accomplish these tasks efficiently over the phone. Additionally, a person with a disability who cannot use an inaccessible online tax form might have to call to request assistance with filling out either online or mailed forms, which could involve significant delay, added costs, and may require providing private information such as banking details or Social Security numbers over the phone without the benefit of certain security features available for online transactions. Finally, calling a staffed telephone line lacks the privacy of looking up information on a website. A caller needing public safety resources, for example, might be unable to access a private location to ask for help on the phone, whereas an accessible website would allow users to privately locate resources. For these reasons, the Department does not now believe that a staffed telephone line—even if it is offered 24/7—provides equal access in the way that an accessible website can.

---

[22] U.S. Dep't of Just., *Accessibility of State and Local Government Websites to People with Disabilities*, ADA.gov (June 2003), *https://www.ada.gov/websites2.htm* [*https://perma.cc/Z7JT-USAN*].

C. The Department's Previous Web Accessibility-Related Rulemaking Efforts

The Department has previously pursued rulemaking efforts regarding website accessibility under title II. On July 26, 2010, the Department's advance notice of proposed rulemaking ("ANPRM") titled "Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations" was published in the *Federal Register*.[23] The ANPRM announced that the Department was considering revising the regulations implementing titles II and III of the ADA to establish specific requirements for State and local government entities and public accommodations to make their websites accessible to individuals with disabilities. In the ANPRM, the Department sought information regarding what standards, if any, it should adopt for web accessibility; whether the Department should adopt coverage limitations for certain entities, like small businesses; and what resources and services are available to make existing websites accessible to individuals with disabilities. The Department also requested comments on the costs of making websites accessible; whether there are effective and reasonable alternatives to make websites accessible that the Department should consider permitting; and when any web accessibility requirements adopted by the Department should become effective. The Department received approximately 400 public comments addressing issues germane to both titles II and III in response to this ANPRM. The Department later announced that it decided to pursue separate rulemakings addressing website accessibility under titles II and III.[24]

On May 9, 2016, the Department followed up on its 2010 ANPRM with a detailed Supplemental ANPRM that was published in the *Federal Register*. The Supplemental ANPRM solicited public comment about a variety of issues regarding establishing technical standards for web access under title II.[25] The Department received more than 200 public comments in

---

[23] 75 FR 43460 (July 26, 2010).
[24] *See* Department of Justice—Fall 2015 Statement of Regulatory Priorities, *http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201510/Statement_1100.html* [*https://perma.cc/YF2L-FTSK*].
[25] Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, 81 FR 28658 (May 9, 2016).

response to the title II Supplemental ANPRM.

On December 26, 2017, the Department published a Notice in the *Federal Register* withdrawing four rulemaking actions, including the titles II and III web rulemakings, stating that it was evaluating whether promulgating specific web accessibility standards through regulations was necessary and appropriate to ensure compliance with the ADA.[26] The Department has also previously stated that it would continue to review its entire regulatory landscape and associated agenda, pursuant to the regulatory reform provisions of Executive Order 13771 and Executive Order 13777.[27] Those Executive Orders were revoked by Executive Order 13992 in early 2021.

The Department is now reengaging in efforts to promulgate regulations establishing technical standards for web accessibility for public entities. Accordingly, the Department has begun this distinct rulemaking effort to address web access under title II of the ADA.

D. Need for Department Action

1. Use of Web Content by Title II Entities

Public entities regularly use the web to disseminate information and offer programs and services to the public. Public entities use a variety of websites to streamline their programs and services. Members of the public routinely make online service requests—from requesting streetlight repairs and bulk trash pickups to reporting broken parking meters—and can often check the status of a service request online. Public entities' websites also offer the opportunity for people to renew their vehicle registrations, submit complaints, purchase event permits, and pay traffic fines and property taxes, making some of these otherwise time-consuming tasks relatively easy and expanding their availability beyond regular business hours. Moreover, applications for many Federal benefits, such as unemployment benefits and food stamps, are available through State websites.

---

[26] Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions, 82 FR 60932 (Dec. 26, 2017).

[27] *See* Letter for Charles E. Grassley, U.S. Senator, from Stephen E. Boyd, Assistant Attorney General, Civil Rights Division, Department of Justice (Oct. 11, 2018), *https://www.grassley.senate.gov/imo/media/doc/2018-10-11%20DOJ%20to%20Grassley%20-%20ADA%20Website%20Accessibility.pdf* [*https://perma.cc/8JHS-FK2Q*].

People also rely on public entities' websites to engage in civic participation, particularly when more individuals prefer or need to stay at home in light of changes to preferences and behavior resulting from the COVID-19 pandemic. The Department believes that although many public health measures addressing the COVID-19 pandemic are no longer in place, there have been durable changes to State and local government entities' operations and public preferences that necessitate greater access to online services, programs, and activities.

People can now frequently watch local public hearings, read minutes from community meetings, or take part in live chats with government officials on the websites of State and local government entities. Many public entities allow voters to begin the voter registration process and obtain candidate information on their websites. Individuals interested in running for local public offices can often find pertinent information concerning candidate qualifications and filing requirements on these websites as well. The websites of public entities also include information about a range of issues of concern to the community and about how people can get involved in community efforts to improve the administration of government services.

Many public entities use online resources to promote access to public benefits. People can use websites of public entities to file for unemployment or other benefits and find and apply for job openings. Access to these online functions became even more crucial during the COVID-19 pandemic, when millions of Americans lost their jobs and government services were often not available in person.[28] As noted previously, the Department believes that although many of these services have become available in person again as COVID-19 public health measures have ended, State and local government entities will continue to offer these services online due to durable shifts in preferences and expectations resulting from the pandemic. For example, through the websites of State and local government entities, business owners can register their

[28] *See* Rakesh Kochhar & Jesse Bennet, *U.S. Labor Market Inches Back from the Covid-19 Shock, but Recovery is Far from Complete*, Pew Research Center (Apr. 14, 2021), https://www.pewresearch.org/fact-tank/2021/04/14/u-s-labor-market-inches-back-from-the-covid-19-shock-but-recovery-is-far-from-complete/ [https://perma.cc/29E5-LMXM].

businesses, apply for occupational and professional licenses, bid on contracts to provide products and services to public entities, and obtain information about laws and regulations with which they must comply. The websites of many State and local government entities also allow members of the public to research and verify business licenses online and report unsavory business practices. Access to these online services can be particularly important for any services that have not resumed in-person availability.

Public entities are also using websites as an integral part of public education. Public schools at all levels, including public colleges and universities, offer programs, reading material, and classroom instruction through websites. Access to these sites became even more critical during the COVID-19 pandemic, when, at one point, all U.S. public school buildings were closed.[29] Web access is essential, and, during part of the COVID-19 pandemic, it was often the only way for State and local government entities to provide students with educational services, programs, and activities like public school classes and exams. As noted previously, the Department believes durable changes to preferences and behavior due to the COVID-19 pandemic will result in many educational activities continuing to be offered online. Most public colleges and universities rely heavily on websites and other online technologies in the application process for prospective students; for housing eligibility and on-campus living assignments; course registration, assignments, and discussion groups; and for a wide variety of administrative and logistical functions in which students and staff must participate. Similarly, in many public elementary and secondary school settings, communications via the web are how teachers and administrators communicate grades, assignments, and administrative matters to parents and students.

As noted previously, access to the web has become increasingly important as a result of the COVID-19 pandemic, which shut down workplaces, schools, and in-person services, and has

---

[29] *See The Coronavirus Spring: The Historic Closing of U.S. Schools (A Timeline)*, Education Week (July 1, 2020), *https://www.edweek.org/leadership/the-coronavirus-spring-the-historic-closing-of-u-s-schools-a-timeline/2020/07* [*https://perma.cc/47E8-FJ3U*].

forced millions of Americans to stay home for extended periods.[30] In response, the American public has turned to the web for work, activities, and learning.[31] In fact, a study conducted in April 2021 found that 90 percent of adults say the web "has been at least important to them personally during the pandemic."[32] Fifty-eight percent say it has been *essential*.[33] Web access can be particularly important for those who live in rural communities and need to travel long distances to reach certain physical locations like schools and libraries.[34]

Currently, a large number of Americans interact with public entities remotely and many State and local government entities provide vital information and services for the general public online, including information on recreational and educational programs, school closings, State travel restrictions, food assistance and employment, guidance for health care providers, and workplace safety.[35] Access to such web-based information and services, while important for everyone during the pandemic, took on heightened importance for people with disabilities, many of whom face a greater risk of COVID-19 exposure, serious illness, and death.[36]

According to the CDC, some people with disabilities "might be more likely to get infected or have severe illness because of underlying medical conditions, congregate living settings, or systemic health and social inequities. All people with serious underlying chronic medical conditions like chronic lung disease, a serious heart condition, or a weakened immune

---

[30] *See* Colleen McClain et al., *The Internet and the Pandemic*, Pew Research Center (Sep. 1, 2021), https://www.pewresearch.org/internet/2021/09/01/the-internet-and-the-pandemic/ [https://perma.cc/4WVA-FQ9P].
[31] *See* Kerry Dobransky & Eszter Hargittai, *Piercing the Pandemic Social Bubble: Disability and Social Media Use About COVID-19*, American Behavioral Scientist (Mar. 29, 2021), https://doi.org/10.1177/00027642211003146. A Perma archive link was unavailable for this citation.
[32] McClain et al., *The Internet and the Pandemic*, at 3.
[33] *Id.*
[34] John Lai & Nicole O. Widmar, *Revisiting the Digital Divide in the COVID-19 Era*, 43 Applied Econ. Perspectives and Pol'y 458 (2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7675734/ [https://perma.cc/Y75D-XWCT].
[35] *See, e.g.*, *Coronavirus Disease 2019 (COVID-19) Outbreak*, Maryland.gov, https://coronavirus.maryland.gov/ [https://perma.cc/NAW4-6KP4]; *Covid19.CA*, California.gov, https://covid19.ca.gov/ [https://perma.cc/BL9C-WTJP]; *Washington State Coronavirus Response*, Washington State, https://coronavirus.wa.gov/ [https://perma.cc/KLA4-KY53].
[36] *See* Hannah Eichner, *The Time is Now to Vaccinate High-Risk People with Disabilities*, National Health Law Program (Mar. 15, 2021), https://healthlaw.org/the-time-is-now-to-vaccinate-high-risk-people-with-disabilities/ [https://perma.cc/8CM8-9UC4].

system seem to be more likely to get severely ill from COVID-19."[37] A report by the National Council on Disability indicated that COVID-19 has a disproportionately negative impact on people with disabilities' access to healthcare, education, and employment, among other areas, making remote access to these opportunities via the web even more important.[38]

Individuals with disabilities can often be denied equal access to many services, programs, and activities because many public entities' web content is not fully accessible. Thus, there is a digital divide between the ability of people with certain types of disabilities and people without those disabilities to access the services, programs, and activities of their State and local government entities.

2. Use of Mobile Applications by Title II Entities

The Department is also proposing that public entities make their mobile apps accessible under proposed § 35.200 because public entities also use mobile apps to offer their services, programs, and activities to the public. As discussed, a mobile app is a software application that runs on mobile devices. Mobile apps are distinct from a website that can be accessed by a mobile device because, in part, mobile apps are not directly accessible on the web—they are often downloaded on a mobile device.[39] A mobile website, on the other hand, is a website that is designed so that it can be accessed by a mobile device similarly to how it can be accessed on a desktop computer.[40]

Public entities use mobile apps to provide services and reach the public in various ways. For example, during the COVID-19 pandemic, when many State and local government entities' offices were closed, public entities used mobile apps to inform people about benefits and

---

[37] *See People with Disabilities*, Centers for Disease Control and Prevention, https://www.cdc.gov/ncbddd/humandevelopment/covid-19/people-with-disabilities.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fpeople-with-disabilities.html [https://perma.cc/WZ7U-2EQE].

[38] *See 2021 Progress Report: The Impact of COVID-19 on People with Disabilities*, National Council on Disability (Oct. 29, 2021), https://ncd.gov/progressreport/2021/2021-progress-report [https://perma.cc/96L7-XMKZ].

[39] Mona Bushnell, *What Is the Difference Between an App and a Mobile Website?*, Business News Daily (updated Aug. 2, 2022), https://www.businessnewsdaily.com/6783-mobile-website-vs-mobile-app.html [https://perma.cc/9LKC-GUEM] .

[40] *Id*.

resources, to provide updates about the pandemic, and as a means to show proof of vaccination status, among other things.[41] Also, using a public entity's mobile app, residents are able to submit nonemergency service requests, such as cleaning graffiti or repairing a street light outage, and track the status of these requests. Public entities' apps take advantage of common features of mobile devices, such as camera and Global Positioning System ("GPS") functions, so individuals can provide public entities with a precise description and location of issues.[42] These may include issues such as potholes, physical barriers created by illegal dumping or parking, or curb ramps that need to be fixed to ensure accessibility for some people with disabilities.[43] Some public transit authorities have transit apps that use a mobile device's GPS function to provide bus riders with the location of nearby bus stops and real-time arrival and departure times.[44] In addition, public entities are also using mobile apps to assist with emergency planning for natural disasters like wildfires; provide information about local schools; and promote tourism, civic culture, and community initiatives.[45]

3. Barriers to Web and Mobile App Accessibility

Millions of individuals in the United States have disabilities that can affect their use of the web and mobile apps. Many of these individuals use assistive technology to enable them to navigate websites or access information contained on those sites. For example, individuals who are unable to use their hands may use speech recognition software to navigate a website, while individuals who are blind may rely on a screen reader to convert the visual information on a website into speech. Many websites and mobile apps fail to incorporate or activate features that enable users with certain types of disabilities to access all of the information or elements on the

---

[41] *See, e.g.*, *COVID-19 Virginia Resources*, Virginia Department of Social Services, *https://apps.apple.com/us/app/covid-19-virginia-resources/id1507112717* [*https://perma.cc/LP6N-WC9K*]; Chandra Steele, *Does My State Have a COVID-19 Vaccine App*, PC Mag (updated Feb. 10, 2022), *https://www.pcmag.com/how-to/does-my-state-have-a-covid-19-vaccine-app* [*https://perma.cc/H338-MCWC*].
[42] *See Using Mobile Apps in Government*, IBM Ctr. for the Bus. of Gov't, at 11 (2015), *https://www.businessofgovernment.org/sites/default/files/Using%20Mobile%20Apps%20in%20Government.pdf* [*https://perma.cc/248X-8A6C*].
[43] *Id*. at 32.
[44] *Id*. at 31.
[45] *Id*. at 8.

website or app. For instance, individuals who are deaf may be unable to access information in web videos and other multimedia presentations that do not have captions. Individuals with low vision may be unable to read websites or mobile apps that do not allow text to be resized or do not provide enough contrast. Individuals with limited manual dexterity or vision disabilities who use assistive technology that enables them to interact with websites may be unable to access sites that do not support keyboard alternatives for mouse commands. These same individuals, along with individuals with cognitive and vision disabilities, often encounter difficulty using portions of websites that require timed responses from users but do not give users the opportunity to indicate that they need more time to respond.

Individuals who are blind or have low vision often confront significant barriers to accessing websites and mobile apps. For example, a study from the University of Washington analyzed approximately 10,000 mobile apps and found that many are highly inaccessible to people with disabilities.[46] The study found that 23 percent of the mobile apps reviewed did not provide content description of images for most of their image-based buttons. As a result, the functionality of those buttons is not accessible for people who use screen readers.[47] Additionally, other mobile apps may be inaccessible if they do not allow text resizing, which can provide larger text for persons with vision disabilities.[48]

Furthermore, many websites provide information visually, without features that allow screen readers or other assistive technology to retrieve information on the website so it can be presented in an accessible manner. A common barrier to website accessibility is an image or photograph without corresponding text describing the image. A screen reader or similar assistive technology cannot "read" an image, leaving individuals who are blind with no way of independently knowing what information the image conveys (*e.g.*, a simple icon or a detailed

---

[46] *See Large-Scale Analysis Finds Many Mobile Apps Are Inaccessible*, University of Washington CREATE, *https://create.uw.edu/initiatives/large-scale-analysis-finds-many-mobile-apps-are-inaccessible/* [*https://perma.cc/442K-SBCG*].
[47] *Id*.
[48] *See* Chase DiBenedetto, *4 ways mobile apps could be a lot more accessible*, Mashable (Dec. 9, 2021), *https://mashable.com/article/mobile-apps-accessibility-fixes* [*https://perma.cc/WC6M-2EUL*].

graph). Similarly, if websites lack navigational headings or links that facilitate navigation using a screen reader, it will be difficult or impossible for a someone using a screen reader to understand.[49] Additionally, these websites may fail to present tables in a way that allows the information in the table to be interpreted by someone who is using a screen reader.[50] Web-based forms, which are an essential part of accessing government services, are often inaccessible to individuals with disabilities who use screen readers. For example, field elements on forms, which are the empty boxes on forms that hold specific pieces of information, such as a last name or telephone number, may lack clear labels that can be read by assistive technology. Inaccessible form fields make it difficult for persons using screen readers to fill out online forms, pay fees and fines, submit donations, or otherwise participate in government services, programs, or activities using a website. Some governmental entities use inaccessible third-party websites to accept online payments, while others request public input through their own inaccessible websites. These barriers greatly impede the ability of individuals with disabilities to access the services, programs, and activities offered by public entities on the web. In many instances, removing certain website barriers is neither difficult nor especially costly. For example, the addition of invisible attributes known as alt text or alt tags to an image helps orient an individual using a screen reader and allows them to gain access to the information on the website. Alt text can be added to the coding of a website without any specialized equipment.[51] Similarly, adding headings, which facilitate page navigation for those using screen readers, can often be done easily as well.[52]

---

[49] *See, e.g.*, W3C®, *Easy Checks – A First Review of Web Accessibility*, (updated Jan. 31, 2023), *https://www.w3.org/WAI/test-evaluate/preliminary/* [*https://perma.cc/N4DZ-3ZB8*].

[50] W3C®, *Tables Tutorial* (updated Feb. 16, 2023), *https://www.w3.org/WAI/tutorials/tables/* [*https://perma.cc/FMG2-33C4*].

[51] W3C®, *Images Tutorial* (Feb. 08, 2022), *https://www.w3.org/WAI/tutorials/images/* [*https://perma.cc/G6TL-W7ZC*].

[52] W3C®, *Providing Descriptive Headings* (June 20, 2023), *https://www.w3.org/WAI/WCAG21/Techniques/general/G130.html* [*https://perma.cc/XWM5-LL6S*].

4. Voluntary Compliance with Technical Standards for Web Accessibility Has Been Insufficient in Providing Access

The web has changed significantly and its use has become far more prevalent since Congress enacted the ADA in 1990 and the Department subsequently promulgated its first ADA regulations. Neither the ADA nor the Department's regulations specifically addressed public entities' use of websites and mobile apps to provide their services, programs, and activities. Congress contemplated, however, that the Department would apply title II, part A of the statute in a manner that evolved over time and it delegated authority to the Attorney General to promulgate regulations to carry out the ADA mandate under title II, part A.[53] Consistent with this approach, the Department stated in the preamble to the original 1991 ADA regulations that the regulations should be interpreted to keep pace with developing technologies.[54]

Since 1996, the Department has consistently taken the position that the ADA applies to the web content of State and local government entities. This interpretation comes from title II's application to "all services, programs, and activities provided or made available by public entities."[55] The Department has affirmed the application of the statute to websites in multiple technical assistance documents over the past two decades.[56] Further, the Department has repeatedly enforced this obligation and worked with State and local government entities to make their websites accessible, such as through Project Civic Access, an initiative to promote local governments' compliance with the ADA by eliminating physical and communication barriers impeding full participation by people with disabilities in community life.[57]

A variety of voluntary standards and structures have been developed for the web through

---

[53] *See* H.R. Rep. No. 101-485, pt. 2, at 108 (1990); 42 U.S.C. 12134(a).
[54] 28 CFR part 36, app. B.
[55] *See* 28 CFR 35.102.
[56] U.S. Dep't of Just., *Accessibility of State and Local Government Websites to People with Disabilities* (2003), https://www.ada.gov/websites2.htm [https://perma.cc/Z7JT-USAN]; U.S. Dep't of Just., *Chapter 5: Website Accessibility Under Title II of the ADA, ADA Best Practices Tool Kit for State and Local Governments*, Ada.gov (May 7, 2007), https://www.ada.gov/pcatoolkit/chap5toolkit.htm [https://perma.cc/VM3M-AHDJ]; U.S. Dep't of Just., *Guidance on Web Accessibility and the ADA*, Ada.gov (Mar. 18, 2022), *https://* https://www.ada.gov/resources/web-guidance/ [https://perma.cc/874V-JK5Z].
[57] U.S. Dep't of Just., *Project Civic Access*, Ada.gov, https://www.ada.gov/civicac.htm [https://perma.cc/B6WV-4HLQ].

nonprofit organizations using multinational collaborative efforts. For example, domain names are issued and administered through the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Internet Society ("ISOC") publishes computer security policies and procedures for websites, and the World Wide Web Consortium ("W3C®") develops a variety of technical standards and guidelines ranging from issues related to mobile devices and privacy to internationalization of technology. In the area of accessibility, the Web Accessibility Initiative ("WAI") of the W3C® created the Web Content Accessibility Guidelines ("WCAG").

Many organizations, however, have indicated that voluntary compliance with these accessibility guidelines has not resulted in equal access for people with disabilities; accordingly, they have urged the Department to take regulatory action to ensure web and mobile app accessibility.[58] The National Council on Disability, an independent Federal agency that advises the President, Congress, and other agencies about programs, policies, practices, and procedures affecting people with disabilities, has similarly emphasized the need for regulatory action on this issue.[59] The Department has also heard from State and local government entities and businesses asking for clarity on the ADA's requirements for websites through regulatory efforts.[60]

In light of the long regulatory history and the ADA's current general requirement to make all services, programs, and activities accessible, the Department expects that public entities have made strides to make their web content accessible since the 2010 ANPRM was published. However, despite the availability of voluntary web and mobile app accessibility standards; the

---

[58] *See, e.g.*, Letter for U.S. Dep't of Just. from American Council of the Blind et al. (Feb. 28, 2022), https://acb.org/accessibility-standards-joint-letter-2-28-22 [https://perma.cc/R77M-VPH9] (citing research showing persistent barriers in digital accessibility); Letter for U.S. Dep't of Just. from Consortium for Citizens with Disabilities (Mar. 23, 2022), https://www.c-c-d.org/fichiers/CCD-Web-Accessibility-Letter-to-DOJ-03232022.pdf [https://perma.cc/Q7YB-UNKV].

[59] National Council on Disability, *The Need for Federal Legislation and Regulation Prohibiting Telecommunications and Information Services Discrimination* (Dec. 19, 2006), https://www.ncd.gov/publications/2006/Dec282006 [https://perma.cc/7HW5-NF7P] (discussing how competitive market forces have not proven sufficient to provide individuals with disabilities access to telecommunications and information services); *see also, e.g.*, National Council on Disability, *National Disability Policy: A Progress Report* (Oct. 7, 2016), https://ncd.gov/progressreport/2016/progress-report-october-2016 [https://perma.cc/J82G-6UU8] (urging the Department to adopt a web accessibility regulation).

[60] *See, e.g.*, Letter for U.S. Dep't of Just. from Nat'l Ass'n of Realtors (Dec. 13, 2017), https://www.narfocus.com/billdatabase/clientfiles/172/3/3058.pdf [https://perma.cc/Z93F-K88P].

Department's clearly stated position that all services, programs, and activities of public entities, including those available on websites, must be accessible; and case law supporting that position, individuals with disabilities continue to struggle to obtain access to the websites of public entities.[61] As a result, the Department has brought enforcement actions to address web access, resulting in a significant number of settlement agreements with State and local government entities.[62]

Moreover, other Federal agencies have also taken enforcement action against public entities regarding the lack of access for people with disabilities to websites. In December 2017, for example, the U.S. Department of Education entered into a resolution agreement with the Alaska Department of Education and Early Development after it found the entity had violated Federal statutes, including title II of the ADA, by denying people with disabilities an equal opportunity to participate in Alaska Department of Education and Early Development's services, programs, and activities, due to website inaccessibility.[63] Similarly, the U.S. Department of

---

[61] *See, e.g.*, *Meyer v. Walthall*, 528 F. Supp. 3d 928, 959 (S.D. Ind. 2021) ("[T]he Court finds that Defendants' websites constitute services or activities within the purview of Title II and section 504, requiring Defendants to provide effective access to qualified individuals with a disability."); *Price v. City of Ocala, Fla.*, 375 F. Supp. 3d 1264, 1271 (M.D. Fla. 2019) ("Title II undoubtedly applies to websites . . . ."); *Payan v. Los Angeles Cmty. Coll. Dist.*, No. 2:17-CV-01697-SVW-SK, 2019 WL 9047062, at *12 (C.D. Cal. Apr. 23, 2019) ("[T]he ability to sign up for classes on the website and to view important enrollment information is itself a 'service' warranting protection under Title II and section 504."); *Eason v. New York State Bd. of Elections*, No. 16-CV-4292 (KBF), 2017 WL 6514837, at *1 (S.D.N.Y. Dec. 20, 2017) (stating, in a case involving a State's website, that "Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act . . . , long ago provided that the disabled are entitled to meaningful access to a public entity's programs and services. Just as buildings have architecture that can prevent meaningful access, so too can software."); *Hindel v. Husted*, No. 2:15-CV-3061, 2017 WL 432839, at *5 (S.D. Ohio Feb. 1, 2017) ("The Court finds that Plaintiffs have sufficiently established that Secretary Husted's website violates Title II of the ADA because it is not formatted in a way that is accessible to all individuals, especially blind individuals like the Individual Plaintiffs whose screen access software cannot be used on the website.").

[62] *See, e.g.*, Settlement Agreement Between the United States of America and the Champaign-Urbana Mass Transit District (Dec. 14, 2021), *https://www.ada.gov/champaign-urbana_sa.pdf* [*https://perma.cc/VZU2-E6FZ*]; Consent Decree, *United States v. The Regents of the Univ. of Cal.* (Nov. 20, 2022), *https://www.justice.gov/opa/press-release/file/1553291/download* [*https://perma.cc/9AMQ-GPP3*]; Consent Decree, *Dudley v. Miami Univ.* (Oct. 13, 2016), *https://www.ada.gov/miami_university_cd.html* [*https://perma.cc/T3FX-G7RZ*]; Settlement Agreement Between the United States of America and the City and County of Denver, Colorado Under the Americans with Disabilities Act (Jan. 8, 2018), *https://www.ada.gov/denver_pca/denver_sa.html* [*https://perma.cc/U7VE-MBSG*]; Settlement Agreement Between the United States of America and Nueces County, Texas Under the Americans with Disabilities Act (effective Jan. 30, 2015), *https://www.ada.gov/nueces_co_tx_pca/nueces_co_tx_sa.html* [*https://perma.cc/TX66-WQY7*]; Settlement Agreement Between the United States of America, Louisiana Tech University, and the Board of Supervisors for the University of Louisiana System Under the Americans with Disabilities Act (July 22, 2013), *https://www.ada.gov/louisiana-tech.htm* [*https://perma.cc/78ES-4FQR*].

[63] *In re Alaska Dep't of Educ. and Early Dev.*, OCR Reference No. 10161093 (U.S. Dep't of Educ. Dec. 11, 2017) (resolution agreement), *https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/10161093-b.pdf*

Housing and Urban Development took action against the City of Los Angeles, and its subrecipient housing providers, to ensure that it maintained an accessible housing website concerning housing opportunities.[64]

The Department believes that adopting technical standards for web and mobile app accessibility will provide clarity to public entities regarding how to make the services, programs, and activities they offer the public via the web and mobile apps accessible. Adopting specific technical standards for web and mobile app accessibility will also provide individuals with disabilities with consistent and predictable access to the web content and mobile apps of public entities.

IV. Section-by-Section Analysis

This section details the Department's proposed changes to the title II regulation, including the reasoning behind the proposals, and poses questions for public comment.

Subpart A—General

§ 35.104 Definitions

"Archived web content"

The Department proposes to add a definition for "archived web content" to proposed § 35.104. The proposed definition defines "archived web content" as "web content that (1) is maintained exclusively for reference, research, or recordkeeping; (2) is not altered or updated after the date of archiving; and (3) is organized and stored in a dedicated area or areas clearly identified as being archived." The definition is meant to capture web content that, while outdated or superfluous, is maintained unaltered in a dedicated area on a public entity's website for historical, reference, or other similar purposes, and the term is used in the proposed exceptions set forth in § 35.201. Throughout this rule, a public entity's "website" is intended to

---

[*https://perma.cc/DUS4-HVZJ*], superseded by *https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/10161093-b1.pdf* [*https://perma.cc/BVL6-Y59M*] (U.S. Dep't of Educ. Mar. 28, 2018) (revised resolution agreement).

[64] *See* Voluntary Compliance Agreement Between the U.S. Department of Housing and Urban Development and the City of Los Angeles, California (Aug. 2, 2019), *https://www.hud.gov/sites/dfiles/Main/documents/HUD-City-of-Los-Angeles-VCA.pdf* [*https://perma.cc/X5RN-AJ5K*].

include not only the websites hosted by the public entity, but also websites operated on behalf of a public entity by a third party. For example, public entities sometimes use vendors to create and host their web content. Such content would also be covered by this rule.

"Conventional electronic documents"

The Department proposes to add a definition for "conventional electronic documents" to proposed § 35.104. The proposal defines "conventional electronic documents" as "web content or content in mobile apps that is in the following electronic file formats: portable document formats ('PDFs'), word processor file formats, presentation file formats, spreadsheet file formats, and database file formats." The definition thus provides an exhaustive list of electronic file formats that constitute conventional electronic documents. Examples of conventional electronic documents include: Adobe PDF files (*i.e.*, portable document formats), Microsoft Word files (*i.e.*, word processor files), Apple Keynote or Microsoft PowerPoint files (*i.e.*, presentation files), Microsoft Excel files (*i.e.*, spreadsheet files), and FileMaker Pro or Microsoft Access files (*i.e.*, database files).

The term "conventional electronic documents" is intended to describe those documents created or saved as an electronic file that are commonly available on public entities' websites and mobile apps in either an electronic form or as printed output. The term is intended to capture documents where the version posted by the public entity is not open for editing by the public. For example, if a public entity maintains a Word version of a flyer on its website, that would be a conventional electronic document. A third party could technically download and edit that Word document, but their edits would not impact the "official" posted version. Similarly, a Google Docs file that does not allow others to edit or add comments in the posted document would be a conventional electronic document. The term "conventional electronic documents" is used in proposed § 35.201(b) to provide an exception for certain electronic documents created by or for a public entity that are available on a public entity's website before the compliance date of this rule and in proposed § 35.201(g) to provide an exception for certain individualized, password-

protected documents, and is addressed in more detail in the discussion regarding proposed §§ 35.201(b) and (g).

"Mobile applications (apps)"

Mobile apps are software applications that are downloaded and designed to run on mobile devices such as smartphones and tablets. For the purposes of this part, mobile apps include, for example, native apps built for a particular platform (*e.g.*, Apple iOS, Google Android, among others) or device and hybrid apps using web components inside native apps.

"Special district government"

The Department proposes to add a definition for a "special district government." The term "special district government" is used in proposed § 35.200(b) and is defined in proposed § 35.104 to mean "a public entity—other than a county, municipality, or 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." Because special district governments do not have populations calculated by the United States Census Bureau, their population sizes are unknown. A special district government may include, for example, a mosquito abatement district, utility district, transit authority, water and sewer board, zoning district, or other similar governmental entities that may operate with administrative and fiscal independence.

"Total population"

The Department proposes to add a definition for "total population." The term "total population" means "the population estimate for a public entity as calculated by the United States Census Bureau in the most recent decennial Census or, if a public entity is an independent school district, the population estimate as calculated by the United States Census Bureau in the most recent Small Area Income and Poverty Estimates."

As mentioned previously, proposed § 35.200 generally proposes different compliance dates according to a public entity's size. The term "total population" is generally used in proposed § 35.200 to refer to the size of a public entity's population as calculated by the U.S. Census Bureau in the most recent decennial Census. If a public entity does not have a specific population calculated by the U.S. Census Bureau, but belongs to another jurisdiction that does, the population of the entity is determined by the population of the jurisdiction to which the entity belongs. For example, the total population of a county library is the population of the county to which the library belongs. However, because the decennial Census does not include population estimates for public entities that are independent school districts, the term "total population" with regard to independent school districts refers to population estimates in the most recent Small Area Income and Poverty Estimates, which includes population estimates for these entities.

"WCAG 2.1"

The Department proposes to add a definition of "WCAG 2.1." The term "WCAG 2.1" refers to the 2018 version of the voluntary guidelines for web accessibility, known as the Web Content Accessibility Guidelines 2.1 ("WCAG"). The W3C®, the principal international organization involved in developing standards for the web, published WCAG 2.1 in June 2018, and it is available at *https://www.w3.org/TR/WCAG21/*. WCAG 2.1 is discussed in more detail in proposed § 35.200 below.

"Web content"

The Department proposes to add a definition for "web content" under proposed § 35.104 that is based on the WCAG 2.1 definition but is slightly less technical and intended to be more easily understood by the public generally. The Department's proposal defines "web content" as "information or sensory experience—including the encoding that defines the content's structure, presentation, and interactions—that is communicated to the user by a web browser or other software. Examples of web content include text, images, sounds, videos, controls, animations, and conventional electronic documents." WCAG 2.1 defines web content as "information and

sensory experience to be communicated to the user by means of a user agent, including code or markup that defines the content's structure, presentation, and interactions."[65]

The definition of "web content" attempts to describe the different types of information and experiences available on the web. The Department's NPRM proposes to cover the accessibility of public entities' web content available on public entities' websites and web pages regardless of whether the web content is viewed on desktop computers, laptops, smartphones, or other devices.

The definition of "web content" also includes the encoding used to create the structure, presentation, or interactions of the information or experiences on web pages that range in complexity from, for example, pages with only textual information to pages where users can complete transactions. Examples of languages used to create web pages include Hypertext Markup Language ("HTML"), Cascading Style Sheets ("CSS"), Python, SQL, PHP, and JavaScript.

The Department poses questions for feedback about its proposed approach. Comments on all aspects of this proposed rule, including these proposed definitions, are invited. Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 1: The Department's definition of "conventional electronic documents" consists of an exhaustive list of specific file types. Should the Department instead craft a more flexible definition that generally describes the types of documents that are covered or otherwise change the proposed definition, such as by including other file types (e.g., images or movies), or removing some of the listed file types?

Question 2: Are there refinements to the definition of "web content" the Department

---

[65] *See* W3C®, *Web Content Accessibility Guidelines 2.1* (June 5, 2018), https://www.w3.org/TR/WCAG21/#glossary [https://perma.cc/YB57-ZB8C].

should consider? Consider, for example, WCAG 2.1's definition of "web content" as "information and sensory experience to be communicated to the user by means of a user agent, including code or markup that defines the content's structure, presentation, and interactions."

Subpart H—Web and Mobile Accessibility

The Department is proposing to create a new subpart to its title II regulation. Subpart H would address the accessibility of public entities' web content and mobile apps.

§ 35.200 Requirements for Web and Mobile Accessibility

General

Proposed § 35.200 sets forth specific requirements for the accessibility of web content and mobile apps of public entities. Proposed § 35.200(a) requires a public entity to "ensure the following are readily accessible to and usable by individuals with disabilities: (1) web content that a public entity makes available to members of the public or uses to offer services, programs, or activities to members of the public; and (2) mobile apps that a public entity makes available to members of the public or uses to offer services, programs, or activities to members of the public." As detailed below, the remainder of proposed § 35.200 sets forth the specific standards that public entities would be required to meet to make their web content and mobile apps accessible and the proposed timelines for compliance.

Background on Accessibility Standards for Websites and Web Content

Since 1994, the W3C® has been the principal international organization involved in developing protocols and guidelines for the web.[66] The W3C® develops a variety of voluntary technical standards and guidelines, including ones relating to privacy, internationalization of technology, and, relevant to this rulemaking, accessibility. The W3C®'s WAI has developed voluntary guidelines for web accessibility, known as WCAG, to help web developers create web content that is accessible to individuals with disabilities.

The first version of WCAG, WCAG 1.0, was published in 1999. WCAG 2.0 was

[66] W3C®, *About Us*, https://www.w3.org/about/ [https://perma.cc/TQ2W-T377].

published in December 2008, and is available at http://www.w3.org/TR/2008/REC-WCAG20-20081211/ [https://perma.cc/L2NH-VLCR]. WCAG 2.0 was approved as an international standard by the International Organization for Standardization ("ISO") and the International Electrotechnical Commission ("IEC") in October 2012.[67] WCAG 2.1, the most recent and updated recommendation of WCAG, was published in June 2018, and is available at https://www.w3.org/TR/WCAG21/ [https://perma.cc/UB8A-GG2F].[68]

WCAG 2.1 contains four principles that provide the foundation for web accessibility: perceivable, operable, understandable, and robust.[69] Testable success criteria (*i.e.*, requirements for web accessibility that are measurable) are provided "to be used where requirements and conformance testing are necessary such as in design specification, purchasing, *regulation* and contractual agreements."[70] Thus, WCAG 2.1 contemplates establishing testable success criteria that could be used in regulatory efforts such as this one.

Proposed WCAG Version

The Department is proposing to adopt WCAG 2.1 as the technical standard for web and mobile app accessibility under title II. WCAG 2.1 was published in June 2018 and is available at https://www.w3.org/TR/WCAG21/ [https://perma.cc/UB8A-GG2F]. WCAG 2.1 represents the most recent and updated published recommendation of WCAG. WCAG 2.1 incorporates and builds upon WCAG 2.0—meaning that WCAG 2.1 includes all of the WCAG 2.0 success criteria, in addition to success criteria that were developed under WCAG 2.1.[71] Specifically, WCAG 2.1 added 12 Level A and AA success criteria to the 38 success criteria contained in

---

[67] W3C®, *Web Accessibility Guidelines 2.0 Approved as ISO/IEC International Standard* (Oct. 15, 2012), https://www.w3.org/press-releases/2012/wcag2pas/ [https://perma.cc/JQ39-HGKQ].

[68] *See* W3C®, *Web Content Accessibility Guidelines 2.1* (June 5, 2018), https://www.w3.org/TR/WCAG21/#wcag-2-layers-of-guidance [https://perma.cc/5PDG-ZTJE]. Additionally, in May 2021, WAI published a working draft for WCAG 2.2, which has yet to be finalized. W3C®, Web Content Accessibility Guidelines 2.2 (May 21, 2021), https://www.w3.org/TR/WCAG22/ [https://perma.cc/M4G8-Z2GY]. The WAI also published a working draft of WCAG 3.0 in December 2021. W3C®, Web Content Accessibility Guidelines 3.0 (Dec. 7, 2021), https://www.w3.org/TR/wcag-3.0/ [https://perma.cc/7FPQ-EEJ7].

[69] *Id*.

[70] *See* W3C®, *Web Content Accessibility Guidelines 2.1*, *WCAG 2 Layers of Guidance* (June 5, 2018), https://www.w3.org/TR/WCAG21/#wcag-2-layers-of-guidance [https://perma.cc/5PDG-ZTJE] (emphasis added).

[71] W3C®, *What's New in WCAG 2.1* (Aug. 13, 2020), https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/ [https://perma.cc/W8HK-Z5QK].

WCAG 2.0 Level AA.[72] The additional criteria provide important accessibility benefits, especially for people with low vision, manual dexterity disabilities, and cognitive and learning disabilities.[73] The additional criteria are intended to improve accessibility for mobile web content and mobile apps.[74] The Department anticipates that WCAG 2.1 is familiar to web developers as it comprises WCAG 2.0's requirements—which have been in existence since 2008—and 12 new Level A and AA requirements that have been in existence since 2018.

The Department expects that adopting WCAG 2.1 as the technical standard will have benefits that are important to ensuring access for people with disabilities to public entities' services, programs, and activities. For example, WCAG 2.1 requires that text be formatted so that it is easier to read when magnified.[75] This is important, for example, for people with low vision who use magnifying tools. Without the formatting that WCAG 2.1 requires, a person magnifying the text might find reading the text disorienting because they could have to scroll horizontally on every line.[76]

WCAG 2.1 also has new success criteria addressing the accessibility of mobile apps or web content viewed on a mobile device. For example, WCAG 2.1 Success Criterion 1.3.4 requires that page orientation (*i.e.*, portrait or landscape) not be restricted to just one orientation, unless a specific display orientation is essential.[77] This feature is important, for example, for someone who uses a wheelchair with a tablet attached to it such that the tablet cannot be rotated.[78] If content only works in one orientation (*i.e.*, portrait or landscape) it will not always work for this individual depending on how the tablet is oriented, and could render that content or app unusable for the person.[79] Another WCAG 2.1 success criterion requires, in part, that if a

---

[72] *Id.*
[73] *Id.*
[74] *See id.*
[75] *See* W3C®, *Web Content Accessibility Guidelines 2.1, Reflow* (June 5, 2018), *https://www.w3.org/TR/WCAG21/#reflow* [*https://perma.cc/YRP5-M599*].
[76] *See id.*
[77] *See* W3C®, *Web Content Accessibility Guidelines 2.1, Orientation* (June 5, 2018), *https://www.w3.org/TR/WCAG21/#orientation* [*https://perma.cc/FC3E-FRYK*].
[78] W3C®, *What's New in WCAG 2.1* (Aug. 13, 2020), *https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/* [*https://perma.cc/W8HK-Z5QK*]
[79] *See id.*

device can be operated by motion—for example, shaking the device to undo typing—that there be an option to turn off that motion sensitivity.[80] This could be important, for example, for someone who has tremors so that they do not accidentally undo their typing.[81]

Such accessibility features are critical for people with disabilities to have equal access to their State or local government's services, programs, and activities. This is particularly true given that using mobile devices to access government services is commonplace. For example, in August 2022, about 54 percent of visits to Federal Government websites over the previous 90 days were from mobile devices.[82] In addition, WCAG 2.1's incorporation of mobile-related criteria is important because of public entities' increasing use of mobile apps in offering their services, programs, and activities via mobile apps. As discussed in more detail later, public entities are using mobile apps to offer a range of critical government services—from traffic information, to scheduling trash pickup, to vaccination appointments.

Because WCAG 2.1 is the most recent recommended version of WCAG and generally familiar to web professionals, the Department expects it is well-positioned to continue to be relevant even as technology inevitably evolves. In fact, the W3C® advises using WCAG 2.1 over WCAG 2.0 when possible because WCAG 2.1 incorporates more forward-looking accessibility needs.[83] The WCAG standards were designed to be "technology neutral."[84] This means that they are designed to be broadly applicable to current and future web technologies.[85] Thus, WCAG 2.1 also allows web and mobile app developers flexibility and potential for innovation.

The Department also expects that public entities are likely already familiar with WCAG

---

[80] *See* W3C®, *Web Content Accessibility Guidelines 2.1, Motion Actuation* (June 5, 2018), https://www.w3.org/TR/WCAG21/#motion-actuation [https://perma.cc/6S93-VX58].
[81] *See* W3C®, *What's New in WCAG 2.1* (Aug. 13, 2020), https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/ [https://perma.cc/W8HK-Z5QK]
[82] U.S. Gen. Servs. Admin. Digital Analytics Program, https://analytics.usa.gov/ [https://perma.cc/2YZP-KCMG].
[83] W3C®, *WCAG 2.0 Overview* (updated Aug. 6, 2022), https://www.w3.org/WAI/standards-guidelines/wcag/ [https://perma.cc/L7NX-8XW3].
[84] W3C®, *Introduction to Understanding WCAG* (June 20, 2023), https://www.w3.org/WAI/WCAG21/Understanding/intro [https://perma.cc/XB3Y-QKVU].
[85] *See* W3C®, *Understanding Techniques for WCAG Success Criteria* (June 20, 2023), https://www.w3.org/WAI/WCAG21/Understanding/understanding-techniques [https://perma.cc/AMT4-XAAL].

2.1 or will be able to become familiar quickly. This is because WCAG 2.1 has been available since 2018, and it builds upon WCAG 2.0, which has been in existence since 2008 and has been established for years as a benchmark for accessibility. In other words, the Department expects that web developers and professionals who work for or with public entities are likely to be familiar with WCAG 2.1. If they are not already familiar with WCAG 2.1, the Department expects that they are at least likely to be familiar with WCAG 2.0 and will be able to become acquainted quickly with WCAG 2.1's 12 additional Level A and AA success criteria. The Department also believes that resources exist to help public entities implement or understand how to implement not only WCAG 2.0 Level AA, but also WCAG 2.1 Level AA. Additionally, public entities will have two or three years to come into compliance with a final rule, which should also provide sufficient time to get acquainted with and implement WCAG 2.1.

According to the Department's research, WCAG 2.1 is also being increasingly used by members of the public and governmental entities. In fact, the Department recently included WCAG 2.1 in several settlement agreements with covered entities addressing inaccessible websites.[86]

In evaluating what technical standard to propose, the Department also considered WCAG 2.0. In addition, the Department considered the standards set forth under section 508 of the Rehabilitation Act of 1973, which governs the accessibility of the Federal Government's web content and is harmonized with WCAG 2.0.[87] In 2017, when the United States Access Board adopted WCAG 2.0 as the technical standard for the Federal Government's web content under

---

[86] *See, e.g.*, Settlement Agreement with CVS Pharmacy, Inc. (Apr. 11, 2022), *https://archive.ada.gov/cvs_sa.pdf* [*https://perma.cc/H5KZ-4VVF*]; Settlement Agreement with Meijer, Inc. (Feb. 2, 2022), *https://archive.ada.gov/meijer_sa.pdf* [*https://perma.cc/5FGD-FK42*]; Settlement Agreement with The Kroger Co. (Jan. 28, 2022), *https://archive.ada.gov/kroger_co_sa.pdf* [*https://perma.cc/6ASX-U7FQ*]; Settlement Agreement with Champaign-Urbana Mass Transit Dist. (Dec. 14, 2021), *https://www.justice.gov/d9/case-documents/attachments/2021/12/14/champaign-urbana_sa.pdf* [*https://perma.cc/66XY-QGA8*]; Settlement Agreement with Hy-Vee, Inc. (Dec. 1, 2021) *https://archive.ada.gov/hy-vee_sa.pdf* [*https://perma.cc/GFY6-BJNE*]; Settlement Agreement with Rite Aid Corp. (Nov. 1, 2021), *https://archive.ada.gov/rite_aid_sa.pdf* [*https://perma.cc/4HBF-RBK2*].

[87] 36 CFR 1194, app. A.

section 508, WCAG 2.1 had not been finalized.[88] The Department ultimately decided to propose WCAG 2.1 as the appropriate standard. A number of countries that have adopted WCAG 2.0 as their standard are now making efforts to move or have moved to WCAG 2.1.[89] In countries that are part of the European Union, public sector websites and mobile apps generally must meet a technical standard that requires conformance with the WCAG 2.1 Level AA success criteria.[90] And although WCAG 2.0 is the standard adopted by the Department of Transportation in its rule implementing the Air Carrier Access Act, which covers airlines' websites and kiosks,[91] that rule—like the section 508 rule—was promulgated before WCAG 2.1 was published.

The Department expects that the wide usage of WCAG 2.0 lays a solid foundation for public entities to become familiar with and implement WCAG 2.1's additional Level A and AA criteria. According to the Department's research, approximately 48 States either use or strive to use a WCAG 2.0 standard or greater for at least some of their web content. It appears that at least four of these States—Louisiana, Maryland, Nebraska, and Washington—already either use WCAG 2.1 or strive to use WCAG 2.1 for at least some of their web content.

WCAG 2.1 represents the most up-to-date recommendation and is generally familiar to web professionals. It offers important accessibility benefits for people with disabilities that affect manual dexterity, adds some criteria to reduce barriers for those with low vision and cognitive disabilities, and expands coverage of mobile content. Given that public entities will have two or three years to comply, the Department views WCAG 2.1 as the appropriate technical standard to propose at this time.

---

[88] *See* Information and Communication Technology ("ICT") Standards and Guidelines, 82 FR 5790, 5791 (Jan. 18, 2017); W3C®, *Web Content Accessibility Guidelines 2.1* (June 5, 2018), https://www.w3.org/TR/WCAG21/ [https://perma.cc/UB8A-GG2F].

[89] *See e.g.*, *Exploring WCAG 2.1 for Australian government services*, Australian Government Digital Transformation Agency (Aug. 22, 2018), https://www.dta.gov.au/blogs/exploring-wcag-21-australian-government-services. A Perma archive link was unavailable for this citation.

[90] *Web Accessibility*, European Comm'n (updated July 13, 2022), https://digital-strategy.ec.europa.eu/en/policies/web-accessibility [https://perma.cc/LSG9-XW7L]; *Accessibility Requirements for ICT Products and Services*, European Telecomm. Standards Institute, 45–51, 64–78 (Mar. 2021), https://www.etsi.org/deliver/etsi_en/301500_301599/301549/03.02.01_60/en_301549v030201p.pdf [https://perma.cc/5TEZ-9GC6].

[91] *See* 14 CFR 382.43(c)-(e), 382.57.

The Department is aware that a working draft for WCAG 2.2 was published in May 2021.[92] Several subsequent drafts have also been published.[93] All of the WCAG 2.0 and WCAG 2.1 success criteria except for one are included in WCAG 2.2.[94] But WCAG 2.2 also includes six additional Level A and AA success criteria beyond those included in WCAG 2.1.[95] Like WCAG 2.1, WCAG 2.2 offers benefits for individuals with low vision, limited manual dexterity, and cognitive disabilities. For example, Success Criterion 3.3.8, which is a new criterion under WCAG 2.2, improves access for people with cognitive disabilities by limiting the use of cognitive function tests, like solving puzzles, in authentication processes.[96] Because WCAG 2.2 has not yet been finalized and is subject to change, and web professionals have had less time to become familiar with the additional success criteria that have been incorporated into WCAG 2.2, the Department does not believe it is appropriate to adopt WCAG 2.2 as the technical standard at this time.

The Department is seeking feedback from the public about its proposal to use WCAG 2.1 as the standard under this rule and its assumptions underlying this decision. Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

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

---

[92] W3C®, *Web Content Accessibility Guidelines 2.2* (May 21, 2021), *https://www.w3.org/TR/2021/WD-WCAG22-20210521/* [*https://perma.cc/M4G8-Z2GY*].
[93] *See, e.g.*, W3C®, *Web Content Accessibility Guidelines 2.2* (May 17, 2023), *https://www.w3.org/TR/WCAG22/* [*https://perma.cc/SXA7-RF32*].
[94] W3C®, *What's New in WCAG 2.2 Draft* (May 17, 2023), *https://www.w3.org/WAI/standards-guidelines/wcag/new-in-22/* [*https://perma.cc/Y67R-SFSE*].
[95] *Id.*
[96] *Id.*

pace at which technology changes?

Proposed WCAG Conformance Level

For a web page to conform to WCAG 2.1, the web page must satisfy the success criteria under one of three levels of conformance: A, AA, or AAA. The three levels of conformance indicate a measure of accessibility and feasibility. Level A, which is the minimum level of accessibility, contains criteria that provide basic web accessibility and are the least difficult to achieve for web developers.[97] Level AA, which is the intermediate level of accessibility, includes all of the Level A criteria and contains enhanced criteria that provide more comprehensive web accessibility, and yet are still achievable for most web developers.[98] Level AAA, which is the highest level of conformance, includes all of the Level A and Level AA criteria and contains additional criteria that can provide a more enriched user experience, but are the most difficult to achieve for web developers.[99] The W3C® does not recommend that Level AAA conformance be required as a general policy for entire websites because it is not possible to satisfy all Level AAA criteria for some content.[100]

Based on review of previous public feedback and independent research, the Department believes that WCAG 2.1 Level AA is an appropriate conformance level because it includes criteria that provide web accessibility to individuals with disabilities—including those with visual, auditory, physical, speech, cognitive, and neurological disabilities—and yet is feasible for public entities' web developers to implement. In addition, Level AA conformance is widely used, making it more likely that web developers are already familiar with its requirements. Though many of the entities that conform to Level AA do so under WCAG 2.0, not 2.1, this still suggests a widespread familiarity with most of the Level AA success criteria, given that 38 of the 50 Level A and AA success criteria in WCAG 2.1 are also included in WCAG 2.0. The

---

[97] W3C®, *Web Content Accessibility Guidelines (WCAG) 2 Level A Conformance* (July 13, 2020), https://www.w3.org/WAI/WCAG2A-Conformance [https://perma.cc/KT74-JNHG].
[98] *Id.*
[99] *Id.*
[100] *See* W3C®, *Understanding Conformance, Understanding Requirement 1*, https://www.w3.org/WAI/WCAG21/Understanding/conformance [https://perma.cc/9ZG9-G5N8].

Department believes that Level A conformance alone is not appropriate because it does not include criteria for providing web accessibility that the Department understands are critical, such as a minimum level of color contrast so that items like text boxes or icons are easier to see, which is important for people with vision disabilities. Also, while Level AAA conformance provides a richer user experience, it is the most difficult to achieve for many entities. Therefore, the Department is proposing Level AA conformance for public feedback as to whether it strikes the right balance between accessibility for individuals with disabilities and achievability for public entities.

Adopting a WCAG 2.1 Level AA conformance level would make the ADA requirements consistent with a standard that has been widely accepted internationally. Many nations have selected Level AA conformance as their standard for web accessibility.[101] The web content of Federal agencies that are governed by section 508 also need to comply with Level AA.[102]

In its proposed regulatory text in § 35.200(b)(1) and (2), the Department provides that public entities must "comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1." WCAG 2.1 provides that for "Level AA conformance, the Web page [must] satisf[y] all the Level A and Level AA Success Criteria . . . ."[103] However, individual success criteria in WCAG 2.1 are labeled only as Level A or Level AA. Therefore, a person reviewing individual requirements in WCAG 2.1 may not understand that both Level A and Level AA success criteria must be met in order to attain Level AA. Accordingly, the Department has made explicit in its proposed regulation that both Level A and Level AA success criteria and conformance requirements must be met in order to comply with the proposed web accessibility requirements.

---

[101] *See* W3C®, *Web Accessibility Laws & Policies* (Mar. 21, 2018), *https://www.w3.org/WAI/policies/* [*https://perma.cc/5EBY-3WX4*].

[102] *See* Information and Communication Technology ("ICT") Standards and Guidelines, 82 FR 5790, 5791 (Jan. 18, 2017).

[103] *See* W3C®, *Conformance Requirements, Web Content Accessibility Guidelines (WCAG) 2.1* (June 5, 2018), *https://www.w3.org/TR/WCAG21/#cc1* [*https://perma.cc/ZL6N-VQX4*]. WCAG 2.1 also states that a Level AA conforming alternate version may be provided. The Department has adopted a slightly different approach to conforming alternate versions, which is discussed below.

Conformance Level for Small Public Entities

The Department considered proposing another population threshold of very small entities that would be subject to a lower conformance level or WCAG version, to reduce the burden of compliance on those entities. However, the Department decided against this proposal due to a variety of factors. First, this would make for inconsistent levels of WCAG conformance across public entities, and a universal standard for consistency in implementation would promote predictability. A universal level of conformance would reduce confusion about which standard applies, and it would create a basic level of conformance for all public entities to follow. It would also allow for people with disabilities to know what they can expect when navigating a public entity's web content; for example, it will be helpful for people with disabilities to know that they can expect to be able to navigate a public entity's web content independently using their assistive technology. Finally, for the reasons discussed above, the Department believes that WCAG 2.1 Level AA contains criteria that are critical to accessing services, programs, and activities of public entities, which may not be included under a lower standard. However, the Department recognizes that small public entities—those with a total population of less than 50,000 based on Census data—might initially face more technical and resource challenges in complying than larger public entities. Therefore, as discussed below, the Department has decided to propose different compliance dates according to a public entity's size to reduce burdens on small public entities.

Possible Alternative Standards for Compliance

The Department considered proposing to adopt the section 508 standards but decided not to take this approach. The section 508 standards are harmonized with WCAG 2.0, and for the reasons discussed above, the Department believes WCAG 2.1—which had not been finalized at the time the section 508 standards were promulgated—is the more appropriate recommendation for this proposed rule. Moreover, by adopting WCAG on its own rather than adopting it through the section 508 standards, the Department can then tailor the rule to public entities as it does in

this proposed rule.

The Department also considered adopting performance standards instead of specific technical standards for accessibility of web content. Performance standards establish general expectations or goals for web accessibility and allow for compliance via a variety of unspecified methods. Performance standards could provide greater flexibility in ensuring accessibility as web technologies change. However, based on what the Department has heard previously from the public and its own knowledge of this area, the Department understands that performance standards might be too vague and subjective and could prove insufficient in providing consistent and testable requirements for web accessibility. Additionally, the Department expects that performance standards would likely not result in predictability for either public entities or people with disabilities in the way that a more specific technical standard would. Further, similar to a performance standard, WCAG has been designed to allow for flexibility and innovation in the evolving web environment. The Department recognizes the importance of adopting a standard for web accessibility that provides not only specific and testable requirements, but also sufficient flexibility to develop accessibility solutions for new web technologies. The Department believes that WCAG achieves this balance because it provides flexibility similar to a performance standard, but it also provides more clarity, consistency, predictability, and objectivity. Using WCAG also enables public entities to know precisely what is expected of them under title II, which may be of particular benefit to jurisdictions with less technological experience. This will assist public entities in targeting accessibility errors, which may reduce costs they would incur without clear expectations.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 4: What compliance costs and challenges might small public entities face in conforming with this rule? How accessible are small public entities' web content and mobile

apps currently? Do small public entities have internal staff to modify their web content and mobile apps, or do they use outside consulting staff to modify and maintain their web content and mobile apps? If small public entities have recently (for example, in the past three years) modified their web content or mobile apps to make them accessible, what costs were associated with those changes?

Question 5: Should the Department adopt a different WCAG version or conformance level for small entities or a subset of small entities?

Public Entities' Use of Social Media Platforms

Public entities are increasingly using social media platforms to provide information and communicate with the public about their services, programs, and activities in lieu of or in addition to engaging the public on their own websites. The Department is using the term "social media platforms" to refer to websites or mobile apps of third parties whose primary purpose is to enable users to create and share content in order to participate in social networking (*i.e.*, the creation and maintenance of personal and business relationships online through websites and mobile apps like Facebook, Instagram, Twitter, and LinkedIn).

The Department is proposing to require that web content that public entities make available to members of the public or use to offer services, programs, and activities to members of the public be accessible within the meaning of proposed § 35.200. This requirement would apply regardless of whether that web content is located on the public entity's own website or elsewhere on the web. It therefore covers web content that a public entity makes available via a social media platform. Even where a social media platform is not fully accessible, a public entity can generally take actions to ensure that the web content that it posts is accessible and in compliance with WCAG 2.1.[104] The Department understands that social media platforms often make available certain accessibility features like the ability to add captions or alt text. It is the

[104] *See Federal Social Media Accessibility Toolkit Hackpad*, Digital.gov (updated June 21, 2022), https://digital.gov/resources/federal-social-media-accessibility-toolkit-hackpad/ [https://perma.cc/DJ8X-UCHA].

public entity's responsibility to use these features when it makes web content available on social media sites. For example, if a public entity posts an image to a social media site that allows users to post alt text, the public entity needs to ensure that appropriate alt text accompanies that image so that screen reader users can access the information.

At this time, the Department is not proposing any regulatory text specific to the web content that public entities make available to members of the public via social media platforms because web content posted on social media platforms will be treated the same as any other content public entities post on the web. However, the Department is considering creating an exception from coverage under the rule for social media posts if they were posted before the effective date of the rule. This exception would recognize that making preexisting social media content accessible may be impossible at this time or result in a significant burden. Many public entities have posted social media content for several years, often numbering thousands of posts, which may not all be accessible. The benefits of making all preexisting social media posts accessible might also be limited as these posts are intended to provide current updates on platforms that are frequently refreshed with new information. The Department is considering this exception in recognition of the fact that many entities' resources may be better spent ensuring that current web content is accessible, rather than reviewing all preexisting social media content for compliance or possibly deleting their previous posts. The Department is looking for input on whether this approach would make sense and whether any limitations to this approach are necessary, such as providing that the exception does not apply when preexisting social media content is currently used to offer a service, program, or activity, or possibly limiting this exception when the public requests certain social media content to be made accessible.

The Department is also weighing whether public entities' preexisting videos posted to social media platforms such as YouTube should be excepted from coverage due to these same concerns or otherwise be treated differently.

Please provide as much detail as possible and any applicable data, suggested alternative

approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 6: *How do public entities use social media platforms and how do members of the public use content made available by public entities on social media platforms? What kinds of barriers do people with disabilities encounter when attempting to access public entities' services via social media platforms?*

Mobile Applications

The Department is proposing to adopt the same technical standard for mobile app accessibility as it is for web content—WCAG 2.1 Level AA. As discussed earlier, WCAG 2.1 was published in June 2018 and was developed, in part, to address mobile accessibility.[105]

The Department considered applying WCAG 2.0 Level AA to mobile apps, which is a similar approach to the requirements in the final rule promulgated by the United States Access Board in its update to the section 508 standards.[106] WCAG 2.1 was not finalized when the Access Board adopted the section 508 standards. When WCAG 2.0 was originally drafted in 2008, mobile apps were not as widely used or developed. Further, the technology has grown considerably since that time. Accordingly, WCAG 2.1 provides 12 additional Level A and AA success criteria not included in WCAG 2.0 to ensure, among other things, that mobile apps are more accessible to individuals with disabilities using mobile devices.[107] For example, WCAG 2.1 includes Success Criterion 1.4.12, which ensures that text spacing like letter spacing, line spacing, and word spacing meets certain requirements to ensure accessibility; Success Criterion 2.5.4, which enables the user to disable motion actuation (*e.g.*, the ability to activate a device's function by shaking it) to prevent such things as accidental deletion of text; and Success Criterion 1.3.5, which allows a user to input information such as a name or address

---

[105] W3C®, *What's New in WCAG 2.1* (Aug. 13, 2020), *https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/* [*https://perma.cc/W8HK-Z5QK*].
[106] *See* 82 FR 5790, 5815 (Jan. 18, 2017).
[107] W3C®, *What's New in WCAG 2.1* (Aug. 13, 2020), *https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/* [*https://perma.cc/W8HK-Z5QK*].

automatically.[108]

The Access Board's section 508 standards include additional requirements applicable to mobile apps that are not in WCAG 2.1, and the Department is requesting feedback on whether to adopt those requirements as well. For example, the section 508 standards apply the following requirements not found in WCAG 2.1 to mobile apps: interoperability requirements to ensure that a mobile app does not disrupt a device's assistive technology for persons with disabilities (*e.g.*, screen readers for persons who are blind or have low vision); requirements for mobile apps to follow preferences on a user's phone such as settings for color, contrast, and font size; and requirements for caption controls and audio description controls that enable users to adjust caption and audio description functions.[109]

Adopting WCAG 2.1 Level AA for mobile apps will help ensure this rule's accessibility standards for mobile apps are consistent with this rule's accessibility standards for web content. We seek comments on this approach below. Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 7: How do public entities use mobile apps to make information and services available to the public? What kinds of barriers do people with disabilities encounter when attempting to access public entities' services, programs, and activities via mobile apps? Are there any accessibility features unique to mobile apps that the Department should be aware of?

Question 8: Is WCAG 2.1 Level AA the appropriate accessibility standard for mobile apps? Should the Department instead adopt another accessibility standard or alternative for mobile apps, such as the requirements from section 508 discussed above?

Requirements by Entity Size

Section 35.200(b) sets forth the proposed specific standard with which the web content

---

[108] W3C®, *Web Content Accessibility Guidelines 2.1* (June 5, 2018), https://www.w3.org/TR/WCAG21/ [https://perma.cc/UB8A-GG2F].

[109] 36 CFR 1194, app. C (§§ 502.1, 502.2.2, 503.2, 503.4.1, 503.4.2).

and mobile apps that public entities make available to members of the public or use to offer services, programs, and activities to members of the public must comply, and also proposes time frames for compliance. The proposed requirements of § 35.200(b) are generally delineated by the size of the population of the public entity, as calculated by the U.S. Census Bureau.

Section 35.200(b)(1): Larger Public Entities

Section 35.200(b)(1) sets forth the proposed web and mobile app accessibility requirements for public entities with a total population of 50,000 or more. The requirements of proposed § 35.200(b)(1) are meant to apply to larger public entities—specifically, to those public entities that do not qualify as "small governmental jurisdictions" as defined in the Regulatory Flexibility Act.[110] As applied to this proposed rule, the Department defines the population of a public entity by the total general population of the jurisdiction as calculated by the U.S. Census Bureau. If a public entity does not have a specific population calculated by the U.S. Census Bureau, but belongs to another jurisdiction that does, the population of the entity is determined by the population of the jurisdiction to which the entity belongs. For example, a county police department in a county with a population of 5,000 is a small public entity, while a city police department in a city with a population of 200,000 is not a small public entity. For purposes of this rule, a population of a public entity is not defined by the population that is eligible for or that takes advantage of the specific services of the public entity. For example, a county school district in a county with a population of 60,000 adults and children is not a small public entity regardless of the number of students enrolled or eligible for services. Similarly, individual county schools are also not considered small public entities if they are components of a county government that has a population of over 50,000 (*i.e.*, when the individual county schools are not separate legal entities). Though a specific county school may create and maintain web content or a mobile app, the county, as the legal entity governed by title II, is also responsible for what

[110] 5 U.S.C. 601(5) ("[T]he term 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand . . . .").

happens in the individual school. The Department expects that the specific school benefits from the resources made available or allocated by the county.

The Department is also proposing this approach because, practically speaking, it is likely to make it easier for public entities to determine their population size. Under the Department's proposal, population size is used to determine a public entity's compliance time frame. Some public entities, like libraries or public universities and community colleges, do not have population data associated with them in the U.S. Census. By using the population data associated with the entity the library or university belongs to, like a county or State, the library or university can assess its compliance time frame. This also allows the county or State as a whole to assess compliance for its services, programs, and activities holistically.

Proposed § 35.200(b)(1) requires that a public entity, other than a special district government, with a total population of 50,000 or more shall ensure that the web content and mobile apps it makes available to members of the public or uses to offer services, programs, or activities to members of the public comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1. Public entities subject to proposed § 35.200(b)(1) have two years after the publication of a final rule to make their web content and mobile apps accessible, unless they can demonstrate that compliance with proposed § 35.200(b)(1) would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. The limitations on a public entity's obligation to comply with the proposed requirements are discussed in more detail below.

The Department has received varied feedback from the public in the past regarding an appropriate time frame for requiring compliance with technical web accessibility standards. Individuals with disabilities or disability advocacy organizations tended to prefer a shorter time frame, often arguing that web accessibility has long been required by the ADA and that extending the deadline for compliance rewards entities that have not made efforts to make their websites accessible. Some covered entities have asked for more time to comply. State and local

government entities have been particularly concerned about shorter compliance deadlines, often citing budgets and staffing as major limitations. In the past, many public entities stated that they lacked qualified personnel to implement the web accessibility requirements of WCAG 2.0, which was relatively new at the time. They told the Department that in addition to needing time to implement the changes to their websites, they also needed time to train staff or contract with professionals who are proficient in developing accessible websites. Considering all these factors, as well as the facts that over a decade has passed since the Department started receiving such feedback and there is more available technology to make web content and mobile apps accessible, the Department is proposing a two-year implementation time frame for public entities with a total population of 50,000 or more. Regulated entities and the community of web developers have had over a decade to familiarize themselves with WCAG 2.0, which was published in 2008 and serves as the foundation for WCAG 2.1, and five years to familiarize themselves with the additional 12 Level A and AA success criteria of WCAG 2.1. Though the Department is now proposing requiring public entities to comply with WCAG 2.1 instead of WCAG 2.0, the Department believes the time allowed to come into compliance is appropriate. As discussed above, WCAG 2.1 Level AA only adds 12 Level A and AA success criteria that were not included in WCAG 2.0. The Department believes these additional success criteria will not significantly increase the time or resources that it will take for a public entity to come into compliance with the proposed rule beyond what would have already been required to comply with WCAG 2.0, though the Department seeks the public's input on this belief. The Department therefore believes this proposal balances the resource challenges reported by public entities with the interests of individuals with disabilities in accessing the multitude of services, programs, and activities that public entities now offer via the web and mobile apps.

Section 35.200(b)(2): Small Public Entities and Special District Governments

The Department has also previously received public input on whether it should consider different compliance requirements or a different compliance date for small entities in order to take into account the impact on small entities as required by the Regulatory Flexibility Act of 1980 and Executive Order 13272.[111] Many disability organizations and individuals have opposed having a different timetable or different accessibility requirements for smaller entities, stating that many small entities have smaller and less complex websites with fewer web pages, which would make compliance easier. The Department has also heard from other members of the public opposing different timetables or different accessibility requirements for smaller entities. These commenters note that small public entities are protected from excessive burdens deriving from rigorous compliance dates or stringent accessibility standards by the ADA's "undue burden" compliance limitations. It is also the Department's understanding that many web accessibility professionals may operate online and could be available to assist entities with compliance regardless of their location.

Many of those expressing concerns about compliance dates, especially web developers as well as State and local government entities, have stated that compliance in incremental levels would help public entities to allocate resources—both financial and personnel—to bring their websites into compliance. Such entities have noted that many small State and local government entities do not have a dedicated web developer or staff. The Department has heard that when these small entities develop or maintain their own websites, they often do so with staff or volunteers who have only a cursory knowledge of web design and use manufactured web templates or software, which may create inaccessible web pages. Some small public entities have expressed concern that even when they do use outside help, there is likely to be a shortage of professionals who are proficient in web accessibility and can assist all public entities in

[111] *See* Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations, 75 FR 43460, 43467 (July 26, 2010).

bringing their websites into compliance. Some public entities have also expressed concern that smaller entities would need to take down their websites because they would not be able to comply with the accessibility requirements, although the Department notes that public entities would not be required to undertake changes that would impose an undue financial and administrative burden.

In light of these concerns, proposed § 35.200(b)(2) sets forth the Department's proposed web and mobile app accessibility requirements for small public entities and special district governments. Specifically, proposed § 35.200(b)(2) covers those public entities with a total population of less than 50,000 and special district governments. Section 35.200(b)(2) would require these public entities to ensure that the web content and mobile apps they make available to the public or use to offer services, programs, and activities to members of the public, comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1, unless they can demonstrate that compliance would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. This is the same substantive standard that applies to larger entities. However, the Department is proposing to give these small entities additional time to bring their web content and mobile apps into compliance with proposed § 35.200(b)(2). Specifically, small public entities and special district governments covered by proposed § 35.200(b)(2) will have three years after the publication of a final rule to make their web content and mobile apps compliant with the Department's proposed requirements. The Department believes this longer phase-in period would be prudent to allow small public entities and special district governments to properly allocate their personnel and financial resources in order to bring their web content and mobile apps into compliance with the Department's proposed requirements. However, the Department welcomes feedback on whether there are alternatives to delaying compliance requirements by a year that could better balance the needs of small public entities and the people with disabilities who live in those communities.

Proposed § 35.200(b)(2) also covers public entities that are special district governments. As previously noted, special district governments are governments that are authorized to provide a single function or a limited number of functions, such as a zoning or transit authority. As discussed above, proposed § 35.200 proposes different compliance dates according to the size of the population of the public entity, as calculated by the U.S. Census Bureau. The Department believes applying to special district governments the same compliance date as proposed for small public entities (*i.e.*, compliance in three years) may be appropriate for two reasons. First, because the U.S. Census Bureau does not provide population estimates for special district governments, these limited-purpose public entities would find it difficult to obtain population estimates that are objective and reliable in order to determine their duties under the proposed rule. Though some special district governments may estimate their total populations, these entities may use varying methodology to calculate population estimations, which may lead to confusion and inconsistency in the application of the proposed accessibility requirements. Second, although special district governments in some instances may serve a large population, unlike counties, cities, or townships with large populations that provide a wide range of online government services and programs and have large and varying budgets, special district governments are authorized to provide a single function or a limited number of functions (*e.g.*, to provide mosquito abatement or water and sewer services) and have more limited or specialized budgets. Therefore, proposed § 35.200(b)(2) extends the deadline for compliance for special district governments to three years, as it does for small public entities.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 9: How will the proposed compliance date affect small public entities? Are there technical or budget constraints that small public entities would face in complying with this rule, such that a longer phase-in period is appropriate?

Question 10: How will the proposed compliance date affect people with disabilities, particularly in rural areas?

Question 11: How should the Department define "small public entity"? Should categories of small public entities other than those already delineated in this proposed rule be subject to a different WCAG 2.1 conformance level or compliance date?

Question 12: Should the Department consider factors other than population size, such as annual budget, when establishing different or tiered compliance requirements? If so, what should those factors be, why are they more appropriate than population size, and how should they be used to determine regulatory requirements?

Limitations

The proposed rule sets forth the limitations on public entities' obligations to comply with the specific requirements of this proposed rule. For example, where it would impose an undue financial and administrative burden to comply with WCAG 2.1 (or part of WCAG 2.1), public entities would not be required to remove their web content and mobile apps, forfeit their web presence, or otherwise undertake changes that would be unduly burdensome. Further, as proposed in § 35.200(b), the web and mobile app accessibility requirements would not require any public entity to take actions that would result in a fundamental alteration in the nature of a service, program, or activity.

In circumstances where officials of a public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or their designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with proposed § 35.200(b) would result in such an alteration or such

burdens, a public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity. For more information, see the discussion below regarding limitations on obligations under proposed § 35.204.

Captions for Live-Audio Content

WCAG 2.1 Level AA Success Criterion 1.2.4 requires synchronized captions for live-audio content. The intent of this success criterion is to "enable people who are deaf or hard of hearing to watch *real-time* presentations. Captions provide the part of the content available via the audio track. Captions not only include dialogue, but also identify who is speaking and notate sound effects and other significant audio."[112] Modern live captioning often can be created with the assistance of technology, such as by assigning captioners through Zoom or other conferencing software, which integrates captioning with live meetings.

The Department proposes to apply the same compliance date to all of the WCAG 2.1 Level AA success criteria, including live-audio captioning requirements. As noted above, this would allow for three years after publication of the final rule for small public entities and special district governments to comply, and two years for large public entities. The Department believes this approach is appropriate for several reasons. First, the Department understands that technology utilizing live-audio captioning has developed in recent years and continues to develop. In addition, the COVID-19 pandemic moved a significant number of formerly in-person meetings, activities, and other gatherings to online settings, many of which incorporated live-audio captioning. As a result of these developments, live-audio captioning has become even more critical for individuals with certain types of disabilities to participate fully in civic life. And while the Department believes that the two- and three-year periods described above afford a

[112] W3C®, *Captions (Live), Understanding SC 1.2.4, Understanding WCAG 2.0: A Guide to Understanding and Implementing WCAG 2.0*, http://www.w3.org/TR/UNDERSTANDING-WCAG20/media-equiv-real-time-captions.html [https://perma.cc/NV74-U77R] (emphasis in original).

sufficient amount of time for public entities to allocate resources towards live-audio captioning, public entities have the option to demonstrate that compliance with any success criterion would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

Though at least one country that has adopted WCAG 2.0 Level AA as its standard for web accessibility has exempted entities from having to comply with the live-audio captioning requirements,[113] the Department does not believe this approach is appropriate or necessary under the current circumstances, given the current state of live-audio captioning technology and the critical need for live-audio captioning for people with certain types of disabilities to participate more fully in civic life. Further, the Department believes that the state of live-audio captioning technology has advanced since 2016 when Canada made the decision to exempt entities from the live-audio captioning requirements.[114] However, the Department is interested in learning more about compliance capabilities. Accordingly, the Department poses several questions for commenters about the development of live-audio captioning technology and the Department's proposed requirement.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 13: Should the Department consider a different compliance date for the captioning of live-audio content in synchronized media or exclude some public entities from the requirement? If so, when should compliance with this success criterion be required and why? Should there be a different compliance date for different types or sizes of public entities?

Question 14: What types of live-audio content do public entities and small public entities post? What has been the cost for providing live-audio captioning?

---

[113] *See* W3C®, *Canada* (last updated Feb. 9, 2017), https://www.w3.org/WAI/policies/canada/ [https://perma.cc/W2DS-FAE9].
[114] *See id.*

§ 35.201 Exceptions

This rule would require public entities to make their web content and mobile apps accessible. However, the Department believes it may be appropriate in some situations for certain content to be excepted from compliance with the technical requirements of this proposed rule. The Department has heard a range of views on this issue, including that a title II regulation should not include any exceptions because the compliance limitations for undue financial and administrative burdens would protect public entities from any unrealistic requirements. On the other hand, the Department has also heard that exceptions are necessary to avoid substantial burdens on public entities. The Department also expects that such exceptions may help public entities avoid uncertainty about whether they need to ensure accessibility in situations where it might be extremely difficult. After consideration of the public's views and after its independent assessment, the Department is proposing the following exceptions and poses questions for public feedback. The Department is interested in feedback about whether these proposed exceptions would relieve the burden on public entities, and also how these proposed exceptions would impact people with disabilities.

The Department is proposing exceptions from coverage—subject to certain limitations—for the following seven categories of web content: (1) archived web content; (2) preexisting conventional electronic documents; (3) web content posted by third parties on a public entity's website; (4) third-party web content linked from a public entity's website; (5) course content on a public entity's password-protected or otherwise secured website for admitted students enrolled in a specific course offered by a public postsecondary institution; (6) class or course content on a public entity's password-protected or otherwise secured website for students enrolled, or parents of students enrolled, in a specific class or course at a public elementary or secondary school; and (7) conventional electronic documents that are about a specific individual, their property, or their account and that are password-protected or otherwise secured. Additionally, there are certain limitations to these exceptions—situations in which the otherwise excepted content still must be

made accessible. This proposed rule's exceptions as well as the limitations on those exceptions are explained below.

Archived Web Content

Public entities' websites can often include a significant amount of archived web content, which may contain information that is outdated, superfluous, or replicated elsewhere. The Department's impression is that generally, this historic information is of interest to only a small segment of the general population. Still, the information may be of interest to some members of the public, including some individuals with disabilities, who are conducting research or are otherwise interested in these historic documents. The Department is aware and concerned, however, that based on current technologies, public entities would need to expend considerable resources to retroactively make accessible the large quantity of historic or otherwise outdated information available on public entities' websites. Thus, proposed § 35.201(a) provides an exception from the web access requirements of proposed § 35.200 for web content that meets the definition of "archived web content" in proposed § 35.104. As mentioned previously, proposed § 35.104 defines "archived web content" as "web content that (1) is maintained exclusively for reference, research, or recordkeeping; (2) is not altered or updated after the date of archiving; and (3) is organized and stored in a dedicated area or areas clearly identified as being archived." The archived web content exception allows public entities to keep and maintain historic web content, while utilizing their resources to make accessible the many up-to-date materials that people need to currently access public services or to participate in civic life.

The Department notes that under this exception, 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. The exception focuses narrowly on content that satisfies all three of the criteria necessary to qualify as "archived web content," namely content that is maintained exclusively for reference, research, or recordkeeping; is not altered or updated after the date of archiving; and is organized and stored in a dedicated area or areas clearly identified as

being archived. If any one of those criteria is not met, the content does not qualify as "archived web content." For example, if an entity maintains content for any purpose other than reference, research, or recordkeeping—such as for purposes of offering a current service, program, or activity—then that content would not fall within the exception, even if an entity labeled it as "archived." Similarly, an entity would not be able to circumvent its accessibility obligations by rapidly moving newly posted content that is maintained for a purpose other than reference, research, or recordkeeping, or that the entity continues to update, from a non-archived section of its website to an archived section.

Though the Department proposes that archived web content be excepted from coverage under this rule, if an individual with a disability requests that certain archived web content be made accessible, public entities generally have an existing obligation to make these materials accessible in a timely manner and free of charge.[115]

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 15: How do public entities currently manage content that is maintained for reference, research, or recordkeeping?

Question 16: What would the impact of this exception be on people with disabilities?

Question 17: Are there alternatives to this exception that the Department should consider, or additional limitations that should be placed on this exception? How would foreseeable advances in technology affect the need for this exception?

Preexisting Conventional Electronic Documents

As discussed in the section-by-section analysis for proposed § 35.104 above, the Department is proposing to add a definition for "conventional electronic documents." Specifically, the proposed definition provides that the term "conventional electronic documents"

[115] *See, e.g.*, 28 CFR 35.130(b)(7)(i), (f), 35.160(b)(2).

"means web content or content in mobile apps that is in the following electronic file formats: portable document formats ('PDF'), word processor file formats, presentation file formats, spreadsheet file formats, and database file formats." This list of conventional electronic documents is intended to be an exhaustive list of file formats, rather than an open-ended list.

Proposed § 35.201(b) provides that "conventional electronic documents created by or for a public entity that are available on a public entity's website or mobile app before the date the public entity is required to comply with this rule" do not have to comply with the accessibility requirements of proposed § 35.200, "unless such documents are currently used by members of the public to apply for, gain access to, or participate in a public entity's services, programs, or activities."

The Department's research indicates that many websites of public entities contain a significant number of conventional electronic documents, such as comprehensive reports on water quality containing text, images, charts, graphs, and maps. The Department expects that many of these conventional electronic documents are in PDF format, but many conventional electronic documents are formatted as word processor files (*e.g.*, Microsoft Word files), presentation files (*e.g.*, Apple Keynote or Microsoft PowerPoint files), spreadsheet files (*e.g.*, Microsoft Excel files), and database files (*e.g.*, FileMaker Pro or Microsoft Access files).

Because of the substantial number of conventional electronic documents that public entities make available on their websites and mobile apps, and because of the difficulty of remediating some complex types of information and data 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 by members of the public to access the public entity's services, programs, or activities. For example, if before the date a public entity is required to comply with this rule, the entity's website contains a series of out-of-date PDF reports on local COVID-19 statistics, those reports generally need not

comply with WCAG 2.1. 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 date the entity was required to comply with this rule generally do not need to comply with WCAG 2.1. As the public entity posts new reports going forward, however, those reports must comply with WCAG 2.1. This approach is expected to reduce the burdens on public entities.

This exception is subject to a limitation: the exception does not apply to any preexisting documents that are currently used by members of the public to apply for, access, or participate in the public entity's services, programs, or activities. In referencing "documents that are currently used," the Department intends to cover documents that are used by members of the public at any given point in the future, not just at the moment in time when this rule is published. This limitation includes documents that provide instructions or guidance. For example, a public entity must not only make an application for a business license accessible, but it must also make accessible other materials that may be needed to obtain the license, complete the application, understand the process, or otherwise take part in the program, such as business license application instructions, manuals, sample knowledge tests, and guides, such as "Questions and Answers" documents.

The Department notes that a public entity may not rely on this "preexisting conventional electronic documents" exception to circumvent its accessibility obligations by, for example, converting all of its web content to conventional electronic document formats and posting those documents before the date the entity must comply with this rule. As noted above, any documents that are currently used by members of the public to access the public entity's services, programs, or activities would need to be accessible as defined under this rule, even if those documents were posted before the date the entity was required to comply with the rule. And if an entity updates a conventional electronic document after the date the entity must comply with this rule, that document would no longer qualify as "preexisting," and would thus need to be made accessible

as defined under this rule.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 18: Where do public entities make conventional electronic documents available to the public? Do public entities post conventional electronic documents anywhere else on the web besides their own websites?

Question 19: Would this "preexisting conventional electronic documents" exception reach content that is not already excepted under the proposed archived web content exception? If so, what kinds of additional content would it reach?

Question 20: What would the impact of this exception be on people with disabilities? Are there alternatives to this exception that the Department should consider, or additional limitations that should be placed on this exception? How would foreseeable advances in technology affect the need for this exception?

Third-Party Web Content

Public entities' websites can include or link to many different types of third-party content (*i.e.*, content that is created by someone other than the public entity), some of which is posted by or on behalf of public entities and some of which is not. For example, many public entities' websites contain third-party web content like maps, calendars, weather forecasts, news feeds, scheduling tools, reservations systems, or payment systems. Third-party web content may also be posted by members of the public on a public entity's online message board or other sections of the public entity's website that allow public comment. In addition to third-party content that is posted on the public entity's own website, public entities frequently provide links to third-party content (*i.e.*, links on the public entity's website to content that has been posted on another website that does not belong to the public entity), including links to outside resources and information.

The Department has heard a variety of views regarding whether or not public entities should be responsible for ensuring that third-party content on their websites and linked third-party content are accessible. Some maintain that public entities cannot be held accountable for third-party content on their websites, and without such an exception, public entities may have to remove the content altogether. Others have suggested that public entities should not be responsible for third-party content and linked content unless that content is necessary for individuals to access public entities' services, programs, or activities. The Department has also previously heard the view, however, that public entities should be responsible for third-party content because an entity's reliance on inaccessible third-party content can prevent people with disabilities from having equal access to the public entity's own services, programs, and activities. Furthermore, boundaries between web content generated by a public entity and by a third party are often difficult to discern.

At this time, the Department is proposing the following two limited exceptions related to third-party content in §§ 35.201(c)–(d) and is posing questions for public comment.

Section 35.201(c): Web Content Posted by a Third Party on a Public Entity's Website

Proposed § 35.201(c) provides an exception to the web accessibility requirements of proposed § 35.200 for "web content posted by a third party that is available on a public entity's website."

The Department is proposing this exception in recognition of the fact that individuals other than a public entity's agents sometimes post content on a public entity's website. For example, members of the public may sometimes post on a public entity's online message boards, wikis, social media, or other web forums, many of which are unregulated, interactive spaces designed to promote the sharing of information and ideas. Members of the public may post frequently, at all hours of the day or night, and a public entity may have little or no control over the content posted. In some cases, a public entity's website may include posts from third parties dating back many years, which are likely of limited, if any, relevance today. Because public

entities often lack control over this third-party content, it may be challenging (or impossible) for them to make it accessible. Moreover, because this third-party content may be outdated or unrelated to a public entity's services, programs, and activities, there may be only limited benefit to requiring public entities to make this content accessible. Accordingly, the Department believes it is appropriate to create an exception for this content. However, while this exception applies to web content posted by third parties, it does not apply to the tools or platforms used to post third-party content on a public entity's website such as message boards—these tools and platforms are subject to the rule's technical standard.

This exception applies to, among other third-party content, documents filed by third parties in administrative, judicial, and other legal proceedings that are available on a public entity's website. This example helps to illustrate why the Department believes this exception is necessary. Many public entities have either implemented or are developing an automated process for electronic filing of documents in administrative, judicial, or legal proceedings in order to improve efficiency in the collection and management of these documents. Courts and other public entities receive high volumes of filings in these sorts of proceedings each year. The majority of these documents are submitted by third parties—such as a private attorney in a legal case or other members of the public—and often include appendices, exhibits, or other similar supplementary materials that may be difficult to make accessible.

However, the Department notes that public entities have existing obligations under title II of the ADA to ensure the accessibility of their services, programs, and activities.[116] Accordingly, for example, if a person with a disability is a party to a case and requests access to inaccessible filings submitted by a third party in a judicial proceeding that are available on a State court's website, the court may need to timely provide those filings in an accessible format. Similarly, public entities may need to provide reasonable modifications to ensure that people with disabilities have access to the entities' services, programs, and activities. For example, if a

[116] 28 CFR 35.130, 35.160.

hearing had been scheduled in the proceeding referenced above, the court might need to postpone the hearing if it did not provide the filings in an accessible format to the requestor in sufficient time for the requestor to review the documents before the scheduled hearing.

Sometimes a public entity itself chooses to post content created by a third party on its website. This exception does not apply to content posted by the public entity itself, even if the content was originally created by a third party. For example, many public entities post third-party content on their websites, such as calendars, scheduling tools, maps, reservations systems, and payment systems that were developed by an outside technology company. To the extent a public entity chooses to rely on third-party content on its website, it must select third-party content that meets the requirements of proposed § 35.200.

Moreover, a public entity may not delegate away its obligations under the ADA.[117] Accordingly, if a public entity relies on a contractor or another third party to post content on the entity's behalf, the public entity retains responsibility for ensuring the accessibility of that content. For example, if a public housing authority relies on a third-party contractor to collect applications for placement on a waitlist for housing, the public housing authority must ensure that this content is accessible.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 21: What types of third-party web content can be found on websites of public entities and, how would foreseeable advances in technology affect the need for creating an exception for this content? To what extent is this content posted by the public entities themselves, as opposed to third parties? To what extent do public entities delegate to third parties to post on their behalf? What degree of control do public entities have over content

[117] *See* 28 CFR 35.130(b)(1) (prohibiting discrimination through a contractual, licensing, or other arrangement that would provide an aid, benefit, or service to a qualified individual with a disability that is not equal to that afforded others).

posted by third parties, and what steps can public entities take to make sure this content is accessible?

Question 22: What would the impact of this exception be on people with disabilities?

Section 35.201(d): Third-Party Content Linked from a Public Entity's Website

Proposed § 35.201(d) provides that a public entity is not responsible for the accessibility of third-party web content linked from the public entity's website "unless the public entity uses the third-party web content to allow members of the public to participate in or benefit from the public entity's services, programs, or activities." Many public entities' websites include links to other websites that contain information or resources in the community offered by third parties that are not affiliated with the public entity. Clicking on one of these links will take an individual away from the public entity's website to the website of a third party. Typically, the public entity has no control over or responsibility for a third party's web content or the operation of the third party's website. Accordingly, the public entity has no obligation to make the content on a third party's website accessible. For example, if for purely informational or reference purposes, a public university posts a series of links to restaurants and tourist attractions that members of the public may wish to visit in the surrounding area, the public entity is not responsible for ensuring the websites of those restaurants and tourist attractions are accessible.

Proposed § 35.201(d) generally allows public entities to provide relevant links to third-party web content that may be helpful without making them responsible for the third party's web content. However, the Department's title II regulation prohibits discrimination in the provision of any aid, benefit, or service provided by public entities directly or through contractual, licensing, or other arrangements.[118] Therefore, if the public entity uses the linked third-party web content to allow members of the public to participate in or benefit from the public entity's services, programs, or activities, then the public entity must ensure it only links to third-party web content that complies with the web accessibility requirements of proposed § 35.200. This

[118] 28 CFR 35.130(b)(1).

approach is consistent with public entities' obligation to make all of their services, programs, or activities accessible to the public, including those it provides through third parties.[119] For example, a public entity that links to online payment processing websites offered by third parties to accept the payment of fees, parking tickets, or taxes must ensure that the third-party web content it links to in order for members of the public to pay for the public entity's services, programs, or activities complies with the web accessibility requirements of proposed § 35.200. In other words, if a public entity links to a website for a third-party payment service that the entity allows the public to use to pay taxes, the public entity would be using that third-party web content to allow members of the public to participate in its tax program, and the linked third-party web content would need to comply with this rule. Otherwise, the public entity's tax program would not be equally accessible to people with disabilities. Similarly, if a public entity links to a third-party website that processes applications for benefits or requests to sign up for classes or programs the public entity offers, the public entity is using the third party's linked web content to allow members of the public to participate in the public entity's services, programs, or activities, and the public entity must thus ensure that it links to only third-party web content that complies with the requirements of proposed § 35.200.

The Department believes this approach strikes the appropriate balance between acknowledging that public entities may not have the ability to make third parties' web content accessible and recognizing that public entities do have the ability to choose to use only third-party content that is accessible when that content is used to allow members of the public to participate in or benefit from the public entity's services, programs, or activities.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

---

[119] *See* 28 CFR 35.130(b)(1)(ii) (prohibiting discrimination through a contractual, licensing, or other arrangement that would provide an aid, benefit, or service to a qualified individual with a disability that is not equal to that afforded others).

Question 23: Do public entities link to third-party web content to allow members of the public to participate in or benefit from the entities' services, programs, or activities? If so, to what extent does the third-party web content that public entities use for that purpose comply with WCAG 2.1 Level AA?

Question 24: What would the impact of this exception be on people with disabilities and how would foreseeable advances in technology affect the need for this exception?

External Mobile Apps

Many public entities use mobile apps that are developed, owned, and operated by third parties, such as private companies, to allow the public to access the entity's services, programs, or activities. We will refer to these mobile apps as "external mobile apps."[120] One example of an external mobile app is the "ParkMobile" app, a private company's app that some cities direct the public to in order to pay for parking in the city.[121] In addition, members of the public use mobile apps that are operated by private companies, like the "SeeClickFix" app, to submit non-emergency service requests such as fixing a pothole or a streetlight.[122]

At this time, the Department is not proposing to create an exception for public entities' use of external mobile apps (*e.g.*, mobile apps operated by a third party) from proposed § 35.200. We expect that public entities are using external mobile apps mostly to offer the entities' services, programs, and activities, such that creating an exception for these apps would not be appropriate.

Accordingly, the Department is seeking comment and additional information on external mobile apps that public entities use to offer their services, programs, and activities. Please

---

[120] In this document, we refer to web content that is created by someone other than a public entity as "third-party web content." We note that we do not use "third-party" to describe mobile apps here to avoid confusion. It is our understanding that the term "third-party mobile app" appears to have a different meaning in the technology industry and some understand "a third-party app" as an application that is provided by a vendor other than the manufacturer of the device or operating system provider. *See* Alice Musyoka, *Third-Party Apps*, *Webopedia* (Aug. 4, 2022), *https://www.webopedia.com/definitions/third-party-apps/* [*https://perma.cc/SBW3-RRGN*].

[121] *See ParkMobile Parking App*, *https://parkmobile.io* [*https://perma.cc/G7GY-MDFE*].

[122] *See Using Mobile Apps in Government*, IBM Ctr. for the Bus. of Gov't, at 32–33 (2015), *https://www.businessofgovernment.org/sites/default/files/Using%20Mobile%20Apps%20in%20Government.pdf* [*https://perma.cc/248X-8A6C*].

provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 25: What types of external mobile apps, if any, do public entities use to offer their services, programs, and activities to members of the public, and how accessible are these apps? While the Department has not proposed an exception to the requirements proposed in § 35.200 for public entities' use of external mobile apps, should the Department propose such an exception? If so, should this exception expire after a certain time, and how would this exception impact persons with disabilities?

Password-Protected Class or Course Content of Public Educational Institutions

Proposed § 35.201(e) and (f) provide exceptions for public educational institutions' password-protected class or course content where there is no student with a disability enrolled in the class or course (or, in the elementary and secondary school context, where there is no student enrolled in the class or course who has a parent with a disability) who needs the password-protected content to be made accessible.

Public educational institutions, like many other public institutions, use their websites to provide a variety of services, programs, and activities to members of the public. Many of the services, programs, and activities on these websites are available to anyone. The content on these websites can include such general information as the academic calendar, enrollment process, admission requirements, school lunch menus, school policies and procedures, and contact information. Under the proposed regulation, all such services, programs, or activities available to the public on the websites of public educational institutions must comply with the requirements of proposed § 35.200 unless the content is subject to a proposed exception.

In addition to the information available to the general public on the websites of public educational institutions, the websites of many schools, colleges, and universities also make certain services, programs, and activities available to a discrete and targeted audience of

individuals (*e.g.*, students taking particular classes or courses or, in the elementary or secondary school context, parents of students enrolled in particular classes or courses). This information is often provided using a Learning Management System ("LMS") or similar platform that can provide secure online access and allow the exchange of educational and administrative information in real time. LMSs allow public educational institutions and their faculty and staff to exchange and share information with students and parents about classes or courses and students' progress. For example, faculty and staff can create and collect assignments, post grades, provide real-time feedback, and share subject-specific media, documents, and other resources to supplement and enrich the curriculum. Parents can track their children's attendance, assignments, grades, and upcoming class events. To access the information available on these platforms, students (and parents in the elementary and secondary school context) generally must obtain a password, login credentials, or some equivalent from the educational institution. The discrete population that has access to this content may not always include a person with a disability. For example, a student who is blind may not have enrolled in a psychology course, or a parent who is deaf may not have a child enrolled in a particular ninth-grade world history class.

The Department's regulatory proposal would require that the LMS platforms that public elementary and secondary schools, colleges, and universities use comply with proposed § 35.200. However, subject to limitations, the Department is proposing an exception for password-protected class or course content. Thus, while the LMS platform would need to be accessible, class or course content (such as syllabi and assigned readings) posted on the password-protected LMS platform would not need to be, except in specified circumstances. Specifically, the content available on password-protected websites for specific classes or courses would generally be excepted from the requirements of proposed § 35.200 unless a student is enrolled in that particular class or course and the student (or the parent[123] in the elementary and

[123] The Department notes that the term "parent" as used throughout proposed § 35.201(f) is intended to include biological, adoptive, step-, or foster parents; legal guardians; or other individuals recognized under Federal or State law as having parental rights.

secondary school context) would be unable, because of a disability, to access the content posted on the password-protected website for that class or course. Thus, once a student with a disability (or a student in an elementary or secondary school with a parent with a disability) is enrolled in a particular class or course, the content available on the password-protected website for the specific class or course would need to be made accessible in accordance with certain compliance dates discussed below. This may include scenarios in which a student with a disability (or, in the elementary and secondary school context, a student whose parent has a disability) preregisters, enrolls, or transfers into a class or course or acquires a disability during the term, or when a school otherwise identifies a student in a class or course (or their parent in the elementary and secondary school context) as having a disability. The educational institution would generally be required to make the course content for that class or course fully compliant with all WCAG 2.1 Level AA success criteria, not merely the criteria related to that student or parent's disability. This will ensure that course content becomes more accessible to all students over time. In addition, the Department expects that it will be more straightforward for public entities to comply with WCAG 2.1 Level AA as a whole, rather than attempting to identify and isolate the WCAG 2.1 success criteria that relate to a specific student, and then repeating that process for a subsequent student with a different disability.

The Department proposes this exception for class and course content based on its understanding that it would be burdensome to require public educational institutions to make accessible all of the documents, videos, and other content that many instructors upload and assign via LMS websites. For instance, instructors may scan hard-copy documents and then upload them to LMS sites as conventional electronic documents. In some instances, these documents comprise multiple chapters from books and may be hundreds of pages long. Similarly, instructors may upload videos or other multimedia content for students to review. The Department believes that making all of this content accessible when students with disabilities (or their parents in the elementary and secondary context) are not enrolled in the class or course may

be onerous for public educational institutions, but the Department also understands that it is critical for students and parents with disabilities to have access to needed course content.

The Department believes its proposal provides a balanced approach by ensuring access to students with disabilities (or, in elementary and secondary school settings, parents with disabilities) enrolled in the educational institution, while recognizing that there are large amounts of class or course content that may not immediately need to be accessed by individuals with disabilities because they have not enrolled in a particular class or course.

By way of analogy and as an example, under the Department's existing title II regulations, public educational institutions are not required to proactively provide accessible course handouts to all students in a course, but they are required to do so for a student with a disability who needs them to access the course content. The Department envisions the requirements proposed here as an online analogue: while public educational institutions are not required to proactively make all password-protected course handouts accessible, for example, once an institution knows that a student with a disability is enrolled in a course and, accordingly, needs the content to be made accessible, the institution must do so. The institution must also comply with its obligations to provide accessible course content under all other applicable laws, including the IDEA.

The Department appreciates that some public educational institutions may find it preferable or more effective to make all class or course content accessible from the outset without waiting for a student with a disability (or, in the elementary and secondary school context, a student with a parent with a disability) to enroll in a particular class or course, and nothing in this rule would prevent public educational institutions from taking that approach. Even if public educational institutions do not take this approach, the Department expects that those institutions will likely need to take steps in advance so that they are prepared to make all class or course content for a particular course accessible within the required timeframes discussed below when there is an enrolled student with a disability (or, in the elementary and

secondary school context, an enrolled student with a parent with a disability) who needs access to that content.

Because the nature, operation, and structure of public elementary and secondary schools are different from those of public colleges and universities, the proposed regulation sets forth separate requirements for the two types of institutions.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following question.

Question 26: Are there particular issues relating to the accessibility of digital books and textbooks that the Department should consider in finalizing this rule? Are there particular issues that the Department should consider regarding the impact of this rule on libraries?

Public Postsecondary Institutions: Password-Protected Web Content

In proposed § 35.201(e), the Department is considering an exception to the requirements proposed in § 35.200 for public postsecondary institutions, subject to two limitations. This exception would provide that "course content available on a public entity's password-protected or otherwise secured website for admitted students enrolled in a specific course offered by a public postsecondary institution" would not need to comply with the web accessibility requirements of proposed § 35.200 unless one of the two limitations described below applies. As used in this context, "admitted students" refers to students who have applied to, been accepted by, and are enrolled in a particular educational institution. These students include both matriculated students (*i.e.*, students seeking a degree) and non-matriculated students (*i.e.*, continuing education students or non-degree-seeking students). As noted above, this exception applies only to password-protected or otherwise secured content. Content may be otherwise secured if it requires some process of authentication or login to access the content.

The exception is not intended to apply to password-protected content for classes or courses that are made available to the general public, or a subset thereof, without enrolling at a

particular educational institution. Such classes or courses generally only require limited, if any, registration to participate. These types of classes or courses may sometimes be referred to as Massive Open Online Courses, or MOOCs. Because access to the content on these password-protected websites is not limited to a discrete student population within an educational institution but is instead widely available to the general public—sometimes without limits as to enrollment—any individual, including one with a disability, may enroll or participate at almost any time. Under these circumstances, the public entity must make such class or course content accessible from the outset of the class or course regardless of whether a student with a disability is known to be participating. The Department is interested in the public's feedback on this exception, and in particular the impact it may have on public institutions' continued use of MOOCs.

The phrase "enrolled in a specific course" as used in proposed § 35.201(e) limits the exception to password-protected course content for a particular course, at a particular time, during a particular term. For example, if a university offers a 20th-Century Irish Literature course at 10 a.m. that meets on Mondays, Wednesdays, and Fridays for the fall semester of the 2029–2030 academic year, the exception would apply to the password-protected course content for that course, subject to the limitations discussed below.

The proposed exception in § 35.201(e) would not apply to non-course content on the public entity's password-protected website that is generally available to all admitted students. For example, forms for registering for class, applications for meal plans or housing, academic calendars, and announcements generally made available to all students enrolled in the postsecondary institution would all be required to comply with proposed § 35.200. In addition, if a public postsecondary institution made course content for specific courses available to all admitted students on a password-protected website, regardless of whether students had enrolled in that specific course, the exception would not apply, even if such content was only made available for a limited time, such as within a set time frame for course shopping.

Sections 35.201(e)(1)–(2): Limitations to the Exception for Password-Protected Course Content for Specific Courses

As noted previously, there are two important limitations to the general exception for course content on password-protected websites of postsecondary institutions in proposed § 35.201(e); both limitations apply to situations in which an admitted student with a disability is enrolled in a particular course at a postsecondary institution and the student, because of a disability, would be unable to access the content on the password-protected website for the specific course. The phrase "the student, because of a disability, would be unable to access" is meant to make clear that these limitations are not triggered merely by the enrollment of a student with a disability, but instead they are triggered by the enrollment of a student whose disability would make them unable to access the content on the password-protected course website. These limitations would also be triggered by the development or identification of such a disability while a student is enrolled, or the realization that a student's disability makes them unable to access the course content during the time that they are enrolled. The phrase "unable to access" does not necessarily mean a student has no access at all. Instead, the phrase "unable to access" is intended to cover situations in which a student's disability would limit or prevent their ability to equally access the relevant content.

The provisions set forth in the limitations to the exception are consistent with longstanding obligations of public entities under title II of the ADA. Public entities are already required to make appropriate reasonable modifications and ensure effective communication, including by providing the necessary auxiliary aids and services to students with disabilities, under the current title II regulation. It is the public educational institution, not the student, that is responsible for ensuring that it is meeting these obligations. Such institutions, therefore, should be proactive in addressing the access needs of admitted students with disabilities, including those who would be unable to access inaccessible course content on the web. This also means that when an institution knows that a student with a disability is unable to access inaccessible content,

the institution should not expect or require that the student first attempt to access the information and be unable to do so before the institution's obligation to make the content accessible arises.

Correspondingly, when an institution has notice that such a student is enrolled in a course, all of the content available on the password-protected website for that course must be made accessible in compliance with the accessibility requirements of proposed § 35.200. The difference between the two limitations to the exception to proposed § 35.201(e) is the date that triggers compliance. The triggering event is based on when the institution knew, or should have known, that such a student with a disability would be enrolled in a specific course and would be unable to access the content available on the password-protected website.

The application of the limitation in proposed § 35.201(e)(1) and (e)(2), discussed in detail below, is contingent upon the institution having notice both that a student with a disability is enrolled in a specific course and that the student cannot access the course content because of their disability. Once an institution is on notice that a student with a disability is enrolled in a specific course and that the student's disability would render the student unable to access the content available on the password-protected website for the specific course, the password-protected course content for that course must be made accessible within the time frames set forth in proposed § 35.201(e)(1) and (e)(2), which are described in greater detail below.

The first proposed limitation to the exception for postsecondary institutions, proposed § 35.201(e)(1), would require that "if a public entity is on notice that an admitted student with a disability is pre-registered in a specific course offered by a public postsecondary institution and that the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific course," then "all content available on the public entity's password-protected or otherwise secured website for the specific course must comply with the requirements of § 35.200 by the date the academic term begins for that course offering. New content added throughout the term for the course must also comply with the requirements of § 35.200 at the time it is added to the website." Students may

register for classes and make accessibility requests ahead of the start of the term—often during the previous term. The institution therefore knows, or should know, that a student with a disability has registered for a particular course or notified the school that content must be made accessible for a particular course. This provision would ensure that students with disabilities have timely access to and equal opportunity to benefit from content available on a password-protected website for their particular courses.

The second proposed limitation to the exception for postsecondary institutions, proposed § 35.201(e)(2), applies to situations in which "a public entity is on notice that an admitted student with a disability is enrolled in a specific course offered by a public postsecondary institution after the start of the academic term, and that the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific course." In this instance, unlike proposed § 35.201(e)(1), the postsecondary institution is not on notice until after the start of the academic term that a student is enrolled in a particular course and that the student, because of a disability, would be unable to access the content on the password-protected course website. In such circumstances, all content available on the public entity's password-protected website for the specific course must comply with the requirements of proposed § 35.200 within five business days of such notice. This second limitation would apply to situations in which students have not pre-registered in a class, such as when students enroll in a class during the add/drop period, or where waitlisted or transfer students enroll in a class at the start of, or during, the academic term. This second limitation to the exception for postsecondary institutions would also apply to situations in which the institution was not on notice that the enrolled student had a disability and would be unable to access online course content until after the academic term began—because, for example, the student newly enrolled at the institution or was recently diagnosed with a disability.

In proposing the five-day remediation requirement in this limitation, the Department is attempting to strike the appropriate balance between providing postsecondary institutions with a

reasonable opportunity to make the content on the password-protected or otherwise secured website accessible and providing individuals with disabilities full and timely access to this information that has been made available to all other students in the course. The Department believes five days provides a reasonable opportunity to make the relevant content accessible in most cases, subject to the general limitations under proposed § 35.204, entitled "Duties." However, the Department is interested in the public's feedback and data on whether this remediation requirement provides a reasonable opportunity to make the relevant content accessible, and whether a shorter or longer period would be more appropriate in most cases.

If, for example, a public college offers a specific fall semester course, a student with a disability pre-registers for it and, because of disability, that student would be unable to access the content available on the password-protected website for that course, all content available on the institution's password-protected website for that specific course must comply with the requirements of proposed § 35.200 by the date the academic semester begins for the fall semester (according to the first limitation). If, instead, that same student does not enroll in that particular course until two days after the start of the fall semester, all content available on the institution's password-protected or otherwise secured website for that specific course must comply with the requirements of proposed § 35.200 within five business days of notice that a student with a disability is enrolled in that particular course and, because of disability, would be unable to access the content (according to the second limitation).

The exception applies to course content such as conventional electronic documents, multimedia content, or other course material "available" on a public entity's password-protected or otherwise secured website. As such, the two limitations apply when that content is made "available" to students with disabilities enrolled in a specific course who are unable to access course content. Although a professor may load all of their course content on the password-protected website at one time, they may also stagger the release of particular content to their students at various points in time during the term. It is when this content is made available to

students that it must be made accessible in compliance with proposed § 35.200.

The two limitations to the exception for password-protected course content state that the limitations apply whenever "the student, because of a disability, would be unable to access the content available on the public entity's password-protected website for the specific course." Pursuant to longstanding obligations of public entities under title II of the ADA, the public postsecondary institution must continue to take other steps necessary to timely make inaccessible course content accessible to an admitted student with a disability during the five-day period proposed in the second limitation, unless doing so would result in a fundamental alteration or undue financial and administrative burden. This could include timely providing alternative formats, a reader, or a notetaker for the student with a disability, or providing other auxiliary aids and services that enable the student with a disability to participate in and benefit from the services, programs, and activities of the public entity while the public entity is making the course content on the password-protected website accessible.

Once the obligation is triggered to make password-protected course content accessible for a specific course, the obligation is ongoing for the duration of the course (*i.e.*, the obligation is not limited to course content available at the beginning of the term). Rather, all web content newly added throughout the remainder of the student's enrollment in the course must also be accessible at the time it is made available to students. Furthermore, once a public postsecondary institution makes conventional electronic documents, multimedia content, or other course material accessible in accordance with the requirements of proposed § 35.201(e)(1) or (e)(2), the institution must maintain the accessibility of that specific content as long as that content is available to students on the password-protected course website, in compliance with the general accessibility requirement set forth in proposed § 35.200. However, new content added later, when there is no longer a student with a disability who is unable to access inaccessible web content enrolled in that specific course, would not need to be made accessible because that course-specific web content would once again be subject to the exception, unless and until

another student with a disability is enrolled in that course.

With regard to third-party content linked to from a password-protected or otherwise secured website for a specific course, the exception and limitations set forth in proposed § 35.201(d) apply to this content, even when a limitation under proposed § 35.201(e)(1) or (e)(2) has been triggered requiring all the content available to students on a password-protected website for a specific course to be accessible. Accordingly, third-party web content to which a public entity provides links for informational or resource purposes is not required to be accessible; however, if the postsecondary institution uses the third-party web content to allow members of the public to participate in or benefit from the institution's services, programs, or activities, then the postsecondary institution must ensure it links to third-party web content that complies with the web accessibility requirements of proposed § 35.200. For example, if a postsecondary institution requires students to use a third-party website it links to on its password-protected course website to complete coursework, then the third-party web content must be accessible.

The Department believes that this approach strikes a proper balance of providing necessary and timely access to course content, while not imposing burdens where web content is currently only utilized by a population of students without relevant disabilities, but it welcomes public feedback on whether alternative approaches might strike a more appropriate balance.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 27: How difficult would it be for public postsecondary institutions to comply with this rule in the absence of this exception?

Question 28: What would the impact of this exception be on people with disabilities?

Question 29: How do public postsecondary institutions communicate general information and course-specific information to their students?

Question 30: Do public postsecondary institutions commonly provide parents access to

password-protected course content?

Question 31: The proposed exception and its limitations are confined to content on a password-protected or otherwise secured website for students enrolled in a specific course. Do public postsecondary institutions combine and make available content for particular groups of students (e.g., newly admitted students or graduating seniors) using a single password-protected website and, if so, should such content be included in the exception?

Question 32: On average, how much content and what type of content do password-protected course websites of postsecondary institutions contain? Is there content posted by students or parents? Should content posted by students or parents be required to be accessible and, if so, how long would it take a public postsecondary institution to make it accessible?

Question 33: How long would it take to make course content available on a public entity's password-protected or otherwise secured website for a particular course accessible, and does this vary based on the type of course? Do students need access to course content before the first day of class? How much delay in accessing online course content can a student reasonably overcome in order to have an equal opportunity to succeed in a course, and does the answer change depending on the point in the academic term that the delay occurs?

Question 34: To what extent do public postsecondary institutions use or offer students mobile apps to enable access to password-protected course content? Should the Department apply the same exceptions and limitations to the exceptions under proposed § 35.201(e) and (e)(1)-(2), respectively, to mobile apps?

Question 35: Should the Department consider an alternative approach, such as requiring that all newly posted course content be made accessible on an expedited time frame, while adopting a later compliance date for remediating existing content?

Public Elementary and Secondary Schools: Password-Protected Web Content

In proposed § 35.201(f), the Department is considering an exception to the requirements proposed in § 35.200 for public elementary and secondary schools that would provide, subject to

four limitations, that "class or course content available on a public entity's password-protected or otherwise secured website for students enrolled, or parents of students enrolled, in a specific class or course at a public elementary or secondary school" would not need to comply with the web accessibility requirements of proposed § 35.200.

Because parents of students in elementary and secondary schools have greater rights, roles, and responsibilities with regard to their children and their children's education than in the postsecondary education setting, and because these parents typically interact with such schools much more often and in much greater depth and detail, parents are expressly included in both the general exception for password-protected web content in proposed § 35.201(f) and its limitations.[124] Parents use password-protected websites to access progress reports and grades, track homework and long-term project assignments, and interact regularly with their children's teachers and administrators.

Proposed exception § 35.201(f) provides that "class or course content available on a public entity's password-protected or otherwise secured website for students enrolled, or parents of students enrolled, in a specific class or course offered by a public elementary or secondary school" does not need to comply with the accessibility requirements of proposed § 35.200 unless and until a student is enrolled in that particular class or course and either the student or the parent would be unable, because of a disability, to access the content available on the password-protected website. As used in this context, "enrolled . . . in a specific class or course" limits the exception to password-protected class or course content for a particular class or course during a particular academic term. For example, content on a password-protected website for students, and parents of students, in a specific fifth-grade class would not need to be made accessible unless a student enrolled, or the parent of a student enrolled, in the class that term would be unable, because of a disability, to access the content on the password-protected website.

[124] The Department notes that the term "parent" as used throughout proposed § 35.201(f) is intended to include biological, adoptive, step-, or foster parents; legal guardians; or other individuals recognized under Federal or State law as having parental rights.

The proposed exception in § 35.201(f) is not intended to apply to password-protected content that is available to all students or their parents in a public elementary or secondary school. Content on password-protected websites that is not limited to students enrolled, or parents of students enrolled, in a specific class or course, but instead is available to all students or their parents at the public elementary or secondary school is not subject to the exception. For example, a school calendar available on a password-protected website to which all students or parents at a particular elementary school are given a password would not be subject to the exception for password-protected web content for a specific class or course. It would, therefore, need to comply with the requirements of proposed § 35.200.

Sections 35.201(f)(1)–(4): Limitations to the Exception for Password-Protected Class or Course Content

There are four critical limitations to the general exception in proposed § 35.201(f) for public elementary and secondary schools' class or course content. These limitations are identical to those discussed above in the postsecondary context, except that they arise not only when a school is on notice that a student with a disability is enrolled in a particular class or course and cannot access content on the class or course's password-protected website because of their disability, but also when the same situation arises for a parent with a disability. The discussion above of the limitations in the postsecondary context applies with equal force here, and a shorter discussion of the limitations in the elementary and secondary context follows. However, the Department acknowledges that there are existing legal frameworks specific to the public elementary and secondary education context which are described further in this section.

The first limitation, in proposed § 35.201(f)(1), addresses situations in which the public entity is on notice before the beginning of the academic term that a student with a disability is pre-registered in a specific class or course offered by a public elementary or secondary school, and the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific class or course.

In such circumstances, all content available on the public entity's password-protected website for the specific class or course must comply with the requirements of proposed § 35.200 by the date the term begins for that class or course. New content added throughout the term for the class or course must also comply with the requirements of proposed § 35.200 at the time it is added to the website.

Similarly, the second limitation, proposed § 35.201(f)(2), addresses situations in which the pre-registered student's parent has a disability. Proposed § 35.201(f)(2) applies when the public entity is on notice that a student is pre-registered in a public elementary or secondary school's class or course, and that the student's parent needs the content to be accessible because of a disability that inhibits access to the content available on the password-protected website for the specific class or course. In such circumstances, all content available on the public entity's password-protected website for the specific class or course must comply with the requirements of proposed § 35.200 by the date the school term begins for that class or course. New content added throughout the term for the class or course must also comply with the requirements of proposed § 35.200 at the time it is added to the website.

The third and fourth limitations to the exception for class or course content on password-protected websites for particular classes or courses at elementary and secondary schools are similar to the first and second limitations but have different triggering events. These limitations apply to situations in which a student is enrolled in a public elementary or secondary school's class or course after the term begins, or when a school is otherwise not on notice until after the term begins that there is a student or parent with a disability who is unable to access class or course content because of their disability. The third limitation, in proposed § 35.201(f)(3), would apply once a public entity is on notice that "a student with a disability is enrolled in a public elementary or secondary school's class or course after the term begins and that the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific class or course." In

such circumstances, all content available on the public entity's password-protected or otherwise secured website for the specific class or course must comply with the requirements of proposed § 35.200 within five business days of such notice. New content added throughout the term for the class or course must also comply with the requirements of proposed § 35.200 at the time it is added to the website.

Proposed § 35.201(f)(4), the fourth limitation, applies the same triggering event as in proposed § 35.201(f)(3) to situations in which the student's parent has a disability. Proposed § 35.201(f)(4) would apply once a public entity is on notice that a student is enrolled in a public elementary or secondary school's class or course after the term begins, and that the student's parent needs the content to be accessible because of a disability that would inhibit access to the content available on the public entity's password-protected website for the specific class or course. In such circumstances, all content available on the public entity's password-protected or otherwise secured website for the specific class or course must comply with the requirements of proposed § 35.200 within five business days of such notice. New content added throughout the term for the class or course must also comply with the requirements of proposed § 35.200 at the time it is added to the website.

The procedures for enrollment in the public elementary or secondary school context likely vary from the postsecondary context. Unlike in postsecondary institutions, public elementary and secondary schools generally have more autonomy and authority regarding student placement in a particular class or course. The student or parent generally does not control placement in a particular class or course. To the extent a parent or student has such autonomy or authority, the application of the limitations in proposed § 35.201(f)(1) through (f)(4) is contingent on whether the public elementary or secondary school knows, or should know, that a student with a disability is enrolled, or a parent with a disability has a child enrolled, in a particular class or course, and that the student or parent would be unable to access the class or course content because of their disability.

Regardless of what process a school follows for notification of enrollment, accessibility obligations for password-protected class or course content come into effect once a school is on notice that materials need to be made accessible under these provisions. For example, some schools that allow students to self-select the class or course in which they enroll may require students with disabilities to notify their guidance counselor or the special education coordinator each time they have enrolled in a class or course. With respect to parents, some schools may have a form that parents fill out as part of the process for enrolling a student in a school, or in a particular class or course in that school, indicating that they (the parent) are an individual with a disability who, because of their disability, needs auxiliary aids or services. Other schools may publicize the schools' responsibility to make class or course content accessible to parents with disabilities and explain the process for informing the school that they cannot access inaccessible websites. Under this rule, regardless of the process a school follows, once the public elementary or secondary school is on notice, the password-protected class or course content for that class or course must be made accessible within the time frames set forth in proposed § 35.201(f)(1) through (f)(4). We note that the ADA would prohibit limiting assignment of students with disabilities only to classes for which the content has already been made accessible.[125]

The Department emphasizes that in the public elementary and secondary school context a variety of Federal laws include robust protections for students with disabilities, and this rule is intended to build on, but not to supplant, those protections for students with disabilities. Public schools that receive Federal financial assistance already must ensure they comply with obligations under other statutes such as the IDEA and section 504 of the Rehabilitation Act, including the Department of Education's regulations implementing those statutes. The IDEA and section 504 already include affirmative obligations that covered public schools work to identify children with disabilities, regardless of whether the schools receive notice from a parent

[125] *See* 28 CFR 35.130.

that a student has a disability, and provide a Free Appropriate Public Education (FAPE).[126] The Department acknowledges that educational entities likely already employ procedures under those frameworks to identify children with disabilities and assess their educational needs. Under the IDEA and section 504, schools have obligations to identify students with the relevant disabilities that would trigger the limitations in proposed § 35.201(f)(1) through (f)(4). The proposed rule would add to and would not supplant the already robust framework for identifying children with disabilities and making materials accessible. The language used in the educational exceptions and their limitations is not intended to replace or conflict with those existing procedures. In other words, regardless of the means by which schools identify students with the relevant disabilities here, including procedures developed to comply with the IDEA and section 504 regulations, once a school is on notice that either the student or the parent has a disability and requires access because of that disability, the limitation is triggered. Further, schools should not alter their existing practices to wait for notice because of this rule—this rule does not modify existing requirements that schools must follow under other statutes such as the IDEA and section 504.

Federal and State laws may have a process for students who are newly enrolled in a school and those who are returning to have their educational program or plan reviewed and revised annually. This generally would include a determination of the special education, related services, supplementary aids and services, program modifications, and supports from school personnel that the student needs, which under the ADA would be similar to the terms "modifications" and "auxiliary aids and services." However, once the school is on notice that the student has a disability and requires access because of the disability, those processes and procedures cannot be used to delay or avoid compliance with the time frames set forth in proposed § 35.201(f)(1) through (f)(4). For example, if a school knows that a student who is blind is enrolled at the school for the first time over the summer, the school is then on notice that,

[126] *See* 20 U.S.C. 1412; 34 CFR 104.32–104.33.

in accordance with proposed § 35.201(f)(1), the content on the school's password-protected website for the class or course to which the school assigns the student must be accessible in compliance with the requirements of proposed § 35.200 by the date the term begins, regardless of the timeframes for evaluation or the review or development of an Individualized Education Program or section 504 Plan.

As in the postsecondary context, the Department believes that these exceptions and limitations strike a proper balance of providing necessary and timely access to class or course content, while not imposing burdens where class or course content is currently only used by a population of students and parents without relevant disabilities, but it welcomes public feedback on whether alternative approaches might strike a more appropriate balance.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 36: How difficult would it be for public elementary and secondary schools to comply with this rule in the absence of this exception?

Question 37: What would the impact of this exception be on people with disabilities?

Question 38: How do elementary and secondary schools communicate general information and class- or course-specific information to students and parents?

Question 39: The proposed exception and its limitations are confined to content on a password-protected or otherwise secured website for students enrolled, or parents of students enrolled, in a specific class or course. Do public elementary or secondary schools combine and make available content for all students in a particular grade or certain classes (e.g., all 10th-graders in a school taking chemistry in the same semester) using a single password-protected website and, if so, should such content be included in the exception?

Question 40: Do elementary and secondary schools have a system allowing a parent with a disability to provide notice of their need for accessible class or course content?

Question 41: On average, how much content and what type of content do password-protected websites of public elementary or secondary school courses contain? Is there content posted by students or parents? Should content posted by students or parents be required to be accessible and, if so, how long would it take a public elementary or secondary school to make it accessible?

Question 42: How long would it take to make class or course content available on a public entity's password-protected or otherwise secured website for the particular class or course accessible, and does this vary based on the type of course? Do parents and students need access to class or course content before the first day of class? How much delay in accessing online class or course content can a student reasonably overcome in order to have an equal opportunity to succeed in a course, and does the answer change depending on the point in the academic term that the delay occurs?

Question 43: To what extent do public elementary or secondary schools use or offer students or parents mobile apps to enable access to password-protected class or course content? Should the Department apply the same exceptions and limitations to the exceptions under proposed § 35.201(f) and (f)(1)-(4), respectively, to mobile apps?

Question 44: Should the Department consider an alternative approach, such as requiring that all newly posted course content be made accessible on an expedited timeframe, while adopting a later compliance date for remediating existing content?

Individualized, Password-Protected Documents

In proposed § 35.201(g), the Department is considering an exception to the accessibility requirements of proposed § 35.200 for web-based "[c]onventional electronic documents that are: (1) about a specific individual, their property, or their account; and (2) password-protected or otherwise secured."

Many public entities use the web to provide access to digital versions of documents for their customers, constituents, and other members of the public. For example, some public utility

companies provide a website where customers can log in and view a PDF version of their latest bill. Similarly, many public hospitals offer a virtual platform where healthcare providers can send digital versions of test results and scanned documents to their patients. The Department anticipates that a public entity could have many such documents. The Department also anticipates that making conventional electronic documents accessible in this context may be difficult for public entities, and that in many instances, the individuals who are entitled to view a particular individualized document will not need an accessible version. However, some public entities might be able to make some types of documents accessible relatively easily after they make the template they use to generate these individualized documents accessible. To help better understand whether these assumptions are accurate, the Department asks questions for public comment below about what kinds of individualized, conventional electronic documents public entities make available, how public entities make these documents available to individuals, and what experiences individuals have had in accessing these documents.

This proposed exception is expected to reduce the burdens on public entities. The Department expects that making such documents accessible for every individual, regardless of whether they need such access, could be too burdensome and would not deliver the same benefit to the public as a whole as if the public entity were to focus on making other types of web content accessible. The Department expects that it would generally be more impactful for public entities to focus resources on making documents accessible for those individuals who actually need the documents to be accessible. It is the Department's understanding that making conventional electronic documents accessible is generally a more time- and resource- intensive process than making other types of web content accessible. As discussed below, public entities must still provide accessible versions of individualized, password-protected conventional electronic documents in a timely manner when those documents pertain to individuals with disabilities. This approach is consistent with the broader title II regulatory framework. For example, public utility companies are not required to provide accessible bills to all customers.

Instead, the companies need only provide accessible bills to those customers who need them because of a disability.

This exception is limited to "conventional electronic documents" as defined in proposed § 35.104. This exception would, therefore, not apply in a case where a public entity makes individualized information available in formats other than a conventional electronic document. For example, if a public utility makes individualized bills available on a password-protected web platform as HTML content (rather than a PDF), that content would not be subject to this exception. Such bills, therefore, would need to be made accessible in accordance with proposed § 35.200. On the other hand, if a public entity makes individualized bills available on a password-protected web platform in PDF form, that content would be excepted from the accessibility requirements of proposed § 35.200, subject to the limitation discussed in further detail below.

This exception also only applies when the content is individualized for a specific person or their property or account. Examples of individualized documents include medical records or notes about a specific patient, receipts for purchases (like a parent's receipt for signing a child up for a recreational sports league), utility bills concerning a specific residence, or Department of Motor Vehicles records for a specific person or vehicle. Content that is broadly applicable or otherwise for the general public (*i.e.*, not individualized) is not subject to this exception. For instance, a PDF notice that explains an upcoming rate increase for all utility customers and is not addressed to a specific customer would not be subject to this exception. Such a general notice would not be subject to this exception even if it were attached to or sent with an individualized letter, like a bill, that is addressed to a specific customer.

Finally, this exception applies only to password-protected or otherwise secured content. Content may be otherwise secured if it requires some process of authentication or login to access the content. Unless subject to another exception, conventional electronic documents that are on a public entity's general, public web platform would not be excepted.

This proposed exception for individualized, password-protected conventional electronic documents has certain limitations. While the exception is meant to alleviate the burden on public entities of making all individualized, password-protected or otherwise secured conventional electronic documents generally accessible, people with disabilities must still be able to access information from documents that pertain to them. An accessible version of these documents must be provided in a timely manner.[127] A public entity might also need to make reasonable modifications to ensure that a person with a disability has equal access to its services, programs, or activities.[128] For example, if a person with a disability requests access to an inaccessible bill from a county hospital, the hospital may need to extend the payment deadline and waive any late fees if the hospital does not provide the bill in an accessible format in sufficient time for the person to review the bill before payment is due.

As in other situations involving a public entity's effective communication obligations—for example, when providing an American Sign Language interpreter—this exception and its accompanying limitation would also apply to the parent, spouse, or companion of the person receiving the public entity's services in appropriate circumstances.[129]

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 45: What kinds of individualized, conventional electronic documents do public entities make available and how are they made available (e.g., on websites or mobile apps)? How difficult would it be to make such documents accessible? How do people with disabilities currently access such documents?

Question 46: Do public entities have adequate systems for receiving notification that an

---

[127] *See* 28 CFR 35.160(b)(2).
[128] *See* 28 CFR 35.130(b)(7)(i).
[129] *See ADA Requirements: Effective Communication*, U.S. Dep't of Just. (updated Feb. 28, 2020), https://www.ada.gov/effective-comm.htm [https://perma.cc/W9YR-VPBP].

individual with a disability requires access to an individualized, password-protected conventional electronic document? What kinds of burdens do these notification systems place on individuals with disabilities and how easy are these systems to access? Should the Department consider requiring a particular system for notification or a particular process or timeline that entities must follow when they are on notice that an individual with a disability requires access to such a document?

Question 47: What would the impact of this exception be on people with disabilities?

Question 48: Which provisions of this rule, including any exceptions (e.g., the exceptions for individualized, password-protected conventional electronic documents and content posted by a third party), should apply to mobile apps?

§ 35.202 Conforming Alternate Versions

Generally, to meet the WCAG 2.1 standard, a web page must satisfy one of the defined levels of conformance—in the case of this proposed rule, Level AA.[130] However, WCAG 2.1 allows for the creation of a "conforming alternate version," a separate web page that is accessible, up-to-date, contains the same information and functionality as the inaccessible web page, and can be reached via a conforming page or an accessibility-supported mechanism.[131] The ostensible purpose of a "conforming alternate version" is to provide individuals with relevant disabilities access to the information and functionality provided to individuals without relevant disabilities, albeit via a separate vehicle.

Having direct access to an accessible web page provides the best user experience for many individuals with disabilities, and it may be difficult for public entities to reliably maintain conforming alternate versions, which must be kept up to date. Accordingly, the W3C® explains that providing a conforming alternate version of a web page is intended to be a "fallback option

---

[130] *See* W3C®, *Web Content Accessibility Guidelines 2.1* (June 5, 2018), https://www.w3.org/TR/WCAG21/#cc1 [https://perma.cc/ZL6N-VQX4].

[131] *See* W3C®, *Web Content Accessibility Guidelines 2.1, Conforming Alternate Version* (June 5, 2018), https://www.w3.org/TR/WCAG21/#dfn-conforming-alternate-version [https://perma.cc/5NJ6-UZPV].

for conformance to WCAG and the preferred method of conformance is to make all content directly accessible."[132] However, WCAG 2.1 does not explicitly limit the circumstances under which an entity may choose to create a conforming alternate version of a web page instead of making the web page directly accessible.

The Department is concerned that WCAG 2.1 can be interpreted to permit the development of two separate websites—one for individuals with relevant disabilities and another for individuals without relevant disabilities—even when doing so is unnecessary and when users with disabilities would have a better experience using the main web page. This segregated approach is concerning and appears inconsistent with the ADA's core principles of inclusion and integration.[133] The Department is also concerned that the creation of separate websites for individuals with disabilities may, in practice, result in unequal access to information and functionality. However, as the W3C® explains, certain limited circumstances may warrant the use of conforming alternate versions of web pages. For example, a conforming alternate version of a web page may be necessary when a new, emerging technology is used on a web page, but the technology is not yet capable of being made accessible, or when a website owner is legally prohibited from modifying the web content.[134]

Due to the concerns about user experience, segregation of users with disabilities, unequal access to information, and maintenance burdens discussed above, the Department is proposing to adopt a slightly different approach to "conforming alternate versions" than that provided under WCAG 2.1. Instead of permitting entities to adopt "conforming alternate versions" whenever they believe this is appropriate, proposed § 35.202 makes it clear that use of conforming

---

[132] *See* W3C®, *Understanding Conformance* (last updated Dec. 24, 2022), *https://www.w3.org/WAI/WCAG21/Understanding/conformance* [*https://perma.cc/Q2XU-K4YY*].

[133] *See, e.g.*, 42 U.S.C. 12101(a)(2) (finding that "society has tended to isolate and segregate individuals with disabilities"); 28 CFR 35.130(b)(1)(iv) (stating that public entities generally may not "[p]rovide different or separate aids, benefits, or services to individuals with disabilities . . . than is provided to others unless such action is necessary[.]"); 35.130(d) (requiring that public entities administer services, programs, and activities in "the most integrated setting appropriate").

[134] *See* W3C®, *Understanding WCAG 2.0* (Oct. 7, 2016), *https://www.w3.org/TR/UNDERSTANDING-WCAG20/conformance.html#uc-conforming-alt-versions-head* [*https://perma.cc/DV5L-RJUG*].

alternate versions of websites and web content to comply with the Department's proposed requirements in § 35.200 is permissible only where it is not possible to make websites and web content directly accessible due to technical limitations (*e.g.*, technology is not yet capable of being made accessible) or legal limitations (*e.g.*, web content is protected by copyright). Conforming alternate versions should be used rarely—when it is truly not possible to make the content accessible for reasons beyond the public entity's control. For example, a conforming alternate version would not be permissible due to technical limitations just because a town's web developer lacked the knowledge or training needed to make content accessible. By contrast, the town could use a conforming alternate version if its website included a new type of technology that it is not yet possible to make accessible, such as a specific kind of immersive virtual reality environment. Similarly, a town would not be permitted to claim a legal limitation because its general counsel failed to approve contracts for a web developer with accessibility experience. Instead, a legal limitation would apply when the inaccessible content itself could not be modified for legal reasons specific to that content, such as lacking the right to alter the content or needing to maintain the content as it existed at a particular time due to pending litigation. The Department believes this approach is appropriate because it ensures that, whenever possible, people with disabilities have access to the same web content that is available to people without disabilities. However, proposed § 35.202 does not prohibit public entities from providing alternate versions of web pages *in addition* to their accessible main web page to possibly provide users with certain types of disabilities a better experience.

In addition to allowing conforming alternate versions to be used where it is not possible to make websites and web content directly accessible due to technical or legal limitations, this proposed rulemaking also incorporates general limitations if public entities can demonstrate that full compliance with proposed § 35.200 would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.[135] If an action

[135] *See* proposed § 35.204.

would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible.[136] One way in which public entities could fulfill their obligation to provide the benefits or services to the maximum extent possible, in the rare instance when they can demonstrate that full compliance would result in a fundamental alteration or undue burden, is through creating conforming alternate versions.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 49: Would allowing conforming alternate versions due to technical or legal limitations result in individuals with disabilities receiving unequal access to a public entity's services, programs, and activities?

§ 35.203 Equivalent Facilitation

Proposed § 35.203 provides that nothing prevents a public entity from using designs, methods, or techniques as alternatives to those prescribed in the proposed regulation, provided that such alternatives result in substantially equivalent or greater accessibility and usability. The 1991 and 2010 ADA Standards for Accessible Design both contain an equivalent facilitation provision.[137] However, for purposes of proposed subpart H, the reason for allowing for equivalent facilitation is to encourage flexibility and innovation by public entities while still ensuring equal or greater access to web and mobile content. Especially in light of the rapid pace at which technology changes, this proposed provision is intended to clarify that public entities can use methods or techniques that provide equal or greater accessibility than this proposed rule would require. For example, if a public entity wanted to conform its website or mobile app to

[136] *See id.*
[137] *See* 28 CFR pt. 36, app. D, at 1000 (1991); 36 CFR pt. 1191, app. B at 329.

WCAG 2.1 Level AAA—which includes all the Level AA requirements plus some additional requirements for even greater accessibility—this provision makes clear that the public entity would be in compliance with this rule. A public entity could also choose to comply with this rule by conforming its website to WCAG 2.2 or WCAG 3.0, so long as the version and conformance level of those guidelines that the entity selects includes all of the WCAG 2.1 Level AA requirements. The Department believes that this proposed provision offers needed flexibility for entities to provide usability and accessibility that meet or exceed what this rule would require as technology continues to develop. The responsibility for demonstrating equivalent facilitation rests with the public entity.

§ 35.204 Duties

Section 35.204 sets forth the general limitations on the obligations under subpart H. Proposed § 35.204 provides that in meeting the accessibility requirements set out in this subpart, a public entity is not required to take any action that would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. These proposed limitations on a public entity's duty to comply with the proposed regulatory provisions mirror the fundamental alteration and undue burden compliance limitations currently provided in the title II regulation in 28 CFR 35.150(a)(3) (program accessibility) and 35.164 (effective communication), and the fundamental alteration compliance limitation currently provided in the title II regulation in 28 CFR 35.130(b)(7) (reasonable modifications in policies, practices, or procedures). These limitations are thus familiar to public entities.

Generally, the Department believes it would not constitute a fundamental alteration of a public entity's services, programs, or activities to modify web content or mobile apps to make them accessible, though the Department seeks the public's input on this view. Moreover, like the undue burden and fundamental alteration limitations in the title II regulation referenced above, proposed § 35.204 does not relieve a public entity of all obligations to individuals with disabilities. Although a public entity under this proposed rule is not required to take actions that

would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens, it nevertheless must comply with the requirements of this subpart to the extent that compliance does not result in a fundamental alteration or undue financial and administrative burdens. For instance, a public entity might determine that full WCAG 2.1 Level AA compliance would result in a fundamental alteration or undue financial and administrative burdens. However, this same public entity must then determine whether it can take any other action that would not result in such an alteration or such burdens, but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible. To the extent that the public entity can, it must do so. This may include the public entity's bringing its web content into compliance with some of the WCAG 2.1 Level A or Level AA success criteria.

It is the Department's view that most entities that choose to assert a claim that full compliance with the proposed web or mobile app accessibility requirements would result in undue financial and administrative burdens will be able to attain at least partial compliance. The Department believes that there are many steps a public entity can take to comply with WCAG 2.1 that should not result in undue financial and administrative burdens, depending on the particular circumstances.

In determining whether an action would result in undue financial and administrative burdens, all of a public entity's resources available for use in the funding and operation of the service, program, or activity should be considered. The burden of proving that compliance with proposed § 35.204 would fundamentally alter the nature of a service, program, or activity, or would result in undue financial and administrative burdens, rests with the public entity. As the Department has consistently maintained since promulgation of the title II regulation in 1991, the decision that compliance would result in a fundamental alteration or impose undue burdens must be made by the head of the public entity or their designee, and must be memorialized with a

written statement of the reasons for reaching that conclusion.[138] The Department has always recognized the difficulty public entities have in identifying the official responsible for this determination, given the variety of organizational structures within public entities and their components.[139] The Department has made clear 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."[140]

Where a public entity cannot bring web content or a mobile app into compliance without a fundamental alteration or an undue burden, it must take other steps to ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible.

Once a public entity has complied with the web or mobile app accessibility requirements set forth in subpart H, it is not required by title II of the ADA to make further modifications to its web or mobile app content to accommodate an individual who is still unable to access, or does not have equal access to, the web or mobile app content due to their disability. However, it is important to note that compliance with this ADA title II rule will not alleviate title II entities of their distinct employment-related obligations under title I of the ADA. The Department realizes that the proposed rule is not going to meet the needs of and provide access to every individual with a disability, but believes that setting a consistent and enforceable web accessibility standard that meets the needs of a majority of individuals with disabilities will provide greater predictability for public entities, as well as added assurance of accessibility for individuals with disabilities.

Fully complying with the web and mobile app accessibility requirements set forth in subpart H means that a public entity is not required by title II of the ADA to make any further modifications to its web or mobile app content. This is consistent with the approach the

---

[138] 28 CFR 35.150(a)(3), 35.164.
[139] 28 CFR pt. 35, app. B, at 708 (2022).
[140] *Id.*

Department has taken in the context of physical accessibility, where a public entity is not required to exceed the applicable design requirements of the ADA Standards if certain wheelchairs or other power-driven mobility devices exceed those requirements.[141] However, if an individual with a disability, on the basis of disability, cannot access or does not have equal access to a service, program, or activity through a public entity's web content or mobile app that conforms to WCAG 2.1 Level AA, the public entity still has an obligation to provide the individual an alternative method of access to that service, program, or activity unless the public entity can demonstrate that alternative methods of access would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.[142] Thus, just because an entity is in full compliance with this rule's web or mobile app accessibility standard does not mean it has met all of its obligations under the ADA or other applicable laws. Even though no further changes to a public entity's web or mobile app content are required by title II of the ADA, a public entity must still take other steps necessary to ensure that an individual with a disability who, on the basis of disability, is unable to access or does not have equal access to the service, program, or activity provided by the public entity through its accessible web content or mobile app can obtain access through other effective means. The entity must still satisfy its general obligations to provide effective communication, reasonable modifications, and an equal opportunity to participate in or benefit from the entity's services using methods other than its website or mobile app.[143] Of course, an entity may also choose to further modify its web or mobile app content to make that content more accessible or usable than this subpart requires.

The public entity must determine on a case-by-case basis how best to accommodate those individuals who cannot access the service, program, or activity provided through the public entity's fully compliant web content or mobile app. A public entity should refer to

---

[141] *See* 28 CFR pt. 35, app. A, at 626 (2022).
[142] *See, e.g.*, 28 CFR 35.130(b)(1)(ii), (b)(7), 35.160.
[143] *See* 28 CFR 35.130(b)(1)(ii), (b)(7), 35.160.

28 CFR 35.160 (effective communication) to determine its obligations to provide individuals with disabilities with the appropriate auxiliary aids and services necessary to afford them an equal opportunity to participate in, and enjoy the benefits of, the public entity's service, program, or activity. A public entity should refer to 28 CFR 35.130(b)(7) (reasonable modifications) to determine its obligations to provide reasonable modifications in policies, practices, or procedures to avoid discrimination on the basis of disability. It is helpful to provide individuals with disabilities with information about how to obtain the modifications or auxiliary aids and services they may need. The Department therefore strongly recommends that the public entity provide notice to the public on how an individual who cannot use the web content or mobile app because of a disability can request other means of effective communication or reasonable modifications in order to access the public entity's services, programs, or activities that are being provided through the web content or mobile app. The Department also strongly recommends that the public entity provide an accessibility statement that tells the public how to bring web or mobile app accessibility problems to the public entity's attention, and that public entities consider developing and implementing a procedure for reviewing and addressing any such issues raised. For example, a public entity is encouraged to provide an email address, accessible link, accessible web page, or other accessible means of contacting the public entity to provide information about issues individuals with disabilities may encounter accessing web or mobile app content or to request assistance.[144] Providing this information will help public entities to ensure that they are satisfying their obligations to provide equal access, effective communication, and reasonable modifications.

V. Additional Issues for Public Comment

A. Measuring Compliance

As discussed above, the Department is proposing to adopt specific standards for public

[144] *See* W3C®, *Developing an Accessibility Statement* (Mar. 11, 2021), *https://www.w3.org/WAI/planning/statements/* [*https://perma.cc/85WU-JTJ6*].

entities to use to ensure that their web content and mobile apps are accessible to individuals with disabilities. Proposed § 35.200(a) requires public entities to ensure that any web content and mobile apps that they make available to members of the public or use to offer services, programs, and activities to members of the public are readily accessible to and usable by individuals with disabilities. Proposed § 35.200(b) sets forth the specific technical requirements in WCAG 2.1 Level AA with which public entities must comply unless compliance results in a fundamental alteration in the nature of a service, program, or activity or undue financial and administrative burdens. Now that the Department is proposing requiring public entities to comply with a specific technical standard for web accessibility, it seeks to craft a framework for determining when an entity has complied with that standard. The framework will ensure the full and equal access to which individuals with disabilities are entitled, while setting forth obligations that will be achievable for public entities.

1. Existing Approaches to Defining and Measuring Compliance

a. Federal and International Approaches

The Department is aware of two Federal agencies that have implemented requirements for complying with technical standards for web accessibility. Each agency has taken a different approach to defining what it means to comply with its regulation. As discussed above, for Federal agency websites covered by section 508, the Access Board requires conformance with WCAG 2.0 Level A and Level AA.[145] In contrast, in its regulation on accessibility of air carrier websites, the Department of Transportation took a tiered approach that did not require all web content to conform to a technical standard before the first compliance date.[146] Instead, the Department of Transportation required those web pages associated with "core air travel services and information" to conform to a technical standard first, while other types of content could come into conformance later.[147] The Department of Transportation also required air carriers to

[145] 36 CFR 1194.1; *id.* part 1194, app. A (E205.4).
[146] 14 CFR 382.43(c)(1).
[147] *Id.*

consult with members of the disability community to test, and obtain feedback about, the usability of their websites.[148]

International laws appear to have taken different approaches to evaluating compliance, though it is unclear which, if any, would be feasible within the system of government in the United States and the Department's authority under the ADA. For example, the European Union has crafted a detailed monitoring methodology that specifies protocols for member States to sample, test, and report on accessibility of government websites and mobile apps.[149] Canada has established a reporting framework for the specific Federal departments covered by its web accessibility standard and may impose a range of corrective actions, depending on how conformant a website is with a technical standard, measured as a percentage.[150] New Zealand has developed a self-assessment methodology for government agencies that combines automated and manual testing and requires agencies to conduct a detailed risk assessment and develop a plan for addressing nonconformance over time.[151] In the United Kingdom, a government agency audits a sample of public sector websites and mobile apps (*i.e.*, websites and mobile apps of central government, local government organizations, some charities, and some other non-governmental organizations) every year, using both manual and automated testing, following a priority order for auditing that is based on the "social impact (for example size of population covered, or site or service usage) and complaints received."[152] The auditing agency then sends a

---

[148] *Id.* 382.43(c)(2).
[149] *Commission Implementing Decision (EU) 2018/1524* (Dec. 10, 2018), https://eur-lex.europa.eu/eli/dec_impl/2018/1524/oj [https://perma.cc/5M7B-SVP9].
[150] Government of Canada, *Standard on Web Accessibility* (Aug. 1, 2011), https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=23601&section=html [https://perma.cc/ZU5D-CPQ7].
[151] New Zealand Government, *2017 Web Standards Self-Assessments Report* (July 2018), https://www.digital.govt.nz/dmsdocument/97-2017-web-standards-self-assessments-report/html [https://perma.cc/3TQ3-2L9L]; New Zealand Government, *Web Standards Risk Assessment* (Oct. 19, 2020), https://www.digital.govt.nz/standards-and-guidance/nz-government-web-standards/risk-assessment/ [https://perma.cc/N3GJ-VK7X]; New Zealand Government, *About the Web Accessibility Standard* (Mar. 3, 2022), https://www.digital.govt.nz/standards-and-guidance/nz-government-web-standards/web-accessibility-standard-1-1/about-2/ [https://perma.cc/GPR4-QJ29].
[152] United Kingdom, *Understanding accessibility requirements for public sector bodies* (Aug. 22, 2022), https://www.gov.uk/guidance/accessibility-requirements-for-public-sector-websites-and-apps; United Kingdom, *Public sector website and mobile application accessibility monitoring* (Nov. 1, 2022), https://www.gov.uk/guidance/public-sector-website-and-mobile-application-accessibility-monitoring. A Perma archive link was unavailable for these citations.

report to the public entity, requires the entity to fix accessibility issues within 12 weeks, and refers the matter to an enforcement agency after that time frame has passed and the website or app has been retested.[153]

b. State Governments' Approaches

Within the United States, different public entities have taken different approaches to measuring compliance with a technical standard under State laws. For example, Florida,[154] Illinois,[155] and Massachusetts[156] seem to simply require conformance, without specifying how compliance will be measured or how entities can demonstrate compliance with this requirement. California requires the director of each State agency to certify compliance with technical standards and post a certification form on the agency's website.[157] California also provides assessment checklists for its agencies and guidelines for sampling and testing, including recommending that agencies use analytics data to conduct thorough testing on frequently used pages.[158] Minnesota requires compliance with a technical standard, provides accessibility courses and other resources, and notes the importance of both automated and manual testing; it also states that "[f]ew systems are completely accessible," and that "[t]he goal is continuous improvement."[159] Texas law requires State agencies to, among other steps, comply with a technical standard, conduct tests with one or more accessibility validation tools, establish an accessibility policy that includes criteria for compliance monitoring and a plan for remediation of noncompliant items, and establish goals and progress measurements for accessibility.[160] Texas

---

[153] United Kingdom, *Public sector website and mobile application accessibility monitoring* (Dec. 6, 2021), https://www.gov.uk/guidance/public-sector-website-and-mobile-application-accessibility-monitoring. A Perma archive link was unavailable for this citation.
[154] Fla. Stat. 282.603 (2023).
[155] 30 Ill. Comp. Stat. 587 (2023); *Illinois Information Technology Accessibility Act* (Mar. 18, 2022), https://www.dhs.state.il.us/page.aspx?item=32765. A Perma archive link was unavailable for the second citation.
[156] Commonwealth of Massachusetts, *Enterprise Information Technology Accessibility Policy* (July 28, 2021), https://www.mass.gov/policy-advisory/enterprise-information-technology-accessibility-policy [https://perma.cc/8293-HXUA].
[157] Cal. Gov't Code 11546.7.
[158] Department of Rehabilitation, *Website Accessibility Requirements and Assessment Checklists*, https://www.dor.ca.gov/Home/WebRequirementsAndAssessmentChecklists [https://perma.cc/JAS9-Q343].
[159] Minnesota IT Services, *Guidelines for Accessibility and Usability of Information Technology Standard* (Apr. 17, 2018), https://mn.gov/mnit/assets/accessibility-guidelines-2018_tcm38-336072.pdf [https://perma.cc/Q9P5-NGMT].
[160] 1 Tex. Admin. Code 206.50, 213.21.

has also developed an automated accessibility scanning tool and offers courses on web accessibility.[161]

c. Other Approaches to Defining and Measuring Compliance

The Department understands that businesses open to the public, which are subject to title III of the ADA, have, like public entities, taken different approaches to web accessibility. These approaches may include collecting feedback from users with disabilities about inaccessible websites or mobile apps or relying on external consultants to conduct periodic testing and remediation. Other businesses may have developed detailed internal policies and practices that require comprehensive automated and manual testing, including testing by people with disabilities, on a regular basis throughout their digital content development and quality control processes. Some businesses have also developed policies that include timelines for remediation of any accessibility barriers; these policies may establish different remediation time frames for different types of barriers.

2. Challenges of Defining and Measuring Compliance with this Rule

The Department recognizes that it must move forward with care, weighing the interests of all stakeholders, so that as accessibility for individuals with disabilities is improved, innovation in the use of the web or mobile apps by public entities is not hampered. The Department appreciates that the dynamic nature of web content and mobile apps presents unique challenges in measuring compliance. For example, as discussed further below, this type of content can change frequently and assessment of conformance can be complex or subjective. Therefore, the Department is seeking public input on issues concerning how compliance should be measured, which the Department plans to address in its final rule.

The Department is concerned that the type of compliance measures it currently uses in the ADA, such as the one used to assess compliance with the ADA Standards, may not be

---

[161] Texas Department of Information Resources, *EIR Accessibility Tools & Training*, *https://dir.texas.gov/electronic-information-resources-eir-accessibility/eir-accessibility-tools*-training [*https://perma.cc/A5LC-ZTST*].

practical in the web or mobile app context. Public entities must ensure that newly designed and constructed State and local government facilities are in full compliance with the scoping and technical specifications in the ADA Standards unless full compliance is structurally impracticable.[162] The ADA Standards require newly constructed State or local government buildings to be 100 percent compliant at all times with the applicable provisions, subject to limited compliance limitations. However, unlike buildings, public entities' websites and mobile apps are dynamic and interconnected, and can contain a large amount of complex, highly technical, varied, and frequently changing content. Accordingly, the Department is concerned that a compliance measure similar to the one used in the other area where it has adopted specific technical standards may not work well for web content or mobile apps.

If web content or mobile apps are updated frequently, full conformance with a technical standard after the compliance date may be difficult or impossible to maintain at all times. The Department is aware that even when a public entity understands its accessibility obligations, is committed to maintaining an accessible website, and intends to conform with WCAG 2.1 Level AA, the dynamic and complex nature of web content is such that full conformance may not always be achieved successfully. The Department is seeking public comment about whether a different framework for measuring compliance may be needed to address the difficulty that public entities may have in achieving 100 percent conformance with a technical standard, 100 percent of the time. Though title II does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs,[163] it is possible that websites or mobile apps could be undergoing maintenance or repair almost constantly, such that this compliance limitation is not readily transferrable to web or mobile app accessibility.

The Department also appreciates the serious impact that a failure to comply with WCAG 2.1 Level AA can have on people with disabilities. For example, if a person who has limited

[162] 28 CFR 35.151(a), (c).
[163] *See* 28 CFR 35.133(b).

manual dexterity and uses keyboard navigation is trying to apply for public benefits, and the "submit" button on the form is not operable using the keyboard, that person will not be able to apply independently for benefits online, even if the rest of the website is fully accessible. A person who is blind and uses a screen reader may not be able to make an appointment at a county health clinic if an element of the clinic's appointment calendar is not coded properly. Nearly all of a public entity's web content could conform with the WCAG 2.1 Level AA success criteria, but one instance of nonconformance could still prevent someone from accessing services on the website. People with disabilities must be able to access the many important government services, programs, and activities that are offered through web content and mobile apps on equal terms, without sacrificing their privacy, dignity, or independence. The Department's concern about the many barriers to full and equal participation in civic life that inaccessible web content can pose for people with disabilities is an important motivating factor behind the Department's decision to propose requiring compliance with a technical standard. By clarifying what compliance with a technical standard means, the Department seeks to enhance the impact this requirement will have on the daily lives of people with disabilities by helping public entities to understand their obligations, thereby increasing compliance.

An additional challenge to specifying what it means to comply with a technical standard for web accessibility is that, unlike the physical accessibility required by the ADA Standards, which can be objectively and reliably assessed with one set of tools, different automated testing tools may provide different assessments of the same website's accessibility. For example, using different web browsers with different testing tools or assistive technology can yield different results. Assessments of a website's or mobile app's accessibility may change frequently over time as the web content or mobile app changes. Automated testing tools also may report purported accessibility errors inaccurately. For example, an automated testing tool may report an error related to insufficient color contrast because the tool has not correctly detected the foreground and background colors. These tools will also provide an incomplete assessment of a

website's accessibility because automated tools cannot assess conformance with certain WCAG success criteria, such as whether color is being used as the only visual means of conveying information or whether all functionality of the content is operable through a keyboard interface.[164] Additional, manual testing is required to conduct a full assessment of conformance, which can take time and often relies on sampling. Furthermore, the Department understands that a person's experiences of web or mobile app accessibility may vary depending on what assistive technology or other types of hardware or software they are using. Accordingly, the Department is considering what the appropriate measure for determining compliance with the web and mobile app accessibility requirements should be.

The Department believes that a more nuanced definition of compliance might be appropriate because some instances of nonconformance with WCAG success criteria may not impede access to the services, programs, or activities offered through a public entity's web content or mobile app. For example, even if a county park fails to provide alt text on an image of the scenic views at the park, a person who is using a screen reader could still reserve a picnic area successfully, so long as the website also includes text about any amenities shown in the photo. If the contrast between the text and background colors used for permit application instructions deviates by a few hundredths from the color contrast ratio required by WCAG 2.1 Level AA, most people with low vision will likely still be able to access those instructions without difficulty. However, in either of these examples, the web content would be out of conformance with WCAG 2.1 Level AA. If the Department does not establish a more detailed compliance framework, a person with a disability would have a valid basis for filing a complaint with the Department, other designated Federal agencies, or in Federal court about either scenario. This could expose public entities to extensive litigation risk, while potentially generating more

---

[164] *See* W3C®, *Web Content Accessibility Guidelines 2.1, Use of Color* (June 5, 2018), *https://www.w3.org/TR/WCAG21/#use-of-color* [*https://perma.cc/R3VC-WZMY*]; W3C®, *Web Content Accessibility Guidelines 2.1, Keyboard Accessible*, http://www.w3.org/TR/WCAG21/#keyboard-accessible [https://perma.cc/5A3C-9KK2].

complaints than the Department, other designated Federal agencies, or the courts have capacity to resolve, and without improving access for people with disabilities.

Some may argue that the same risk of allegedly unjustified enforcement action also exists for some provisions of the ADA Standards. Yet, the Department believes that, for all of the reasons described above (including the frequently changing nature of web content, the technical difficulties inherent in ensuring compliance, and the potential for differing assessments of compliance), a public entity's web content and mobile apps may be more likely to be out of full compliance with WCAG 2.1 Level AA than its buildings are to be out of compliance with the ADA Standards. Sustained, perfect compliance with WCAG 2.1 Level AA may be more difficult to achieve on a website that is updated several times a week and includes thousands of pages of content than compliance with the ADA Standards is in a town hall that is renovated once a decade. The Department also believes that slight deviations from WCAG 2.1 Level AA may be more likely to occur without having a detrimental impact on access than is the case with the ADA Standards. Additionally, it may be easier for an aggrieved individual to find evidence of noncompliance with WCAG 2.1 Level AA than noncompliance with the ADA Standards, given the availability of many free testing tools and the fact that public entities' websites can be accessed from almost anywhere. The Department welcomes public comment on the accuracy of all of these assumptions, as well as about whether it is appropriate to consider the impact of nonconformance with a technical standard when evaluating compliance with the proposed rule.

3. Possible Approaches to Defining and Measuring Compliance with this Rule.

The Department is considering a range of different approaches to measuring compliance with this proposed rule. First, the Department is considering whether to require a numerical percentage of conformance with a technical standard, which could be 100 percent or less. This percentage could be a simple numerical calculation based on the number of instances of nonconformance across a website or mobile app, or the percentage could be calculated by weighting different instances of nonconformance differently. Weighting could be based on

factors like the importance of the content; the frequency with which the content is accessed; the severity of the impact of nonconformance on a person's ability to access the services, programs, or activities provided on the website; or some other formula. This idea of weighting would not be unprecedented in the context of the title II regulatory scheme because, in some circumstances, the existing title II regulation requires priority to be given to alterations that will provide the greatest access.[165] As described above, the Department of Transportation's web accessibility regulation has, at times, also prioritized the accessibility of certain content.

However, the Department does not believe that a percentage-based approach would achieve the purposes of this rule or be feasible to implement because it may not ensure access and will be difficult to measure. First, as discussed previously, a percentage-based approach seems unlikely to ensure access for people with disabilities. Even if the Department were to require that 95 percent or 99 percent of an entity's web content or mobile apps conform with WCAG 2.1 (or that all content or apps conform to 95 percent or 99 percent of the WCAG 2.1 success criteria), the relatively small percentage that does not conform could still block an individual with a disability from accessing a service, program, or activity. For example, a single critical accessibility error could prevent an individual with a disability from submitting their application for a business license.

A percentage-based standard is also likely to be difficult to implement. If the Department adopts a specific formula for calculating whether a certain percentage-based compliance threshold has been met, it could be challenging for members of the public and regulated entities to determine whether web content and mobile apps comply with this rule. Calculations required to evaluate compliance could become complex, particularly if the Department were to adopt a weighted or tiered approach that requires certain types of core content to be fully accessible, while allowing a lower percentage of accessibility for less important or less frequently accessed content. People with disabilities who are unable to use inaccessible parts of a website or mobile

[165] *See* 28 CFR 35.151(b)(4)(iv)(B).

app may have particular difficulty calculating a compliance percentage, because it could be difficult, if not impossible, for them to correctly evaluate the percentage of a website or mobile app that is inaccessible if they do not have full access to the entire website or app. For these reasons, the Department currently is not inclined to adopt a percentage-based approach to measuring compliance, though we welcome public comment on ways that such an approach could be implemented successfully.

Another possible approach might be to limit an entity's compliance obligations where nonconformance with a technical standard does not impact a person's ability to have equal access to services, programs, or activities offered on a public entity's website or mobile app. For example, the Department could specify that nonconformance with WCAG 2.1 Level AA does not constitute noncompliance with this part if that nonconformance does not prevent a person with a disability from accessing or acquiring the same information, engaging in the same interactions, performing the same transactions, and enjoying the same services, programs, and activities that the public entity offers visitors to its website without relevant disabilities, with substantially equivalent ease of use. This approach would provide equal access to people with disabilities, while limiting the conformance obligations of public entities where technical nonconformance with WCAG 2.1 Level AA does not affect access. If a public entity's compliance were to be challenged, in order to prevail, the entity would need to demonstrate that, even though it was technically out of conformance with one or more of the WCAG 2.1 Level AA success criteria, the nonconformance had such a minimal impact that this provision applies, and the entity has therefore met its obligations under the ADA despite nonconformance with WCAG 2.1.

The Department believes that this approach would have a limited impact on the experience of people with disabilities who are trying to use web content or mobile apps for two reasons. First, by its own terms, the provision would require a public entity to demonstrate that any nonconformance did not have a meaningful effect. Second, it is possible that few public

entities will choose to rely on such a provision, because they would prefer to avoid assuming the risk inherent in this approach to compliance. A public entity may find it easier to conform to WCAG 2.1 Level AA in full so that it can depend on that clearly defined standard, instead of attempting to determine whether any nonconformance could be excused under this provision. Nonetheless, the Department believes some public entities may find such a provision useful because it would prevent them from facing the prospect of failing to comply with the ADA based on a minor technical error. The Department seeks public comment on all of these assumptions.

The Department also believes such an approach may be logically consistent with the general nondiscrimination principles of section 508, which require comparable access to information and data,[166] and of the ADA's implementing regulation, which require an equal opportunity to participate in and benefit from services.[167] The Department has heard support from the public for ensuring that people with disabilities have equal access to the same information and services as people without disabilities, with equivalent ease of use. The Department is therefore evaluating ways that it can incorporate this crucial principle into a final rule, while simultaneously ensuring that the compliance obligations imposed by the final rule will be attainable for public entities in practice.

Another approach the Department is considering is whether an entity could demonstrate compliance with this part by affirmatively establishing and following certain robust policies and practices for accessibility feedback, testing, and remediation. The Department has not made any determinations about what policies and practices, if any, would be sufficient to demonstrate compliance, and the Department is seeking public comment on this issue. However, for illustrative purposes only, and to enable the public to better understand the general approach the Department is considering, assume that a public entity proactively tested its existing web and mobile app content for conformance with WCAG 2.1 Level AA using automated testing on a

[166] *See* 29 U.S.C. 794d(a)(1)(A).
[167] *See* 28 CFR 35.130(b)(1)(ii).

regular basis (*e.g.*, every 30 days), conducted user testing on a regular basis (*e.g.*, every 90 days), and tested any new web and mobile app content for conformance with WCAG 2.1 Level AA before that content was posted on its website or added to its mobile app. This public entity also remediated any nonconformance found in its existing web and mobile app content soon after the test (*e.g.*, within two weeks). An entity that took these (or similar) steps on its own initiative could be deemed to have complied with its obligations under the ADA, even if a person with a disability encountered an access barrier or a particular automated testing report indicated noncompliance with WCAG 2.1 Level AA. The public entity would be able to rely on its existing, effectively working web and mobile app content accessibility testing and remediation program to demonstrate compliance with the ADA. In a final rule, the Department could specify that nonconformance with WCAG 2.1 Level AA does not constitute noncompliance with this part if a public entity has established certain policies for testing the accessibility of web and mobile app content and remediating inaccessible content, and the entity can demonstrate that it follows those policies.

This approach would enable a public entity to remain in compliance with the ADA even if its website or mobile app is not in perfect conformance with WCAG 2.1 Level AA at all times, if the entity is addressing any nonconformance within a reasonable period of time. A new policy that a public entity established in response to a particular complaint, or a policy that an entity could not demonstrate that it has a practice of following, would not satisfy such a provision. The Department could craft requirements for such policies in many different ways, including by requiring more prompt remediation for nonconformance with a technical standard that has a more serious impact on access to services, programs, and activities; providing more detail about what testing is sufficient (*e.g.*, both automated testing and manual testing, testing by users with certain types of disabilities); setting shorter or longer time frames for how often testing should occur; setting shorter or longer time frames for remediation; or establishing any number of additional criteria.

The Department is also considering whether an entity should be permitted to demonstrate compliance with this rule by showing organizational maturity—that the organization has a sufficiently robust program for web and mobile app accessibility. Organizational maturity models provide a framework for measuring how developed an organization's programs, policies, and practices are—either as a whole or on certain topics (*e.g.*, cybersecurity, user experience, project management, accessibility). The authors of one accessibility maturity model observe that it can be difficult to know what a successful digital accessibility program looks like, and they suggest that maturity models can help assess the proficiency of accessibility programs and a program's capacity to succeed.[168] Whereas accessibility conformance testing evaluates the accessibility of a particular website or mobile app at a specific point in time, organizational maturity evaluates whether an entity has developed the infrastructure needed to produce accessible web content and mobile apps consistently.[169] For example, some outcomes that an organization at the highest level of accessibility maturity might demonstrate include integrating accessibility criteria into all procurement and contracting decisions, leveraging employees with disabilities to audit accessibility, and periodically evaluating the workforce to identify gaps in accessibility knowledge and training.[170]

Existing maturity models for accessibility establish several different categories of accessibility, which are called domains or dimensions, then assess which maturity level an organization is at for each category.[171]

For example, the Office of Management and Budget requires Federal agencies to assess

---

[168] *See* Level Access, *The Digital Accessibility Maturity Model: Introduction to DAMM*, https://www.levelaccess.com/the-digital-accessibility-maturity-model-introduction-to-damm/ [https://perma.cc/6K38-FJZU].
[169] *See* W3C®, *W3C Accessibility Maturity Model, About the W3C Accessibility Maturity Model* (Sept. 6, 2022), https://www.w3.org/TR/maturity-model/ [https://perma.cc/NB29-BDRN].
[170] *See* W3C®, *W3C Accessibility Maturity Model, Ratings for Evaluation* (Sept. 6, 2022), https://www.w3.org/TR/maturity-model/ [https://perma.cc/W7DA-HM9Z].
[171] *See, e.g.*, W3C®, *W3C Accessibility Maturity Model, Maturity Model Structure* (Sept. 6, 2022), https://www.w3.org/TR/maturity-model/ [https://perma.cc/NB29-BDRN]; Level Access, *The Digital Accessibility Maturity Model: Core Dimensions*, https://www.levelaccess.com/the-digital-accessibility-maturity-model-core-dimensions/ [https://perma.cc/C6ZC-K9ZF]; Level Access, *The Digital Accessibility Maturity Model: Maturity Levels*, https://www.levelaccess.com/the-digital-accessibility-maturity-model-maturity-levels/ [https://perma.cc/25HH-SLYF].

the maturity of their section 508 programs in the following domains: acquisition, agency technology life cycles, testing and validation, complaint management, and training.[172] At the lowest level of maturity in each domain, no formal policies, processes, or procedures have been defined; at the highest level of maturity, effectiveness in the domain is validated, measured, and tracked.[173]

As another example, according to a different digital accessibility maturity model, if an organization has well-trained, qualified individuals test all of its technology, and has individuals with relevant disabilities conduct testing at multiple stages in the development lifecycle, the organization would meet some of the criteria to be rated at the fourth level out of five maturity levels in one of ten dimensions—testing and validation.[174] The Department seeks public comment on whether the maturity levels and criteria established in existing organizational maturity models for digital accessibility would be feasible for State and local government entities to meet.

As with the policy-based approach discussed above, a focus on organizational maturity would enable a public entity to demonstrate compliance with the ADA even if the entity's website or mobile app is not in perfect conformance with WCAG 2.1 Level AA at all times, so long as the entity can demonstrate sufficient maturity of its digital accessibility program, which would indicate its ability to quickly remedy any issues of nonconformance identified. The Department could define requirements for organizational maturity in many different ways, including by adopting an existing organizational maturity model in full, otherwise relying on existing organizational maturity models, establishing different categories of organizational maturity (*e.g.*, training, testing, feedback), or establishing different criteria for measuring

---

[172] U.S. Gen. Servs. Admin., *Assess your Section 508 program maturity*, https://www.section508.gov/tools/playbooks/technology-accessibility-playbook-intro/play02/ [https://perma.cc/89FM-SJ3H].
[173] *Id.*
[174] Level Access, *The Digital Accessibility Maturity Model: Dimension #7 – Testing and Validation*, https://www.levelaccess.com/the-digital-accessibility-maturity-model-dimension-7-testing-and-validation/ [https://perma.cc/VU93-3NH4].

organizational maturity levels in each category. The Department could also require an entity to have maintained a certain level of organizational maturity across a certain number of categories for a specified period of time or require an entity to have improved its organizational maturity by a certain amount in a specified period of time.

The Department has several concerns about whether allowing organizations to demonstrate compliance with this rule through their organizational maturity will achieve the goals of this rulemaking. First, this approach may not provide sufficient accessibility for individuals with disabilities. It is not clear that when State and local government entities make their accessibility programs more robust, that will necessarily result in websites and mobile apps that consistently conform to WCAG 2.1 Level AA. If the Department permits a lower level of organizational maturity (*e.g.*, level four out of five) or requires the highest level of maturity in only some categories (*e.g.*, level five in training), this challenge may be particularly acute. Second, this approach may not provide sufficient predictability or certainty for public entities. Organizational maturity criteria may prove subjective and difficult to measure, so disputes about an entity's assessments of its own maturity may arise. Third, an organizational maturity model may be too complex for the Department to define or for public entities to implement. Some existing models include as many as ten categories of accessibility, with five levels of maturity, and more than ten criteria for some levels.[175] Some of these criteria are also highly technical and may not be feasible for some public entities to understand or satisfy (*e.g.*, testing artifacts are actively updated and disseminated based on lessons learned from each group; accessibility testing artifacts required by teams are actively updated and maintained for form and ease of use).[176] Of course, a public entity that does not want to use an organizational maturity model would not need to do so; it could meet its obligations under the rule by complying with WCAG

---

[175] Level Access, *Digital Accessibility Maturity Model (DAAM) Archives,* *https://www.levelaccess.com/category/damm/* [*https://perma.cc/Z683-X9H5*].

[176] Level Access, *The Digital Accessibility Maturity Model: Dimension #7 – Testing and Validation*, *https://www.levelaccess.com/the-digital-accessibility-maturity-model-dimension-7-testing-and-validation/* [*https://perma.cc/VU93-3NH4*].

2.1 Level AA. But it is unclear whether this approach will benefit either people with disabilities or public entities. We seek public comment on whether the Department should adopt an approach to compliance that includes organizational maturity, and how such an approach could be implemented successfully.

The Department seeks public comment on how compliance with the web and mobile app accessibility requirements should be assessed or measured, including comments on these approaches to measuring compliance and any alternative approaches it should consider.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 50: What should be considered sufficient evidence to support an allegation of noncompliance with a technical standard for purposes of enforcement action? For example, if web content or a mobile app is noncompliant according to one testing methodology, or using one configuration of assistive technology, hardware, and software, is that sufficient?

Question 51: In evaluating compliance, do you think a public entity's policies and practices related to web and mobile app accessibility (e.g., accessibility feedback, testing, remediation) should be considered and, if so, how? For example, should consideration be given to an entity's effectively working processes for accepting and addressing feedback about accessibility problems; using automated testing, manual testing, or testing by people with relevant disabilities to identify accessibility problems; and remediating any accessibility problems identified within a reasonable period of time according to the entity's policies, and if so, how? How would such an approach impact people with disabilities?

Question 52: If you think a public entity's policies and practices for receiving feedback on web and mobile app accessibility should be considered in assessing compliance, what specific policies and practices for feedback would be effective?

Question 53: If you think a public entity's web and mobile app accessibility testing

policies and practices should be considered in assessing compliance, what specific testing policies and practices would be effective? For example, how often should websites and mobile apps undergo testing, and what methods should be used for testing? If manual testing is required, how often should this testing be conducted, by whom, and what methods should be used? Should the Department require public entities' websites and mobile apps to be tested in consultation with individuals with disabilities or members of disability organizations, and, if so, how?

Question 54: If you think a public entity's web and mobile app accessibility remediation policies and practices should be considered in assessing compliance, what specific remediation policies and practices would be effective? Should instances of nonconformance that have a more serious impact on usability—because of the nature of the nonconformance (i.e., whether it entirely prevents access or makes access more difficult), the importance of the content, or otherwise—be remediated in a shorter period of time, while other instances of nonconformance are remediated in a longer period of time? How should these categories of nonconformance be defined and what time frames should be used, if any?

Question 55: Should a public entity be considered in compliance with this part if the entity remediates web and mobile app accessibility errors within a certain period of time after the entity learns of nonconformance through accessibility testing or feedback? If so, what time frame for remediation is reasonable? How would allowing public entities a certain amount of time to remediate instances of nonconformance identified through testing or feedback impact people with disabilities?

Question 56: Should compliance with this rule be assessed differently for web content that existed on the public entity's website on the compliance date than for web content that is added after the compliance date? For example, might it be appropriate to allow some additional time for remediation of content that is added to a public entity's website after the compliance date, if the public entity identifies nonconformance within a certain period of time after the

content is added, and, if so, what should the remediation time frame be? How would allowing public entities a certain amount of time to remediate instances of nonconformance identified in content added after the compliance date impact people with disabilities?

Question 57: What policies and practices for testing and remediating web and mobile app accessibility barriers are public entities or others currently using and what types of testing and remediation policies and practices are feasible (or infeasible)? What types of costs are associated with these testing and remediation policies?

Question 58: In evaluating compliance, do you think a public entity's organizational maturity related to web and mobile app accessibility should be considered and, if so, how? For example, what categories of accessibility should be measured? How should maturity in each category be assessed or demonstrated (i.e., what should the levels of organizational maturity be and what should an entity be required to do to attain each level)? What indicators of organizational maturity criteria would be feasible for public entities to attain? How would an approach that assesses organizational maturity for purposes of demonstrating compliance impact people with disabilities? Would such an approach be useful for public entities?

Question 59: If you think a public entity's organizational maturity should be considered in assessing compliance, what level of organizational maturity would be effective? For example, if an organizational maturity model has ten categories, should an entity be required to attain the highest level of maturity in all ten? Should an entity be required to sustain a particular level of organizational maturity for a certain length of time?

Question 60: Should a public entity be considered in compliance with this part if the entity increases its level of organizational maturity by a certain amount within a certain period of time? If so, what time frame for improvement is reasonable, and how much should organizational maturity be required to improve? How would an entity demonstrate this improvement? How would allowing public entities a certain amount of time to develop organizational maturity with respect to accessibility impact people with disabilities? Would

requiring public entities to improve their organizational maturity over time be effective?

Question 61: Are there any frameworks or methods for defining, assessing, or demonstrating organizational maturity with respect to digital accessibility that the Department should consider adopting for purposes of this rule?

Question 62: Should the Department address the different level of impact that different instances of nonconformance with a technical standard might have on the ability of people with disabilities to access the services, programs, and activities that a public entity offers via the web or a mobile app? If so, how?

Question 63: Should the Department consider limiting public entities' compliance obligations if nonconformance with a technical standard does not prevent a person with disabilities from accessing the services, programs, and activities that a public entity offers via the web or a mobile app? Should the Department consider limiting public entities' compliance obligations if nonconformance with a technical standard does not prevent a person with disabilities from accessing the same information, engaging in the same interactions, and enjoying the same programs, services, and activities as people without relevant disabilities, within similar time frames and with substantially equivalent ease of use? Should the Department consider limiting public entities' compliance obligations if members of the public with disabilities who are seeking information or services from a public entity have access to and use of information and services that is comparable to that provided to members of the public who are not individuals with disabilities? How would these limitations impact people with disabilities?

Question 64: Should the Department adopt percentages of web or mobile app content that need to be accessible or other similar means of measuring compliance? Is there a minimum threshold below 100 percent that is an acceptable level of compliance? If the Department sets a threshold for compliance, how would one determine whether a website or mobile app meets that threshold?

Question 65: When assessing compliance, should all instances of nonconformance be

treated equally? Should nonconformance with certain WCAG 2.1 success criteria, or nonconformance in more frequently accessed content or more important core content, be given more weight when determining whether a website or mobile app meets a particular threshold for compliance?

Question 66: How should the Department address isolated or temporary noncompliance[177] *with a technical standard and under what circumstances should noncompliance be considered isolated or temporary? How should the Department address noncompliance that is a result of technical difficulties, maintenance, updates, or repairs?*

Question 67: Are there any local, State, Federal, international, or other laws or policies that provide a framework for measuring, evaluating, defining, or demonstrating compliance with web or mobile app accessibility requirements that the Department should consider adopting?

VI. Regulatory Process Matters

The Department has examined the likely economic and other effects of this proposed rule addressing the accessibility of web content and mobile apps, as required, under applicable Executive Orders,[178] Federal administrative statutes (*e.g.*, the Regulatory Flexibility Act,[179] Paperwork Reduction Act,[180] and Unfunded Mandates Reform Act[181]) and other regulatory guidance.[182]

As discussed previously, the purpose of this proposed regulation is to revise the regulation implementing title II of the ADA in order to ensure that the services, programs, or activities offered by State and local government entities to the public via web content and mobile apps are accessible to people with disabilities. The Department is proposing to adopt specific technical standards related to the accessibility of the web content and mobile apps of State and

---

[177] *See* 28 CFR 35.133(b).
[178] *See* E.O. 14094, 88 FR 21879 (Apr. 6, 2023); E.O. 13563, 76 FR 3821 (Jan. 21, 2011); E.O. 13272, 67 FR 53461 (Aug. 13, 2002); E.O. 13132, 64 FR 43255 (Aug. 4, 1999); E.O. 12866, 58 FR 51735 (Sept. 30, 1993).
[179] Regulatory Flexibility Act of 1980 ("RFA"), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*
[180] Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.*
[181] Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*
[182] OMB Circular A-4 (Sept. 17, 2003).

local government entities and is specifying proposed dates by which such web content and mobile apps must meet those standards. This rule is necessary to help public entities understand how to ensure that people with disabilities will have equal access to the services, programs, and activities public entities make available on or through their web content and mobile apps.

The Department has carefully crafted this proposed regulation to better ensure the protections of title II of the ADA, while at the same time doing so in the most economically efficient manner possible. After assessing the likely costs of this proposed regulation, the Department has determined that it is a section 3(f)(1) significant regulatory action within the meaning of Executive Order 12866, as amended by Executive Order 14094. As such, the Department has undertaken a Preliminary Regulatory Impact Analysis ("PRIA") pursuant to Executive Order 12866. The Department has undertaken a Preliminary Regulatory Flexibility Analysis as specified in § 603(a) of the Regulatory Flexibility Act. The results of both of these analyses are summarized below. Lastly, the Department does not believe that this proposed regulation will have any impact—significant or otherwise—relative to the Paperwork Reduction Act, the Unfunded Mandates Reform Act, or the federalism principles outlined in Executive Order 13132.

A. Preliminary Regulatory Impact Analysis ("PRIA") Summary

1. Introduction

The Department has prepared a Preliminary Regulatory Impact Analysis ("PRIA") for this rulemaking. This PRIA complies with the requirements of Executive Order 12866, as well as other authorities on regulatory planning, by providing a robust economic analysis of the costs and benefits of this rulemaking. It contains a Preliminary Regulatory Flexibility Analysis ("PRFA"), which is also included in this summary. The Department contracted with Eastern Research Group Inc. ("ERG") to prepare this economic assessment. This summary provides an overview of the Department's preliminary economic analysis and key components of the PRIA. The full PRIA will be made available at https://www.ada.gov/assets/_pdfs/web-pria.pdf.

Requiring State and local government entities' web content and mobile apps to comply with the WCAG 2.1 Level AA success criteria will result in costs for State and local government entities to remediate and maintain their web content and mobile apps in conformance with this technical standard. The Department believes that most of these costs will be one-time expenses to remediate existing websites, and that the rule will not impose as substantial cost burdens in the creation of new websites, as experts estimate that building accessibility into a website initially is 3-10 times less expensive than retrofitting an existing one for accessibility.[183] Based on a Department analysis of the web presence of a sample of 227 State and local government entities, the Department estimates that a total number of 109,893 State and local government entity websites and 8,805 State and local government entity mobile apps will be affected by the rule. These websites and mobile apps provide services on behalf of and are managed by 91,489 State and local government entities that will incur these costs. These costs include one-time costs for familiarization with the requirements of the rule; testing, remediation, and O&M costs for websites; testing, remediation, and O&M costs for mobile apps; and school course remediation costs. The remediation costs include both time and software components. Initial familiarization, testing, and remediation costs of the proposed rule occur over the first two or three years (two years for large governments and three years for small governments) and are presented in Table 3. Implementation costs accrue during the first three years of the analysis (the implementation period) and total $15.8 billion, undiscounted. After the implementation period, annual O&M costs are $1.8 billion. Annualized costs are calculated over a 10-year period that includes both this implementation period and seven years post-implementation. Annualized costs over this 10-year period are estimated at $2.8 billion assuming a 3 percent discount rate or $2.9 billion assuming a 7 percent discount rate. All values are presented in 2021 dollars as 2022 data were not yet available. These costs are summarized in Table 4, Table 5, and Table 6. Two findings

[183] Level Access, *The Road to Digital Accessibility*, *https://www.levelaccess.com/the-road-to-digital-accessibility/* [*https://perma.cc/4972-J8TA*].

that were notable in the Department's estimations for accessible course content were that, due to the limitations to the exceptions for course content, the Department expects that within two years following implementation virtually all postsecondary courses will be remediated, and within the first year of implementation virtually all elementary and secondary classes or courses will be remediated.

Benefits will generally accrue to all individuals who access State and local government entities' web content and mobile apps, and additional benefits will accrue to individuals with certain types of disabilities. The WCAG 2.1 Level AA standards primarily benefit individuals with vision, hearing, cognitive, and manual dexterity disabilities because WCAG 2.1 is intended to address barriers that often impede access for people with these disability types. Using 2021 data, the Department estimates that 4.8 percent of adults have a vision disability, 7.5 percent have a hearing disability, 10.1 percent have a cognitive disability, and 5.7 percent have a manual dexterity disability. Due to the incidence of multiple disabilities, the total share without any of these disabilities is 80.1 percent.

Annual benefits, beginning once the rule is fully implemented, total $11.4 billion. Because individuals generally prefer benefits received sooner, future benefits need to be discounted to reflect the lower value due to the wait to receive them. The Office of Management and Budget ("OMB") guidance states that annualized benefits and costs should be presented using real discount rates of 3 and 7 percent.[184] Benefits annualized over a 10-year period that includes both three years of implementation and seven years post-implementation total $9.3 billion per year, assuming a 3 percent discount rate, and $8.9 billion per year, assuming a 7 percent discount rate. Annual and annualized monetized benefits of the proposed rule are presented in Table 7, Table 8, and Table 9. There are many additional benefits that have not been monetized due to data availability. Benefits that cannot be monetized are discussed

[184] *See* Office of Management and Budget, *Circular A-4* (Sept. 17, 2003), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* [*https://perma.cc/7655-M7UF*].

qualitatively. Impacts to individuals include increased independence, increased flexibility, increased privacy, reduced frustration, decreased reliance on companions, and increased program participation. This proposed rule will also benefit governments through increased certainty about what constitutes accessible web content, potential reduction in litigation, and a larger labor market pool.

Comparing annualized costs and benefits, monetized benefits to society outweigh the costs. A summary of this comparison is presented in Table 10. Net annualized benefits over the first 10 years post publication of this rule total $6.5 billion per year using a 3 percent discount rate and $6.0 billion per year using a 7 percent discount rate. Additionally, beyond this 10-year period, benefits are likely to continue to accrue at a greater rate than costs because many of the costs are upfront costs and benefits tend to have a delay before beginning to accrue.

To consider the relative magnitude of the estimated costs of this proposed regulation, the Department also compared the costs to revenues for public entities. Because the costs for each government entity type are estimated to be well below 1 percent of revenues, the Department does not believe the rule will be unduly burdensome or costly for public entities.[185] Costs of the rulemaking for each government entity type are estimated to be well below this 1 percent threshold.

The Department's economic analysis is discussed more fully in the complete PRIA. However, the Department will review its findings and analysis in this summary. Some key portions of the PRIA are also included here in full to aid in understanding the Department's analysis and to provide sufficient context for public feedback.

[185] As noted above and as a point of reference, the United States Small Business Administration advises agencies that a potential indicator that the impact of a proposed regulation may be "significant" is whether the costs exceed 1 percent of the gross revenues of the entities in a particular sector, although the threshold may vary based on the particular types of entities at issue. The Department estimates that the costs of this rulemaking for each government entity type are far less than 1 percent of revenues. *See* Small Bus. Admin., A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act 19 (Aug. 2017), https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf [https://perma.cc/MZW6-Y3MH].

Table 3: Initial Familiarization, Testing, and Remediation Costs (Millions)

Cost	State	County	Municipal	Township	Special District	School District	U.S. Territories	Higher Ed.	Total
Regulatory familiarization	$0.02	$0.90	$5.79	$4.83	$11.44	$3.63	$0.00	$0.56	$27.17
Websites	$228.9	$742.5	$2,363.4	$1,342.9	$374.4	$1,826.1	$6.4	$1,283.0	$8,167.7
Mobile apps	$13.7	$53.1	$93.4	$1.3	$0.0	$379.7	$1.2	$64.4	$606.8
Postsecondary course remediation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	$5,393.8	$5,393.8
Primary and secondary course remediation	N/A	$47.4	$18.5	$40.0	N/A	$1,059.5	N/A	N/A	$1,165.4
Third-party website remediation	$6.6	$35.8	$133.5	$77.6	$18.0	$103.1	$0.0	$84.7	$459.2
Total	$249.2	$879.7	$2,614.6	$1,466.6	$403.9	$3,372.0	$7.6	$6,826.4	$15,819.9

Table 4: Average Annual Cost After Implementation (Millions)

Cost	State	County	Municipal	Township	Special District	School District	U.S. Territories	Higher Ed.	Total
Websites	$19.9	$65.1	$215.1	$124.2	$40.5	$164.7	$0.6	$111.7	$741.9
Mobile apps	$0.01	$0.04	$0.03	$0.00	$0.00	$0.21	$0.00	$0.04	$0.33
Postsecondary course remediation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	$935.7	$935.7
Primary and secondary course remediation	N/A	$4.7	$1.9	$4.0	N/A	$105.9	N/A	N/A	$116.5
Third-party website remediation	$0.6	$3.2	$12.1	$7.2	$1.9	$9.2	$0.0	$7.4	$41.6
Total	$20.5	$73.1	$229.2	$135.4	$42.5	$280.1	$0.6	$1,054.8	$1,836.0

Table 5: 10-Year Average Annualized Cost, 3 Percent Discount Rate (Millions)

Cost	State	County	Municipal	Township	Special District	School District	U.S. Territories	Higher Ed.	Total
Regulatory familiarization	$0.00	$0.10	$0.66	$0.55	$1.30	$0.41	$0.00	$0.06	$3.09
Websites	$38.9	$126.4	$405.2	$231.2	$68.4	$312.4	$1.1	$217.9	$1,401.5
Mobile apps	$1.5	$5.9	$10.5	$0.1	$0.0	$42.2	$0.1	$7.2	$67.7
Postsecondary course remediation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	$1,100.9	$1,100.9
Primary and secondary course remediation	N/A	$7.9	$3.1	$6.7	N/A	$176.9	N/A	N/A	$194.6
Third-party website remediation	$1.1	$6.1	$22.9	$13.4	$3.3	$17.6	$0.0	$14.4	$78.7
Total	$41.5	$146.4	$442.3	$251.9	$73.0	$549.6	$1.2	$1,340.6	$2,846.6

Table 6: 10-Year Average Annualized Cost, 7 Percent Discount Rate (Millions)

Cost	State	County	Municipal	Township	Special District	School District	U.S. Territories	Higher Ed.	Total
Regulatory familiarization	$0.00	$0.12	$0.77	$0.64	$1.52	$0.48	$0.00	$0.07	$3.61
Websites	$41.6	$135.2	$429.6	$244.5	$71.8	$331.8	$1.2	$233.5	$1,489.1
Mobile apps	$1.8	$6.7	$12.0	$0.2	$0.0	$47.7	$0.2	$8.3	$76.9
Postsecondary course remediation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	$1,097.5	$1,097.5
Primary and secondary course remediation	N/A	$8.0	$3.1	$6.8	N/A	$179.2	N/A	N/A	$197.1
Third-party website remediation	$1.2	$6.5	$24.3	$14.1	$3.4	$18.7	$0.0	$15.4	$83.7
Total	$44.6	$156.6	$469.8	$266.1	$76.8	$577.9	$1.3	$1,354.8	$2,947.9

Table 7: Annual Benefit Once Full Implementation (Millions)

Benefit Type	Visual Disability	Other Relevant Disability [a]	Without Relevant Disabilities	State and Local Gov'ts	Total
Time savings - current users	$549.6	$751.3	$2,858.5	N/A	$4,159.4
Time savings - new users	$222.4	$695.0	N/A	$600.6	$1,518.1
Time savings - mobile apps	$51.5	$70.5	$268.1	N/A	$390.1
Time savings - education	$693.5	$1,205.8	$3,157.8	N/A	$5,057.1
Educational attainment	$7.2	$255.6	N/A	N/A	$262.8
Total benefits	**$1,524.2**	**$2,978.3**	**$6,284.3**	**$600.6**	**$11,387.5**

[a] For purposes of this table, hearing, cognitive, and manual dexterity disabilities are referred to as "other relevant disabilities."

Table 8: 10-Year Average Annualized Benefits, 3 Percent Discount Rate (Millions)

Benefit Type	Visual Disability	Other Relevant Disability [a]	Without Relevant Disabilities	State and Local Gov'ts	Total
Time savings - current users	$463.6	$633.8	$2,411.6	N/A	$3,509.1
Time savings - new users	$187.6	$586.4	N/A	$506.7	$1,280.7
Time savings - mobile apps	$43.5	$59.4	$226.2	N/A	$329.1
Time savings - education	$504.7	$878.8	$2,307.6	N/A	$3,691.1
Educational attainment	$13.8	$492.4	N/A	N/A	$506.2
Total benefits	**$1,213.2**	**$2,650.9**	**$4,945.4**	**$506.7**	**$9,316.3**

[a] For purposes of this table, hearing, cognitive, and manual dexterity disabilities are referred to as "other relevant disabilities."

Table 9: 10-Year Average Annualized Benefits, 7 Percent Discount Rate (Millions)

Benefit Type	Visual Disability	Other Relevant Disability [a]	Without Relevant Disabilities	State and Local Gov'ts	Total
Time savings - current users	$451.4	$617.1	$2,347.7	N/A	$3,416.1
Time savings - new users	$182.7	$570.8	N/A	$493.3	$1,246.8
Time savings - mobile apps	$42.3	$57.9	$220.2	N/A	$320.4
Time savings - education	$478.9	$834.2	$2,191.3	N/A	$3,504.4
Educational attainment	$12.3	$437.2	N/A	N/A	$449.5
Total benefits	**$1,167.6**	**$2,517.1**	**$4,759.1**	**$493.3**	**$8,937.2**

[a] For purposes of this table, hearing, cognitive, and manual dexterity disabilities are referred to as "other relevant disabilities."

Table 10: 10-Year Average Annualized Comparison of Costs and Benefits

Benefit Type	3% Discount Rate	7% Discount Rate
Average annualized costs (millions)	$2,846.6	$2,947.9
Average annualized benefits (millions)	$9,316.3	$8,937.2
Net benefits (millions)	$6,469.7	$5,989.3
Cost-to-benefit ratio	0.3	0.3

2. Baseline Conditions

To estimate the costs and benefits of the proposed rule, baseline web accessibility of government websites and baseline disability prevalence need to be considered both in the presence and absence of the proposed rule over the 10-year analysis period. For these analyses, the Department assumed that the number of governments would remain constant over the 10-year horizon for which the Department projects costs and benefits. This is in line with the trend of total government units in the United States, which rose by only 19 government units (representing a 0.02 percent increase) between 2012 and 2017.[186] The Department assumes that the total number of government websites scales with the number of governments, and that the number of government websites that each government maintains would remain constant for the 10-year period with or without the rule. The Department notes, however, that if the number of government websites increases over time, both costs and benefits would increase accordingly, and because benefits are estimated to be larger than costs, this would only create a larger net benefit for the rule. The Department also assumes constant rates of disability over the 10-year horizon.[187] Finally, the ways in which government websites are used and the types of websites (*e.g.*, Learning Management Systems and Content Management Systems) are assumed to be constant due to a lack of data.

---

[186] U.S. Census Bureau, *Census of Governments 2017 - Public use Files* (Jan. 2017), *https://www.census.gov/data/datasets/2017/econ/gus/public-use-files.html* [*https://perma.cc/UG79-5MVM*]; U.S. Census Bureau, *Census of Governments 2012 - Public use Files* (Jan. 2012), https://www.census.gov/data/datasets/2012/econ/gus/public-use-files.html *[https://perma.cc/7UPP-H9WN]*.

[187] Recent trends in disability prevalence vary across surveys, with some finding an increase in recent years and others finding no change. Due to uncertainty, the Department assumed no change in prevalence rates over the next ten years. U.S. Census Bureau, *2021 SIPP: Estimates of Disability Prevalence* (Aug. 30, 2022), *https://www.census.gov/programs-surveys/sipp/tech-documentation/user-notes/2021-usernotes/estim-disabilty-preval.html* [*https://perma.cc/6BJB-XX96*].

Costs to test and remediate websites were estimated based on the level of effort needed to reach full compliance with WCAG 2.1 Level AA from the level of observed compliance during the Department's automated and manual accessibility checking from September 2022 through October 2022. The Department did not feel confident quantifying baseline conformity with proposed requirements.[188] Baseline accessibility of mobile apps and password-protected course content was understood through literature, which estimated costs to make those materials WCAG 2.1 Level AA compliant, implicitly defining baseline conditions.

Most literature on current website accessibility has not historically tested websites against the same sets of standards, so comparing results from studies over time to find trends in accessibility is challenging. Additionally, the types of websites tested, and their associated geographies, tend to vary from study to study, compounding the difficulty of extracting longitudinal trends in accessibility. There are, however, some studies that have evaluated the change in accessibility for the same websites in different time periods, such as a 2014 paper that continued a study of Alabama website accessibility from 2002.[189, 190] That study found almost no change in accessibility from the previous 2002 study.[191] Although most accessibility studies do not take this longitudinal approach, their conclusions, regardless of the standards against which websites are checked, are generally that websites are not fully accessible. For example, a 2006 study found that 98 percent of State home pages did not meet WCAG 1.0 Level AA guidelines.[192] Another 2006 study found that only 18 percent of municipal websites met section

---

[188] Though SortSite does give what percentile a website falls into as far as accessibility, it does not give a raw "accessibility score."

[189] Andrew Potter, *Accessibility of Alabama Government Web Sites*, 29 Journal of Government Information 303 (2002), *https://doi.org/10.1016/S1352-0237(03)00053-4* [*https://perma.cc/5W29-YUHK*].

[190] Norman Youngblood, *Revisiting Alabama State Website Accessibility*, 31 Government Information Quarterly 476 (2014), *https://doi.org/10.1016/j.giq.2014.02.007* [*https://perma.cc/PUL4-QUCD*].

[191] Potter (2002) found that 80 percent of State websites did not pass section 508 standards, and Youngblood (2014) found that 78 percent of those same websites still did not meet section 508 standards 12 years later. Andrew Potter, *Accessibility of Alabama Government Web Sites*, 29 Journal of Government Information 303 (2002), *https://doi.org/10.1016/S1352-0237(03)00053-4* [*https://perma.cc/5W29-YUHK*]; Norman Youngblood, *Revisiting Alabama State Website Accessibility*, 31 Government Information Quarterly 476 (2014), *https://doi.org/10.1016/j.giq.2014.02.007* [*https://perma.cc/PUL4-QUCD*].

[192] Tanya Goette et al, *An Exploratory Study of the Accessibility of State Government Web Sites*, 5 Universal Access in the Information Society 41 (Apr. 20, 2006), *https://link.springer.com/article/10.1007/s10209-006-0023-2* [*https://perma.cc/6SD9-KRFT*].

508 standards.[193] And 14 years later, a 2021 study found that 71 percent of county websites evaluated did not conform to WCAG 2.0, and the remaining 29 percent only partially conformed to the standards.[194] Given the minimal progress in web accessibility over the last 20 years, the Department does not expect that compliance with WCAG 2.1 Level AA would improve significantly in the absence of the rule.

3. Number of Affected Governments and Individuals

The proposed regulation will affect all State and local government entities[195] by requiring them to comply with WCAG 2.1 Level AA. The Department used the 2017 Census of Governments to determine the number of affected governments, disaggregated by government entity type as defined by the Census Bureau.[196] The Department estimates the number of government entities affected by the proposed rule in Table 11. To account for differences in government characteristics, the Department stratified the government entities by population size and analyzed impacts of the rule to each type of government entity within each population size category. The Department assumes that the number of governments would remain constant throughout the 10-year analysis period with or without the rule.

Table 11: Number of Governments by Government Entity Type[197]

Type of Government Entity	Population of less than 50,000	Population of 50,000 or more	Total
State	N/A	51 [a]	51
County	2,105	926	3,031
Municipal	18,729	766	19,495
Township	16,097	156	16,253
Special district	38,542 [b]	N/A	38,542

[193] Jennifer S. Evans-Cowley, *The Accessibility of Municipal Government Websites*, 2 Journal of E-Government 75 (2006), https://www.tandfonline.com/doi/abs/10.1300/J399v02n02_05. A Perma archive link was unavailable for this citation.
[194] Yang Bai et al., *Accessibility of Local Government Websites: Influence of Financial Resources, County Characteristics and Local Demographics*, 20 Universal Access in the Information Society 851 (2021), https://link.springer.com/article/10.1007/s10209-020-00752-5 [https://perma.cc/YM6G-Y7TY]. The Department notes that although these studies discuss State or local government conformance with the section 508 standards, those standards only apply to the Federal Government, not to State or local governments.
[195] The PRIA summary and PRFA frequently refer generally to "governments," which is intended to include only State or local governments covered by this rulemaking.
[196] U.S. Census Bureau, *Census of Governments 2017 - Public use Files* (Jan.), https://www.census.gov/data/datasets/2017/econ/gus/public-use-files.html [https://perma.cc/UG79-5MVM].
[197] *See* Section 2.1, Number of Governments, in the accompanying PRIA for the Department's methodology.

Type of Government Entity	Population of less than 50,000	Population of 50,000 or more	Total
School district	11,443	779	12,222
U.S. territory	2	3	5
Public university	744 [b]	N/A	744
Community college	1,146 [b]	N/A	1,146
Total (no higher education)	86,918	2,681	89,599
Total (with higher education)	88,808	2,681	91,489

[a] Washington D.C. is included as a State for purposes of this table and the following analysis.
[b] Special district, public university, and community college data do not include population. For these tables, they are displayed as small.

The Department expects the benefits of this proposed regulation will accrue to all individuals using State and local government entities' services, but particularly to those with certain types of disabilities. WCAG 2.1 Level AA primarily benefits individuals with vision, hearing, cognitive, and manual dexterity disabilities.[198] To identify persons with those disabilities, the Department relied on the U.S. Census Bureau's Survey of Income and Program Participation ("SIPP") for reasons described further in the Department's full PRIA.[199]

Using SIPP 2021 data, as shown in Table 12, the Department estimates that 4.8 percent of adults have a vision disability, 7.5 percent have a hearing disability, 10.1 percent have a cognitive disability, and 5.7 percent have a manual dexterity disability. Due to the incidence of multiple disabilities, the total share without any of these disabilities is 80.1 percent.[200]

Table 12: Disability Prevalence Counts, SIPP 2021

Disability Type	Prevalence Rate	Number (Millions)	Marginal Prevalence Rate [a]	Marginal Number [a] (Millions)
Vision	4.8%	12.2	4.8%	12.2
Hearing	7.5%	19.0	6.1%	15.3
Cognitive	10.1%	25.5	6.7%	16.9
Manual dexterity	5.7%	14.3	2.3%	5.7

[198] *See* Section VI.A.5.b of this preamble for further information.
[199] *See* U.S. Census Bureau, *Survey of Income and Program Participation – About this Survey* (Aug. 2022), *https://www.census.gov/programs-surveys/sipp/about.html* [*https://perma.cc/Z7UH-6MJ8*].
[200] These estimates may miss some individuals due to underreporting. Some individuals with temporary disabilities may also not respond in the affirmative and may be missed. We note, however, that people with temporary disabilities may not always qualify as having a disability covered by the ADA.

Disability Type	Prevalence Rate	Number (Millions)	Marginal Prevalence Rate [a]	Marginal Number [a] (Millions)
None of the above	80.1%	202.3	80.1%	202.3

Source: U.S. Census Bureau. *https://www.census.gov/programs-surveys/sipp/data/datasets/2021-data/2021.html.*
[a] Individuals with multiple qualifying disabilities are counted within the first disability category listed (*e.g.*, if someone has a cognitive and vision disability, they are included in the vision disability prevalence rate).

4. Compliance Cost Analysis

For State and local government entities to comply with the proposed rule, they will have to invest time and resources to make inaccessible web and mobile app content accessible. Based on a review of the accessibility of a sample of State and local government entities' websites taken between September and November 2022, the Department has found that most government websites and mobile apps will require accessibility testing and remediation because they do not meet the success criteria of WCAG 2.1 Level AA. In addition, the proposed rule will generally require public postsecondary educational institutions and primary and secondary schools to provide accessible course content to students with disabilities at the time that the schools knew or should have known that a student with a disability is enrolled in a class and would be unable to access the content available on the password-protected website for that class (the rule provides a similar requirement for parents with disabilities in the primary and secondary school context). The Department performed analyses to estimate the costs to test and remediate inaccessible websites, mobile apps, and education course content. Estimated total costs of the rule can be found in Table 3 above. The monetized costs are also summarized further in the following subsections.

a. Regulatory Familiarization Costs

Regulatory familiarization refers to the time needed for professional staff members to become familiar with the requirements of new regulations. This may include time spent reading the rule itself, but more commonly it refers to time spent reviewing guidance documents provided by the Department, advocacy groups, or professional organizations. It does not include

time spent identifying current compliance levels or implementing changes. It also does not include training time to learn the nuances of WCAG 2.1 Level AA.

The Department has estimated regulatory familiarization costs to be $27.2 million. The summary of the Department's regulatory familiarization calculations is included in Table 13, and the Department's analysis is explained in more detail in Section 3.2, Regulatory Familiarization Costs, of the full PRIA. Average annualized regulatory familiarization costs over 10 years, using a 7 percent discount rate, are $3.6 million.

Table 13: Regulatory Familiarization Costs[201]

Variable	Value
Potentially affected governments	91,489
Average hours per entity	3
Loaded wage rate	$98.98
Base wage [a]	*$49.49*
Adjustment factor	*2.00*
Cost year 1 ($1,000s)	$27,167
Annual cost years 2-10 ($1,000s)	$0
Average annualized cost, 3% discount rate ($1,000s)	$3,092
Average annualized cost, 7% discount rate ($1,000s)	$3,615

[a] 2021 Occupational Employment and Wage Survey (OEWS) median wage for software and web developers, programmers, and testers (SOC 15-1250).

b. Website Testing, Remediation, and O&M Costs

The proposed rule uses WCAG 2.1 Level AA as the standard for State and local government entities' websites. To assess costs to State and local government entities, the Department employed multistage stratified cluster sampling to randomly select government entities and their websites. To account for variability in website complexity and baseline compliance with WCAG 2.1 between government types, the Department then sampled and assessed costs based on each government type. Each identified website within the second-stage sample was tested for accessibility using a two-pronged approach of automated and manual testing to estimate the number of accessibility errors present on each site. The Department

[201] *See* Section 3.2, Regulatory Familiarization Costs, in the accompanying PRIA for the Department's methodology.

estimated remediation costs for government websites based on these manual and automated accessibility reports. The cost of remediating a website was calculated by estimating the amount of time it would take to fix each accessibility error identified on that website and multiplying that time by the 2021 Occupational Employment and Wage Survey ("OEWS") median wage for software and web developers, programmers, and testers and by a factor of two to account for benefits and overhead.[202]

Mobile app costs were analyzed separately as described in Section VI.A.4.c of this preamble. Further, costs associated with the remediation of PDFs and the captioning of video and audio media hosted on government websites were estimated separately, in order to better capture the nuanced costs associated with remediating these types of content.

For costs of PDF remediation, the Department calculated both software costs and remediation time, given that access to some PDF editing software equipped with accessibility functionality is necessary to ensure PDFs are accessible. The Department estimated the amount of time needed to remediate existing PDFs covered by the proposed rule by determining an average amount of time needed to make a pre-existing PDF compliant with WCAG 2.1 Level AA and estimating the number of covered PDFs hosted on State and local government entities' websites requiring remediation.

For costs of captioning, two governments were randomly selected from each government type, for a total of 28 governments selected. The Department compiled a list of all videos and audio files associated with each website. The Department then made a determination about whether the video or audio media required captions and recorded their durations. The durations of YouTube and Vimeo videos were imputed from the mean duration of non-YouTube and non-Vimeo videos, computed across all 28 governments. The Department estimated that, for those 28 entities, captioning is needed for: 1,640 minutes of non-YouTube and non-Vimeo videos, 378

[202] U.S. Bureau of Labor Statistics, *May 2021 National Occupational Employment and Wage Estimates United States* (Mar. 31, 2022), *https://www.bls.gov/oes/current/oes_nat.htm#15-0000* [*https://perma.cc/U2JE-ZXAL*].

minutes of audio files, and 23,794 minutes of YouTube and Vimeo videos. This adds up to a total captioning time of 25,811 minutes for the 28 governments. The Department then scanned consumer prices and, based on that scan, applied an upper bound rate of $15 per minute to caption to the total captioning time, yielding an estimated cost of $387,200 across the 28 governments. For these same governments, the total estimated website remediation costs are $8.1 million. Thus, the ratio of captioning costs to website remediation costs is 4.8 percent. This ratio represents the estimated mean percentage increase in website remediation costs when accounting for video and audio content requiring captions—including content posted to external sites and platforms such as YouTube and Vimeo. This mean percentage was applied uniformly to all government types to scale up the website remediation costs to account for video and audio content. The Department's assessment of these costs is included in the full PRIA and summarized in Table 14.

In addition, the Department estimated testing costs by evaluating the pricing of several commercial web accessibility checkers that could be used in tandem with manual testing. The Department then derived an average cost to test and remediate all websites of a given government entity for each government type and size. Initial website testing and remediation costs are summarized in Table 14, and the methodologies used to calculate these costs are fully described in Section 3.3, Website Testing, Remediation, and O&M Costs, in the full PRIA.

Table 14: Total Initial Website Testing and Remediation Costs (Millions)[203]

Type of Government Entity	Testing Costs	Website Remediation Costs	PDF Remediation Costs	Video and Audio Captioning Costs	Total Initial Costs
State	$28.3	$141.1	$22.9	$6.7	$199.0
County (small)	$9.1	$35.4	$15.9	$1.7	$62.2
County (large)	$87.7	$433.2	$44.4	$20.6	$585.9
Municipality (small)	$268.8	$1,260.1	$112.7	$60.0	$1,701.5
Municipality (large)	$61.8	$304.2	$45.0	$14.5	$425.5
Township (small)	$185.5	$876.1	$89.5	$41.7	$1,192.8

[203] *See* Section 3.3, Website Testing, Remediation, and O&M Costs, in the accompanying PRIA for the Department's methodology.

Type of Government Entity	Testing Costs	Website Remediation Costs	PDF Remediation Costs	Video and Audio Captioning Costs	Total Initial Costs
Township (large)	$3.8	$18.0	$2.1	$0.9	$24.7
Special district	$61.4	$247.0	$13.8	$11.8	$333.9
U.S. territory (small)	$0.1	$0.6	$0.4	$0.0	$1.2
U.S. territory (large)	$0.6	$3.0	$0.7	$0.1	$4.5
School district (small)	$175.1	$813.5	$55.7	$38.7	$1,083.0
School district (large)	$85.2	$421.4	$24.1	$20.1	$550.8
Public university	$73.4	$362.7	$26.7	$17.3	$480.1
Community college	$98.0	$483.4	$30.9	$23.0	$635.3
Total	$1,138.8	$5,399.6	$484.9	$257.1	$7,280.3

In addition to initial testing and remediation costs associated with making existing web content accessible, the Department also estimated O&M costs, which State and local government entities would incur after the initial implementation phase. These O&M costs cover ongoing activities required under the rule to ensure that new web content meets WCAG 2.1 Level AA such as websites and new social media posts.

The Department estimates O&M costs will be composed of (1) a fixed cost for technology to assist with creating accessible content, as well as (2) a variable cost that scales according to the size and type of content on the website. In general, entities whose websites have higher remediation costs are likely to have a higher O&M burden, as remediation cost is one useful measure of the amount of web content that must conform to WCAG 2.1 Level AA. As such, the Department believes that the initial remediation costs serve as a reasonable basis for scaling future O&M costs. However, regardless of their initial remediation burden, governments may be able to mitigate their ongoing costs by developing systems early in the implementation period to ensure that accessibility considerations are incorporated at every stage of future content creation.

Annual O&M costs are estimated to be significantly smaller than remediation costs because (1) the amount of new material added each year will generally be less than the current amount of content and (2) the cost to make new content accessible is significantly smaller than to remediate existing content. One vendor estimates that making content accessible during the development

phase is 3–10 times faster, and consequently less expensive, than remediating web content after a website has been fully launched.[204] Given the estimate that new web content is 3–10 times faster to make accessible than existing content, the Department concluded that allocating 10 percent of the time originally used to test and remediate sites to O&M each year would be more than sufficient to ensure future content is accessible.

Table 15 displays the undiscounted annual O&M costs for each government type. The total annual cost across all State and local government entities is estimated to be $741.9 million. O&M costs are estimated to accrue over the implementation period following the same schedule described for initial costs. Large governments will incur 100 percent of annual O&M costs starting in Year 3 following promulgation of the proposed rule, and small governments would incur these full O&M costs beginning in Year 4. For more on annual O&M costs, please see Section 3.3.8, Operating and Maintenance ("O&M") Costs, of the accompanying PRIA.

Table 15: Annual O&M Costs, by Government Type (thousands)[205]

Type of Government Entity	Undiscounted Annual O&M Costs, per Entity[a]	Total Undiscounted Annual O&M Costs for All Entities
State	$390.3	$19,906.4
County (small)	$3.1	$6,470.7
County (large)	$63.4	$58,677.8
Municipality (small)	$9.2	$172,517.7
Municipality (large)	$55.6	$42,622.7
Township (small)	$7.6	$121,724.7
Township (large)	$15.9	$2,482.2
Special district	$1.1	$40,513.9
U.S. territory (small)	$57.9	$115.8
U.S. territory (large)	$149.2	$447.7
School district (small)	$9.6	$109,531.3
School district (large)	$70.8	$55,156.1
Public university	$64.6	$48,081.1
Community college	$55.5	$63,644.5
Total	$8.1	$741,892.6

[a] This column presents the mean annual O&M cost across all governments, including those that do not have a website.

[204] Level Access, *The Road to Digital Accessibility*, https://www.levelaccess.com/the-road-to-digital-accessibility/ [https://perma.cc/4972-J8TA].

[205] *See* Section 3.3.8, Operating and Maintenance (O&M) Costs, in the accompanying PRIA for the Department's methodology.

The Department assumes that initial testing and remediation costs would be uniformly distributed across the number of implementation years for each entity type. In aggregate, it was assumed that large entities would incur 50 percent of their initial testing and remediation costs during each of Year 1 and Year 2 following the promulgation of the rule, and that small entities would incur 33 percent of their initial testing and remediation costs during each of the first three years following the promulgation of the rule. Total projected website costs over 10 years are displayed in Table 16, and are discussed in Section 3.3.9 of the full PRIA. Present value ("PV") and average annualized costs are displayed using both a 3 percent and 7 percent discount rate.

Table 16: Total Projected 10-Year Website Costs[206]

Time Period	Cost (Millions)
Year 1	$2,911.0
Year 2	$3,206.8
Year 3	$2,049.8
Year 4	$741.9
Year 5	$741.9
Year 6	$741.9
Year 7	$741.9
Year 8	$741.9
Year 9	$741.9
Year 10	$741.9
PV of 10-year costs, 3% discount rate	$11,954.8
Average annualized costs, 3% discount rate	$1,401.5
PV of 10-year costs, 7% discount rate	$10,458.6
Average annualized costs, 7% discount rate	$1,489.1

c. Mobile App Testing, Remediation, and O&M Costs

Mobile apps offer convenient access to State and local government entities' services, programs, and activities. According to a 2021 U.S. Census Bureau report, in 2018, smartphones and tablet devices were present in 84 percent and 63 percent of U.S. households, respectively.[207]

[206] *See* Section 3.3.9, Total Costs for Website Testing and Remediation, in the accompanying PRIA for the Department's methodology.
[207] Michael Martin, *Computer and Internet Use in the United States: 2018,* American Community Survey Reports (Apr. 2021), *https://www.census.gov/content/dam/Census/library/publications/2021/acs/acs-49.pdf [https://perma.cc/ST79-PKX5].*

Mobile apps are relatively new compared to websites, and a different technology. Existing tools to evaluate website accessibility cannot reasonably be applied to mobile apps and cannot be easily altered for mobile app evaluation. The tools that do exist to evaluate mobile app accessibility are largely geared towards app developers and often require access to mobile app coding.[208] Literature related to accessibility for mobile software is also sparse, which may be attributed to the relative lack of tools available to assess mobile app accessibility compared with the tools available to assess website accessibility.[209] The Department expects that these resources will grow as a result of this rulemaking and a resulting greater demand for mobile app accessibility resources.

Under the proposed rule, mobile apps that State and local government entities make available to members of the public or use to offer services, programs, and activities to members of the public must adhere to WCAG 2.1 Level AA. To evaluate costs associated with mobile app compliance, a simple random sample of five entities was selected for each type of government. As described in more detail in Section 3.3.2, Government and Website Sampling, in the accompanying PRIA, governments were stratified by size when sampled.

State and local government entities are obligated to ensure that mobile apps they make available or use to offer services, programs, and activities to members of the public are accessible. However, as with websites, the Department only identified mobile apps created directly for a government. The Department did not include mobile apps developed and managed by third parties and used by the sampled government entities ("external mobile apps") because the Department was unable to find existing data or literature on the cost to remediate these apps, which may differ substantially from internal mobile apps. Additionally, many of these external mobile apps are used by multiple government clients, so our sample would overcount these apps. However, unlike websites, the Department has not included costs for third-party mobile apps as a

[208] *See id.*
[209] *See id.*

separate cost, because the necessary data are unavailable. Exclusion of third-party developed mobile apps from this analysis may underestimate costs. The Department believes this undercount is offset elsewhere. For example, for State and local government entities' mobile apps used to offer services, programs, and activities to members of the public, the Department assumed all non-compliant material would be remediated, but in reality, some material that is not actively being used will likely be archived or removed.

To estimate the number of mobile apps controlled by State and local government entities, the Department calculated the average number of identified mobile apps per government entity in the sample, by entity type. The results of these calculations are presented below in Table 17. This was multiplied by the number of government entities for each respective government type (see Table 11) to estimate the number of mobile apps controlled by each government type. Estimates of the total number of mobile apps controlled by each government type are presented below, in Table 18. These calculations are discussed further in Section 3.4.1.1, Mobile App Estimation, of the PRIA.

Table 17: Average Number of Mobile Apps by Government Type[210]

Type of Government Entity	Population Less than 50,000	Population More than 50,000	Total
State	N/A	4.40	4.40
County	0.20	0.60	0.32
Municipal	0.00	1.00	0.04
Township	0.00	0.20	0.00
Special district	0.00	[a]	0.00
School district	0.40	1.40	0.46
U.S. territory	0.50	5.33	3.40
Public university	1.20	[a]	1.20
Community college	0.20	[a]	0.20
Total (special districts and higher education)	[a]	[a]	0.03
Total (all else)	0.10	1.00	0.15

[a] Special district, public university, and community college data do not include population. For tables in Section VI.A.4.c of this preamble, they are displayed as entities with populations less than 50,000.

[210] *See* Section 3.4.1.1, Mobile App Estimation, in the accompanying PRIA for the Department's methodology.

Table 18: Total Estimated Number of Mobile Apps by Government Type[211]

Type of Government Entity	Population Less than 50,000	Population More than 50,000	Total
State	N/A	224	224
County	421	556	977
Municipal	0	766	766
Township	0	31	31
Special district	0	[a]	0
School district	4,577	1,091	5,668
U.S. territory	1	16	17
Public university	893	[a]	893
Community college	229	[a]	229
Total (special districts and higher education)	1,122	[a]	1,122
Total (all else)	4,999	2,684	7,683

[a] Special district, public university, and community college data do not include population. For tables in Section VI.A.4.c of this preamble, they are displayed as entities with populations less than 50,000.

As the Department describes more fully in its PRIA, there is a lack of literature related to accessibility testing guidelines, tools, and costs for mobile apps. Because of this, the Department assumed that costs to test and modify a mobile app for compliance with WCAG 2.1 Level AA success criteria would be a percentage of the cost to develop an "average" mobile app, based on the limited literature the Department found related to making mobile apps accessible. Using best professional judgment, the Department assumed that costs to test and modify an existing mobile app for accessibility will be greater than half of the cost to develop a mobile app from scratch, but less than the total cost of developing a new mobile app. Specifically, the Department assumed that the cost to test and modify a mobile app for accessibility will be 65 percent of the cost to develop a new mobile app. The Department seeks the public's input on this assumption. The Department used mobile app development cost data made public by the mobile app developer SPD Load in 2022 to estimate an average mobile app development cost of $105,000.[212] This results in an average mobile app accessibility testing and modification cost of $68,250 (65 percent of $105,000). Some mobile apps may be more complex than others, and

[211] *Id.*

[212] SPD Load, *How Much Does It Cost to Develop an App in 2022? Cost Breakdown*, https://spdload.com/blog/app-development-cost/ [https://perma.cc/Y2RM-X7VR].

therefore more expensive to test and modify for accessibility.[213] The Department thus used file size as a proxy for mobile app complexity in its analysis.

Table 19 shows the average costs associated with testing and modifying an existing mobile app to conform with WCAG 2.1 Level AA. Generally, the estimated costs differ due to variability in the file size. The average cost of initial mobile app testing and remediation was then multiplied by the total estimated number of mobile apps for each respective government type and size (see Table 18) to generate an estimated cost to all government entities in each respective category (Table 20). Underlying calculations to these tables are discussed further in Section 3.4, Mobile App Testing, Remediation, and O&M Costs, of the accompanying PRIA.

Table 19: Average Cost to Modify a Mobile App by Government Type[214]

Type of Government Entity	Population Less than 50,000	Population More than 50,000
State	N/A	$61,045
County	$59,356	$50,478
Municipal	N/A	$121,922
Township	N/A	$41,624
Special district	N/A [a]	[a]
School district	$68,250	$61,670
U.S. territory	$134,991	$65,971
Public university	$52,185 [a]	[a]
Community college	$77,478 [a]	[a]
Total (special districts and higher education)	$64,832	[a]
Total (all else)	$87,532	$67,118

[a] Special district, public university, and community college data do not include population. For tables in Section VI.A.4.c of this preamble, they are displayed as entities with populations less than 50,000.

[213] Sudeep Srivastava, *What Differentiates a $10,000 Mobile App From a $100,000 Mobile App?*, appinventiv (May 6, 2022), https://appinventiv.com/blog/mobile-app-development-costs-difference/ [https://perma.cc/5RBB-W7VP].
[214] *See* Section 3.4, Mobile App Testing, Remediation, and O&M Costs, in the accompanying PRIA for the Department's methodology.

Table 20: Initial Mobile App Costs (Millions)[215]

Type of Government Entity	Population Less than 50,000	Population More than 50,000	Total
State	N/A	$13.7	$13.7
County	$25.0	$28.0	$53.0
Municipal	$0.0	$93.4	$93.4
Township	$0.0	$1.3	$1.3
Special district	$0.0 [a]	[a]	$0.0
School district	$312.4	$67.3	$379.7
U.S. territory	$0.1	$1.1	$1.2
Public university	$46.6 [a]	[a]	$46.6
Community college	$17.8 [a]	[a]	$17.8
Total (special districts and higher education)	$64.3	[a]-	$64.3
Total (all else)	$337.5	$204.7	$542.3

[a] Special district, public university, and community college data do not include population. For tables in Section VI.A.4.c of this preamble, they are displayed as entities with populations less than 50,000.

Costs for the proposed rule are expected to be incurred at different times for each type of government entity because of differences in proposed implementation timelines. Government entities serving populations over 50,000 will have two years to implement the proposed rule, and costs are assumed to be distributed evenly across the two implementation years. Government entities serving populations of less than 50,000 and special districts will have three years to implement the proposed rule, and costs are assumed to be distributed evenly among the three implementation period years. Public postsecondary institutions are generally associated with large governments, and consequently, for purposes of this analysis, the Department assumes that public postsecondary institutions will have two years to implement the rule.

Additionally, the Department assumed that State and local government entities will incur O&M costs associated with accessibility maintenance starting after the proposed rule's implementation period. The Department, using best professional judgment due to the absence of applicable data, assumed that added O&M costs associated with accessible mobile apps are equal

[215] *Id.*

to 10 percent of O&M costs associated with an average mobile app. The Department used a publicly available data range to calculate average annual mobile app O&M costs and estimate the annual cost of O&M for an average mobile app.[216] The estimated average annual cost of O&M per mobile app ($375) was multiplied by 10 percent to calculate expected additional O&M costs incurred as a result of compliance with the proposed rule ($37.50). The Department then multiplied expected additional O&M costs per app by the total estimated number of mobile apps. Undiscounted costs of compliance with the proposed rule over a 10-year period, PV of costs, and average annualized costs are presented in Table 21 and discussed further in Section 3.4, Mobile App Testing, Remediation, and O&M Costs, of the accompanying PRIA.

Table 21: Timing of Mobile App Costs (Millions)[217]

Time Period	Costs
Year 1	$247.1
Year 2	$247.1
Year 3	$112.6
Year 4	$0.3
Year 5	$0.3
Year 6	$0.3
Year 7	$0.3
Year 8	$0.3
Year 9	$0.3
Year 10	$0.3
PV of 10-year costs, 3% discount rate	$577.7
Average annualized costs, 3% discount rate	$67.7
PV of 10-year costs, 7% discount rate	$540.1
Average annualized costs, 7% discount rate	$76.9

d. Postsecondary Education

The proposed rule distinguishes between public postsecondary institutions' public-facing websites, mobile apps, and password-protected course material. Costs were estimated separately for these three categories.

---

[216] Michael Georgiou, *Cost of Mobile App Maintenance in 2022 and Why It's Needed*, Imaginovation Insider (June 30, 2022), *https://imaginovation.net/blog/importance-mobile-app-maintenance-cost/* [*https://perma.cc/UY5K-6FKC*].

[217] *See* Section 3.4, Mobile App Testing, Remediation, and O&M Costs, in the accompanying PRIA for the Department's methodology.

Public-facing websites were assessed for current levels of compliance using SortSite, a software application the Department used to assess accessibility in tandem with manual testing.[218] For this cost component, unstratified random samples were drawn consisting of 10 public four-year universities and 10 public community colleges.[219] Whereas the Department searched for and scanned other State and local government entities' secondary websites, only the main site was scanned for postsecondary institutions. Instead, the Department estimated that postsecondary institutions' secondary websites would incur testing and remediation costs equal to 1.1 times the testing and remediation costs of their main websites. Postsecondary institutions were found to have main website costs that were most similar to those of large school districts and large counties, and for those two types of government entities, secondary websites incur 1.1 times the cost of the main websites, on average. Large school districts and large counties also have 5.7 times as many secondary websites as main websites and their secondary websites have 0.25 times the number of PDFs as their main websites. Those ratios were used in estimating numbers of higher education secondary websites and secondary website PDF costs. For a more complete discussion of the Department's methodology, please see Section 3.5.1, Postsecondary Education Overview, of the accompanying PRIA.

Postsecondary institutions' mobile app costs were assessed separately using the Department's methodology for mobile app calculation. This is discussed in full in the Department's PRIA.

Given that website accessibility scanning software is not compatible with password-protected sites, costs to remediate online course content were estimated with a different method. As an overview, the Department used a probabilistic model to estimate the proportion of courses that would require remediation during the first year of remediating course content under the proposed rule (the first year after implementation). As discussed in more detail in the full PRIA,

[218] The Department's basis for selecting SortSite, as well as its methods for using SortSite in tandem with manual testing, are described in more detail in the full PRIA.
[219] Technical colleges were included with community colleges.

the Department determined as a result of its modeling that virtually all remaining courses would be remediated in the second year of remediating course content. The Department does not expect that courses will be made accessible in a significant way in the absence of the rule, though this assumption is based on literature on trends in web accessibility rather than statistical modeling. The high rate at which courses will need remediation under the proposed rule is a notable finding of the Department's analysis, which has major implications for students with disabilities. The Department also conducted sensitivity analyses to ensure the PRIA accounts for a range of possibilities on course remediation.

O&M costs for course content were estimated at a higher annual rate than for websites to account for new courses that may be introduced, additional captioning associated with video lectures, and the like. This is further described in the Department's full PRIA.

Under the proposed rule, password-protected postsecondary course content (*e.g.*, course content provided through third-party learning management systems) must be made accessible when an institution is on notice that a student with a relevant disability is enrolled in a particular class. Using data from the 2021 SIPP, the Department estimated the prevalence of students with either a hearing, vision, manual dexterity, or cognitive disability. The Department estimated prevalence values for individuals aged 18–22 to account for the conventional school age population that attends four-year institutions and used an age range of 17–29 for community college students.[220] The Department recognizes that these age ranges do not represent the entire postsecondary population, and that they may underestimate disability prevalence by excluding older populations who may be more likely to have disabilities. However, given the need to define the population's age in order to estimate disability prevalence, the Department feels that these are appropriate ranges for this cost estimation.

The Department understands that only a portion of students with disabilities will require

[220] The range 17–29 was calculated from National Center for Education Statistics data and includes 80 percent of the community college population.

course remediation. Data in the High School Longitudinal Study ("HSLS") of 2009, conducted by the National Center for Education Statistics ("NCES"), suggests that 37 percent of students with disabilities report their disability to their college or university.[221] Applying this proportion to the disability prevalence rates for students with a vision, hearing, dexterity, or cognitive disability, yields the percent of individuals aged 18–22 and 17–29 who will report a relevant disability to their college or university. However, because the HSLS reports the fraction of students with any disability who report their disability to the school, and not the fraction of students with either a vision, hearing, dexterity, or cognitive disability who report their disability to the school, this number may be an over- or underestimate depending on the variability in the likelihood that students with specific disabilities report their disability to the school. To estimate average class sizes, the Department used Common Data Set ("CDS") reports from 21 public universities and 10 community colleges, resulting in an average of 29.8 students per class in public universities and 20.4 students per class in community colleges.[222]

When estimating the percent of courses that will be remediated in each year, the Department found that, within two years following implementation, virtually all postsecondary courses will have been remediated. Specifically, the probability function discussed in Section 3.5.2.2, Probabilistically Calculating the Rate of Course Remediation, in the Department's PRIA shows that by the end of year four (two years after postsecondary schools begin to remediate course content), 96 percent of courses offered by public four-year and postgraduate institutions and 90 percent of courses offered by community colleges will have been remediated. The Department assumes that despite having some courses for which remediation has not been requested by year five, postsecondary institutions will finish remediation on their own to preempt requests in the following year. For institutions that wait to remediate outstanding courses, the costs will be negligible because the number of outstanding courses is projected to be low, and

[221] Institute of Education Sciences, *Use of Supports Among Students with Disabilities and Special Needs in College* Supp. Tbl. 2 (Apr. 2022), *https://nces.ed.gov/pubs2022/2022071/index.asp* [*https://perma.cc/RSY3-TQ46*].
[222] *See* Common Data Set Initiative, *https://commondataset.org/* (last visited June 15, 2023).

because in year three entities will likely have ensured that their LMS supports accessibility and that their instructors have appropriate tools and training. These findings about the rapidity of course remediation speak to the necessity and importance of this rule. Table 22 shows the assumptions, data, and methods from Section 3.5, Postsecondary Education, of the accompanying PRIA to estimate course costs.

Table 22: Course Remediation Costs[223]

Description	Public University	Community College	Source
Age range	18–22	17–29	NCES
Average class size	29.8	20.4	CDS Data
Prevalence of disabilities	0.13	0.12	SIPP Data
Share of students with a disability who notify school	0.37	0.37	HSLS
Share of students who have a relevant disability and notify school	0.05	0.04	Calculation
Total number of courses offered	1,803,277	965,097	Calculation
Number of courses remediated first semester	900,406	383,766	Calculation
Cost per course	$1,690	$1,690	Farr et al. (2009)[224] NCDAE[225]
First semester cost for all institutions (millions)	$1,521.6	$648.5	Calculation
First semester mean cost per institution (millions)	$2.0	$0.6	Calculation
Number of courses remediated second semester	563,214	269,294	Calculation
Second semester course remediation costs (millions)	$951.8	$455.1	Calculation
First year cost (millions)	$2,473.4	$1,103.6	Calculation
Courses remediated in Year 2	339,656	312,037	Calculation
Year 2 course remediation cost (millions)	$574.0	$527.3	Calculation
Total costs to remediate all courses (millions)	$3,047.4	$1,630.9	Calculation
Mean cost per institution to remediate all courses (millions)	$4.1	$1.4	Calculation
Mean cost per student to remediate all courses	$340.7	$341.4	Calculation
Yearly O&M cost per course	$253	$253	Calculation
Total yearly O&M cost (millions)	$609.5	$326.2	Calculation
Mean O&M cost per institution	$819,198	$285,380	Calculation

[223] *See* Section 3.5, Postsecondary Education, in the accompanying PRIA for the Department's methodology.

[224] Beverly Farr et al., *A Needs Assessment of the Accessibility of Distance Education in the California Community College System Part II: Costs and Promising Practices Associated with Making Distance Education Courses Accessible*, MPR Associates, Inc. (May 2009), https://files.eric.ed.gov/fulltext/ED537862.pdf [https://perma.cc/LFT7-R2CL].

[225] Cyndi Rowland, *GOALS Cost Case Study: Cost of Web Accessibility in Higher Education*, Gaining Online Accessible Learning through Self-Study (Dec. 2014), https://www.ncdae.org/documents/GOALS_Cost_Case_Study.pdf [https://perma.cc/UH6V-SBTU].

The Department calculated the proportion of classes requiring remediation on a per school basis using a methodology outlined in the PRIA, and with that number calculated the total number of classes offered by a school requiring remediation. The Department developed a per-course cost estimate because it believes that password-protected course content is unique in its combination of level of complexity, volume of material, and distribution of content compared to other government web content. These qualities distinguish it from other government entities' web contents, which necessitate a separate estimation approach. Though literature on the cost of remediating course content to WCAG 2.1 Level AA is sparse, the Department used findings from Farr et al. (2009)[226] and the National Center on Disability and Access to Education ("NCDAE") GOALS Course Cost Case Study (2014),[227] to estimate the cost to remediate a course to be $1,690. Each of these studies presented ranges of cost estimates for "simple" and "complex" courses.[228] To generate an average course cost, the Department took the midpoint of the given ranges and generated a weighted average from the two studies' "simple" and "complex" course cost estimates using survey data from Farr et al. (2009) that estimated 40 percent of classes to be complex, and 60 percent of classes to be simple.[229] A full explanation of the Department's methodology on course cost estimates can be found in Section 3.5.2.3 of the accompanying PRIA.

The Department then multiplied the sum of the number of all institutions' first semester courses requiring remediation by the cost per course to estimate a total first-semester cost to remediate courses. The Department expects the first semester to be the most expensive as it will

---

[226] Beverly Farr et al., *A Needs Assessment of the Accessibility of Distance Education in the California Community College System Part II: Costs and Promising Practices Associated with Making Distance Education Courses Accessible*, MPR Associates, Inc. (May 2009), https://files.eric.ed.gov/fulltext/ED537862.pdf [https://perma.cc/LFT7-R2CL].

[227] Cyndi Rowland et al., *GOALS Cost Case Study: Cost of Web Accessibility in Higher Education*, Gaining Online Accessible Learning through Self-Study (Dec. 2014), https://www.ncdae.org/documents/GOALS_Cost_Case_Study.pdf [https://perma.cc/UH6V-SBTU].

[228] "Simple" courses are loosely defined as courses that mostly house images and documents.

[229] *See* Farr et al., at 5. As part of this study, experts were interviewed on online learning to estimate the proportion of classes which are simple or complex. These estimates are discussed throughout the paper and are first referenced on page 5.

be the semester with the smallest amount of existing compliance, and therefore the greatest number of classes that are out of compliance with WCAG 2.1 Level AA. In subsequent semesters, those courses that have been previously remediated will already be accessible, meaning the total pool of classes needing remediation will decrease over time. The Department estimates that 46 percent of all classes offered between community colleges and four-year and postgraduate institutions will be remediated in the first semester, costing a total of $2.2 billion. On a per-student basis, this is $170 for four-year and postgraduate institutions and $136 for community colleges. A full explanation of the Department's methodology can be found in Section 3.5, Postsecondary Education of the accompanying PRIA.

To calculate second-semester classes requiring remediation, the Department used the same proportion of classes needing remediation but calculated a new number of classes that are eligible for remediation. The Department estimates that there is a 50 percent overlap in classes offered during semester one and semester two. Using that estimate, the Department calculated the number of second semester classes eligible for remediation as half the number of classes in the first semester plus the courses which are offered both semesters but were not remediated in semester one. The Department estimates that 563,214 public four-year and postgraduate courses and 269,294 community college courses will need to be remediated in semester two, which will cost a total of $1.4 billion. Because the Department's estimated rate of remediation is relatively high (the modeling above yields a 75 percent remediation rate in semester one for four-year institutions, and a 60 percent remediation rate in semester one for community colleges), the Department assumed that by the end of the second year of remediation, all postsecondary institutions will have remediated all currently offered courses. For the Department's detailed methodology, see Section 3.5.2.2, Probabilistically Calculating the Rate of Course Remediation, of the accompanying PRIA.

Following this remediation period, the Department estimates yearly O&M costs to be 15 percent of initial remediation costs, amounting to $253 per class. As discussed more fully in its

PRIA, the Department estimates general O&M costs to be 10 percent of total remediation costs. Given that course content often contains video-based lectures requiring closed captioning, and content that is updated more frequently than general web content, the Department assumes a 50 percent higher O&M cost for course content than for general web content. Additionally, this 50 percent higher estimate accounts for the cost of developing new accessible courses. The full 10-year costs of the rule for course remediation and O&M costs are presented in Table 23, along with PV and annualized costs. A full explanation of the Department's methodology can be found in Section 3.5, Postsecondary Education, of the PRIA.

Table 23: Projected 10-Year Costs for Course Remediation (Millions)[230]

Institution Type	Public University	Community College	Total
Year 1	$0	$0	$0
Year 2	$0	$0	$0
Year 3	$2,473	$1,104	$3,577
Year 4	$1,069	$748	$1,817
Year 5	$609	$326	$936
Year 6	$609	$326	$936
Year 7	$609	$326	$936
Year 8	$609	$326	$936
Year 9	$609	$326	$936
Year 10	$609	$326	$936
PV, 3% discount rate	$6,147	$3,245	$9,391
PV, 7% discount rate	$5,051	$2,658	$7,708
Annualized cost, 3% discount rate	$721	$380	$1,101
Annualized cost, 7% discount rate	$719	$378	$1,097

e. Elementary and Secondary Class or Course Content Remediation

Under the proposed rule, password-protected course content (*e.g.*, content provided through third-party learning management systems) in a public elementary or secondary school generally must be made accessible when a student with a disability is enrolled in the course or when a student is enrolled whose parent has a disability. This section summarizes the Department's analysis of the costs for elementary and secondary education institutions to make this content

[230] *See* Section 3.5, Postsecondary Education, in the accompanying PRIA for the Department's methodology.

accessible, which is discussed in depth in Section 3.6, Elementary and Secondary Course Content Remediation, of the PRIA. Much of the methodology used is similar to that for course remediation costs for postsecondary education. The Department estimates that annualized costs with a 3 percent discount rate for elementary and secondary education institutions are $195 million. Additionally, these institutions will incur some O&M costs after implementation.

NCES publishes a list of all public schools in the United States with enrollment counts by grade level for kindergarten (grade K) through 12th grade.[231] Best available estimates suggest 66 percent of all schools (public and private) have an LMS and the Department assumed that this number will not change significantly in the next 10 years in the presence or absence of this rule.[232] The Department made this assumption due to a lack of available data, and the Department notes that even if there were an increase in the percent of schools with an LMS, this would increase both costs and benefits, likely resulting in a nominal impact to the net benefits of the rule. Using these data, the number of public schools with an LMS was computed by grade level. The Department estimated the number of unique classes or courses offered per school and per grade level, and then used this value to calculate the total number of LMS classes or courses that must be remediated in each school.[233] Table 24 presents the assumptions for the number of unique LMS classes or courses offered per grade level, based on the Department's best professional judgment. The number of unique classes or courses is lower for earlier grade levels[234] and increases in higher grade levels as education becomes more departmentalized (*i.e.*, students move from teacher to teacher for their education in different subjects) and schools

---

[231] Institute of Education Sciences, *ELSI Elementary/Secondary Information System 2020-21 Public School Student Enrollments by Grade,* National Center for Education Statistics, https://nces.ed.gov/ccd/elsi/default.aspx. A Perma archive link was unavailable for this citation.

[232] Frank Catalano, *Pandemic Spurs Changes in the Edtech Schools Use, From the Classroom to the Admin Office*, EdSurge (Jan. 2021), https://www.edsurge.com/news/2021-01-26-pandemic-spurs-changes-in-the-edtech-schools-use-from-the-classroom-to-the-admin-office [https://perma.cc/N2Y3-UKM2].

[233] To the extent that the percentage of public schools with an LMS is lower than the percentage of private schools, the analysis presented here overestimates the true elementary and secondary class or course remediation costs.

[234] Standardized curricula and relatively lower mean enrollments in earlier grade levels tend to decrease the number of unique class or course offerings per grade level, which would reduce the number of LMS classes or courses that must be remediated.

generally introduce more elective offerings as students progress toward grade 12.[235]

Table 24: Calculation of Elementary and Secondary Class or Course Remediation Costs, by Grade Level

Grade Level	Number of Schools [a]	Number of Schools with an LMS [b]	Number of LMS Courses per Grade Level	Number of Courses to Remediate	Cost to Remediate a Yearlong Course	Total Cost (Millions)
K	52,155	34,422	1	34,422	$182	$6.3
1	52,662	34,757	1	34,757	$182	$6.3
2	52,730	34,802	1	34,802	$182	$6.3
3	52,661	34,756	1	34,756	$182	$6.3
4	52,363	34,560	1	34,560	$182	$6.3
5	50,903	33,596	7	235,172	$364	$85.7
6	35,032	23,121	7	161,848	$364	$59.0
7	29,962	19,775	7	138,424	$364	$50.5
8	30,161	19,906	7	139,344	$364	$50.8
9	23,843	15,736	14	220,309	$994	$219.0
10	24,200	15,972	14	223,608	$994	$222.3
11	24,322	16,053	14	224,735	$994	$223.4
12	24,304	16,041	14	224,569	$994	$223.2
Total	N/A	N/A	N/A	N/A	N/A	$1,165.4

[a] This represents the number of schools with nonzero enrollment in the listed grade level. As such, a single school can be represented on multiple rows.
[b] This represents the number of schools with an LMS and nonzero enrollment in the listed grade level.

As discussed in its assessment of postsecondary education costs, the Department estimated costs to remediate a single postsecondary course using two estimates from Farr et al. (2009)[236] and the NCDAE GOALS Course Case Study.[237] Those papers also estimate the cost of remediating a "simple" college course. The Department assumes that a high school course is equivalent in its complexity to a "simple" college course and used estimates on time spent on

[235] According to NCES, in the 2017–2018 school year, 24 percent of elementary school classes were departmentalized, compared to 93 percent of middle schools and 96 percent of high schools. *National Teacher and Principal Survey,* NCES, https://nces.ed.gov/surveys/ntps/tables/ntps1718_fltable06_t1s.asp [https://perma.cc/8XAK-XK4L].
[236] Beverly Farr et al., *A Needs Assessment of the Accessibility of Distance Education in the California Community College System Part II: Costs and Promising Practices Associated with Making Distance Education Courses Accessible*, MPR Associates, Inc. (May 2009), https://files.eric.ed.gov/fulltext/ED537862.pdf [https://perma.cc/LFT7-R2CL].
[237] Cyndi Rowland et al., *GOALS Cost Case Study: Cost of web accessibility in higher education*, Gaining Online Accessible Learning through Self-Study, (Dec. 2014), https://www.ncdae.org/documents/GOALS_Cost_Case_Study.pdf [https://perma.cc/UH6V-SBTU].

homework to scale course costs for different grade levels. For a more complete discussion of course cost estimates, please see Section 3.6 of the accompanying PRIA. Summing across all grade levels yields total costs of $1.2 billion. Table 25 presents the costs incurred in the first 10 years following promulgation of the rule, by entity type. For each year after completing class or course remediation, the Department assumed elementary and secondary school districts would incur an O&M cost equal to 10 percent of the initial remediation cost. The Department assumes costs will not be incurred until the year required by the rule (Year 4 for small entities and Year 3 for large entities) because classes or courses would not be remediated until necessary. The Department expects that elementary and secondary classes or courses will be remediated at a faster rate than postsecondary courses, given that the proposed rule generally requires elementary and secondary educational web content to be accessible if requested by *either* the child or their parent(s), whereas postsecondary course provisions in the rule do not provide for parent(s) to request accessible web content. As such, the Department expects that virtually all class or course content will be remediated by elementary and secondary educational institutions in the first year required under the rule.

Table 25: Projected 10-Year Course Remediation Costs (Millions)

Time Period	Cost for Small School Districts	Cost for Large School Districts	Total Costs
Year 1	$0	$0	$0
Year 2	$0	$0	$0
Year 3	$0	$551	$551
Year 4	$614	$55	$670
Year 5	$61	$55	$117
Year 6	$61	$55	$117
Year 7	$61	$55	$117
Year 8	$61	$55	$117
Year 9	$61	$55	$117
Year 10	$61	$55	$117
PV, 3% discount rate	$842	$818	$1,660
PV, 7% discount rate	$692	$692	$1,384
Annualized cost, 3% discount rate	$99	$96	$195
Annualized cost, 7% discount rate	$99	$99	$197

f. Costs For Third-Party Websites and Mobile Apps

Some government entities use third-party websites and mobile apps to provide government services, programs, and activities. The Department estimated costs to modify existing third-party websites that are used to provide government services. Third-party costs related to mobile apps are unquantified because the Department was unable to find existing data or literature on the subject.

These numbers should be interpreted with caution because they include significant uncertainty. Limited information exists regarding the number of third-party websites and mobile apps employed by government entities. Additionally, little research has been conducted assessing how government entities use third-party website and mobile app services.

To estimate costs incurred from third-party website compliance, the Department used a convenience sub-sample of the full sample of government entities. This sub-sample includes 106 government entities and was not stratified to ascertain representativeness among various government entities. The Department used SortSite inventory reports to identify third-party websites that provide government services on behalf of sampled government entities. Counts were then adjusted to reflect that some third-party websites are used by more than one government. For each government entity type, the Department calculated the ratio of third-party websites in the sample to total government websites in the sample. Across all entity types, the average ratio is 0.042, or 4.2 percent.

The Department reviewed the literature for reputable estimates of the average cost of modifying a third-party website that provides government services to the public for WCAG 2.1 AA compliance. In the absence of existing reputable estimates, the Department opted to use average government website testing and remediation costs generated in this study as an approximation. Government website testing and remediation cost estimates for each government entity type were multiplied by the third-party to government website ratios to estimate costs from third-party website compliance with WCAG 2.1 AA.

In aggregate, there are estimated to be 0.04 third-party websites for every government website. If all costs were passed along to governments, governments would incur additional costs for remediating third-party websites equivalent to about 4 percent of the costs to test and remediate their own websites. The present value of total 10-year costs incurred from third-party website compliance is estimated to be $671.7 million at a discount rate of 3 percent and $587.8 at a discount rate of 7 percent. These values are displayed in Table 26.

Table 26: Projected Total Costs of Remediating Third-Party Websites (Millions)

Time Period	Total Costs (All Entities)
Year 1	$165.2
Year 2	$181.9
Year 3	$112.1
Year 4	$41.6
Year 5	$41.6
Year 6	$41.6
Year 7	$41.6
Year 8	$41.6
Year 9	$41.6
Year 10	$41.6
PV of 10-year costs, 3% discount rate	$671.7
Annualized costs, 3% discount rate	$78.7
PV of 10-year costs, 7% discount rate	$587.8
Annualized costs, 7% discount rate	$83.7

g. Sensitivity and Uncertainty Analyses of Costs

The Department's cost estimates rely on a variety of assumptions based on literature and other information that, if changed, could impact the cost burden to different government entities. To better understand the uncertainty behind its cost estimates, the Department performed several sensitivity analyses on key assumptions in its cost model. A full summary of the Department's high and low-cost estimates is in Table 28. Other assumptions not altered here also involve a degree of uncertainty and so these low and high estimates should not be considered absolute bounds.

For website testing and remediation costs, the Department adjusted its estimate of the effectiveness of automated accessibility checkers such as SortSite at identifying accessibility

errors. In its primary analysis, the Department relied on its own manual assessment of several webpages to estimate the fraction of remediation time that the errors SortSite caught accounted for among all errors present. This approach found that SortSite caught errors corresponding to 50.6 percent of the time needed to remediate a website, leading to a manual adjustment factor of 1.98. This manual adjustment factor was multiplied by the remediation time estimated using the SortSite output for each website in the sample. Vigo, Brown, and Conway (2013), by contrast, found that SortSite correctly identified 30 percent of the accessibility errors on a given website.[238] This finding is not necessarily inconsistent with the results of the Department's analysis, however, since the paper's authors merely count instances of errors, without considering the relative severity of errors. Nevertheless, the Department conservatively replicated its analysis using the 30 percent estimate for SortSite's comprehensiveness, which amounts to an adjustment factor of 3.33. This altered assumption resulted in a 10-year total website testing and remediation cost of $19.2 billion at a 3 percent discount rate, which is $7.2 billion more than the primary estimate of $12.0 billion. The analysis for estimating costs of remediating third-party websites was replicated using the same altered assumption of SortSite's comprehensiveness, resulting in a 10-year total third-party website testing and remediation cost of $1.1 billion. This is $400 million more than the primary estimate of $672 million.

The Department also reexamined its assumptions concerning PDFs that State and local government entities would choose to remediate. In the primary analysis, it was assumed that only those PDFs that had last been modified prior to 2012 would be removed or archived rather than remediated. This assumption resulted in an estimate that 15 percent of PDFs currently hosted on government websites would be taken down or archived. To approximate an upper

---

[238] Markel Vigo et al., *Benchmarking Web Accessibility Evaluation Tools: Measuring the Harm of Sole Reliance on Automated Tests*, International Cross-Disciplinary Conference on Web Accessibility (May 2013), *https://www.researchgate.net/profile/Markel-Vigo/publication/262352732_Benchmarking_web_accessibility_evaluation_tools_Measuring_the_harm_of_sole_reliance_on_automated_tests/links/56333eee08ae911fcd4a99a7/Benchmarking-web-accessibility-evaluation-tools-Measuring-the-harm-of-sole-reliance-on-automated-tests.pdf*. A Perma archive link was unavailable for this citation.

bound on the number of PDFs government entities would choose to archive, the Department reconducted its website cost analysis with the assumption that 50 percent of PDFs on State and local government entities' websites would be archived or removed rather than remediated. This calculation resulted in website costs of $11.6 billion discounted at 3 percent over 10 years, $311 million less than the primary estimate of $12.0 billion. Once again, the analysis for estimating costs of remediating third-party websites (described in Section VI.A.4.f of this preamble) was replicated using this altered PDF archival rate, resulting in a 10-year total third-party website testing and remediation cost of $654 million. This is $17 million less than the primary estimate of $672 million.

For postsecondary course remediation cost, the Department calculated costs over an increased timeline to generate a low-cost estimate. In its initial calculations, the Department estimated disability prevalence using SIPP data, calculated that the majority of classes will be remediated in the first year following the implementation of the rule, and determined that any outstanding classes will be remediated in the second year. However, the prevalence rates used from SIPP data are higher estimates than estimates from the American Community Survey ("ACS"). If the true disability prevalence of the college population is lower than was estimated for these analyses, then fewer courses will need remediation per year. The Department found that in a scenario where one third of courses are remediated per year, the annualized cost at a 3 percent discount rate is $992 million, $109 million less than its primary estimate. [239]

To generate a high-cost estimate for higher education, the Department evaluated a higher per-course remediation cost. In its primary estimates, the Department used data from two studies that estimated costs to make a course accessible. These studies were conducted in 2009 and 2014 respectively, and the online landscape of postsecondary education has changed since then. COVID-19 and the subsequent distance learning at higher education institutions may have

[239] The Department chose 1/3 to create a scenario with a more flexible remediation timeline, which implies that all courses get remediated within three years instead of two.

increased the amount of course content that is offered through online portals. If this is the case, it is possible that there is more content that needs to be remediated than there was at the time of the studies on which the Department bases its course cost estimates, and that because of that there is less accessible course content.[240] To account for this, the Department used the higher estimates for complex course remediation given in Farr et al. (2009) and the GOALS Cost Case Study from the NCDAE to estimate a cost of $1,894 per course (compared with $1,690 in the primary estimate), and an O&M cost of $284 per course (compared with $253 in the primary estimate). Under these conditions, the Department found the annualized cost of course content remediation to be $1.21 billion, $112 million more than its primary estimates.

To estimate class or course remediation costs for elementary and secondary institutions, the Department made assumptions about the number of LMSs that students interface with at each grade level. In addition, the Department had to estimate the average cost to remediate each of those LMS's content to be compliant with WCAG 2.1 Level AA. The Department performed a sensitivity analysis on these assumptions to create upper and lower bounds on cost.

For the upper bound, the Department increased the number of LMSs that students interact with in each semester. The Department raised the assumption from 1 LMS to 2 for students in grades K–4, from 7 LMSs to 10 in grades 5–8, and from 14 LMSs to 20 in grades 9–12. In addition, the Department created a continuum of costs between its low estimate of $182 and its high estimate of $994, allocating costs that increase linearly with each subsequent grade level, and effectively raising the average cost to remediate class or course content. These changes raised the annualized cost with a 3 percent discount rate from $195 million to $312 million.

For the lower bound, the Department adjusted the same parameters downwards. The Department kept the same estimate of one LMS for grades K–4, decreased the number of LMSs for grades 5–6 from seven to five, and decreased the number of LMSs for grades 9–12 from 14

[240] Conversely, it is also possible that a shift to online learning has made the higher education community more aware of web accessibility issues, and therefore increased the rate of WCAG 2.1 compliance.

to 10. For class or course remediation costs, the Department halved the estimated costs to remediate a class for all grades. When applying these changes, the annualized cost with a 3 percent discount rate decreased from $195 million dollars to $75 million dollars.

The Department conducted sensitivity analyses to assess the mobile apps cost model by varying the assumption that the cost to test and modify an existing mobile app for accessibility is equal to 65 percent of the cost to build an "average" mobile app. In the sensitivity analysis the Department assumed that State and local government entities mostly control either "simple" or "complex" mobile apps, rather than "average" mobile apps. Simple mobile apps are less costly to build than the average mobile app. The expected cost of building a simple mobile app is estimated to be $50,000, compared with $105,000 for an average mobile app.[241] The cost of testing and modifying a simple mobile app for accessibility is assumed to be 65 percent of the cost to build a simple mobile app, equal to $32,500. Using this assumption based on simple mobile apps, PV of total mobile app testing and remediation costs decreases from $597.8 million to $285.7 million.

Conversely, complex mobile apps are costlier to build than both simple mobile apps and the "average" mobile app. The expected cost of building a complex mobile app is $300,000, compared with $105,000 for the average mobile app.[242] The cost to test and modify a complex mobile app for accessibility is assumed to be 65 percent of the cost to build a complex mobile app, equal to $195,000. Using this assumption based on complex mobile apps, PV of total mobile app testing and remediation costs increase from $597.8 million to $1.1 billion.

The parameters changed for each analysis can be found in Table 27, and the total aggregated lower and higher estimates can be found in Table 28. Based on the Department's sensitivity analyses, total 10-year costs discounted at 7 percent would likely be between $18.4

[241] SPD Load, *How Much Does It Cost to Develop an App in 2022? Cost Breakdown*, *https://spdload.com/blog/app-development-cost/* [*https://perma.cc/Y2RM-X7VR*].
[242] *Id.*

and $29.5 billion.

The Department's sensitivity analysis parameters are presented in Table 27, and the Department's sensitivity analyses of total costs are presented in Table 28.

Table 27: Sensitivity Analysis Parameters

Cost	Bound	Variations
Higher education course remediation	Lower estimate	Increased remediation timeline
Higher education course remediation	Higher estimate	Higher course cost
Website costs	Lower estimate	Increased rate of PDF archival
Website costs	Higher estimate	Lower effectiveness of automated accessibility checkers
Mobile app costs	Lower estimate	Assume government apps are "simple"
Mobile app costs	Higher estimate	Assume government apps are "complex"
Elementary and secondary class or course remediation costs	Lower estimate	Assume fewer LMS classes or courses, lower class or course cost
Elementary and secondary class or course remediation costs	Higher estimate	Assume more LMS classes or courses, higher class or course cost

Table 28: Sensitivity Analyses of Total Costs (Millions)

Time Period	Primary	High Estimate	Low Estimate
Year 1	$3,361	$5,462	$3,145
Year 2	$3,646	$5,935	$3,422
Year 3	$6,402	$8,986	$4,030
Year 4	$3,270	$3,756	$2,716
Year 5	$1,836	$2,485	$2,835
Year 6	$1,836	$2,485	$1,743
Year 7	$1,836	$2,485	$1,743
Year 8	$1,836	$2,485	$1,743
Year 9	$1,836	$2,485	$1,743
Year 10	$1,836	$2,485	$1,743
PV of 10-year costs, 3% discount rate	$24,302	$34,420	$21,712
Average annualized costs, 3% discount rate	$2,849	$4,035	$2,545
PV of 10-year costs, 7% discount rate	$20,724	$29,527	$18,407
Average annualized costs, 7% discount rate	$2,951	$4,204	$2,621

h. Cost to Revenue Comparison

To consider the relative magnitude of the estimated costs of this proposed regulation, the Department compares the costs to revenues for State and local government entities. Because the costs for each government entity type are estimated to be well below 1 percent of revenues, the Department does not believe the rule will be unduly burdensome or costly for public entities.[243] Costs for each type and size of government entity are estimated to be well below this 1 percent threshold.

The Department estimated the proportion of total local government revenue in each local government entity type and size using the 2012 U.S. Census Bureau's database on individual local government finances.[244] To evaluate which government entities continue to be small, the Department applied the U.S. Census's Bureau's population growth rates by State to the population numbers in the individual local government finances data to estimate 2020 population levels.[245]

To calculate population estimates for independent school districts, the Department used a methodology that is inconsistent with the population provisions in the proposed rule's regulatory text because the local government finances data only include enrollment numbers, not population numbers. Detailed information on this methodology can be found in the full PRIA.

The Department applied these proportions of governments in each entity type to the total local government revenue estimate from the U.S. Census Bureau's State and Local Government

---

[243] As noted above and as a point of reference, the United States Small Business Administration advises agencies that a potential indicator that the impact of a proposed regulation may be "significant" is whether the costs exceed 1 percent of the gross revenues of the entities in a particular sector, although the threshold may vary based on the particular types of entities at issue. The Department estimates that the costs of this rulemaking for each government entity type are far less than 1 percent of revenues. *See* Small Bus. Admin., A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act 19 (Aug. 2017), *https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf* [*https://perma.cc/MZW6-Y3MH*].

[244] U.S. Census Bureau, *Historical Data* (Oct. 2021), *https://www.census.gov/programs-surveys/cog/data/historical-data.html* [*https://perma.cc/UW25-6JPZ*]. The Department was unable to find more recent data with this level of detail.

[245] U.S. Census Bureau, *Historical Population Change Data (1910–2020)* (Apr. 26, 2021), *https://www.census.gov/data/tables/time-series/dec/popchange-data-text.html* [*https://perma.cc/RYQ3-VX9Q*]. Population numbers in the 2012 data are from different years, so the Department applied a growth rate based on the specified date for each entity.

Finances by Level of Government and by State: 2020, updated to 2021 dollars.[246] Table 29 contains the average annualized cost using a 3 percent and 7 percent discount rate,[247] 2020 annual revenue estimates, and the cost-to-revenue ratios for each entity type and size. The costs are less than 1 percent of revenues in every entity type and size combination, so the Department believes that the costs of this proposed regulation would not be overly burdensome for the regulated entities.

Costs for postsecondary institutions were analyzed separately from other government entities. For public universities, which tend to be State dependent, the Department has included costs with State governments to ensure the ratio of costs to revenues is not underestimated. For community college independent districts, the Department has revenue data.

Table 29: Cost-to-Revenue Ratios by Entity Type and Size[248]

Type of Government Entity	Size	Average Annualized Cost (millions) 3% Discount Rate	Average Annualized Cost (millions) 7% Discount Rate	Annual Revenue (millions) [a]	Cost to Revenue 3% Discount Rate	Cost to Revenue 7% Discount Rate
State	Small	N/A	N/A	N/A	N/A	N/A
State	Large	$867	$877	$2,846,972	0.03%	0.03%
County	Small	$20	$21	$65,044	0.03%	0.03%
County	Large	$126	$135	$448,212	0.03%	0.03%
Municipality	Small	$342	$362	$184,539	0.19%	0.20%
Municipality	Large	$100	$108	$524,589	0.02%	0.02%
Township	Small	$244	$257	$55,819	0.46%	0.48%
Township	Large	$8	$9	$12,649	0.07%	0.07%
Special district	N/A	$73	$77	$278,465	0.03%	0.03%
School district [b]	Small	$366	$384	$330,746	0.12%	0.12%
School district [b]	Large	$208	$218	$311,614	0.07%	0.07%

[246] U.S. Census Bureau, *2020 State & Local Government Finance Historical Datasets and Tables* (Sept. 20, 2022), https://www.census.gov/data/datasets/2020/econ/local/public-use-datasets.html [https://perma.cc/QJM3-N7SG].

[247] The estimated costs for dependent community colleges are not included in this table because the Department is unable to determine how to distribute these entities' costs across the other types of State and local entities. Additionally, it is unclear if all public college and university revenue (*e.g.*, tuition and fees) are included in the revenue recorded for the State or local entities on which the school is dependent. Finally, the low cost-to-revenue ratio for the independent community colleges indicate that these would not increase the cost to revenue above 1 percent for any entity type and size.

[248] *See* Section 3.9, Cost to Revenue Comparison, in the accompanying PRIA.

Type of Government Entity	Size	Average Annualized Cost (millions) 3% Discount Rate	Average Annualized Cost (millions) 7% Discount Rate	Annual Revenue (millions) [a]	Cost to Revenue 3% Discount Rate	Cost to Revenue 7% Discount Rate
Territory	Small	$0	$0	$1,243	0.02%	0.02%
Territory	Large	$1	$1	$38,871	0.00%	0.00%
Public university [c]	N/A	N/A	N/A	N/A	N/A	N/A
Community college [d]	N/A	$163	$166	$38,445	0.44%	0.45%

[a] U.S. Census Bureau, *2020 State & Local Government Finance Historical Datasets and Tables* (Sept. 2022), https://www.census.gov/data/datasets/2020/econ/local/public-use-datasets.html [https://perma.cc/QJM3-N7SG]. Inflated to 2021 dollars using GDP deflator.
[b] Excludes colleges and universities.
[c] Almost all public universities are State-dependent; costs included in the State entity type.
[d] Census of Governments data include revenue numbers only for independent community colleges. The costs included correspond to the proportion of the total number of community colleges that are independent.

5. Benefits Analysis

a. Summary of Benefits for Persons with and without Relevant Disabilities

Websites and mobile apps are common resources to access government services, programs, and activities. For example, during a 90-day period in summer 2022, there were nearly 5 billion visits to Federal Government websites.[249] Aggregate data are unavailable for State and local government entities' websites, but based on the analysis in Section 2 of the PRIA, the Department estimates there are roughly 109,900 public entity websites, and based on the analysis in Section 4.3.2 of the PRIA, the Department estimates these websites have 22.8 billion annual visits. Unfortunately, services, programs, and activities that State and local government entities provide online are not always fully accessible to individuals with disabilities. Conformance with WCAG 2.1 Level AA would increase availability of these resources to individuals with disabilities that affect web and mobile app access (*i.e.*, vision, hearing, cognitive, and manual dexterity disabilities). These individuals are referred to as "individuals with relevant disabilities"

[249] General Services Administration Digital Analytics Program, https://analytics.usa.gov/ [https://perma.cc/2YZP-KCMG] (data retrieved on Aug. 8, 2022). While this rule will not apply to the Federal Government, this statistic is provided for analogy to show the proliferation of government services offered online.

or "individuals with certain types of disabilities." Conformance would also result in benefits to individuals without these disabilities because accessible websites incorporate features that benefit all users, including individuals with other types of disabilities and individuals who do not have disabilities.

This section summarizes the benefits of conformance with WCAG 2.1 Level AA for both individuals with and without relevant disabilities. The Department calculated the primary types of disabilities impacted by WCAG 2.1 Level AA and prevalence rates for each disability type. The Department also considered how individuals without relevant disabilities may benefit. For purposes of this analysis, "individuals without relevant disabilities" are individuals who do not have vision, hearing, cognitive, or manual dexterity disabilities; these may be individuals with other disabilities or individuals with no disability. The Department then monetized benefits where applicable. These monetized benefits are predominantly associated with time savings. The Department estimates that average annualized benefits will total $8.9 billion, using a 7 percent discount rate, and $9.3 billion using a 3 percent discount rate. Finally, the Department qualitatively described additional benefits that could not be quantified.

b. Types of Disabilities Affected by Accessibility Standards

Accessibility standards can benefit individuals with a wide range of disabilities, including vision, hearing, cognitive, speech, and physical disabilities. The Department focused on those with vision, hearing, cognitive, and manual dexterity disabilities because WCAG 2.1 Level AA success criteria more directly benefit people with these disability types.[250] However, the Department emphasizes that benefits for other disability types are also important and that excluding those disabilities may underestimate benefits. Additionally, disability prevalence rates may underestimate the number of people with a disability due to underreporting. As part of its analysis, the Department estimated that 19.9 percent of adults have a relevant disability for

[250] *See* W3C®, *Introduction to Web Accessibility*, https://www.w3.org/WAI/fundamentals/accessibility-intro/ (Mar. 31, 2022) [https://perma.cc/79BA-HLZY].

purposes of this analysis. Table 30 presents prevalence rates for each of these four types of disability.

The number of individuals with disabilities impacted by this rule may be smaller or larger than the numbers shown here. According to the Pew Research Center, 27 percent of people have a disability, as compared to the 19.9 percent figure used in this analysis.[251] Conversely, not all individuals with vision, hearing, cognitive, or manual dexterity disabilities may be impacted by the proposed rulemaking. For example, "cognitive disabilities" is a broad category and some people with cognitive disabilities may not experience the same benefits from web accessibility that others do.

The Department recognizes that accessibility can also produce significant benefits for individuals without relevant disabilities. For instance, many individuals without physical disabilities enjoy the benefits of physical accessibility features currently required under the ADA. For example, curb ramps, other ramps, and doors with accessible features can be helpful when pushing strollers or dollies. In the web context, experts have recognized that accessible websites are generally better organized and easier to use even for persons without relevant disabilities.[252] This can result in benefits to the general public. The population of persons without relevant disabilities is derived as the remainder of the population once individuals with the four disabilities discussed above are removed. The Department estimates that there are 202.3 million Americans without relevant disabilities.

Companions[253] may also benefit from this proposed rulemaking because they will not need to spend as much time assisting with activities that an individual with a disability can now perform on their own. Companions can then spend this time assisting with other tasks or engaging in other activities. Estimates on the number of companions vary based on definitions,

---

[251] Susannah Fox & Jan Lauren Boyles, *Disability in the Digital Age*, Pew Research Center (Aug. 6, 2012), *https://www.pewinternet.org/2012/08/06/disability-in-the-digital-age/* [*https://perma.cc/9RBM-PD78*].
[252] *See* W3C®, *The Business Case for Digital Accessibility* (Nov. 9, 2018), *https://www.w3.org/WAI/business-case/* [*https://perma.cc/K5AF-UYWS*].
[253] A companion may refer to a family member, friend, caregiver, or anyone else providing assistance.

but according to the AARP, there are 53 million "unpaid caregivers" in the United States.[254] This number includes companions to those with disabilities other than disabilities applicable to web accessibility. There are also 4.7 million direct care workers in the United States.[255] Benefits to companions are not quantified, but they are discussed further in Section VI.A.5.d of this preamble.

Table 30: Disability Prevalence Counts, SIPP 2021

Disability Type	Prevalence Rate	Number (Millions)	Cumulative Prevalence Rate [a]	Cumulative Number [a] (Millions)
Vision	4.8%	12.2	4.8%	12.2
Hearing	7.5%	19.0	6.1%	15.3
Cognitive	10.1%	25.5	6.7%	16.9
Manual dexterity	5.7%	14.3	2.3%	5.7
None of the above	80.1%	202.3	80.1%	202.3

See U.S. Census Bureau, Survey of Income and Program Participation – About this Survey (Aug. 2022), https://www.census.gov/programs-surveys/sipp/about.html [*https://perma.cc/Z7UH-6MJ8*]; *see also* Section 4.2, Types of Disabilities Affected by Accessibility Standards, in the accompanying PRIA for more details on the Department's findings.
[a] Individuals with multiple qualifying disabilities are counted within the first disability category listed (*e.g.*, if someone has a cognitive and vision disability, they are included in the vision disability prevalence rate).

c. Monetized Benefits

The Department monetized five benefits of accessible public entity websites and mobile apps (Figure 1). The Department's conclusions are described in this summary, and more detail about its methodology and assumptions are included in Section 4.3, Monetized Benefits, in the accompanying PRIA. The five monetized benefits and their estimated monetary value are:

- Time savings for current users of State and local government entities' websites ($4.2 billion per year),

[254] AARP National Alliance for Caregiving, *Caregiving in the United States 2020*, AARP (May 14, 2020), *https://www.aarp.org/ppi/info-2020/caregiving-in-the-united-states.html* [*https://perma.cc/QBQ2-L94W*]. The term "unpaid caregiver" as used in the AARP report is comparable to this analysis' use of the term companion to refer to family members, friends, caregivers, or anyone else providing assistance.
[255] PHI, *Understanding the Direct Care Workforce*, *https://www.phinational.org/policy-research/key-facts-faq/* [*https://perma.cc/9DNN-XL23*].

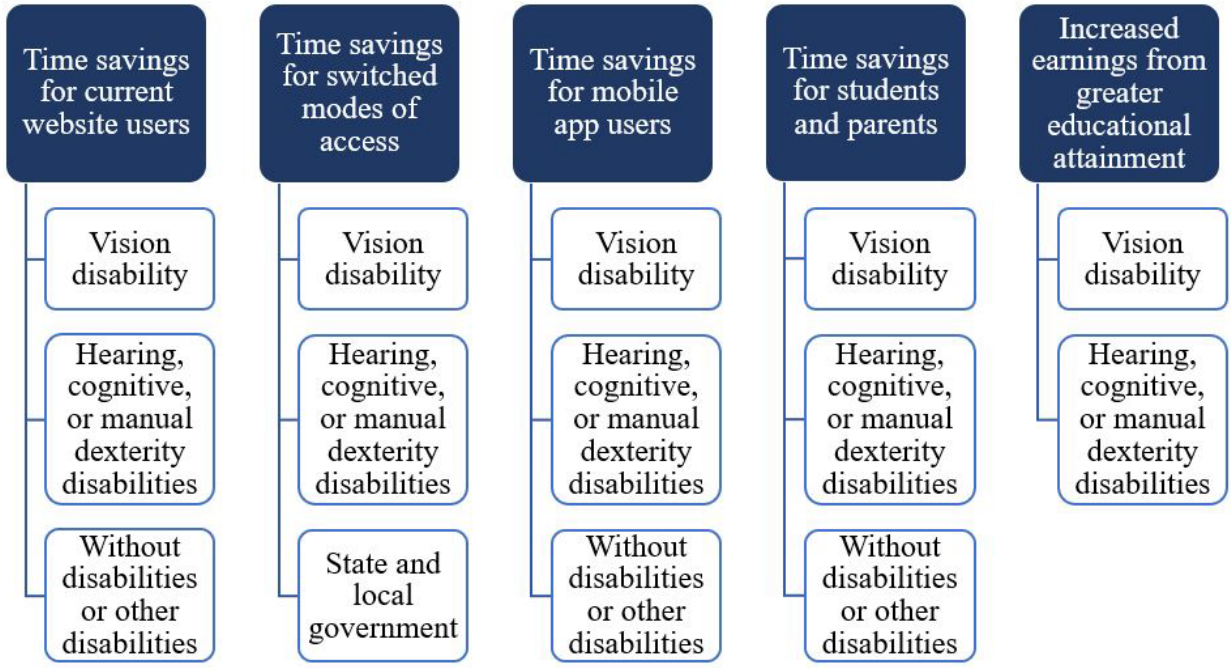
- Time savings for those who switch modes of access (*i.e.*, switch from other modes of accessing State and local government entities' services, programs, and activities such as phone or mail to the public entities' website) or begin to participate (did not previously partake in the State and local government entities' services, programs, or activities) ($917.4 million per year),
- Time savings for current mobile app users ($390.1 million per year),
- Time savings for students and their parents ($5.1 billion per year), and
- Earnings from additional educational attainment ($262.8 million per year).[256]

All five types of benefits are applicable for those with a relevant disability. For individuals without a relevant disability, benefits are limited to time savings for current users of State and local government entities' websites, current users of mobile apps, and educational time savings. For State and local government entities, monetized benefits include time savings from reduced contacts (*i.e.*, fewer interactions assisting people with disabilities). After calculating current benefit levels for each benefit type, the Department projected benefits over a 10-year period and took into consideration the implementation period. The Department also conducted sensitivity analyses and calculated benefits for regulatory alternatives.

In total, the Department estimated benefits of $8.9 billion per year on an average annualized basis, using a 7 percent discount rate. On a per capita basis, this equates to $35 per adult in the United States.[257]

[256] Even after the implementation period, the size of the annual benefit increases over time as more cohorts graduate with additional educational attainment. $262.8 million represents the annual benefit to one graduating class.
[257] The Census Bureau estimates 257.9 million adults in the United States in 2020. U.S. Census Bureau, *National Demographic Analysis Tables: 2020* (Mar. 2022), *https://www.census.gov/data/tables/2020/demo/popest/2020-demographic-analysis-tables.html* [*https://perma.cc/7WHV-7CPM*].

Figure 1: Flow Diagram Summarizing Beneficiaries and Benefit Components



i. Projected 10-year Benefits

During the implementation period, benefits will be lower. The proposed rule allows either two or three years for implementation, depending on the public entity's population. With the exclusion of educational benefits (discussed below), the Department believes benefits will fully accrue beginning in Year 4 but that some benefits will exist during the three implementation years as websites and mobile apps become more accessible. The Department assumes that in Year 1 benefits are 27 percent of the level of benefits once compliance is complete; in Year 2 benefits increase to 53 percent; and in Year 3 benefits increase to 80 percent (Table 31).[258]

For course remediation time savings, the Department assumed no benefits would accrue until the implementation period is complete because courses will not be remediated until

[258] The Department assumed benefits accrue at a steady rate over the implementation period. For example, for large entities, benefits increase from 33 percent in Year 1, to 66 percent in Year 2, and 100 percent in Year 3. For small entities, benefits increase from 25 percent in Year 1, to 50 percent in Year 2, to 75 percent in Year 3, and 100 percent in Year 4. The benefits will be 100 percent accrued in Year 3 for large entities and Year 4 for small entities because at the beginning of those years, the implementation period will be over. These accrual rates are weighted by the number of government websites for small versus large governments. Eighty percent of websites are for small entities, despite websites being less common among small entities, because the number of small governments is much larger than the number of large governments.

remediation is requested,[259] and it is unknown in advance which courses will need to be remediated. Therefore, in Year 3, once small entities are affected, 63 percent of potential benefits for postsecondary students will accrue and 53 percent of potential benefits for elementary and secondary students will accrue. In Year 4, full benefits are reached.[260]

For educational attainment, benefits do not accrue until after the additional education is obtained. For simplicity, benefits are assumed to begin in Year 5, after two years of implementation followed by two years of additional educational attainment. The amount of time needed to obtain additional education varies based on the degree, but the Department believes two years is an appropriate average. For example, to move from a high school degree to some college or an associate's degree would take approximately two years. Similarly, to move from some college or an associate's degree to a bachelor's degree would also take approximately two years. The Department only incorporated two years of implementation because most public colleges are under the purview of large governments with a two-year implementation period. Average annualized educational attainment benefits only include additional earnings over this 10-year period, not over the course of a lifetime.

The Department estimates that 10-year average annualized benefits for additional educational attainment, using a 7 percent discount rate, are $449 million. These benefits will continue to grow after this 10-year period as more workers gain additional education and the size of the population benefiting increases.

Annual benefits, after implementation, were calculated based on current data. There are a variety of reasons why annual benefits could be higher or lower in later years than the numbers estimated here. For example, annual benefits could grow over time because the population is

[259] There are circumstances where courses must be remediated in the absence of a request, such as where an institution should know about the need for accessible materials. This is described in detail in the corresponding section of the preamble.

[260] The Department does not know which institutions are associated with small or large governments. Therefore, the Department assumed that four-year institutions are large entities and community colleges are small entities. For elementary and secondary schools, the Department used the share of students in independent school districts who are in small versus large districts.

likely to grow and age over time, resulting in a larger number of people with disabilities who would benefit from the rule. To demonstrate, if the number of people with disabilities increases by 1 percent a year, then benefits would increase by roughly 1 percent a year. However, because of the many reasons benefits could increase or decrease, and the related uncertainties, the Department has not projected how benefits would change over time. For example, web and mobile app usage will likely become more common over time, increasing the number of users benefiting, but the Department does not know the growth rate in web usage. Conversely, benefits in later years could be lower because the baseline level of compliance, against which benefits are measured, may change over time. There has been a trend towards greater accessibility in recent years, and that trend may have continued in the absence of this proposed rule.

Table 31: Timing of Benefits (Millions)

Year	Total Benefit (Million)	Non-Education Accrual Rate	Non-Education Benefits (Millions)	Postsec. Accrual Rate	Postsec. Benefits[a] (Million)	Elementary/ Secondary Accrual Rate	Elementary/ Secondary Benefits[a] (Million)	Educational Attainment Accrual	Education Attainment Benefits (Million)
Year 1	$1,619	27%	$1,619	0%	$0	0%	$0	0%	$0.0
Year 2	$3,239	53%	$3,239	0%	$0	0%	$0	0%	$0.0
Year 3	$7,756	80%	$4,858	63%	$1,447	53%	$1,452	0%	$0.0
Year 4	$11,125	100%	$6,068	100%	$2,303	100%	$2,754	0%	$0.0
Year 5	$11,387	100%	$6,068	100%	$2,303	100%	$2,754	1 cohort	$263
Year 6	$11,650	100%	$6,068	100%	$2,303	100%	$2,754	2 cohorts	$526
Year 7	$11,913	100%	$6,068	100%	$2,303	100%	$2,754	3 cohorts	$788
Year 8	$12,176	100%	$6,068	100%	$2,303	100%	$2,754	4 cohorts	$1,051
Year 9	$12,439	100%	$6,068	100%	$2,303	100%	$2,754	5 cohorts	$1,314
Year 10	$12,702	100%	$6,068	100%	$2,303	100%	$2,754	6 cohorts	$1,577

[a] Benefits may begin accruing during the implementation period, but for simplicity, the Department excluded benefits here for these years. The Department only incorporated two years of implementation because most public colleges are under the purview of large governments with a two-year implementation period.

ii. Sensitivity Analysis of Benefits

The benefits calculations incorporate some assumptions and sources of uncertainty. Therefore, the Department has conducted sensitivity analyses on select assumptions to demonstrate the degree of uncertainty in the estimates. Other assumptions not altered here also involve a degree of uncertainty and so these low and high estimates should not be considered absolute bounds.

Average annualized benefits using a 7 percent discount rate are estimated to be $8.9 billion under the primary conditions. Using the low estimate assumptions, they are $6.4 billion and under the high estimate assumptions they are $14.7 billion (Table 32). The variations used for each benefit type are shown in Table 33.

Table 32: Average Annualized Benefits Sensitivity Analysis (Millions) [a]

Beneficiary	Low Estimate	Primary	High Estimate
Time savings - current users	$2,688.7	$3,416.1	$7,284.1
Time savings - new users	$170.3	$753.5	$1,177.3
Time savings - governments	$83.6	$493.3	$578.1
Time savings - mobile apps	$252.1	$320.4	$683.1
Time savings - education	$3,043.7	$3,504.4	$3,803.5
Educational attainment	$141.2	$449.5	$1,167.5
Total	$6,379.7	$8,937.2	$14,693.6

[a] 10-Year average annualized benefits, 7 percent discount rate.

Table 33: Assumptions and Data Sources Varied for Sensitivity Analysis

Beneficiary	Estimate Type	Variations
Time savings - current users	Low	ACS data for prevalence rates, instead of SIPP
Time savings - current users	High	Same time reduction (24%) for all disabilities
Time savings - current users	High	Exclude “n/a” from SEMRUSH output
Time savings - new users	Low	ACS data for prevalence rates, instead of SIPP
Time savings - new users	Low	Usage gap only closes by 75%
Time savings - new users	Low	Lower transaction time (19 minutes instead of 25)
Time savings - new users	Low	Fewer transactions (6 instead of 8)
Time savings - new users	High	Higher transaction time (31 minutes instead of 25)
Time savings - new users	High	More transactions (10 instead of 8)
Time savings - governments	Low	ACS data for prevalence rates, instead of SIPP
Time savings - governments	Low	Usage gap only closes by 75%

Beneficiary	Estimate Type	Variations
Time savings - governments	Low	Lower transaction time (7.5 minutes instead of 10)
Time savings - governments	Low	Fewer transactions (7.5 instead of 6)
Time savings - governments	High	Higher transaction time (12.5 minutes instead of 10)
Time savings - governments	High	More transactions (4.5 instead of 6)
Time savings - mobile apps	Low	ACS data for prevalence rates, instead of SIPP
Time savings - mobile apps	High	Same time reduction (24%) for all disabilities
Time savings - mobile apps	High	Exclude "n/a" from SEMRUSH output
Time savings - education	Low	ACS data for prevalence rates, instead of SIPP
Time savings - education	High	Same time reduction (24%) for all disabilities
Educational attainment	Low	ACS data for prevalence rates, instead of SIPP
Educational attainment	Low	Smaller share of achievement gap closed
Educational attainment	High	Benefits begin in Year 3, instead of Year 5
Educational attainment	High	Larger share of achievement gap closed

For current website users, the Department altered three assumptions—one for the low estimate and two for the high estimate. First, disability prevalence rates are much lower using ACS data than SIPP data. As explained in Section 2.2 of the accompanying PRIA, the Department believes the SIPP estimates are more appropriate, but ACS numbers are used here for sensitivity. Using ACS data reduces the average annual benefits from $3.4 to $2.7 billion. For the high estimate, rather than assuming the time reduction for individuals with hearing, cognitive, or manual dexterity is equivalent to individuals without a hearing disability, the Department assumes the reduction is equivalent to individuals with vision disabilities. The Department also excluded websites for which SEMRUSH, an online marketing and research tool,[261] did not provide data, rather than assuming values of zero. These two variations increase benefits from $3.4 billion to $7.3 billion.

For new website users and cost savings to governments, the Department altered four assumptions. First, once again, ACS prevalence rates were used in lieu of SIPP estimates. Second, rather than assuming website usage becomes equivalent for individuals with and without relevant disabilities, the Department assumed this gap only closes by 75 percent. Third, the

[261] For information on this application, see *https://www.semrush.com/features/* [*https://perma.cc/ZZY5-U42Z*].

average time spent per transaction was reduced or increased by 25 percent for the low estimate and high estimate, respectively. Fourth, the average number of transactions per year was reduced or increased by 25 percent for the low estimate and high estimate, respectively. Incorporating these alternative assumptions reduces the benefits for new users to $170.3 million when the transactions are reduced or increases the benefits to $1.2 billion when the transactions are increased, from $753.5 million. For cost savings to governments, benefits decrease to $83.6 million when transactions are reduced or increase to $578.1 million when the transactions are increased, from $493.3 million.

For mobile app users, the Department altered three assumptions. These are the same assumptions that were discussed above for current website users (ACS prevalence data, time reduction for individuals with other disabilities, and exclusion of websites not analyzed by SEMRUSH). After making these calculations, benefits either decrease to $252.1 million or increase to $683.1 million from $320.4 million.

For time savings for students and parents, the Department altered two assumptions. The low estimate uses ACS data for prevalence rates instead of SIPP. The high estimate uses a 24 percent time savings for those with hearing, cognitive, and manual dexterity disabilities instead of 21 percent. After making these calculations, benefits decrease to $3.0 billion or increase to $3.8 billion from $3.5 billion.

For benefits of additional educational attainment, the Department altered three assumptions. First, ACS prevalence rates were used instead of SIPP. Second, benefits begin to accrue in Year 3 rather than Year 5. Third, the Department changed the share of the educational achievement gap that would be closed from 10 percent to 5 and 15 percent. After making these calculations, benefits decrease to $141.2 million or increase to $1.2 billion from $449.5 million.

d. Unquantified Benefits

This rulemaking is being promulgated under the ADA—a Federal civil rights law. Congress stated that a purpose of the ADA is "to provide a clear and comprehensive national

mandate for the elimination of discrimination against individuals with disabilities."[262] This proposed rule is intended to further the ADA's broad purpose by helping to eliminate discrimination against people with disabilities in public entities' web content and mobile apps that are made available to the public or are used to offer their services, programs, and activities. Access to such services, programs, and activities is critical to furthering the Nation's goal, as articulated in the ADA, to ensure "equality of opportunity, full participation, independent living, and economic self-sufficiency" for people with disabilities.[263] This access is also critical to promoting the exercise of fundamental constitutional rights, such as the rights to freedom of speech, assembly, association, petitioning, and due process of law. This proposed rule, therefore, implicates benefits like dignity, independence, and advancement of civil and constitutional rights for people with disabilities. Such benefits can be difficult or impossible to quantify yet provide tremendous benefit to society. The January 20, 2021, Presidential Memorandum titled "Modernizing Regulatory Review"[264] states that the regulatory review process should fully account for regulatory benefits that are difficult or impossible to quantify. Many of the benefits in this proposed rule are exactly the type of benefits contemplated by the Presidential Memorandum.

These benefits are central to this proposed rule's potential impact as they include concepts inherent to any civil rights law—like equality—that will be felt throughout society and personally by individuals with disabilities. Consider, for example, how even a routine example of access to a web-based form could impact a person with a disability. When the online form is accessible, the person with a disability can complete the form 1) at any time they please, even after normal business hours; 2) on their own; 3) without needing to share potentially private information with someone else; and 4) quickly, because they would not need to coordinate a time

[262] 42 U.S.C. 12101(b)(1).
[263] *Id.* 12101(a)(7).
[264] 86 FR 7223 (Jan. 20, 2021).

to complete the form with a companion. Importantly, this is the experience people without relevant disabilities have when accessing online government services. This proposed rule is intended to ensure that people with disabilities have the same opportunity to participate in and receive the benefits of the services, programs, or activities that State and local government entities make available to members of the public online.

There are many benefits of this proposed rule—like equality and dignity—that have not been monetized in the PRIA due to limited data availability and inherent difficulty to quantify. Those benefits are discussed here qualitatively. The Department requests comments and data that could assist in quantifying these important benefits so that the Department can also represent them in a way consistent with this proposed rule's costs. The Department recognizes the significant benefits of this rule and the impact the rule will have on the everyday lives of people with disabilities. Thus, the Department seeks the public's assistance in better quantifying the benefits that are discussed qualitatively in this section.

This section's description of the proposed rule's unquantified benefits first discusses benefits to individuals, followed by benefits to State and local government entities.

- Benefits to individuals include, among others:
    - Increased independence, flexibility, and dignity;
    - Increased privacy;
    - Reduced frustration;
    - Decreased assistance by companions;
    - Increased program participation; and
    - Increased civic engagement and inclusion.
- Benefits to governments include, among others:
    - Increased certainty about the applicable technical standard; and
    - Potential reduction in litigation.

i. Increased Independence, Flexibility, and Dignity

Among the most impactful benefits of this rulemaking are greater independence, flexibility, and dignity for people with disabilities. These unquantified benefits will extend beyond just people with disabilities—many other individuals will benefit from more accessible

websites, as described in the PRIA. These benefits are also among the most difficult to quantify, given that they will be felt uniquely by each person and are often experienced in many intangible aspects of a person's life. Because of this, the Department was unable to quantify the monetary benefits of increased independence, flexibility, and dignity that will result from this rulemaking. These unquantified benefits are thus briefly described here. This inability to quantify these benefits does not suggest that the Department considers them any less important.

Accessible public entity websites and mobile apps will enable more people with disabilities to independently access State or local government entities' services, programs, and activities. People with disabilities will be able to directly access websites providing essential governmental information and services, without needing to rely on a companion to obtain information and interact with websites and mobile apps. For example, people with disabilities will be able to independently submit forms and complete transactions, request critical public services, communicate more easily with their local public officials, and apply for governmental benefits. The ability to do each of these tasks independently, without paying an assistant or asking for a companion's assistance, creates a substantial benefit. Additionally, online processing with status updates, automated notifications, and automated reminders generates time savings and convenience that those with disabilities will be better able to access when they can independently enroll in government services through websites as a result of this rule. People with disabilities will thus be able to exercise more independence and control over their interactions with State or local government entities, which are unquantified benefits that will accrue from this rulemaking.

Further, this rulemaking will provide increased flexibility for people with disabilities. This is another benefit that is difficult to quantify, so the Department describes it here. Because of this rulemaking, people with disabilities will be better able to access State or local government entities' services, programs, or activities on their own time and at their convenience, without needing to wait for assistance from a companion or a State or local government entity's

employee. The ability to conduct certain transactions on a public entity's website, such as paying a utility bill, renewing a business license, or requesting a special trash pickup, gives individuals the ability to conduct these transactions at a time most convenient to them. This greater flexibility should lead to overall improved use of a person's time, as measured by their preferences (thereby enhancing what economists refer to as utility). This greater flexibility could also result in cost savings to individuals with disabilities who might have previously paid an assistant or sought the help of a companion to conduct these transactions. Additionally, when websites are inaccessible, people with disabilities might have to make separate arrangements to conduct a transaction by taking time off work or arranging transportation. Because of greater website accessibility, people with disabilities can schedule these transactions or search for information at a time and place most convenient for them, which results in increased benefits.

Finally, individuals with disabilities will benefit from the dignity that is associated with greater independence and flexibility. This is another benefit that is difficult to quantify, so the Department has included it as an unquantified benefit that will result from this rulemaking. When individuals with relevant disabilities do not need to rely on others to conduct transactions and access services, programs, and activities, they are able to act with the independence and flexibility that individuals without relevant disabilities enjoy, which results in greater feelings of dignity. The knowledge that websites and mobile apps are designed to be inclusive of individuals with disabilities can give people with disabilities a greater sense of dignity rooted in the knowledge that their lives are valued and respected, and that they too are entitled to receive the benefits of State or local government entities' services, programs, and activities, without needing to rely on others. The Department was unable to quantify the monetary value of this benefit, but the Department expects individuals with disabilities to benefit from greater dignity as a result of this rulemaking. This benefit is also associated with a greater sense of confidence, self-worth, empowerment, and fairness, which are also benefits that will accrue as a result of this rulemaking.

ii. Increased Privacy

Accessible websites and mobile apps allow individuals with disabilities to conduct activities independently, without unnecessarily disclosing potentially private information such as banking details, Social Security numbers, and health information to other people. This is because when individuals with disabilities are able to use an accessible website or mobile app, they can rely on security features to convey information online, rather than potentially sharing information with others, such as companions or public entities' employees. Without accessible websites, people with certain types of disabilities may need to share this sensitive information with others unnecessarily, which could result in identity theft or misuse of their personal information. Additionally, privacy protects individual autonomy and has inherent value. Even the prospect of identity theft may result in people with disabilities sharing less information or needing to take additional measures to protect themselves from having their information stolen. Because of this, there is a benefit that is difficult to quantify in people with disabilities being able to safely and privately conduct important transactions on the web, such as for taxes, healthcare, and benefits applications. The increased privacy and assurances that information will be kept safe online will benefit people with relevant disabilities, though the Department was unable to quantitatively calculate this benefit.

Further, another privacy benefit of this rulemaking is that people with relevant disabilities will have greater access to community resources that require sharing and receiving private information. Sometimes sensitive information may need to be discussed, such as information about physical health, mental health, sexual history, substance use, domestic violence, or sexual assault. When websites are more accessible, people with disabilities will be able to share this information using things like online forms and messaging systems, which reduces the likelihood that an individual with a disability will need to disclose this personal information unnecessarily to a companion or on the phone in the presence of others. Additionally, if people with relevant disabilities can access websites independently, they may be able to seek out community

resources without needing to involve a companion or a State or local government entity's employee unnecessarily, which enhances the ability of people with these disabilities to privately locate information. For example, if a person with a disability is seeking to privately locate resources offered by a public entity that would enable them to leave an abusive relationship safely, accessible websites will allow them to search for information with greater privacy than seeking out resources in person, on the phone, or by mail, which they may not be able to do without seeking assistance from, or risking being detected by, their abuser. These benefits were not calculated quantitatively due to the difficulty of placing a value on added privacy, but the Department anticipates people with disabilities would nonetheless greatly benefit from the privacy implications of this rule.

iii. Reduced Frustration

Potentially in addition to the significant unquantified benefits discussed above, another impactful benefit of this rulemaking that may be difficult to quantify is reduced frustration for people with disabilities. Inaccessible websites and mobile apps create significant frustration for individuals with certain types of disabilities who are unable to access information or complete certain tasks. In addition to the inconvenience of not being able to complete a task, this frustration can lead to a lower-quality user experience. For example, Pascual et al. (2014) assessed the moods of sighted, low vision, and blind users while using accessible and inaccessible websites and found greater satisfaction with accessible websites.[265] This frustration appears to be particularly common for individuals with disabilities. Lazar et al. (2007) documented the frustrations users who are blind experience when using screen readers, finding, for example, that on average users reported losing 30.4 percent of time due to inaccessible

[265] Afra Pascual et al., *Impact of Accessibility Barriers on the Mood of Blind, Low-Vision and Sighted Users*, 27 Procedia Comput. Sci. 431, 440 (2014), *https://repositori.udl.cat/bitstream/handle/10459.1/47973/020714.pdf?sequence=1* [*https://perma.cc/4P62-B42X*].

content.[266] Furthermore, some people with vision disabilities may be unable to complete a required task altogether. For example, if an individual with low vision is filling out an online form but the color contrast between the foreground and background on the "submit" button is not sufficient, or if an individual who is blind is filling out a form that is not coded so that it can be used with a screen reader, they may be unable to submit their completed form. The inability to complete a task independently or without any barriers can be extremely frustrating and significantly reduce the overall quality of the user experience. The frustration that individuals with disabilities experience while accessing services, programs, and activities that public entities offer on their websites and mobile apps would be significantly reduced if the content was made accessible.

It is difficult to quantify this reduction in frustration in monetary costs, but it may already partially be captured in the quantitative estimates framed above as time savings. The Department believes the ability to complete tasks and engage with the services, programs, and activities offered by public entities on websites and mobile apps can make a significant improvement in the quality of the lives of people with relevant disabilities by reducing the frustration they experience.

iv. Decreased Assistance by Companions

In addition to the significant benefits discussed above, when individuals with disabilities are able to access websites and mobile apps independently instead of relying on a companion for assistance, both individuals with disabilities and their companions will benefit in other ways that are difficult to quantify.

If people with disabilities previously relied on supports such as family members or friends to perform these tasks, the quality of these relationships may be improved. If a person

---

[266] Jonathan Lazar et al., *What Frustrates Screen Reader Users on the Web: A Study of 100 Blind Users*, 22(3) Int'l J. of Human–Comput. Interaction 247–269 (2007), https://web.archive.org/web/20100612034800id_/http://triton.towson.edu/~jlazar/IJHCI_blind_user_frustration.pdf [https://perma.cc/29PN-45GR].

with a disability no longer needs to request assistance, they can spend that time together with their loved ones socializing or doing activities that they prefer, instead of more mundane tasks like filling out tax forms. People with relevant disabilities will have an increased opportunity to relate to their companions as equals, rather than needing to assume a dependent role in their relationships when they need help from others to complete tasks online. Requests for assistance, and the manner in which those requests are fulfilled by others, can sometimes cause stress or friction in interpersonal relationships; when individuals can complete tasks independently, those strains on relationships may be reduced.

If people with relevant disabilities previously paid companions to assist them with online tasks, they will be able to save or spend this money as they choose. They will also be able to save the time and effort associated with finding paid companions who are willing and able to assist with intermittent, often low-paid work.

If State agencies were providing a personal care assistant or home health aide to assist an individual with a disability, it is possible that some of that companion's time could be reallocated to assist a different person with a disability, because the same amount of assistance would not be needed to complete tasks online. This could reduce government spending for home- and community-based services. It may also increase the number of direct care workers who are available to assist people with disabilities.

Companions will also benefit when they do not need to provide assistance. Family members or friends will be able to do other things with the time that they would have spent helping someone with a disability. These may be activities that they enjoy more, that earn income, or that benefit society in other ways. Paid companions will be able to spend their time on other tasks such as assisting with bathing, toileting, or eating. All of these benefits are difficult to quantitatively calculate, but they are nonetheless benefits that would accrue from the rule.

v. Increased Program Participation

Section 4.3 of the PRIA indirectly quantified the benefits of increased access to services, programs, and activities by calculating the benefit from people changing how they access those services to using websites and mobile apps, which the Department referred to as switching modes. However, the Department believes that there are unquantified benefits associated with increased program participation that are difficult to quantify, which are described briefly here.

Inaccessible websites may prevent persons with relevant disabilities from accessing information or using State or local government services, programs, and activities that others without relevant disabilities have access to online. While people with disabilities may nonetheless access government services, programs, and activities despite barriers due to inaccessible websites, there will be other times when people with disabilities are too discouraged by these barriers and thus do not participate in services, programs, and activities. This rulemaking will reduce those barriers to access, which will result in fewer individuals with disabilities being deterred from participating in State or local government services, programs, or activities. Further, there may be some State or local government services, programs, or activities that individuals with disabilities would simply not have been aware of due to an inaccessible website, that they may now choose to participate in once they have access to the website or mobile app providing those services. This could result in a benefit of increased program participation, which will allow people with relevant disabilities to take advantage of services, programs, or activities that could improve their lives. The Department believes there is great intangible benefit to people with disabilities being able to connect to services, which will result in greater feelings of engagement and belonging in the community. There will also be a tangible benefit to increased program participation that will likely reduce inequality. For example, increased program participation could result in increased benefit payouts, sidewalk repairs, and trash pickups for people with disabilities, which would reduce inequality between people with disabilities and people without relevant disabilities.

vi. Increased Civic Engagement and Inclusion

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. For example, if more people with disabilities can independently access information about proposed legislative and policy changes and contact local civic leadership about their views, they might be more likely to become actively involved in civic activities within their communities. Further, they may be able to access information to inform their democratic participation, such as by locating election resources and procedures for accessible voting. By facilitating this kind of civic engagement, this rule will promote the exercise of fundamental constitutional rights, such as the rights to freedom of speech, assembly, association, and petitioning. Aside from these benefits, governments also provide opportunities for social engagement, recreation, and entertainment, which will further enable people with relevant disabilities to feel more engaged and connected with their communities. This engagement is a benefit both to people with these disabilities and to people without relevant disabilities who will be able to connect with others in their community more easily. All of these benefits are difficult to quantify monetarily, but the Department nonetheless believes they will result in significant benefits for people with disabilities and for American communities.

vii. Increased Certainty About What Constitutes an Accessible Website Under the ADA and Potential Reduction in Litigation

Although the ADA applies to the services, programs, and activities that State and local government entities offer via the web, the ADA's implementing regulations currently do not include specific technical standards. The Department has consistently heard from public entities that that they desire guidance on how to specifically comply with the ADA in this context. Adopting WCAG 2.1 Level AA as the technical standard for web and mobile app accessibility

will reduce confusion and uncertainty by providing clear rules to public entities regarding how to make the services, programs, and activities they offer to the public via their websites and mobile apps accessible. Although the resulting increased certainty from adopting a technical standard is difficult to quantify, the Department believes it is an important benefit that will make public entities more confident in understanding and complying with their ADA obligations.

Further, increased certainty regarding how to make websites and mobile apps accessible may reduce litigation costs for public entities. Similar to how specific standards in the physical environment enable businesses to identify and resolve accessibility issues, the adoption of WCAG 2.1 Level AA as a technical standard will enable public entities to determine if their websites or mobile apps are out of compliance with the ADA and resolve any instances of noncompliance, resulting in greater accessibility without litigation. The Department recognizes that more specific technical standards could lead to an increase in litigation as there will be a clearer way to demonstrate that public entities are not in compliance. However, the ability to more easily determine noncompliance will allow the public entity to proactively resolve any compliance issues. Thus, although it is difficult to know the exact impact that a clear technical standard will have on total litigation costs, the Department believes that the potential for reduced litigation costs is a significant benefit for public entities that should be accounted for in this analysis.

6. Costs and Benefits of Regulatory Alternatives

The Department estimated costs and benefits for several possible alternatives to the proposed rule. These alternatives are described in Table 34, and a full explanation of the Department's methodology can be found in Section 5, Regulatory Alternatives, of the accompanying PRIA.

Table 34: Regulatory Alternatives Considered[267]

Stringency	Alternative
Less stringent	3 years for implementation for large entities; 4 years for implementation for small entities
Less stringent	Conformance with WCAG 2.1 Level A required
Less stringent	Conformance with WCAG 2.0 Level AA required
Rule as Proposed	Conformance with WCAG 2.1 Level AA required
More stringent	1 year for implementation for all entities
More stringent	1 year for implementation for large entities; 3 years for implementation for small entities
More stringent	Conformance with WCAG 2.1 Level AAA required

a. Costs of Regulatory Alternatives

To estimate the impact to website, mobile app, and course remediation costs of lengthening the required implementation timeline, the Department adjusted its assumptions about the pace at which entities would incur initial testing and remediation costs. In this analysis, the Department projected 10-year costs assuming large entities would incur 33 percent of their initial costs in each of the first three years and small entities would incur 25 percent of their initial costs in each of the first four years after the promulgation of the rule.

To estimate the costs of requiring conformance only with WCAG 2.1 Level A, the Department duplicated its website cost methodology while omitting from consideration any errors that violate WCAG 2.1 Level AA success criteria only. Accessibility errors that violated both WCAG 2.1 Level A and WCAG 2.1 Level AA success criteria were retained.

WCAG 2.1 introduced 12 new success criteria for WCAG 2.1 Levels A and AA.[268] To estimate the costs of requiring WCAG 2.0 Level AA rather than WCAG 2.1 Level AA standards, the Department replicated its website cost methodology while omitting any errors classified under one or more of these new success criteria.

To estimate the costs of shortening the implementation timeline for the proposed rule to

[267] *See* Section 5, Regulatory Alternatives, in the accompanying PRIA for the Department's methodology.
[268] These are standards 1.3.4, 1.3.5, 1.4.10, 1.4.11, 1.4.12, 1.4.13, 2.1.4, 2.5.1, 2.5.2, 2.5.3, 2.5.4, and 4.1.3. More information is available at: W3C®, *What's New in WCAG 2.1* (Aug. 13, 2020), *https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/* [*https://perma.cc/W8HK-Z5QK*].

one year for all entities, the Department retained its primary calculations but assumed that the full burden of the initial costs would be borne in Year 1. The Department then generated a second alternative timeline with a one-year implementation timeline for large entities, and a three-year implementation timeline for small entities. For these alternatives, the primary costs remain the same, but the year that they begin to accrue is changed.

The Department believes that requiring compliance with WCAG 2.1 Level AAA would prove infeasible, or at least unduly onerous, for some entities. Level AAA, which is the highest level of WCAG conformance, includes all of the Level A and Level AA success criteria and also contains additional success criteria that can provide a more enriched user experience, but are the most difficult to achieve for web developers. The W3C® does not recommend that Level AAA conformance be required as a general policy for entire websites because it is not possible to satisfy all Level AAA success criteria for some content.[269] For those reasons, the Department did not quantify costs of requiring WCAG 2.1 Level AAA. Table 35 shows the projected 10-year costs of these alternatives.

Table 35: Projected Total 10-Year Costs for Regulatory Alternatives (Millions)[270]

Time Period	Longer Time Frame	WCAG 2.1 Level A	WCAG 2.0 Level AA	Rule as Proposed	Shorter Time Frame Opt. 1 [a]	Shorter Time Frame Opt. 2 [a]
Year 1	$2,387	$3,095	$3,082	$3,361	$8,344	$5,046
Year 2	$2,582	$3,380	$3,365	$3,646	$5,526	$6,402
Year 3	$2,803	$6,275	$5,402	$6,402	$2,717	$4,304
Year 4	$6,030	$3,262	$2,817	$3,270	$1,836	$2,389
Year 5	$3,270	$1,831	$1,600	$1,836	$1,836	$1,836
Year 6	$1,836	$1,831	$1,600	$1,836	$1,836	$1,836
Year 7	$1,836	$1,831	$1,600	$1,836	$1,836	$1,836
Year 8	$1,836	$1,831	$1,600	$1,836	$1,836	$1,836
Year 9	$1,836	$1,831	$1,600	$1,836	$1,836	$1,836
Year 10	$1,836	$1,831	$1,600	$1,836	$1,836	$1,836

[269] *See* W3C®, *Understanding Conformance, Understanding Requirement 1* (Aug. 19, 2022), https://www.w3.org/WAI/WCAG21/Understanding/conformance [https://perma.cc/9ZG9-G5N8].
[270] *See* Section 5, Regulatory Alternatives, in the accompanying PRIA for the Department's methodology.

Time Period	Longer Time Frame	WCAG 2.1 Level A	WCAG 2.0 Level AA	Rule as Proposed	Shorter Time Frame Opt. 1 [a]	Shorter Time Frame Opt. 2 [a]
PV of 10-year costs, 3% rate	$22,721	$23,620	$21,286	$24,275	$26,238	$25,806
Average annualized costs, 3% rate	$3,162	$2,795	$2,522	$2,872	$3,102	$3,052
PV of 10-year costs, 7% rate	$18,579	$20,093	$18,174	$20,701	$22,898	$22,298
Average annualized costs, 7% rate	$2,712	$2,860	$2,587	$2,947	$3,260	$3,174

[a] Option 1 is a compliance time frame of one year for all entities. Option 2 is a compliance time frame of one year for large entities and three years for small entities.

b. Benefits of Regulatory Alternatives

A variety of assumptions were used to estimate benefits for these regulatory alternatives. For the alternative compliance time frames, the Department adjusted only the benefit accrual rates to reflect the alternative time frames. Table 36 shows the 10-year average annualized benefits decrease to $7.7 billion from $8.9 billion with the longer time frame and increase to either $10.7 billion or $9.7 billion with the shorter time frames (using a 7 percent discount rate).

Table 36: Average Annualized Benefits, Regulatory Alternatives (Millions)[271] [a]

Beneficiary	Longer Time Frame	WCAG 2.1 Level A	WCAG 2.0 Level AA	Rule as Proposed	Shorter Time Frame Opt. 1 [b]	Shorter Time Frame Opt. 2 [b]
Time savings - current users	$3,171.6	$2,696.9	$3,416.1	$3,416.1	$3,882.6	$3,469.8
Time savings - new users	$699.6	$170.3	$170.3	$753.5	$856.4	$765.3
Time savings - governments	$458.0	$83.6	$83.6	$493.3	$560.7	$501.1
Time savings - mobile apps	$297.4	$252.9	$320.4	$320.4	$364.1	$325.4
Time savings - education	$2,775.4	$2,766.6	$3,504.4	$3,504.4	$4,384.2	$4,070.8
Educational attainment	$313.4	$224.7	$224.7	$449.5	$614.1	$597.6
Total	$7,715.4	$6,195.1	$7,719.5	$8,937.2	$10,662.1	$9,730.0

[a] 10-Year average annualized benefits, 7 percent discount rate.
[b] Option 1 is a compliance time frame of one year for all entities. Option 2 is a compliance time frame of one year for large entities and three years for small entities.

For the WCAG conformance level, the alternative assumptions were less straightforward to

[271] *See* Section 5, Regulatory Alternatives, in the accompanying PRIA for the Department's methodology.

calculate. For time savings for current website users, current mobile app users, and postsecondary students, the Department used the ratio of the number of success criteria under the different standards to adjust benefit levels. Because the literature used to assess the benefits of compliance with WCAG 2.1 Level AA in the primary analysis was based on compliance with WCAG 2.0 Level AA, the Department set benefits for compliance with WCAG 2.0 Level AA equal to the benefits in the primary analysis. For WCAG 2.1 Level A, the Department multiplied primary benefits by 0.79 (based on the ratio of the number of success criteria in WCAG 2.1 Level A to the number of success criteria in WCAG 2.0 Level AA, or 30/38).[272]

For time savings to new users and State and local government entities, the Department used the low and high estimates for the less stringent and more stringent conformance level alternatives, respectively. For benefits of higher educational attainment, the Department simply multiplied by 0.5 and 1.5 respectively for the less stringent and more stringent alternatives. The basis for this is the gap in educational achievement closing by 5 percent or 15 percent, rather than 10 percent (the same alternative assumptions as used in the sensitivity analysis).

B. Preliminary Regulatory Flexibility Act ("PRFA") Analysis Summary

As directed by the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, as well as Executive Order 13272, the Department is required to consider the potential impact of the proposed rule on small entities, including small businesses, small non-profit organizations, and small governmental jurisdictions. This process helps agencies to determine whether a proposed rule is likely to impose a significant economic impact on a substantial number of small entities and, in turn, to consider regulatory alternatives to reduce the regulatory burden on those small entities.This proposed rule applies to all small governmental jurisdictions. The Department's analysis leads it to conclude

[272] WCAG 2.0 Level AA has 38 success criteria, and WCAG 2.1 Level A has 30. WGAG 2.0 Level AA is used as the baseline because that is the standard used by Sven Schmutz et al., *Implementing Recommendations From Web Accessibility Guidelines: A Comparative Study of Nondisabled Users and Users with Visual Impairments*, 59 Human Factors and Ergonomics Soc'y 956 (2017), https://doi.org/10.1177/0018720817708397. A Perma archive link was unavailable for this citation.

that the impact on small governmental jurisdictions affected by the proposed rule will not be significant, as measured by annualized costs as a percent of annual revenues. The Department presents this Preliminary Regulatory Flexibility Analysis for review and comment.

1. Why the Department is Considering Action

Title II of the ADA provides that no qualified individual with a disability shall be excluded from participation in or denied the benefits of the services, programs, or activities of a State or local government. The Department has consistently made clear that this requirement includes *all* services, programs, and activities of public entities, including those provided via the web. It also includes those provided via mobile apps. In this NPRM, the Department proposes technical standards for web and mobile app accessibility to give public entities greater clarity in exactly how to meet their ADA obligations and to help ensure equal access to government services, programs, and activities for people with disabilities.

Just as steps can exclude people who use wheelchairs, inaccessible web content can exclude people with a range of disabilities from accessing government services. For example, the ability to access voting information, find up-to-date health and safety resources, and look up mass transit schedules and fare information may depend on having access to web content and mobile apps. With accessible web content and mobile apps people with disabilities can access government services independently and privately.

2. Objectives of and Legal Basis for the Proposed Rule

On July 26, 1990, President George H.W. Bush signed into law the ADA, a comprehensive civil rights law prohibiting discrimination on the basis of disability.[273] Section 204(a) of the ADA directs the Attorney General to issue regulations implementing part A of title II but exempts matters within the scope of the authority of the Secretary of Transportation under

[273] 42 U.S.C. 12101–12213.

section 223, 229, or 244.[274] Title II, which this rule addresses, applies to State and local government entities, and, in part A, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities.

Accordingly, the Department is proposing technical requirements to enable public entities to fulfill their obligations under title II to provide access to all of their services, programs, and activities that are provided via the web and mobile apps. The Department believes the requirements described in the NPRM are necessary to ensure the "equality of opportunity, full participation, independent living, and economic self-sufficiency" for individuals with disabilities set forth in the ADA.[275]

3. Number of Small Governments Affected by the Rulemaking

The Department has examined the impact of the proposed rule on small entities as required by the RFA. For the purposes of this analysis, impacted small public entities are independent State and local governmental units in the United States that serve a population less than 50,000.[276] Based on this definition, the Department estimates a total of 88,000 small entities. This estimate includes the governments of counties, municipalities, townships, school districts, and territories with populations below 50,000 in the 2020 Census of Governments.[277] No State governments qualify as small. All special district governments[278] are included in this

---

[274] 42 U.S.C. 12134(a). Sections 229(a) and 244 of the ADA direct the Secretary of Transportation to issue regulations implementing part B of title II, except for section 223. *See* 42 U.S.C 12149; 42 U.S.C. 12164.
[275] 42 U.S.C. 12101(a)(7).
[276] 5 U.S.C. 601(5); Small Bus. Admin., *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* (Aug. 2017), https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf [https://perma.cc/C57B-YV28].
[277] U.S. Census Bureau, *2020 State & Local Government Finance Historical Datasets and Tables* (Sept. 2022), https://www2.census.gov/programs-surveys/gov-finances/tables/2020/2020_Individual_Unit_File.zip, Fin_PID_2020.txt file [https://perma.cc/QJM3-N7SG].
[278] The proposed rule defines "special district government" as "a public entity—other than a county, municipality, or 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." A special district government may include, for example, a mosquito abatement district, utility district, transit authority, water and sewer board, zoning district, or other similar governmental entities that operate with administrative and fiscal independence.

analysis because total population for these public entities could not be determined and the Department wants to ensure small governments are not undercounted.

The Census of Governments includes enrollment numbers for school districts, but not population counts. To approximate population, the Department multiplied the enrollment numbers by the ratio of the estimated total population to school age population, by county.[279] The Department notes that this method of estimating population of independent school districts is inconsistent with the population provisions in the proposed rule's regulatory text because the local government finances data only include enrollment numbers, not population numbers. Postsecondary educational institutions are considered as separate institutions because their funding sources are different from those of traditional State and local government entities. While public postsecondary educational institutions receive funding from State and local tax revenue, they also receive funding from tuition and fees from students and sometimes from endowments. Public universities are excluded from this analysis because these tend to be State-dependent institutions and all States have populations greater than 50,000. Independent community colleges were removed from school district counts and included separately. These were combined with counts of dependent community colleges from the National Center for Education Statistics ("NCES").[280]

4. Impact of the Proposed Rule on Small Governments

The Department calculated costs and benefits to small governments. The Department also compared costs to revenues for small governments to evaluate the economic impact to these governments. The costs are less than 1 percent of revenues for every entity type, so the Department believes that the costs of this proposed regulation would not be overly burdensome

---

[279] U.S. Census Bureau, *Annual County Resident Population Estimates by Age, Sex, Race, and Hispanic Origin: April 1, 2010 to July 1, 2019* (Oct. 2021), https://www.census.gov/data/datasets/time-series/demo/popest/2010s-counties-detail.html [https://perma.cc/SV98-ML2A].

[280] Institute of Education Sciences, *Summary Tables*, National Center for Education Statistics, https://nces.ed.gov/ipeds/SummaryTables/ [https://perma.cc/9SS9-D9T2].

for the regulated small governments.[281] These costs include one-time costs for familiarization with the requirements of the rule; the purchase of software to assist with remediation of the website or mobile app; the time spent testing and remediating websites and mobile apps to comply with WCAG 2.1 Level AA; and elementary, secondary, and postsecondary education course content remediation. Annual costs include recurring costs for software licenses and remediation of future content.

The Department performed analyses to estimate the costs to test and remediate inaccessible websites; mobile apps; and elementary, secondary, and postsecondary education course content. These analyses involved multistage stratified cluster sampling to randomly select government entities, government entity websites, and government entity mobile apps. The Department selected samples from each type and size (small or large) of government entity, estimated each type of remediation cost, and then extrapolated the costs to the population of government entities in each government type and size combination. Annualized total costs for small governments over a 10-year period are estimated at $1.5 billion assuming either a 3 percent or 7 percent discount rate (Table 37). Additional details on how these costs were estimated are provided in Section VI.A.4 of this preamble.

The most recent revenue data available are from the U.S. Census Bureau's State and Local Government Finances by Level of Government and by State: 2020.[282] However, these data do not disaggregate revenue by entity type or size. Therefore, the Department first estimated the proportion of total local government revenue in each local government entity type and size using the 2012 U.S. Census Bureau's database on individual local government

---

[281] As noted above and as a point of reference, the United States Small Business Administration advises agencies that a potential indicator that the impact of a proposed regulation may be "significant" is whether the costs exceed 1 percent of the gross revenues of the entities in a particular sector, although the threshold may vary based on the particular types of entities at issue. The Department estimates that the costs of this rulemaking for each government entity type are far less than 1 percent of revenues. *See* Small Bus. Admin., A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act 19 (Aug. 2017), *https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf* [*https://perma.cc/MZW6-Y3MH*].

[282] U.S. Census Bureau, *2020 State & Local Government Finance Historical Datasets and Tables* (Sept. 2022), *https://www.census.gov/data/datasets/2020/econ/local/public-use-datasets.html* [*https://perma.cc/QJM3-N7SG*].

finances.[283] The Department then multiplied these proportions of the total local government revenues in each entity type by the 2020 total local government revenue to calculate the 2020 revenue for the small entities in each government type. Revenue data for the small territories are from the U.S. Government Accountability Office.[284] The Department then multiplied these 2020 revenue numbers by the ratio of the 2021 GDP deflator to the 2020 GDP deflator to express these revenues in 2021 dollars.[285] See Section VI.A.3.h for additional details on how these revenue numbers were derived.

Table 37 contains the costs and revenues per government type, and cost-to-revenue ratios using a 3 percent and 7 percent discount rate. The costs are less than 1 percent of revenues for every entity type, so the Department believes that the costs of this proposed regulation would not have a significant economic impact on small entities affected by the proposed rule.[286]

---

[283] U.S. Census Bureau, *Historical Data* (Oct. 2021), *https://www.census.gov/programs-surveys/cog/data/historical-data.html* [*https://perma.cc/UW25-6JPZ*]. The Department was unable to find more recent data with this level of detail. Population counts were adjusted for estimated population growth over the applicable period.

[284] GAO, *U.S. TERRITORIES: Public Debt Outlook-2021 Update* (June 2021), *https://www.gao.gov/assets/gao-21-508.pdf* [*https://perma.cc/7Z2W-K8ZG*].

[285] Bureau of Economic Analysis, *Table 1.1.9. Implicit Price Deflators for Gross Domestic Product* (last updated Nov. 30, 2022), *https://apps.bea.gov/iTable/?reqid=19&step=3&isuri=1&1910=x&0=-99&1921=survey&1903=13&1904=2015&1905=2021&1906=a&1911=0* [*https://perma.cc/KNK8-EM6L*].

[286] As noted above and as a point of reference, the United States Small Business Administration advises agencies that a potential indicator that the impact of a proposed regulation may be "significant" is whether the costs exceed 1 percent of the gross revenues of the entities in a particular sector, although the threshold may vary based on the particular types of entities at issue. The Department estimates that the costs of this rulemaking for each government entity type are far less than 1 percent of revenues. *See* Small Bus. Admin., *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* 19 (Aug. 2017), *https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf* [*https://perma.cc/MZW6-Y3MH*]. Dependent community college costs (community colleges that are operated by a government entity rather than being an independent school district) are not compared to revenues. Revenues are not available directly for these community colleges, and the Department is unable to determine how to distribute these entities' costs across the State and local government entity types. Additionally, it is unclear if all public college and university revenue (*e.g.*, tuition, fees) is included in the revenue recorded for the State or local entities on which the school is dependent.

Table 37: Number of Small Entities and Ratio of Costs to Government Revenues

Government Type	Number of Small Entities	Average Annual Cost per Entity (3%) [c]	Average Annual Cost per Entity (7%) [c]	Total 10-Year Average Annual Costs (3%) (millions)	Total 10-Year Average Annual Costs (7%) (millions)	Annual Revenue (millions)	Ratio of Costs to Revenue (3%)	Ratio of Costs to Revenue (7%)
County	2,105	$9,601.6	$10,150.5	$20.2	$21.4	$65,044.3	0.03%	0.03%
Municipality	18,729	$18,269.9	$19,314.5	$342.2	$361.7	$184,538.9	0.19%	0.20%
Township	16,097	$15,135.0	$15,990.6	$243.6	$257.4	$55,818.9	0.44%	0.46%
Special district	38,542	$1,893.1	$1,991.4	$73.0	$76.8	$278,465.3	0.03%	0.03%
School district [a]	11,443	$31,964.3	$33,559.1	$365.8	$384.0	$330,746.4	0.11%	0.12%
U.S. territory	2	$116,995.3	$124,261.1	$0.2	$0.2	$1,242.5	0.02%	0.02%
CCs [b]	960	$449,163.1	$455,942.1	$431.2	$437.7	N/A	N/A	N/A
CCs - independent	231	$449,163.1	$455,942.1	$103.8	$105.3	$11,340.2	0.91%	0.93%
Total (includes all CCs)	87,878	$16,798.0	$17,515.5	$1,476.2	$1,539.2	N/A	N/A	N/A
Total (only independent CCs)	87,149	$13,181.3	$13,848.1	$1,148.7	$1,206.8	$927,196.7	0.12%	0.13%

[a] Excludes community colleges, which are costed separately.

[b] Includes all dependent community college districts and the small independent community college districts. Revenue data are not available for the dependent community college districts.

[c] This cost consists of regulatory familiarization costs (discussed in Section VI.A.a of this preamble), government website testing and remediation costs (Section VI.A.b), mobile app testing and remediation costs (Section VI.A.c of this preamble), postsecondary education course remediation costs (Section VI.A.d of this preamble), elementary and secondary education course remediation costs (Section VI.A.e), and costs for third-party websites (Section VI.A.f of this preamble) averaged over ten years.

The Department quantified six types of benefits in the Preliminary Regulatory Impact Analysis.[287] However, only one of these types of benefits directly impacts State and local government entities' budgets. Improved website accessibility will lead some individuals who accessed government services via the phone, mail, or in person to begin using the public entity's website to complete the task. This will generate time savings for government employees. The Department assumed that for each of the 13.5 million new users of State and local government entities' websites, there will be six fewer transactions that require government personnel's time, and each of these will save the government about 10 minutes of labor time. This results in 13.5 million hours saved. To determine the share associated with small governments, the Department multiplied by 80 percent, which is the share of websites associated with small governments.

The cost of this time is valued at the median loaded wage for "Office and Administrative Support Occupations" within Federal, State, and local governments. According to the 2021 OEWS, the median hourly wage rate is $22.19.[288] This was multiplied by two to account for benefits and overhead.[289] This results in a loaded hourly wage rate of $44.38 per hour. Multiplying 13.5 million hours by 80 percent and $44.38 per hour results in time savings to small State and local government entities of $478.9 million. Assuming lower benefits during the implementation period[290] results in average annualized benefits of $404.0 million and $393.3 million using a 3 percent and 7 percent discount rate, respectively.

5. Relevant Federal Rules Duplicating, Overlapping, or Conflicting with the Proposed Rule

The Department has determined that there are no other Federal rules that are either in conflict with this proposed rule or are duplicative of it. The Department recognizes that there is

---

[287] *See* Section 4, Impact of the Proposed Rule on Small Governments, of the accompanying PRFA for more details.
[288] U.S. Bureau of Labor Statistics, *May 2021 National Industry-Specific Occupational Employment and Wage Estimates* (last updated Mar. 2022), *https://www.bls.gov/oes/current/naics2_99.htm#43-0000* [*https://perma.cc/SGS7-9GXP*].
[289] Department of Justice guidance was unavailable, so the Department used guidance from a different agency that frequently engages in rulemakings. U.S. Dep't of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation, *Guidelines for Regulatory Impact Analyses* (2016), *https://aspe.hhs.gov/reports/guidelines-regulatory-impact-analysis* [*https://perma.cc/7NVQ-AG8S*].
[290] *See* Section VI.A.5.c.i.

a potential for overlap with other Federal nondiscrimination laws because entities subject to title II of the ADA also are subject to title I of the ADA, which prohibits discrimination on the basis of disability in employment. Some public entities subject to title II may also be subject to section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of disability in programs and activities that receive Federal financial assistance. The regulation implementing title II of the ADA does not, however, invalidate or limit the remedies, rights, and procedures available under any other Federal, State, or local laws that provide greater or equal protection for the rights of individuals with disabilities (or individuals associated with them). Compliance with the Department's title II regulation, therefore, does not ensure compliance with other Federal laws.

6. Alternatives to the Proposed Rule

The Department has considered three less-restrictive compliance alternatives for small governments. The first is a longer compliance period of four years for small public entities and special district governments, for which the Department adjusted its assumptions as to the pace at which entities would incur initial testing and remediation costs. Additionally, two less restrictive conformance levels were considered: WCAG 2.1 Level A and WCAG 2.0 Level AA. To estimate the costs of requiring conformance only with WCAG 2.1 Level A success criteria, the Department duplicated its website cost methodology discussed in Section VI.A.4.b of this preamble while omitting from consideration any errors that violate WCAG 2.1 Level AA success criteria only. Accessibility errors that violated both WCAG 2.1 Level A and WCAG 2.1 Level AA success criteria were retained. WCAG 2.1 introduced 12 new success criteria for Levels A and AA.[291] To estimate the costs of requiring WCAG 2.0 Level AA rather than WCAG 2.1 Level AA compliance, the Department replicated its website cost methodology from Section

[291] These are Success Criteria 1.3.4, 1.3.5, 1.4.10, 1.4.11, 1.4.12, 1.4.13, 2.1.4, 2.5.1, 2.5.2, 2.5.3, 2.5.4, and 4.1.3. Success Criteria 1.3.6, 2.2.6, 2.3.3, 2.5.5, and 2.5.6 were newly introduced at Level AAA. *See* W3C®, *What's New in WCAG 2.1* (Aug. 13, 2020), *https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/* [*https://perma.cc/W8HK-Z5QK*].

VI.A.4.b while omitting any errors classified under one or more of these new success criteria. Costs and benefits of these regulatory alternatives for all governments are presented in Section 5, Regulatory Alternatives, of the accompanying PRIA. Here, the Department summarizes the costs and benefits of these regulatory alternatives for small entities.

Costs for small public entities differ for the regulatory alternatives as explained in Section 6, Alternatives to the Proposed Rule, of the accompanying PRIA. The results are summarized in Table 38.

Table 38: Average Annualized Costs for Small Entities of Regulatory Alternatives, 7 Percent Discount Rate (Millions)[292]

Government Type	Rule as Proposed	WCAG 2.1 Level A	WCAG 2.0 Level AA	Longer Implementation Period
County	$21.4	$21.2	$21.8	$20.6
Municipality	$361.7	$360.8	$366.5	$348.9
Township	$257.4	$256.5	$261.5	$248.8
Special district	$76.8	$76.7	$86.7	$82.9
School district [a]	$384.0	$383.1	$382.5	$362.2
U.S. territory	$0.2	$0.2	$0.2	$0.2
CCs [b]	$437.7	$436.5	$357.5	$392.8
CCs – independent	$105.3	$105.0	$86.0	$94.5
Total (includes all CCs)	$1,539.2	$1,535.1	$1,476.8	$1,456.4
Total (only independent CCs)	$1,206.8	$1,203.6	$1,205.3	$1,158.1

[a] Excludes community colleges, which are costed separately.
[b] Includes all dependent community college districts and the small independent community college districts.

Benefit methodology for regulatory alternatives is explained in Section VI.A.6 of this preamble. Here, the Department applies that same methodology to small entities. Using a longer compliance period, the Department estimates average annualized benefits would be slightly lower because benefits would not accrue as quickly. The Department estimates average annualized benefits of $378.2 million and $365.2 million using a 3 percent and 7 percent discount rate, respectively (compared with $404.0 million and $393.3 million associated with the

[292] *See* Section 6, Alternatives to the Proposed Rule, in the accompanying PRFA for the Department's methodology.

rule as proposed).

The Department altered four assumptions to estimate the benefits associated with WCAG 2.1 Level A and WCAG 2.0 Level AA. These are the same assumptions altered for the sensitivity analysis in Section VI.A.5.c.ii of this preamble. First, ACS prevalence rates were used in lieu of SIPP estimates. Second, rather than assuming website usage becomes equivalent for individuals with and without relevant disabilities, the Department assumed this gap only closes by 75 percent. Third, the average time spent per transaction was reduced by 25 percent. Fourth, the average number of transactions per year was reduced by 25 percent. Incorporating these alternative assumptions reduces the cost savings for small governments to $68.5 million and $66.7 million using a 3 percent and 7 percent discount rate, respectively (from $404.0 million and $393.3 million associated with the rule as proposed).

C. Executive Order 13132: Federalism

Executive Order 13132 requires executive branch agencies to consider whether a proposed rule will have federalism implications.[293] That is, the rulemaking agency must determine whether the rule is likely to have substantial direct effects on State and local governments, on the relationship between the Federal Government and the States and localities, or on the distribution of power and responsibilities among the different levels of government. If an agency believes that a proposed rule is likely to have federalism implications, it must consult with State and local government officials about how to minimize or eliminate the effects.

Title II of the ADA covers State and local government services, programs, and activities, and, therefore, clearly has some federalism implications. State and local government entities have been subject to the ADA since 1991, and the many State and local government entities that receive Federal financial assistance have also been required to comply with the requirements of section 504 of the Rehabilitation Act. Hence, the ADA and the title II regulation are not novel

[293] 64 FR 43255 (Aug. 4, 1999).

for State and local governments. This proposed rule will preempt State laws affecting entities subject to the ADA only to the extent that those laws provide less protection for the rights of individuals with disabilities. This proposed rule does not invalidate or limit the remedies, rights and procedures of any State laws that provide greater or equal protection for the rights of individuals with disabilities.

The Department intends to amend the regulation in a manner that meets the objectives of the ADA while also minimizing conflicts between State law and Federal interests. The Department is now soliciting comments from State and local officials and their representative national organizations through this NPRM. The Department seeks comment from all interested parties about the potential federalism implications of the proposed rule. The Department welcomes comments on the proposed rule's effects on State and local governments, and on whether the proposed rule may have direct effects on the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

D. National Technology Transfer and Advancement Act of 1995

The National Technology Transfer and Advancement Act of 1995 ("NTTAA") directs that, as a general matter, all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, which are private, generally nonprofit organizations that develop technical standards or specifications using well-defined procedures that require openness, balanced participation among affected interests and groups, fairness and due process, and an opportunity for appeal, as a means to carry out policy objectives or activities.[294] In addition, the NTTAA directs agencies to consult with voluntary, private sector, consensus standards bodies and requires that agencies participate with such bodies in the development of technical standards when such participation is in the public interest and is

[294] Pub. L. 104-113, § 12(d)(1) (15 U.S.C. 272 note).

compatible with agency and departmental missions, authorities, priorities, and budget resources.[295]

As discussed previously, the Department is proposing to adopt the Web Content Accessibility Guidelines 2.1 Level AA as the accessibility standard to apply to web content and mobile apps of title II entities. WCAG 2.1 was developed by the W3C®, which has been the principal international organization involved in developing protocols and guidelines for the web. The W3C® develops a variety of technical standards and guidelines, including ones relating to privacy, internationalization of technology, and—as detailed above—accessibility. Thus, the Department believes it is complying with the NTTAA in selecting WCAG 2.1 as the applicable accessibility standard. However, the Department is interested in comments from the public addressing our use of WCAG 2.1.

E. Plain Language Instructions

The Department makes every effort to promote clarity and transparency in its rulemaking. In any regulation, there is a tension between drafting language that is simple and straightforward and drafting language that gives full effect to issues of legal interpretation. The Department operates a toll-free ADA Information Line at (800) 514–0301 (voice); 1-833-610-1264 (TTY) that the public is welcome to call for assistance understanding anything in this proposed rule. If any commenter has suggestions for how the regulation could be written more clearly, please contact Rebecca B. Bond, Chief, Disability Rights Section, whose contact information is provided in the introductory section of this proposed rule entitled, "**FOR FURTHER INFORMATION CONTACT**."

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 ("PRA"), no person is required to respond to a "collection of information" unless the agency has obtained a control number from OMB.[296]

---

[295] *Id.* § 12(d)(2).
[296] 44 U.S.C. 3501 *et seq*.

This proposed rule does not contain any collections of information as defined by the PRA.

G. Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995[297] excludes from coverage under that Act any proposed or final Federal regulation that "establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability." Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

H. Incorporation by Reference

As discussed above, the Department proposes to adopt the internationally recognized accessibility standard for web access, the Web Content Accessibility Guidelines ("WCAG") 2.1 Level AA, published in June 2018, as the technical standard for web and mobile app accessibility under title II of the ADA. WCAG 2.1, published by the World Wide Web Consortium ("W3C®") Web Accessibility Initiative ("WAI"), specifies success criteria and requirements to make web content more accessible to all users, including persons with disabilities. The Department incorporates WCAG 2.1 Level AA by reference into this rule, instead of restating all of its requirements verbatim. As noted above, to the extent there are distinctions between WCAG 2.1 Level AA and the standards articulated in this rule, the standards articulated in this rule prevail.

The Department notes that when the W3C® publishes new versions of WCAG, those versions will not be automatically incorporated into this rule. Federal agencies cannot incorporate by reference future versions of standards developed by bodies like the W3C®. Federal agencies are required to identify the particular version of a standard incorporated by reference in a regulation.[298] When an updated version of a standard is published, an agency must

---

[297] 2 U.S.C. 1503(2).

[298] *See*, *e.g.*, 1 CFR 51.1(f) ("Incorporation by reference of a publication is limited to the edition of the publication that is approved [by the Office of Federal Register]. Future amendments or revisions of the publication are not included.").

revise its regulation if it seeks to incorporate any of the new material.

WCAG 2.1 is reasonably available to interested parties. Free copies of WCAG 2.1 are available online on the W3C®'s website at *https://www.w3.org/TR/WCAG21/* [*https://perma.cc/UB8A-GG2F*]. In addition, a copy of WCAG 2.1 is also available for inspection at the Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 150 M St. N.E., 9th Floor, Washington, D.C. 20002 by appointment.

VII. Proposed Regulatory Text

List of Subjects for 28 CFR Part 35

Administrative practice and procedure, Civil rights, Communications, Incorporation by reference, Individuals with disabilities, State and local requirements.

By the authority vested in me as Attorney General by law, including 5 U.S.C. 301; 28 U.S.C. 509, 510; sections 201 and 204 of the of the Americans with Disabilities Act, Pub. L. 101–336, as amended, and section 506 of the ADA Amendments Act of 2008, Pub. L. 110–325, 28 CFR part 35 is proposed to be amended as follows—

PART 35—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

1. The authority citation for part 35 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12134, 12131, and 12205a.

Subpart A—General

2. Amend § 35.104 by adding definitions for *Archived web content*, *Conventional electronic documents*, *Mobile applications (apps), Special district government, Total population, WCAG 2.1,* and *Web content* in alphabetical order to read as follows:

§ 35.104 Definitions.

* * * * *

Archived web content means web content that—

(1) Is maintained exclusively for reference, research, or recordkeeping;

(2) Is not altered or updated after the date of archiving; and

(3) Is organized and stored in a dedicated area or areas clearly identified as being archived.

* * * * *

Conventional electronic documents means web content or content in mobile apps that is in the following electronic file formats: portable document formats ("PDF"), word processor file formats, presentation file formats, spreadsheet file formats, and database file formats.

* * * * *

Mobile applications ("apps") means software applications that are downloaded and designed to run on mobile devices, such as smartphones and tablets.

* * * * *

Special district government means a public entity—other than a county, municipality, or 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.

* * * * *

Total population means the population estimate for a public entity as calculated by the United States Census Bureau in the most recent decennial Census or, if a public entity is an independent school district, the population estimate as calculated by the United States Census Bureau in the most recent Small Area Income and Poverty Estimates.

* * * * *

WCAG 2.1 means the Web Content Accessibility Guidelines ("WCAG") 2.1, W3C® Recommendation 05 June 2018, *https://www.w3.org/TR/2018/REC-WCAG21-20180605/* [*https://perma.cc/UB8A-GG2F*]. WCAG 2.1 is incorporated by reference elsewhere in this part

(see § 35.200 and 35.202).

Web content means information or sensory experience—including the encoding that defines the content's structure, presentation, and interactions—that is communicated to the user by a web browser or other software. Examples of web content include text, images, sounds, videos, controls, animations, and conventional electronic documents.

Subpart H—Web and Mobile Accessibility

3. Add new subpart H to read as follows:

Subpart H—Web and Mobile Accessibility

Sec.
35.200 Requirements for web and mobile accessibility.
35.201 Exceptions.
35.202 Conforming alternate versions.
35.203 Equivalent facilitation.
35.204 Duties.
35.205–35.209 [Reserved]

§ 35.200 Requirements for web and mobile accessibility.

(a) *General*. A public entity shall ensure that the following are readily accessible to and usable by individuals with disabilities:

(1) Web content that a public entity makes available to members of the public or uses to offer services, programs, or activities to members of the public; and

(2) Mobile apps that a public entity makes available to members of the public or uses to offer services, programs, or activities to members of the public.

(b) *Requirements*.

(1) Effective two years from the publication of this rule in final form, a public entity, other than a special district government, with a total population of 50,000 or more shall ensure that the web content and mobile apps it makes available to members of the public or uses to offer services, programs, or activities to members of the public 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.

(2) Effective three years from the publication of this rule in final form, a public entity with a total population of less than 50,000 or any public entity that is a special district government shall ensure that the web content and mobile apps it makes available to members of the public or uses to offer services, programs, or activities to members of the public 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.

(3) WCAG 2.1 is incorporated by reference into this section with the approval of the Director of the *Federal Register* under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference ("IBR") material is available for inspection at the U.S. Department of Justice and at the National Archives and Records Administration ("NARA"). Contact the U.S. Department of Justice at: Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 150 M St. N.E., 9th Floor, Washington, D.C. 20002; ADA Information Line: (800) 514-0301 (voice) or 1-833-610-1264 (TTY); website: *www.ada.gov*. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov*. The material may be obtained from the World Wide Web Consortium ("W3C®") Web Accessibility Initiative ("WAI"), 401 Edgewater Place, Suite 600, Wakefield, MA 01880; phone: (339) 273-2711; email: contact@w3.org; website: *www.w3.org/TR/2018/REC-WCAG21-20180605/* [*https://perma.cc/UB8A-GG2F*].

§ 35.201 Exceptions.

The requirements of § 35.200 of this chapter do not apply to the following:

(a) *Archived web content.* Archived web content as defined in § 35.104 of this chapter.

(b) *Preexisting conventional electronic documents*. Conventional electronic documents created by or for a public entity that are available on a public entity's website or mobile app

before the date the public entity is required to comply with this rule, unless such documents are currently used by members of the public to apply for, gain access to, or participate in a public entity's services, programs, or activities.

(c) *Web content posted by a third party.* Web content posted by a third party that is available on a public entity's website.

(d) *Linked third-party web content.* Third-party web content linked from a public entity's website, unless the public entity uses the third-party web content to allow members of the public to participate in or benefit from the public entity's services, programs, or activities.

(e) *Public postsecondary institutions: password-protected course content*. Except as provided in paragraphs (e)(1) and (2) of this section, course content available on a public entity's password-protected or otherwise secured website for admitted students enrolled in a specific course offered by a public postsecondary institution.

(1) This exception does not apply if a public entity is on notice that an admitted student with a disability is pre-registered in a specific course offered by a public postsecondary institution and that the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific course. In such circumstances, all content available on the public entity's password-protected or otherwise secured website for the specific course must comply with the requirements of § 35.200 by the date the academic term begins for that course offering. New content added throughout the term for the course must also comply with the requirements of § 35.200 at the time it is added to the website.

(2) This exception does not apply once a public entity is on notice that an admitted student with a disability is enrolled in a specific course offered by a public postsecondary institution after the start of the academic term and that the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific course. In such circumstances, all content available on the

public entity's password-protected or otherwise secured website for the specific course must comply with the requirements of § 35.200 within five business days of such notice. New content added throughout the term for the course must also comply with the requirements of § 35.200 at the time it is added to the website.

(f) *Public elementary and secondary schools: password-protected class or course content*. Except as provided in paragraphs (f)(1) through (4) of this section, class or course content available on a public entity's password-protected or otherwise secured website for students enrolled, or parents of students enrolled, in a specific class or course at a public elementary or secondary school.

(1) This exception does not apply if the public entity is on notice of the following: a student with a disability is pre-registered in a specific class or course offered by a public elementary or secondary school and that the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific class or course. In such circumstances, all content available on the public entity's password-protected or otherwise secured website for the specific class or course must comply with the requirements of § 35.200 by the date the term begins for that class or course. New content added throughout the term for the class or course must also comply with the requirements of § 35.200 at the time it is added to the website.

(2) This exception does not apply if the public entity is on notice of the following: a student is pre-registered in a public elementary or secondary school's class or course, the student's parent has a disability, and the parent, because of a disability, would be unable to access the content available on the password-protected or otherwise secured website for the specific class or course. In such circumstances, all content available on the public entity's password-protected or otherwise secured website for the specific class or course must comply with the requirements of § 35.200 by the date the term begins for that class or course. New content added throughout the term for the class or course must also comply with the

requirements of § 35.200 at the time it is added to the website.

(3) This exception does not apply once a public entity is on notice of the following: a student with a disability is enrolled in a public elementary or secondary school's class or course after the term begins and that the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific class or course. In such circumstances, all content available on the public entity's password-protected or otherwise secured website for the specific class or course must comply with the requirements of § 35.200 within five business days of such notice. New content added throughout the term for the class or course must also comply with the requirements of § 35.200 at the time it is added to the website.

(4) This exception also does not apply once a public entity is on notice of the following: a student is enrolled in a public elementary or secondary school's class or course after the term begins, and the student's parent has a disability, and the parent, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific class or course. In such circumstances, all content available on the public entity's password-protected or otherwise secured website for the specific class or course must comply with the requirements of § 35.200 within five business days of such notice. New content added throughout the term for the class or course must also comply with the requirements of § 35.200 at the time it is added to the website.

(g) *Individualized, password-protected documents*. Conventional electronic documents that are: (1) about a specific individual, their property, or their account; and (2) password-protected or otherwise secured.

§ 35.202 Conforming alternate versions.

(a) A public entity may use conforming alternate versions of websites and web content, as defined by WCAG 2.1, to comply with § 35.200 only where it is not possible to make websites and web content directly accessible due to technical or legal limitations.

(b) WCAG 2.1 is incorporated by reference into this section with the approval of the Director of the *Federal Register* under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference ("IBR") material is available for inspection at the U.S. Department of Justice and at the National Archives and Records Administration ("NARA"). Contact the U.S. Department of Justice at: Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 150 M St. N.E., 9th Floor, Washington, D.C. 20002; ADA Information Line: (800) 514-0301 (voice) or 1-833-610-1264(TTY); website: *www.ada.gov*. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov*. The material may be obtained from the World Wide Web Consortium ("W3C®") Web Accessibility Initiative ("WAI"), 401 Edgewater Place, Suite 600, Wakefield, MA 01880; phone: (339) 273-2711; email: contact@w3.org; website: *www.w3.org/TR/2018/REC-WCAG21-20180605/* [*https://perma.cc/UB8A-GG2F*].

§ 35.203 Equivalent facilitation.

Nothing in this subpart prevents the use of designs, methods, or techniques as alternatives to those prescribed, provided that the alternative designs, methods or techniques result in substantially equivalent or greater accessibility and usability of the web content or mobile app.

§ 35.204 Duties.

Where a public entity can demonstrate that full compliance with the requirements of § 35.200 would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens, compliance with § 35.200 is required to the extent that it does not result in a fundamental alteration or undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with § 35.200 would result in such alteration or burdens. The decision that compliance would

result in such alteration or burdens must be made by the head of a public entity or their designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible.

§§ 35.205–35.209 [Reserved]

Dated: July 21, 2023.

Merrick B. Garland,
Attorney General.