



Submitted via Regulations.gov

October 3, 2023

Merrick B. Garland, Attorney General
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

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

Dear Attorney General Garland:

I am writing on behalf of the American Association of People with Disabilities (“AAPD”) in response to the Notice of Proposed Rulemaking: Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, RIN Number 1190-AA79.¹ AAPD works to increase the political and economic power of people with disabilities. As a national disability-led and cross-disability rights organization, AAPD advocates for full civil rights for more than 60 million Americans with disabilities.² We do this by promoting equal opportunity, economic power, independent living, and political participation. Since 1995, AAPD has worked tirelessly alongside disability advocates, government agencies, and corporate and nonprofit partners to advance the goals of the Americans with Disabilities Act (“ADA”). We consider the Department’s Proposed Rulemaking on ensuring the accessibility of web information and services of state and local government entities to be central to our mission and constituency.

¹ Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, 88 Fed. Reg. 51,948 (Aug. 4, 2023) (to be codified at 28 C.F.R. pt. 35), <https://www.federalregister.gov/documents/2023/08/04/2023-15823/nondiscrimination-on-the-basis-of-disability-accessibility-of-web-information-and-services-of-state>.

² U.S. Census Bureau, *Survey of Income and Program Participation (SIPP)*, <https://www.census.gov/programs-surveys/sipp.html> (last visited Sept. 21, 2023).

First, AAPD applauds the issuance of the Proposed Rule, which has been more than a decade in the making. Updating regulations under Title II of the ADA for web- and mobile-app-based information and services is more vital than ever before, as technology continues to evolve rapidly.³ The ADA's intent is to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for people with disabilities.⁴ To that end, people with disabilities must have equal access to government services and community information across all forms of disability (including print-disabled, blind, low vision, deaf, hard of hearing, cognitive disabilities, limited manual dexterity, speech disabilities, and more); such access requires standardized, consistent accessible web and app design. Such standardization can only come from the finalization of a strong web accessibility rule under Title II of the ADA.

The Proposed Rule will require that public entities respond to the vast array of ways that people use the internet via websites and mobile applications to access public services, programs, activities, and information. People who are blind may use screen readers that convert code to audible text. People with low vision may use screen magnification and high-contrast settings to visually perceive web content. People with manual dexterity disabilities may use switches or gestures to navigate a website or app. People who are deaf or hard-of-hearing benefit from captioned videos or American Sign Language interpretation. People with cognitive disabilities benefit from websites and apps that are clearly organized, do not require verification puzzle solving, and allow users ample time to complete tasks. People with speech disabilities may rely on text-based alternatives to voice communication modes and require alternatives to recorded responses. People with seizure disorders often cannot use websites or video content that produce rapid and unexpected flashes. People with print and learning disabilities may use speech-to-text and text-to-speech software to facilitate reading and writing. As such the Final Rule will enhance the lives of millions of Americans with disabilities and will represent a significant and long-awaited advancement in disability civil rights in the digital age.

In this comment, AAPD outlines additional improvements which will benefit the Proposed Rule, making it more robust and equitable. Our suggestions include:

- Supporting the adoption of WCAG 2.2 as the technical standard in the Final Rule and including language that requires conformance with future accessibility best practices;
- Enforcing shorter compliance deadlines regardless of entity size, and instead basing compliance timelines on the type of web content (new or existing);
- Supporting the provision of robust outreach and education to covered entities, as well as technical assistance to facilitate compliance; and
- Urging the Department to rely on existing undue burden and fundamental alteration defenses and eliminate all seven proposed exceptions to the Rule's requirements for reasons discussed below.

³ Americans with Disabilities Act, 42 U.S.C. § 12132; 28 C.F.R. §§ 35.104, 35.200-209.

⁴ *Id.* § 12101.

In addition to our suggestions, AAPD has collected stories from its members describing their lived experiences navigating web accessibility, which is attached to the comment as an addendum.⁵

I. Web Accessibility Technical Standards⁶

A. The Department of Justice should adopt Web Content Accessibility Guidelines “WCAG”) 2.2 as the standard in the Final Rule for all covered entities.

We first applaud the Department for proposing the adoption of WCAG 2.1 as the technical standard for web and mobile app accessibility under Title II. We agree that adopting WCAG 2.1 as the technical standard will have benefits that are paramount to ensuring access to public entities’ services, programs, and activities for people with disabilities.⁷ We believe that adopting WCAG 2.1, Level AA might indeed be *sufficient* to improve accessibility—but adopting the imminent WCAG 2.2 standard in the Final Rule would bring all covered entities into alignment with the most up-to-date international standards for digital accessibility. The WCAG 2.2 standards were in near-final form on July 30, 2023, and publication is scheduled for

⁵ See Addendum A - Stories from the Disability Community.

⁶ This section responds in whole or in part to the following proposed questions from the Department:

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

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?

See Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, 88 Fed. Reg. at 51962-63.

⁷ *Id.* at 51960.

Fall 2023.⁸

WCAG 2.2 contains identical success criteria as WCAG 2.1 and 2.0, with the exception of one criterion that will be removed. WCAG 2.2 will include nine additional success criteria, some of which 1) improve ways users navigate, find content, and determine where they are; 2) make it easier for users to operate functionality through inputs beyond a keyboard; 3) making web pages appear and operate in predictable ways; 4) help users avoid and correct mistakes; 5) eliminating the requirement that users solve, recall, or transcribe something to log in; and 6) eliminate the need for users to recognize objects or user-supplied images and media to log in.⁹ As just one example, authentication tests (like CAPTCHA tests) are inaccessible to people with many different types of disabilities, and thus removing them as suggested by WCAG 2.2 will enhance accessibility.¹⁰

These proposed new criteria in WCAG 2.2 are not only achievable, but they will also provide substantial additional benefits to people with disabilities as opposed to the criteria in WCAG 2.1. Based on historical data on WCAG 2.1, AAPD expects many agencies to adopt WCAG 2.2 standards within a matter of months, and we predict that many, if not most, web developers will be using WCAG 2.2 by the time of the Final Rule's publication.¹¹ If the Final Rule adopts WCAG 2.1 instead of WCAG 2.2, we are concerned that covered entities who do not voluntarily opt into adhering to WCAG 2.2 will be meeting requirements that have fallen far behind the technological curve. Considering that WCAG 2.2 is very likely to be adopted well before the publication of the Final Rule, we strongly suggest the Department consider adopting WCAG 2.2 for all web and mobile app content for all covered entities.

B. The Department should include language that requires conformance with future accessibility best practices in response to rapidly-evolving technology.

Furthermore, we suggest the Department consider adopting language in the Final Rule that allows for the automatic adoption of future accessibility best practices that will evolve over

⁸ W3C, *Web Content Accessibility Guidelines (WCAG) 2.2* (Jul. 20, 2023), <https://www.w3.org/TR/WCAG22/>.

⁹ W3C, *What's New in WCAG 2.2*, <https://www.w3.org/WAI/standards-guidelines/wcag/new-in-22/> (last visited Sept. 21, 2023).

¹⁰ W3C, *Inaccessibility of CAPTCHA Alternatives to Visual Turing Tests on the Web* (Scott Hollier et al. eds., Dec. 16, 2021), <https://www.w3.org/TR/turingtest/> (describing accessibility issues with CAPTCHA content, listing difficulties presented to users with both physical and cognitive disabilities).

¹¹ The European Union adopted WCAG 2.1 in September 2018, just three months after WCAG 2.1's release. See Shadi Abou-Zahra, *WCAG 2.1 Adoption in Europe*, W3C (Sept. 13, 2018), <https://www.w3.org/blog/2018/wcag-2-1-adoption-in-europe/>.

time and in response to technological innovation. Such a standard is eminently achievable: For example, in a 2022 settlement reached between the Berkeley Unified School District (BUSD) and Mina Sun (a parent on behalf of her minor child), BUSD agreed to establish an Accessibility Review Process. This Accessibility Review Process “shall be aligned with the most current adopted” WCAG standard issued by the WAI.¹² Indeed, BUSD cited the Department’s Title II ADA guidance in formulating its Accessibility Review Process. We believe the Department should add similar, forward-looking language to the Final Rule so that all covered entities are put on notice that they must keep pace with future accessibility best practices , and to prevent the necessity of additional rulemaking on that point.

II. Compliance Deadlines, Covered Entities, and Types of Web Content¹³

- A. The Department should set a compliance deadline of six months for new web content regardless of covered entity size, and a compliance deadline of one year for existing content regardless of covered entity size.

The Department has proposed compliance deadlines of two years after publication of the Final Rule for public entities of 50,000 or more persons, and three years after publication of the

¹² Exhibit A at 2 ([https://nfb.org/sites/nfb.org/files/2022-06/Exhibit%20A%20\(BUSD%20Instructional%20Software%20Review%20and%20Approval%20Process\)\(67340708.1\)%20Final.pdf](https://nfb.org/sites/nfb.org/files/2022-06/Exhibit%20A%20(BUSD%20Instructional%20Software%20Review%20and%20Approval%20Process)(67340708.1)%20Final.pdf)); BUSD Settlement (https://nfb.org/sites/nfb.org/files/2022-06/BERKLEY_UNIFIED_SCHOOLS_SETTLEMENT_AGREEMENT_AND_RELEASE.pdf); National Federation for the Blind Database (<https://nfb.org/programs-services/legal-program/rulings-filings-and-letters#access>)

¹³ This section responds in whole or in part to the following proposed questions from the Department:

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?

See Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, 88 Fed. Reg. at 51965.

Final Rule for public entities of 50,000 or fewer persons and special district governments.¹⁴ These deadlines are exceptionally long, especially considering the rapid pace at which websites and mobile apps are routinely updated, and how frequently web content is created at State and local levels. Web accessibility tools and expertise are more readily available now than ever before; indeed, the Department correctly acknowledges that there are web accessibility professionals who operate online and may be available to assist entities with compliance, regardless of their location.¹⁵ There is a growing availability of accessible website templates and tools that prompt content managers to add accessibility features, and emerging technologies that easily test accessibility, like web crawlers. Further, major web services and cloud computing providers such as Amazon Web Services, and Google have existing products and help desks to support the rapid implementation of these standards. In addition to large tech companies, major consulting firms such as Accenture, Boston Consulting Group, McKinsey and Company, and Deloitte all have practices dedicated to state and local government with expertise in accessible digital government. Many, if not all, of these major firms have already worked on contracts with Title II entities to spur transformation towards accessible digital government services. In addition to large contractors who can work with covered entities to comply with these standards within six months, there are a multitude of small businesses who provide web accessibility services who stand ready to assist covered entities with compliance.

In the context of these compliance deadlines, the Department makes no distinction between newly created web content (which can generally be made accessible immediately and with relative ease) and existing web content (which ostensibly takes time to both audit and bring into compliance). Delayed compliance has real costs to people with disabilities. In the case of students at public entities, this extended compliance timeline will likely exacerbate existing, significant digital barriers to access—barriers that have come to the fore of public knowledge since the COVID-19 pandemic began in 2020. For many of these students, they may have to wait more than half of their primary or secondary education years (two or three years) for their school district to come into compliance with the Department’s standards. In the postsecondary context, a compliance period of two to three years is longer than many one-to-three-year graduate degree programs, and almost as long as most four-year bachelor’s degree programs.

In the context of disaster preparedness and response, an implementation period of two to three years may result in missing necessary information to evacuate in a timely fashion, participate in a boil water advisory, or ensure the implementation of other life-saving measures. With the increasing regularity of disasters across the country, whether they be flooding, chemical spills, wildfires, or hurricanes, the availability of accessible websites and apps may literally become a life-saving factor.

¹⁴ *Id.* at 51950.

¹⁵ *Id.* at 51964.

AAPD recommends establishing compliance deadlines based not on covered entity size, but on the type of content to be brought into compliance. A two- or three-year compliance timeline will harm all people with disabilities who will continue living without consistent access to State and local web content and services, and it will be especially harmful for those living in smaller jurisdictions with a lengthier compliance timeline. The Department’s concern for the resources (or lack thereof) of smaller entities may not bear out in reality. The size of a covered entity does not correspond directly with the number of people with disabilities living there, nor with the amount of traffic on, or the quality of, its websites and mobile apps. In fact, smaller jurisdictions, including rural areas, tend to have more people per capita with disabilities who need web accessibility—demonstrating the urgency of shorter compliance timelines regardless of entity size.¹⁶

Furthermore, any costs associated with compliance are likely to be costs already anticipated by covered entities if they are on a predetermined schedule to redesign their web content, an exercise which has become more regular as technology advances. As we discuss below, any entity that faces challenges to compliance may take advantage of the ADA’s undue burden and fundamental alteration exceptions. Therefore, AAPD believes the Department should enforce a compliance deadline of six months for new web content regardless of covered entity size, and a compliance deadline of one year for existing content regardless of covered entity size.

We further suggest, in response to Question 13, that the Department include captions for live audio content in the six-month deadline. People who are deaf or hard of hearing deserve to access live audio content from public entities as soon as possible.¹⁷ Importantly, both WCAG 2.1 and WCAG 2.2 require captions for all live audio content in synchronized media. Organizations increasingly work with Communications Access Realtime Translation (CART) service providers, which can be written on-site or remotely for live audio, and pricing starts around sixty dollars per hour.¹⁸ Finally, in response to Question 48, we encourage the Department to apply all provisions of the rule to mobile apps in addition to websites.¹⁹ Mobile apps are used by public entities with

¹⁶ U.S. Census Bureau, *The South Had Highest Disability Rate Among Regions in 2021* (Jun. 26, 2023) available at <https://www.census.gov/library/stories/2023/06/disability-rates-higher-in-rural-areas-than-urban-areas.html#:~:text=15%20and%20above> (last accessed Oct. 2, 2023).

¹⁷ This section responds in whole or in part to the following proposed questions from the Department:

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?

See Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, 88 Fed. Reg. at 51966.

¹⁸ Bureau of Internet Accessibility, *Does WCAG Require Live Captions?* (Dec. 21, 2022), <https://www.boia.org/blog/does-wcag-require-live-captions>.

¹⁹ This section responds in whole or in part to the following proposed questions from the Department:

greater frequency than ever before, for purposes as diverse as providing local 311 services, looking up ballot information, booking vaccine appointments, paying for parking, taxes, tickets and more, reserving and reading public library books, and accessing course content at educational institutions. In an increasingly digital world, mobile apps are relied on as digital technologies that deliver vital information and must be made equally accessible to people with disabilities.

B. Should the Department set deadlines based on covered entity size, it should consider eliminating the blanket inclusion of all special district governments with small public entities.

AAPD also takes issue with providing a lengthier compliance timeline for all special district governments. The Proposed Rule defines special district governments 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.²⁰

Special district governments may include 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.²¹

The Proposed Rule posits that “[b]ecause special district governments do not have populations calculated by the United States Census Bureau, their population sizes are unknown.”²² On the contrary, special district governments typically serve identifiable populations, knowledge of which is necessary for their ability to function. Should the Department keep differentiating between covered entity sizes and respective compliance

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?

See Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, 88 Fed. Reg. at 51977.

²⁰ *Id.* at 51958.

²¹ *Id.*

²² *Id.*

deadlines, it should require special district governments to come into compliance on the timeframe consistent with the population size they serve. Such a requirement is entirely feasible: we expect that special district governments will be able to establish whether they are considered small or large and thus whether they have two or three years to comply with the regulations. As just one example, the Mosquito Abatement District²³ in Utah serves Davis County, with a Census-reported population of 369,948 in 2022.²⁴ In Illinois, the Cook County Mosquito Abatement District serves eight townships, all or most of which have Census data or Census population estimates readily available.²⁵

Even though special district governments provide discrete services, many are large, well-resourced, and provide crucial services (such as transit and election administration). Transit authorities serving millions of people in the Washington, D.C. metropolitan areas, New York, San Francisco, and more are special district governments indeed, but more likely than not have the resources and ability to comply with the Proposed Rule as compared to special district governments with populations in the low hundreds.

When it comes to voting, the lengthy compliance timelines pose not only threats to accessibility, but threats to ensuring all people have access to every level of our participatory democracy. The ADA's text acknowledges discrimination against people with disabilities in a number of critical areas, including voting. Access to the ballot is inherently time-sensitive, and an increasing number of people retrieve their ballots or register to vote online. Without access to online voting services, people with disabilities may be prevented from voting in local or state elections—elections that impact day-to-day life for years to come, from mayors, to city councils members, to county sheriffs.

Additionally, we note that the Department gave covered entities a compliance period of just eighteen months to comply with the 2010 ADA Standards for Accessible Design.²⁶ The 2010 regulations set minimum requirements for newly designed and constructed or altered State and local government facilities, public accommodations, and commercial facilities to be readily accessible to and usable by individuals with disabilities. It stands to reason that compliance with physical scoping and technical standards for accessibility poses more daunting logistical,

²³ *Davis Mosquito Abatement District*, <https://www.davismosquito.org/> (last visited Sept. 19, 2023).

²⁴ U.S. Census Bureau, *QuickFacts Davis County, Utah*, <https://www.census.gov/quickfacts/daviscountyutah> (last visited Sept. 22, 2023).

²⁵ Cook Cnty. Gov't, *Northwest Mosquito Abatement District*, <https://www.cookcountyil.gov/committee/northwest-mosquito-abatement-district> (last visited Sept. 18, 2023); Nw. Mosquito Abatement Dist., *Mapping*, <https://www.nwmadil.com/mapping> (last visited Sept. 21, 2023).

²⁶ *2010 ADA Standards for Accessible Design*, ADA.gov (Sept. 15, 2010), <https://www.ada.gov/law-and-regs/design-standards/2010-stds/>.

procurement, and financial challenges to covered entities than compliance with web accessibility standards. Accordingly, a compliance period for the Proposed Rule should be shortened in proportion to the relative difficulty of the task facing covered entities.

C. The Department should commit to providing robust outreach and technical assistance to facilitate compliance with the Proposed Rule once finalized.

Although AAPD believes that compliance with the Proposed Rule is achievable, we also stress the importance of robust outreach and the provision of technical assistance from the Department to covered entities to facilitate thorough and timely compliance. A robust outreach campaign to inform covered entities of their new obligations will help ensure awareness and focus on compliance. Such an outreach campaign is also an opportunity to highlight Title II entities who are excelling in web accessibility, and to share widely the best practices and tactics of such entities. DOJ, in consultation with HHS/ACL, should fund a technical assistance effort on the implementation of the Final Rule that compliments existing ADA implementation technical assistance resources and efforts.

We strongly suggest the Department consult with the disability advocacy community, of which AAPD is a part, to provide this type of training to covered entities nationwide. The Department might consider utilizing a training program like the Department of Homeland Security Office of Accessible Systems & Technology's Trusted Tester Conformance Test Process for covered entities.²⁷ Such assistance will help stave off entities' previously stated concerns about a lack of technical knowledge necessary to make accessible websites. Furthermore, as we have observed in the thirty years since the ADA's passage, delays in implementing improved physical access abound.²⁸ Without support from the federal level, State and local covered entities may not meet the new standards—meaning that people with disabilities will pay the price of further exclusion and isolation from our larger society. The Department's willingness to provide such technical assistance is integral to encouraging and ensuring compliance that will directly benefit people with disabilities.

III. The ADA's Undue Burden and Fundamental Alteration Defenses and Proposed Exceptions

A. The ADA's existing defenses eliminate the need for most, if not all, proposed exemptions to compliance requirements.

²⁷ Dep't of Homeland Sec., *Section 508 Trusted Tester Conformance Test Process Version 5*, <https://www.dhs.gov/trusted-tester> (last visited Sept. 20, 2023).

²⁸ Abigail Abrams, *30 Years After a Landmark Disability Law, the Fight for Access and Equality Continue*, TIME (July 23, 2020, 9:03 AM), <https://time.com/5870468/americans-with-disabilities-act-coronavirus/>.

AAPD strongly urges the Department to eliminate all seven proposed exceptions²⁹ to the Proposed Rule’s compliance requirements. The Proposed Rule accurately names potential challenges to compliance for some covered entities with unique circumstances, but we do not believe these challenges merit the addition of new exceptions to the law. Instead, covered entities should utilize the existing, available undue burden and fundamental alteration defenses to seek flexibility with compliance if necessary. These longstanding defenses have been workable for State and local government entities for more than three decades, and there is no evidence that covered entities are unable to avail themselves of these defenses. AAPD does not support a Proposed Rule that *begins* with the premise of providing multiple exceptions to compliance where the burdens posed by compliance may not be undue or cause a fundamental alteration in a public entity’s services, programs, or activities.

Title II of the ADA “does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.”³⁰ 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 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.³¹ If an action required for compliance 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, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.³² The Proposed Rule integrates the undue burden and fundamental alteration defenses into the text of Section 35.204, describing general limitations on the accessibility obligations set forth in the Rule.³³

²⁹ The Proposed Rule includes seven exceptions to compliance: archived web content, preexisting conventional electronic documents, third-party web content, third-party content linked from a public entity’s website, public postsecondary institutions: password-protected web content, public elementary and secondary schools: password-protected web content, and individualized, password-protected documents.

See Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, 88 Fed. Reg. at 51950.

³⁰ 28 C.F.R. § 35.164.

³¹ *Id.*

³² *Id.*; *see also ADA Update: A Primer for State and Local Governments*, ADA.gov (last updated Feb. 28, 2020), <https://www.ada.gov/resources/title-ii-primer/>.

³³ Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, 88 Fed. Reg. at 51979.

We posit that the proposed exceptions (and proposed limitations to the exceptions) will create substantial confusion about what web content must be made accessible under the Final Rule for a number of reasons. First, the exception and limitation scheme will obscure the Final Rule, create barriers to consistent enforcement, and undermine the equitable intent of the regulation. Second, the proposed exceptions go well beyond the current undue burden and fundamental alteration defenses, and may even prove to minimize the obligations of existing law. Third, the existing undue burden and fundamental alteration defenses depend on both the resources available to the covered entity and the difficulty and expense of providing accessibility—and they demand that covered entities exhaust all alternative actions to those required that would provide accessibility. In stark contrast, the proposed exceptions carve out broad swaths of new and existing web content, regardless of how many resources a covered entity may have or how costly remediating accessibility may be. We are concerned that large entities with resources and funding may take advantage of these exceptions, causing people with disabilities to lose access to important information and services.

AAPD urges the Department to continue relying on the available undue burden and fundamental alteration defense schemes to provide flexibility to covered entities, while not creating more onerous obstacles for people with disabilities to overcome in order to participate in public life.

B. The Department should eliminate the seven proposed exceptions in the Final Rule.

AAPD first provides some general feedback about the Proposed Rule’s exception and limitation scheme, before discussing each of the exceptions in turn. Despite current guidance that covered entities must make websites accessible, people with disabilities still encounter barriers to access. Thus, people with disabilities must request that websites be made accessible or be provided in an alternative format. It places a substantial burden on people with disabilities to continue to disclose their disability, to request that every excepted entity make their services accessible, and to wait until such a time that a public entity employee is available to provide assistance. In reality, people with disabilities often forego the service instead of requesting an accessible version. In other cases, when online information is not accessible, they may resort to calling State and local entities for answers, a time-consuming process that potentially puts a strain on already-limited resources like staff who can answer phone calls and troubleshoot issues verbally.³⁴ Further, because filing formal complaints and requesting materials is burdensome on requesters, entities may not even be fully aware of the extent to which people with disabilities are being excluded or disadvantaged in the use of their websites or mobile apps.

The Proposed Rule’s exception scheme for certain web content maintains this untenable and burdensome status quo which places the onus on people with disabilities to make

³⁴ *Id.* at 51953.

accessibility requests.³⁵ The Department only “strongly recommends” that covered entities 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 only “strongly recommends” that the public entity provide an accessibility statement which 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.³⁶ Should the Department keep its exception scheme, AAPD urges the Department to take a stronger stance in this arena. The Department should require that whenever an entity takes advantage of an exception or defense to compliance, it will provide an easily accessible, permanently available way for people with disabilities to request accessibility and to flag issues with accessibility.

The Proposed Rule’s seven proposed exceptions mean that people with disabilities will continue to be excluded from covered web content. These exceptions will also complicate the function of entities by requiring them to remediate content on a case-by-case basis. AAPD agrees with other organizations in the disability rights community: *from here on out, the technology of our public entities needs to be accessible from the start*. Over time, inaccessible content will become less common. The Final Rule should be forward-looking and progressive, not limited to the technological status quo. The Final Rule should set the expectation that web content will be born accessible so that millions of people with disabilities are not left behind.

*1. Archived Web Content*³⁷

The Department proposes an exception to accessibility requirements for archived web content, which is maintained exclusively for reference, research, or recordkeeping, is not updated or altered after the date of archiving, and is organized and stored in an area clearly identified as being archived.³⁸ AAPD believes that unfettered access to archived public documents is

³⁵ *Id.* at 51950, 51968-69, 51972-73, 51978, 51981.

³⁶ *Id.* at 51980.

³⁷ This section responds in whole or in part to the following proposed questions from the Department:

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?

See id. at 51967.

³⁸ *Id.* at 51966-67.

foundational to the public’s right to information, the right to petition, and the right to engage in our democracy. Public records, as their name implies, even when archived, should be readily available to all members of the community. Further, this exception could allow newly-created content, once archived in the future, to be archived in a way that is not accessible—preventing people with disabilities from availing themselves of content to be used for research and reference, or for any number of other reasons.

AAPD agrees with the Department’s assessment that public entities should first prioritize making non-archived content accessible. However, as we note above, public entities have the existing undue burden and fundamental alteration defenses available to them if they find bringing archived content into compliance in a timely manner to be unduly burdensome. We urge the Department to eliminate this exception, and instead require that any new content that is archived after the Final Rule be accessible— given that new content would have been required to be accessible upon its creation.

If the Department retains this exception, public entities should be required to make accessible any archived content upon request in a reasonable timeframe, so that people with disabilities are not waiting indefinitely on this content. A reasonable wait time for accessible archived content should be no more than five to seven business days. Additionally, this process and wait time should be posted clearly on covered entity websites.

2. *Preexisting Conventional Electronic Documents*³⁹

The Department proposes an exception to accessibility requirements for preexisting “conventional electronic documents,” and provides an exhaustive list of those electronic file formats as web content or content in mobile apps: portable document formats (“PDF”), word processor file formats, presentation file formats, spreadsheet file formats, and database file formats.⁴⁰ These documents will be excepted unless “such documents are currently used by

³⁹ This section responds in whole or in part to the following proposed questions from the Department:

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?

See id. at 51968.

⁴⁰ *Id.* at 51967-68.

members of the public to apply for, gain access to, or participate in a public entity's services, programs, or activities."⁴¹ Based on our experience, this exception would reach many documents not already covered by the archived web content exception, such as community information sheets, flyers, proposals, and other important updates to websites using these electronic file formats. Many of the document types listed are considered to be 'living,' and are updated frequently, with some not being archived for many years. This exception is unnecessary, if all 'non-living' documents (as in, those archived) would already be excepted from accessibility requirements. Public entities will need to assess on a case-by-case basis which preexisting conventional electronic documents are 'used' to access their programs, activities, and services—a burdensome task that invites inconsistent results which will harm people with disabilities.

Furthermore, this exception will negatively impact disabled people's ability to access crucial data which are communicated in these formats. Much public information is highly useful but not necessarily used in the ways defined by the exception. For example, a broad interpretation of the exception could cover a city's description of a public park and its accessibility provisions if no particular event or program was discussed. Similarly, it may not reach informational materials used in employment settings (like bus repair manuals produced by transit agencies). Such materials play an important role in advancing job opportunities for people with disabilities, and having access to the documents needed to learn tools, skills, and programs is integral to success. And thus, AAPD supports the elimination of this exception.

3. *Web Content Posted by a Third Party on a Public Entity's Website*⁴²

As the Department acknowledges, a public entity's website 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.⁴³ The Department proposes two exceptions for such content.⁴⁴ AAPD urges the Department

⁴¹ *Id.* at 51967.

⁴² This section responds in whole or in part to the following proposed questions from the Department:

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 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?

See id. at 51969.

⁴³ *Id.*

⁴⁴ *Id.*

to eliminate the exception for content posted by a third party.

Such third-party posted content provides essential information and opportunities for public engagement. Covered entities regularly ask third parties to post content on their websites and mobile apps—content that is instrumental to participation in governmental and educational activities. Such information includes public comments filed in response to proposed rulemakings or upcoming community events on a public message board on the entity’s website. In some cases, entities use apps and websites to solicit real-time feedback during public meetings using polling technology or apps, and that information is often inaccessible to people with disabilities, especially when presented in dynamic word clouds.⁴⁵ Similarly, public school teachers and college professors often assign discussion work that requires students to post a video, essay, Wiki page, or other work to a class message board to which all students are expected to respond. If the information remains inaccessible, students with disabilities cannot fully complete the response portion of the assignment if they cannot access other students’ content.⁴⁶ Similarly, teachers with disabilities may not be able to engage in the essential functions of their jobs because of inaccessible websites and apps,⁴⁷ and disabled parents and adult family members may not be able to assist students with homework or miss necessary school obligations for parents and guardians.⁴⁸

As another example, the social media profiles of covered entities on most social networks allow for other users to comment on or reply to the entity’s posts. In these scenarios, individuals and organizations often weigh in with crucial updates about local events or other critical information during public emergencies.⁴⁹ A private person’s comment on a municipal Facebook

⁴⁵ See Poll Everywhere, *Create a Word Cloud with the Audience*, <https://www.polleverywhere.com/word-cloud> (last visited Sept. 21, 2023) (“When you create a word cloud using Poll Everywhere, each word comes from the audience. You ask the question, the audience responds on their phones, and together you see opinions become artwork. Words move and grow with each new response.”).

⁴⁶ See Greta Anderson, *Accessibility Suffers During Pandemic*, Inside Higher Ed (Apr. 5, 2020) available at <https://www.insidehighered.com/news/2020/04/06/remote-learning-shift-leaves-students-disabilities-behind>.

⁴⁷ See Belinda Becker-Jacob, *Digital Accessibility proves a major obstacle for DU’s disability community*, DU Clarion (May 1, 2023) available at <https://duclarion.com/2023/05/digital-accessibility-proves-a-major-obstacle-for-dus-disability-community/>; see also Jodi S. Cohen, *A Teenager Didn’t Do Her Online Schoolwork, So a Judge Sent Her to Juvenile Detention*, ProPublica (July 14, 2020) available at <https://www.propublica.org/article/a-teenager-didnt-do-her-online-schoolwork-so-a-judge-sent-her-to-juvenile-detention>.

⁴⁸ See *Andre and Kenya*, American Association of People with Disabilities (Feb. 26, 2021) available at https://medium.com/disability-in-the-time-of-covid-19/andre-and-kenya-an-audio-story-245333f4abc9&sa=D&source=docs&ust=1696342808496730&usg=AOvVaw2xVztDveU3EGudiHCcQ_Ei.

⁴⁹ See Georgia DNR Wildlife (@GeorgiaWild), X (Nov. 15, 2022, 8:27 AM), <https://twitter.com/GeorgiaWild/status/1592509698414374912> (State and local governments share safety information on social media, such as this warning about bears. Public commentary on posts like this sometimes provides further warnings about bear sightings and activity in specific places.); see also General Code, *Getting*

post during an active shooter situation or natural disaster may be more current than the Facebook post itself, or local news coverage.⁵⁰ Covered entities' social media profiles are also spaces for complaining about community conditions, getting advice, and getting organized.⁵¹ Similarly, these spaces are sometimes forums for discussing matters of legal and financial significance including zoning, small business issues, public comments, and public contracts.⁵² Such conversations may hold significance for the property rights and financial wellbeing of disabled people, a group that disproportionately lives in poverty,⁵³ and to permit these conversations through inaccessible means excludes many people with disabilities. For these reasons, it is crucial that disabled people have access to third party content posted to Title II entities' social media platforms. For all these reasons, AAPD strongly urges the Department to eliminate this exception.

Social During a Disaster, <https://www.generalcode.com/blog/getting-social-during-a-disaster/> (last visited Sept. 19, 2023).

⁵⁰ See Andy Castillo, *Social Media Can Play an Important Role In a Community's Emergency Response*, Am. City & Cnty. (Oct. 1, 2021), <https://www.americancityandcounty.com/2021/10/01/social-media-can-play-an-important-role-in-a-communitys-emergency-response/> (describing the use of social media to share updates in real time in disaster situations and coordinate professional and volunteer emergency response); see also Dionne Mitcham, Morgan Taylor, & Curtis Harris, *Utilizing Social Media for Information Dispersal during Local Disasters: The Communication Hub Framework for Local Emergency Management*, 18 Int'l J. Env't Rsch. & Pub. Health no. 20, Oct. 2021, at 3-4, <https://www.mdpi.com/1660-4601/18/20/10784>.

⁵¹ See Barbara D (@Menopausalinso1), X (Aug. 25, 2023, 2:45 AM), <https://twitter.com/Menopausalinso1/status/1694964254799978808>, (replying to a post by the governor of New Jersey, saying "... I keep asking @GovMurphy why he wants to contribute to breweries closing, increased unemployment, & lost revenue to surrounding businesses by not signing bipartisan-passed bill 3038/4630..."); see also City of Monterey, California (@cityofmonterey), Instagram (Aug. 8, 2023), <https://www.instagram.com/p/CvsnUtMymFx/> (noting that a third party who self-identifies as disabled left a comment on this Instagram post complaining about parking enforcement in the city); Schenectady Police Department (Schenectady Police Department), Facebook (July 19, 2023), <https://www.facebook.com/photo/?fbid=606649371572185&set=a.267037512200041> (seeing two different discussions by private persons—one on opioid use and Narcan, the other on police conduct—transpired in the comments on a Facebook post by the local police in Schenectady, New York).

⁵² See Atlanta Department of Procurement (@atlprocurement), Instagram (last visited Sept. 11, 2023, 10:28 PM), <https://www.instagram.com/atlprocurement/> (sharing information about contracting opportunities from Atlanta's Department of Procurement); see also Smithfield, North Carolina (Town of Smithfield, NC Government), Facebook (Aug. 25, 2023), <https://www.facebook.com/photo/?fbid=691995036292051&set=a.225523152939244> (announcing a public town council meeting, where two other parties asked questions relevant to public involvement in the comments); Decatur, Georgia (City of Decatur GA- Government), Facebook (June 20, 2023), <https://www.facebook.com/photo/?fbid=637440421744748&set=a.230709499084511> (announcing a planning meeting to discuss changes to an important, local thoroughfare where members of the public brought up concerns and complaints in the comments).

⁵³ Rebecca Vallas, Kimberly Knackstedt, & Vilissa Thompson, *7 Facts About the Economic Crisis Facing People with Disabilities in the United States*, Century Found (April 21, 2022), <https://tcf.org/content/commentary/7-facts-about-the-economic-crisis-facing-people-with-disabilities-in-the-united-states/>.

4. *Third-Party Web Content Linked from a Public Entity's Website*⁵⁴

The Department proposes that public entities are 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."⁵⁵ For similar reasons as above, AAPD urges the Department to eliminate this exception. Public entities are capable of and best positioned to bear the responsibility of selecting third-party content that is accessible when affirmatively linking to such content from their websites and in mobile apps.

Linked third-party web content should be fully accessible regardless of whether it is 'used' to facilitate a service program or activity of the covered entity. Significant and important information is published via third-party linked content, and these providers are often themselves Title III covered entities or have nondiscrimination obligations under the Rehabilitation Act. Eliminating this exception will promote continuity between accessibility obligations for Title II and Title III entities in this context. In addition, many third-party content providers benefit financially from having their content linked on Title II sites and mobile apps.

Third-party content linked from public entities' websites is often provided as part of the entity's public information activities or is necessary for taking part in the activities of a public program. For example, a government entity may provide current information about a sudden or ongoing shortage of a particular medication (common for people with epilepsy and other medical conditions like diabetes, as well as for vaccine distribution) and identify which pharmacies still have a supply by linking to Title III pharmacy websites. It is vital that this information be accessible to all, but this exception creates uncertainty about whether a link is providing information as a service of the public entity or of the private entity. In other cases, public entities have also outsourced to external providers what were once services, programs, or activities they provided. Many students used to learn how to drive in a public-school setting; in many jurisdictions, this service is now available only through Title III businesses. If the public entity links to those businesses' websites as a way of providing information, the Proposed Rule should require they choose content that is accessible to all.

⁵⁴ This section responds in whole or in part to the following proposed questions from the Department:

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?

See Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, 88 Fed. Reg. at 51969.

⁵⁵ *Id.*

Although a covered entity does not have control over third-party linked content to remediate accessibility barriers, the covered entity can still choose *not* to link to inaccessible information that impedes people with disabilities. And entities may require contractors and vendors with which they do business to develop accessible websites themselves, thereby enhancing accessibility. The exception will limit their abilities to do so.

In addition to the suggested improvements above, we fully support the Department's position that public entities' use of mobile apps to offer their services, programs, and activities should not be excepted from the Rule's accessibility requirements.⁵⁶

5. *Postsecondary Password-Protected Websites and Course Content*⁵⁷

⁵⁶ *Id.* at 51969 (Question 24).

⁵⁷ This section responds in whole or in part to the following proposed questions from the Department:

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)(1)–(2), respectively, to mobile apps?

The Department proposes an exception to accessibility requirements for public postsecondary institutions, subject to two limitations to the exception.⁵⁸ 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 unless one of two limitations applies.⁵⁹ The exception is not intended to apply to password-protected content for classes or courses that are made available to the general public without enrolling at a particular educational institution—such content would need to meet accessibility requirements because they are available to the general public.

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 Department clarifies that the limitations are not triggered merely by the enrollment of a student with a disability—but only by the enrollment of a student whose disability makes them unable to access the content at issue. The limitations to the exception are also triggered if a student develops, realizes, or identifies a disability that makes them unable to access content while they are enrolled.

The first limitation applies when the covered entity is put on notice that an admitted student with a disability is *pre-registered* in a specific course 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. The second limitation applies when 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. For the second limitation, covered entities must remediate (make accessible) the relevant content within five days of notice of such a development.

This exception and limitation scheme is convoluted and unnecessary. This exception threatens the ability of people with disabilities to attend and graduate from college. Notably, this exception exempts even *new* course content from being made accessible, even though—as we have noted—the creation of new accessible content (as opposed to the remediation of existing inaccessible content) is relatively straightforward. Postsecondary institutions that utilize learning management systems such as Canvas and Blackboard can take advantage of those systems’

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?

See 88 Fed. Reg. 51948 at 51973-74.

⁵⁸ *Id.* at 51972-75.

⁵⁹ *Id.* at 52019.

accessibility tools and standards to ensure they are serving all students equitably.⁶⁰ AAPD strongly urges the Department to eliminate this exception, and instead require that all new course content be made and remain accessible for all students, even when content is added or changed. We recommend an additional six-month timeline for public postsecondary institutions to remediate all existing content on their password-protected course sites.

Many colleges and universities already have policies requiring new digital content to be accessible from the start, subject only to the existing ADA defenses of undue burden and fundamental alteration. Postsecondary institutions have learned from past experience that trying to comply with their effective communication obligations under the ADA and Section 504 of the Rehabilitation Act of 1973 on an *ad hoc* basis is costly and inconsistent. Many public postsecondary institutions are already complying with the heart of the Proposed Rule in the absence of this exception and limitation scheme, based on their existing legal obligations to students with disabilities.⁶¹

⁶⁰ Instructure Cmty., *What Are the Canvas Accessibility Standards?*, <https://community.canvaslms.com/t5/Canvas-Basics-Guide/What-are-the-Canvas-accessibility-standards/ta-p/1564> (last visited Sept. 20, 2023); Blackboard, *Accessibility Features in Blackboard Learn*, https://help.blackboard.com/Learn/Student/Ultra/Accessibility/Accessibility_Features (last visited Sept. 20, 2023).

⁶¹ See, e.g., Cal. State Univ., *Disability Support and Accommodations Policy* (Mar. 28, 2022), <https://calstate.policystat.com/policy/9798168/latest/>; Univ. of Pa., *Digital Accessibility Policy*, <https://accessibility.web-resources.upenn.edu/overview-accessibility-penn/standards> (last visited Sept. 21, 2023); University of Chicago - <https://its.uchicago.edu/digital-accessibility-policy/>; Off. of Chief Info. Officer, Ohio State Univ., *Digital Accessibility University Policy* (last revised Aug. 1, 2021), <https://accessibility.osu.edu/policy>; Div. of Info. Tech., Univ. of S.C., *Digital Accessibility* (last revised Aug. 3, 2023), <http://www.sc.edu/policies/ppm/it500.pdf>; Chief Info. Officer & Vice President of Info. Tech. Servs., Univ. of Cal., *Information Technology Accessibility* (July 17, 2017), <http://policy.ucop.edu/doc/7000611>; Digital Accessibility Off., Univ. of N.C., *Accessibility of Digital Content and Materials Standard* (last revised Dec. 22, 2022), <https://policies.unc.edu/TDClient/2833/Portal/KB/ArticleDet?ID=131329>; Off. of the Vice Chancellor for Diversity, Equity, & Access, Univ. of Ill. Urbana-Champaign, *Digital Accessibility* (last revised Aug. 30, 2022), <https://cam.illinois.edu/policies/hr-86/>; Div. of Info. Tech., Univ. of Wisconsin-Madison, *Digital Accessibility* (last revised July 1, 2023), <https://policy.wisc.edu/library/UW-519>; Mich. State Univ., *Accessibility Policy*, <https://webaccess.msu.edu/policy#note2> (last visited Sept. 21, 2023); Iowa State Univ., *Digital Accessibility* (last revised Aug. 3, 2023), https://www.policy.iastate.edu/policy/digital_accessibility; Univ. of Minn., *Accessibility in Information Technology* (Aug. 2018), <https://policy.umn.edu/it/webaccess>; Tex. State Univ., *Web Accessibility Policy*, <https://doit.txst.edu/accessibility/ada-statement/web-policies.html> (last visited Sept. 22, 2023); Off. of Integrity & Compliance, Univ. of Colo. Boulder, *Digital Accessibility* (last revised Nov. 8, 2021), <https://www.colorado.edu/policies/digital-accessibility>; Univ. of Mo. Sys., *Digital Accessibility Policy* (last revised Apr. 21, 2022), https://www.umssystem.edu/ums/rules/collected_rules/equal_employment_educational_opportunity/ch600/600.090-digital-accessibility-policy; Bd. of Trs., SUNY Broome Cmty. Coll., *Web Accessibility Policy* (Aug. 19, 2021), <https://www2.sunybroome.edu/pp/wp-content/uploads/sites/47/2021/09/IT9002-Web-Accessibility-Policy.pdf>; George Washington Univ., *Digital Accessibility*, <https://accessibility.gwu.edu/digital-accessibility> (last visited Sept. 18, 2023).

Further, the Departments of Education and Justice, private advocates, and the courts have required accessibility without imposing any password-protection exceptions for more than a decade. See, e.g., Consent Decree, *Lanzilotti, Cossaboon, & Nat'l Fed'n of the Blind v. Atlantic Cape Cmty. Coll.* (D.N.J. 2015) (Docket No. 15-cv-03656), https://nfb.org/images/nfb/documents/pdf/higher-ed-toolkit/atlantic_cape_consent_decree.pdf;

The human cost of this exception is intolerably high and entirely unnecessary. This exception would, at minimum, exclude blind and print-disabled students from full access to postsecondary education, which can fundamentally alter the course of their lives, social mobility, and much more. It would also undermine and obfuscate expectations by both students and public postsecondary institutions about what accessibility requires. The harms caused by inaccessible educational platforms and instructional materials are sharply depicted by the *Payan v. Los Angeles Community College District* litigation, No. 17-cv-9047062, 2019 WL 6164269 (C.D. Cal. Apr. 23, 2019). For years, blind students Roy Payan and Portia Mason were excluded from their higher education because of inaccessible classroom materials, textbooks, websites, and educational applications. They could not keep up with reading assignments, follow along with in-class PowerPoints, complete classroom activities, or participate in online classroom discussions. They could not independently enroll in classes or use library databases. Access was so delayed that they had to choose between dropping classes or accepting lower grades. A jury found that the exclusions caused Mr. Payan more than \$200,000 in damages.

Students with disabilities should not be burdened by a postsecondary institution's decision to delay accessibility by invoking this exception. Students with disabilities are entitled

Nat'l Fed'n of the Blind & Wichita State Univ., *Resolution Agreement* (July 29, 2016), <https://nfb.org/images/nfb/documents/pdf/higher-ed-toolkit/wichita-state-agreement.pdf>; Nat'l Fed'n of the Blind & S. Or. Univ., *Resolution Agreement* (Mar. 15, 2017), <https://nfb.org/images/nfb/documents/pdf/higher-ed-toolkit/sou-agreement.pdf>; Nat'l Fed'n of the Blind & Fla. State Univ., *Final Settlement Agreement, Waiver, and Release* (Feb. 16, 2022), <https://www.nfb.org/images/nfb/documents/pdf/fsu%20settlement%20agreement.pdf>; Nat'l Fed'n of the Blind & Univ. of Mont., *Resolution Agreement* (Mar. 10, 2014), https://nfb.org/images/nfb/documents/pdf/agreement_university_of_montana_march_10_2014.pdf; Nat'l Fed'n of the Blind, *Federal Court Rules in Favor of Blind Students* (Aug. 21, 2019), <https://nfb.org/about-us/press-room/federal-court-rules-favor-blind-students>; S.C. Tech. Coll. Sys., *Resolution Agreement* (Feb. 28, 2013), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/11116002-b.pdf>; La. Tech Univ., *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 12, 2013), <https://archive.ada.gov/louisiana-tech.htm>; Mt. Hood Cmty. Coll., *Resolution Agreement* (Sept. 8, 2014), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/10142224-b.pdf>; Youngstown State Univ., *Resolution Agreement* (Nov. 25, 2014), <https://www2.ed.gov/documents/press-releases/youngstown-state-university-agreement.pdf>; Univ. of Cincinnati, *Resolution Agreement* (Dec. 8, 2014), <https://www2.ed.gov/documents/press-releases/university-cincinnati-agreement.pdf>; Consent Decree, *Aleeha Dudley v. Miami Univ.* (S.D. Ohio 2016) (Docket No. 14-cv-38), https://archive.ada.gov/miami_university_cd.html; Univ. of N.C. Sys. Off., *Resolution Agreement* (Nov. 8, 2019), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11196908-b.pdf>; Univ. of Nev. Las Vegas, *Resolution Agreement*, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/10226004-b.pdf> (last visited Sept. 17, 2023); Off. of Pub. Affs., Dep't of Justice, *Justice Department Secures Agreement with University of California, Berkeley to Make Online Content Accessible to People with Disabilities* (Nov. 21, 2022), <https://www.justice.gov/opa/press-release/file/1553291/download>; U.S. Att'y Gen., S. Dist. N.Y., *U.S. Attorney Announces Agreement with the City University of New York to Remedy the Exclusion of a Student with Visual Impairments* (Apr. 12, 2023), <https://www.justice.gov/usao-sdny/pr/us-attorney-announces-agreement-city-university-new-york-remedy-exclusion-student>.

to accessible password-protected course materials at the same time they are made available to nondisabled students, including before the first day of class.

6. *Public Elementary or Secondary Password-Protected Course Content*⁶²

In a similar vein as the postsecondary exception scheme, the Department proposes an exception to accessibility requirements for public elementary and secondary schools that would

⁶² This section responds in whole or in part to the following proposed questions from the Department:

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?

See Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, 88 Fed. Reg. at 51976.

provide, subject to four limitations, that class or course content be 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.⁶³ The four 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 limitations to the exception triggered by enrollment after the school term begins also have a five-day remediation requirement once a school is on notice.

As with the previous exception, this exception is convoluted and unnecessary. Like public postsecondary institutions, public elementary and secondary schools are already complying with existing legal obligations for effective communication and other forms of accessibility for parents and students with disabilities. This proposed exception will exclude disabled students and their parents or guardians from a fulsome elementary and secondary education, and it will set accessible education for students with disabilities back by decades. The Department states that “this rulemaking would build on, and would not supplant, [the] preexisting requirements [of the Individuals with Disabilities Education Act (“IDEA”) and Section 504 of the Rehabilitation Act].”⁶⁴ However, this exception undermines requirements of the IDEA which mandate equitable access to learning opportunities for students with disabilities, including equal access to printed materials, digital materials, and technologies.⁶⁵ Specifically, the exception conflicts with the U.S. Department of Education’s recommendations to States and school districts regarding the best ways to exemplify conditions and services for creating and sustaining a statewide, high-quality, accessible educational materials provision system that is also designed to meet statutory requirements under the IDEA and to assure students have access to the requisite assistive technology.⁶⁶

Additionally, this exception will exclude disabled parents and guardians of children enrolled in public elementary and secondary schools from meaningfully participating in their children’s education due to a potentially endemic lack of access. The creation of password-protected websites in the public school environment has permitted and encouraged parents and

⁶³ *Id.* at 51974-76.

⁶⁴ *Id.* at 51952.

⁶⁵ *See* Assistance to States for the Education of Children With Disabilities, 84 Fed. Reg. 56154 (Oct. 21, 2019) (to be codified at 34 C.F.R. pt. 300) (interpreting “print instructional materials” in section 674(e)(3)(C) of IDEA (20 U.S.C. 1474(e)(3)(C)) to include digital instructional materials).

⁶⁶ *See* Nat’l Ctr. on Accessible Educ. Materials, *AEM Quality Indicators with Critical Components for K–12*. Wakefield, MA: National Center on Accessible Educational Materials (2020), <https://aem.cast.org/binaries/content/assets/common/publications/aem/k12-aem-qualityindicators-criticalcomponents.pdf>; 34 C.F.R. §§ 300.324(a)(2)(iv-v).

guardians to be active participants in their children’s educational journeys while preserving student and family privacy. These websites facilitate communication with educators, allow parents to understand what and how their children are learning, and alert parents to potential concerns in the areas of attendance, behavior, and academic performance. In recent years, these websites have become important tools to share with parents warnings about the health, safety, and welfare of students in public school buildings, from infections, allergies, and even violence. Disabled parents or guardians should not be left out of these important processes by default, nor should they be burdened with providing a school notice of their need for access to password-protected content. Delays in providing disabled students and parents or guardians access to this content are especially detrimental given the foundational nature of primary and secondary education.

The American Federation for the Blind conducted a study on educational barriers faced by blind and low-vision students during the COVID-19 pandemic, which highlighted the discriminatory impact of inaccessible digital equipment, platforms, programs, and instructional materials on students and their parents or guardians.⁶⁷ Nearly sixty percent of educators surveyed reported that their blind and low vision students could not access at least one digital classroom tool or program; thirty-five percent reported that their students could not access at least two digital tools.⁶⁸ Family members surveyed reported their children were expected to use an average of 4.9 different tools or programs, but 2.7 tools or programs were inaccessible, on average. During hybrid and online learning, preschool and elementary school students were unable to complete required assignments and often needed continuous support from a family member—which negatively impacted the family member’s ability to work. Unable to participate and access lessons like their peers, blind and low-vision students felt frustrated, discouraged, and excluded. Educators had to invest additional resources to create alternative lessons for their students with disabilities or, in the absence of an alternative, simply exempted the child from lessons delivered via inaccessible digital platforms.⁶⁹ This exception will only exacerbate these harms by allowing schools to make password-protected content accessible in a piecemeal, inconsistent fashion.

Inaccessible primary and secondary educational web content has ripple effects through entire families and communities. We echo all of our concerns from the postsecondary exception here, and we continue to assert that covered elementary and secondary entities can—as they

⁶⁷ L. Penny Rosenblum et al., *Access and Engagement II: An Examination of How the COVID-19 Pandemic Continued to Impact Students with Visual Impairments, Their Families, and Professionals Nine Months Later*, Am. Found. for the Blind (May 2021), https://static.afb.org/legacy/media/AFB_AccessEngagement_II_Accessible_F2.pdf?_ga=2.176468773.1214767753.1694040147-1914728849.1694040147.

⁶⁸ *Id.* at 65.

⁶⁹ Arielle Silverman et al., *Access and Engagement III: An Extended Examination of the Impact of the COVID-19 Pandemic on Students with Visual Impairments, Their Families, and Professionals*, Am. Found. for the Blind (2022), <https://www.afb.org/research-and-initiatives/education/covid19-education-research/access-and-engagement-iii/access>.

always have—utilize the undue burden and fundamental alteration defenses to address challenges to compliance. This exception has the potential to harm even more disabled students than the prior exception for postsecondary institutions. The exception could ostensibly affect nearly every disabled elementary and secondary student in the country, should their schools take advantage of the exception or fail to properly assess whether a limitation to the exception applies. This exception threatens the delivery of the most basic, formative education that disabled students (and their guardians) inherently deserve. AAPD is not supportive of this exception and enhanced limitation scheme.

7. *Individual, Password-Protected Conventional Electronic Documents*⁷⁰

The Department proposes an exception to accessibility requirements 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.”⁷¹ These documents might be digital versions of utility bills, property tax statements, licenses, motor vehicle registration, or hospital test results for patients. The Department also anticipates that making conventional electronic documents accessible in this context may be difficult for public entities.

AAPD believes the introduction of this exception could encourage public entities to decline to make individualized documents accessible, given that many of the documents covered by this exception are already required to be made accessible by State and local governments. Introducing such an exception is not necessary, as the ease with which these types of conventional electronic documents (like PDFs) or HTML formats can be made accessible increases every day. If this exception were to remain in place, it is essential that there be a clear

⁷⁰ This section responds in whole or in part to the following proposed questions from the Department:

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 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?

See Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, 88 Fed. Reg. at 51977.

⁷¹ *Id.* at 51976.

accessible mechanism, on the front page of a portal and throughout the online system, to request accessible versions of the provided documents. Because these documents may be regarding time-sensitive matters (like the payment of a bill), it is essential that state and local governments be required to provide accessible format documents quickly, and well in advance of any deadline for the documents. In addition, once a request is made, the public entity should provide a means such that no further individualized requests from that person with a disability are required and all future notices or documents sent to that individual are automatically delivered in an accessible format. The Social Security Administration, Internal Revenue Services and several state benefits agencies have demonstrated examples of such an opt-in approach to default accessible formats. However, AAPD believes that the time public entities would spend on creating an accessibility request and notification system would be better spent on ensuring that such documents are in an accessible format to begin with. Again, the onus should not be placed on people with disabilities who wish to access their individualized password-protected documents from public entities to rely on third party assistance, request accessible formats, or pursue legal action.

IV. Conclusion

Thank you for taking the time to consider our views, and the significant impact these proposed revisions will have on the ability of millions of people with disabilities across the country to access vital web information and services. We support the prompt finalization of the Proposed Rule, which we hope will include the recommended changes and enhancements discussed in this comment. Please do not hesitate to reach out with any questions.

Sincerely,

A handwritten signature in black ink that reads "Maria Town". The signature is written in a cursive, flowing style.

Maria Town
President and CEO
The American Association of People with
Disabilities
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Addendum A - Stories from the Disability Community

Toward the end of the comment period, AAPD put out a call for community stories to be shared as an addendum to our comment. We hope these stories will highlight the human cost of a continued lack of standardized web accessibility, and will demonstrate some of the lived experiences of people with disabilities in the digital age.

Story 1: Priscilla G, New Jersey

My name is Priscilla, and I am totally blind. Despite my condition, I have been undertaking various leadership roles in different organizations. I became involved in disability advocacy because of the need to contribute to making a positive change being that I and so many have faced barriers accessing information, materials, services and programs, essential for living a meaningful, productive and fulfilling quality of life with more independence regardless of our different conditions or challenges.

Currently, I am the co-chair of the New Jersey Young Democrats Disability Caucus, a member of various local and county boards like the Union County Board on Persons with Disabilities, the Union County Human Services Advisory Council and the Mental Health and Disabilities Committee.

The power of advocacy is all about connecting with others on a deeper level by amplifying our voices, sharing our experiences surrounding common issues concerning our quality of life and well-being with the goal of persuading others to collaborate together in taking small but mighty actions with purpose. I would like to share my experience using various websites on different operating systems like the Mac OS operating system and Windows for many distinct purposes.

Throughout my academic studies I have used a variety of sites to do research class projects, send in assignments, create documents and much more. Before using the Mac operating system, I used Windows with the Jaws screen reader which is a separate software program to be purchased and installed on a windows-operating system. I currently use a Mac with the built-in screen reader called Voiceover which reads text displayed on the computer or phone's screen.

Having access to my mobile phone and computer is essential because it opens the door to a world of knowledge. Knowledge means wealth. I browse the internet to complete a variety of tasks from studying, to applying to jobs, to shopping online, to registering for events and attending virtual meetings via zoom.

I graduated from Seton Hall University with a Degree in Diplomacy and International Relations, later, a professional certification in Bilingual Translation from NYU, and then, a Master's Degree in Nonprofit Leadership and Development from Fordham University. Throughout my academic studies and professional career, I was often presented with inaccessible PDF documents that are displayed as images. While in school, the Office of

Disability Support Services would print, scan and convert the documents into text with computer programs like Kurzweil.

When I apply to jobs, I'm often presented with sites that have very complex sub-menus, making the process of filling out applications and submitting information quite frustrating and very tedious to the point of utter discouragement from completing the task because some sites have animated images and videos that display ads. This is especially true when accessing sites run by state and government entities from a mobile phone.

Policies that ensure accessibility of services, activities, programs and sites like the Title II of the Americans with Disabilities Act are instituted to ensure that people with disabilities have access to them, online and in person provided that all locations comply with the ADA. This can be done by instituting solutions like turning on accessibility features when developing sites to promote their businesses and services.

More and more businesses are using apps to provide services faster and in a more efficient manner. Throughout the Covid-19 pandemic, restaurants used QR codes instead of physical menus to limit contact with the public, minimizing exposure to covid. However, scanning the barcode proved difficult for me when ordering out while dining at a restaurant with my family because of the inaccessibility of the placement of the barcode, thus, requiring sighted assistance to capture it, opening the site to display the restaurant menu, and my mom had to read out the menu to order the food I desired to eat due to the inaccessible layout.

Navigating these websites can be quite frustrating for me and so many users with visual, cognitive, mental hearing or physical impairments because the layout is riddled with layers of menus, non-descriptive images and unlabeled buttons, forcing me to constantly swipe and scroll the site to read a hint of useful information which poses a major barrier and results in added frustration when ordering food or other items, accessing transportation information, and local emergency information independently as a blind person.

One work-around solution to access sites like Facebook, amazon, instagram, transportation sites and others involve downloading mobile apps for each of the services, allowing me to easily read content on each of the sites. Because of the lack of descriptive images, unlabeled buttons, the labyrinth of sub-menus and animated ads, I often require assistance from another pair of eyes when accomplishing the basic tasks that so many take for granted like reading books, shopping, studying and more.

For this reason, the proposed rule that enforces Title II of the ADA should be in place to allow websites and entities to adapt with innovative accessibility solutions such as a simple menu embedded on each site that lists these accommodations like optimizing sites for use with screen readers, adjusting contrast levels, turning on closed captions, reducing motion and animations, and options to read sites aloud. The proposed rulemaking should allow the evolution of policies that address the ever-changing advancements in technology including the increased use of artificial intelligence and internet of things that are now voice-activated and managed through mobile applications.

Story 2: Mary-Anne W, Massachusetts

I am legally blind with a small slit of usable vision in one eye and abnormal color perception to the point of total failure in medical color blindness tests. Numb fingers mean that I cannot touch type or use a cell phone. I use a heavily customized mac laptop. I can see white text on black background in situations where I cannot see the normal black text on white background.

1. TIMEOUTS: Time-outs in web sessions are problematic for those who type slowly, including some but not all elderly and disabled. IRS websites for example.
2. APPS AND WEB: Phone-only access excludes people like me. Have a web interface easy to find and usability tested. Lowell Regional Transit Authority, comcast, and threads are examples.
3. FONTS: In the browser, low vision users customize font choice and size, especially increased size. Page layout should honor this preference and still work, including when normal arrangement will not fit in a maximized window. While reloading or maximizing the window will sometimes fix these problems, it will sometimes change the state of the page such as throwing away all prior input, so get it right without that. It has reached the point where I compose all long text in an editor rather than trust a web page not to throw it away.
4. COLORS: Even non-disabled users use extensions that override colors in web pages. A good one to test with is the Super Dark Mode extension in the chrome browser for mac, which not only supports light text on dark background but multiple color configurations which I use. Try the defaults and pathological choices. Do not use black lines with the background color for an icon, which is invisible on a black background. If you cannot honor the customizations, at least use 2 contrasting colors and have an explanatory text pop up on mouse hover and go away when the mouse moves away. Have contrasting borders around and hint text within text input fields. Honor customizations of text, hint, and background color. Do not rely on color difference to make a text field visible. The comcast version of the Zimbra web browser is an example, especially bad when composing an email.
5. ANNOYING SCROLLING: If you must divide a web page into sections that scroll separately, which I hate but it's fashionable: a) Have visible borders between sections in at least 2 contrasting colors. b) Have visible scrollbars for anything that scrolls, including if it only scrolls with custom large font. c) Test that the up and down arrow also scrolls consistently. Make sure that the roller on a mouse works too, including on Mac. Many offenders.
6. ZOOM IN AND ACCIDENTAL MOUSE: I use the zoom in feature heavily, using a large monitor, operating system and browser. Do not hide critical buttons off to the right or bottom of the screen with lots of space to pan through where I cannot find them. Especially do not move things around the screen or be inconsistent about location. Large font + zoom in + no peripheral vision + "I know it has to be here somewhere" = frustration. I pan around the zoomed in screen using mouse movements, so do not make a lasting change to the data or its

display just because the mouse passes over something. Wait for a click. Known offenders nongovernment.

7. GO AWAY!: If you must display something that blocks the primary purpose of the web page, such as your cookie policy, provide a visible means to make the pop-up/blocker go away. A button or an X in the upper right corner are typical. Trying to find something nonstandard without peripheral vision is a pain. Random clicking should not be required.

8. NON-VISUAL MOUSELESS: Totally blind users use text-to-speech (JAWS on Windows, VoiceOver or Speak Selection on Mac) and no mouse or trackpad. Text must be selectable. Click-to-type and click-before-down-arrow-scrolls are problems. Confirm that the moving keyboard focuses both forward and backward with keystrokes and that text-to-speech tells the user where they are, for example in fields of a form. Every picture needs a text equivalent. Color coding needs an audio-friendly equivalent. Indentation should be supplemented with numbering, such as 1.5.4 to communicate text organization. Those without use of hands such as those injured by cluster bomb bomblet, firework, fire, industrial accident, repetitive strain injury or arthritis may control computers using voice commands hooked to keystrokes. While Siri and competitors do much, some things are beyond them, so make sure there is also a mouseless option for those with vision. This also helps power users who want rapid progress.

Story 3: Sherrye L, Virginia

Where I live, an ADA coordinator is not listed on the local government website. Documents are inaccessible unless you want to go through the site index, and then more often than not they are unavailable.

Story 4: Danielle D, Connecticut

I am a white presenting, Disabled, neurodivergent, queer, Jewish, special education teacher and barriers in the form of inaccessible electronic documents have caused issues in equity for me and my students.

I recently went back to school to receive my school administrator's degree. My university decided to go completely virtual without ensuring that the academic platform – and all of its accompanying electronic materials utilized for an entire virtual learning degree program at a higher education institution in the United States of America – was not accessible. As such, it impacted my learning, the learning of my peers, my ability to share my lived experience with others, and by extension, all of the students supported by anyone at the university. I wish that there were a way to provide quantitative data, however the overlapping discrimination that is present in education makes this difficult. Needless to say, digital accessibility affects the future of our students and workforce.

Story 5: Barbara K, Colorado

#1. ACCESSING INFORMATION on CELL PHONES

Due to an immune dysfunction that makes me EXTREMELY sensitive to cell phones, I use a landline plugged into the wall in my home. Therefore, since I do not send or receive text messages, I hope the U.S. Government will always offer options for accessing information. Then others with a disability similar to mine might still be able to access information on a computer, landline, or in person.

#2. ACCESSING INFORMATION on COMPUTERS

Due to my immune dysfunction, if my 2014 MacBook Air ever has to be replaced, I might be unable to use a new computer for a while. I say that because I received a large laptop as a gift, in 2011, and was unable to be in the same room with the computer. So, I immediately traded the laptop for a new desktop, which I put on my patio. And then I sat inside my home, and used an old keyboard and mouse to operate the computer. Therefore, since there might be others out there who are unable to use a computer, and who are unable to put a desktop on a patio or balcony, I hope that cell phones, landlines, and meeting in person will still be an option.

#3. OPTIONS to ACCESS INFORMATION

Since so many businesses want to send a code via text in order to access their website, I hope the U.S. Government will never force everyone to own a cell phone so they can send and receive text messages. I hope that landlines will always be an option, and that real people - and not robots - will always be able to assist those who are unable to use a cell phone; or a compute; or who cannot meet in person because they are EXTREMELY sensitive to environmental factors (EMFs, perfumes, cleaning products, disinfectants, mold, carpets, pesticides, new paint, etc., etc.) inside an office.

#4. BOTTOM LINE

I hope the U.S. Government will always provide options so that everyone is able to access information, and I thank you for considering this necessity.

Story 6: Kelly K, Kentucky

I am Kelly, 57 years old in Louisville, KY. I live in my own home and since my parents passed away I live with caregivers or my sisters always being with me. I have epileptic cerebral palsy and am confined to my wheelchair unless someone with me uses a mechanical lift to transfer me to the commode or to my recliner or into my bed. I have to be fed and always need help to have a drink because my hands stay pulled up tight or just I am unable to hold a glass and most importantly I am at risk to choke/aspirate and it is very important that I have someone with me 24/7.

My primary caregiver is my 66 and a half year old oldest sister and since Covid we lost all of the other caregivers we have been trying so hard to hire others, but unsuccessfully! I always need

someone to be with me in case I need to call for help. If a caregiver were to fall or have any problems, I cannot call 911, or even a family member.

We have looked for a phone that is touch, or tried to get a phone service to work on my dynavox that I use eyegaze! But the phone I got from the free phone service program is very hard for me to use, my wheelchair doesn't have a holder, and I cannot push the buttons on the side to turn it on. Just really think that there has to be a way that I could call for help with a touch or my eye gaze with all of the fancy technology out in the world! Let alone a reasonably priced automatic door opener if I needed to get myself out of the house! I just really want to stay at my family home but would love to have some of these emergency options that others have.

Technology has been a big part of my life, my power wheelchair, my dynavox to help give me a voice, and at therapy I've been able to actually stand and walk by a mechanical robot like, it felt great!

I have collected for 54 years here in Louisville for the WHAS Crusade for Children, an annual telethon that collects money for children with disabilities for their school, the therapies and newest in technology even in hospitals from birth! I wish that all of the new things coming out for children were scalable for adults.

Recently I've been told by 2 of my doctors that people with disabilities are living longer than ever and there isn't any studies or science about how to care for arthritic conditions from our childhood issues and about anesthesia and other medical tests that are needed after the ages of 40 and now a lot of us in our 50s, 60s and older!

I've tried to have my assistant help me to write a few ideas I have had about this topic. But there is a lot of conversation that could be had. Thank you for this time, this opportunity!