

January 24, 2011

Disability Rights Section, Civil Rights Division
U.S. Department of Justice
Post Office Box 2885
Fairfax, Virginia 22031-0885

Re: RIN 1190-AA61 - Accessibility of Web Information and Services

Dear Sir or Madam:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the Department of Justice's (DOJ) Advance Notice of Proposed Rulemaking on Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations.

ABA strongly supports DOJ's efforts to ensure that public accommodation websites are accessible to individuals with disabilities. The increased prominence of the Internet in our daily financial lives makes it important that this vital channel be accessible to the disabled. Many of our members have already implemented a number of changes to promote web content accessibility by individuals with disabilities, including the development of content designed to optimize access. Our recommendations to DOJ regarding the proposed requirements follow.

Question 1. Should the Department adopt the WCAG 2.0's "Level AA Success Criteria" as its standard for website accessibility for entities covered by titles II and III of the ADA? Is there any reason why the Department should consider adopting another success criteria level of the WCAG 2.0?

ABA supports DOJ's decision to adopt the "Level AA Success Criteria" of the WCAG 2.0. The fact that this standard has been largely adopted by the assistive technology industry provides an increased certainty for the disabled as to the standard they can anticipate encountering across industries.

Question 2. Should the Department adopt the section 508 standards instead of the WCAG guidelines as its standard for website accessibility under titles II and III of the ADA? Is there a difference in compliance burdens and costs between the two standards?

ABA recommends that the Department **not** adopt section 508 standards instead of the WCAG guidelines. According to our membership, most Section 508 compliant sites lag in actual performance because they are not sufficient in specifying standards for other types of content such as multimedia

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its 2 million employees. The majority of ABA's members are banks with less than \$165 million in assets. Learn more at www.aba.com.

platforms and messaging services. Section 508 is also less flexible than WCAG 2.0 AA, which has proven to be dynamic when having to adapt to what the disabled community and the marketplace need.

Question 3. How should the Department address the ongoing changes to WCAG and section 508 standards? Should covered entities be given the option to comply with the latest requirements?

ABA believes that the DOJ should mandate conformance with Level AA Success Criteria of WCAG 2.0.

Question 4. Given the ever-changing nature of many websites, should the Department adopt performance standards instead of any set of specific technical standards for website accessibility?

ABA recommends adherence to the technical standards within WCAG 2.0 AA. Performance and technical standards are not mutually exclusive. In fact, technical standards can form the basis for the appropriate level of performance. WCAG 2.0 AA is a flexible standard that has the capacity to adapt as website functionality changes.

Question 5. The Department seeks specific feedback on the limitations for coverage that it is considering. Should the Department adopt any specific parameters regarding its proposed coverage limitations? How should the Department distinguish, in the context of an online marketplace, between informal or occasional trading, selling, or bartering of goods or services by private individuals and activities that are formal and more than occasional? Are there other areas or matters regarding which the Department should consider adopting additional coverage limitations?

While it is currently difficult to determine coverage limitations, such as distinctions in coverage for informal selling versus formal selling, ABA recommends that any limitations on coverage be based on online sales, not number of employees. Using online sales as a basis for any limitation ensures that the parameter is directly-related to the business' internet activity, rather than an arbitrary measure.

Question 6. What resources and services are available to public accommodations and public entities to make their websites accessible? What is the ability of covered entities to make their websites accessible with in-house staff? What technical assistance should the Department make available to public entities and public accommodations to assist them with complying with this rule?

Larger banks generally have the staff and related internal resources to implement any necessary website modifications. Smaller financial institutions, however, are dependent on external resources to make these accommodations to ensure accessibility to disabled clients. ABA recommends that DOJ organize a technical group customer support team to field questions from covered entities and the public regarding website compliance.

Question 7. Are there distinct or specialized features used on websites that render compliance with accessibility requirements difficult or impossible?

Many banking websites are comprised of complex, interrelated programs for processing a variety of financial transactions and other functions. Many of these programs are in turn supported by third party service providers. Covered entities can sometimes be at the mercy of developers and technology companies who provide inconsistent accessibility standards in their product offerings, which can lead to technical barriers.

ABA recommends that the Department include, in their guidelines, an expectation that technology companies and/or developers who create and provide technology products such as platforms, browsers, delivery mechanisms, and assistive technologies work collaboratively to resolve technical barriers to online accessibility. We believe that the Department's communication of an expectation that these technology developers and companies be working together will result in an integrated framework of accessibility for covered entities to use in their compliance with the proposed regulation.

Question 9. The Department seeks comment on the proposed time frames for compliance. Are the proposed effective dates for the regulations reasonable or should the Department adopt shorter or longer periods for compliance? Please provide as much detail as possible in support of your view.

ABA recommends that DOJ consider lengthening the proposed time frame for newly created web pages to 18 months. We also recommend that the time frame for existing content be extended to 3 years. For larger banks, websites can be quite large and contain thousands of pages. At the same time, smaller financial institutions will be dependent on their third-party service providers with limited resources and a large numbers of bank clients to complete these tasks.

Question 10. The Department seeks comment regarding whether such a requirement would cause some businesses to remove older material rather than change the content into an accessible format. Should the Department adopt a safe harbor for such content so long as it is not updated or modified?

The ABA recommends that DOJ consider allowing a safe harbor for non-updated or non-modified content. As DOJ's proposed accessibility guidelines are implemented, there is the potential that financial institutions will choose to remove older material rather than change its content, or find that certain content requires more resources to make accessible than originally envisioned. Having the flexibility to maintain that content while determining the best course of action would allow institutions, in the long run, to make more material accessible rather than having to remove it due to time constraints.

Question 11. Should the Department take an incremental approach in adopting accessibility regulations applicable to websites and adopt a different effective date for covered entities based on certain criteria? For instance, should the Department of Justice's regulation initially apply to entities of a certain size (e.g., entities with 15 or more employees or earning a certain amount of revenue) or certain categories of entities (e.g., retail websites)?

ABA recommends that DOJ take an incremental approach, where classifications of different types or sizes of entities are required to comply at different timeframes. Such a process would be more equitable to the smaller financial institutions that have a greater dependency on third-party providers for compliance. If an incremental approach is adopted, owners of retail websites where more than a certain amount of revenue is made should be made to comply in the first wave.

Question 13. What are the annual costs generally associated with creating, maintaining, operating, and updating a website? What additional costs are associated with creating and maintaining an accessible website? Please include estimates of specific compliance and maintenance costs (software, hardware, contracting, employee time, etc.). What, if any, unquantifiable costs can be anticipated from amendments to the ADA regulations regarding website access?

For financial institutions, the costs of creating accessible websites will be substantial. It is hard to estimate the compliance costs associated with creating and maintaining such sites. Larger financial

institutions estimate that their lines of business will spend approximately \$50,000 to \$200,000 for sites that are already assistive-technology enabled to make each line's site accessible to the new standards. In some cases the cost for a line of business might be as high as \$3 million. For smaller financial institutions, while the per business line costs may be lower, the overall cost of compliance will still have a significant impact, though one that is difficult to currently quantify. Based on our review to date, the average cost of compliance could represent .017% of a financial institution's assets. For a \$1 Billion institution this could represent \$170,000 in hard costs. We will further refine these estimates as the proposal gets refined and look forward to working with DOJ to minimize unnecessary costs associated with enhancing accessibility while being true to the proposal's admirable goals.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Johnson", with a long horizontal flourish extending to the right.

Wm. Douglas Johnson
Vice President,
Risk Management Policy