

October 7, 2016

Rebecca Bond

Disability Rights Section, Civil Rights Division, U.S. Department of Justice  
1425 New York Avenue, N.W., Suite 4039  
Washington, D.C. 20005

**Re: Nondiscrimination on the Basis of Disability; Accessibility of  
Web Information and Services of State and Local Government  
Entities and Public Accommodations, RIN 1190-AA65**

Dear Ms. Bond:

The U.S. Department of Justice is seeking information about how to implement the ADA regarding public entity websites by crafting rules that delineate clear standards for those entities to follow. As many of the Department's questions suggest, a one-size-fits-all standard is simply not appropriate. The range of public entity website caliber is immense. A very small government may have a website analogous to a backyard shed, while large states may have websites comparable to commercial office buildings. Some governments may be able to institute a standard approaching WCAG 2.0 Level AA compliance, while others would simply be forced to remove their websites altogether if even a less restrictive standard was mandated.

The National Conference of State Legislatures, the Council of State Governments, the National League of Cities, the United States Conference of Mayors, the International City/County Management Association, the International Municipal Lawyers Association, the National Association of Government Web Professionals (NAGW), and the National Association of Telecommunication Officers offer the Department these comments geared to shed light on how state and local governments will be impacted. All of our organizations enthusiastically support making state and local government websites accessible to all users with disabilities. We offer these comments to help guide the Department in adopting regulations that will achieve this goal and are realistic for state and local governments to comply with.



Per Executive Order 13132 the signatories of this letter request that the Department meet with us to discuss our comments further before the Department issues proposed regulations. We also believe that if the Department proposes rules along the lines of what it suggests in the SANPR those rules will be “economically significant,” triggering a benefit-cost analysis per Executive Order 12866.

The proposed WCAG 2.0 Level AA compliance standard is very onerous, and infeasible for most public entities to achieve. The costs associated with providing captioning, especially live captioning, will lead to the removal of relevant media content from most government websites. Promulgating a rule mandating strict compliance standards will lead to small governments removing their websites entirely, and the entire public suffering those consequences. Instead, the Department should focus on allowing sufficient time for technology to advance to a point where compliance is feasible, carving out appropriate exemptions for small governments that would be overly burdened by mandatory compliance, or merely making recommendations for website accessibility standards and best practices. It is paramount that any achievable regulatory action assist state and local government web professionals in getting the education and tools they need to meet promulgated web accessibility standards.

We recommend at this point that compliance with web accessibility standards should be voluntary for all state and local governments. To the extent the Department mandates compliance with a set standard, a tiered approach is warranted, which grants sufficient time for technology and support infrastructure to advance. Some portions of WCAG 2.0, such as audio, video, and live-media captioning, are currently not economically feasible for public entities, and mandating them will have deleterious effects. An indefinite exception with compliance should be made for smaller governments representing less than 200,000 people. For public entities that do not qualify for an exemption based on population; revenue, staffing, and budgetary constraints should be considered in a process for granting special exceptions for public entities that are overly burdened by the compliance standards. To ease the transition toward compliance, the Department should assist in providing education on developing accessible websites, compliant web development tools, and information on how to write request for proposal (RFP) specifications and how to evaluate software based on those specifications.





Several other web accessibility experts and web developers in prior comments to the Department’s Advanced Notice of Proposed Rulemaking in 2010 suggested that compliance with WCAG 2.0 should be mandatory and implemented quickly. Private web developers experienced in WCAG 2.0 compliance initiatives and developing accessible websites have much to gain by a nationally sweeping mandate touching all public entities. Private web accessibility experts would instantly be in high demand, and web developers versed in WCAG 2.0 would be poised to reap the benefits of their expertise.

The signatories of this letter—and in particular the web professionals of NAGW, which have intimate knowledge of the inner workings of government IT departments, see things differently. No matter what standards are required, state and local governments will have difficulties bringing their websites up to compliance. Most governments do not have staff capable of meeting accessibility standards or the budget to hire such expertise. Governments that cannot afford to implement compliance will indefinitely shutdown or remove their websites. The public will be harmed and democracy will be undermined.

The National League of Cities provides information from the U.S. Census Bureau 2007 Census data<sup>1</sup> which counted 39,044 general purpose local governments including:

- 19,492 municipal governments
- 16,519 township governments
- 3,033 county governments

This data also reported there are 50,432 special purpose local governments made up of:

- 37,381 special districts
- 13,726 independent school districts
- 1,452 dependent public school systems

Of the total reported as municipal government agencies, the vast majority of those (over 90%) have populations under 25,000. Only 679 municipal

<sup>1</sup> *Number of Municipal Governments & Population Distribution*, NATIONAL LEAGUE OF CITIES, <http://www.nlc.org/build-skills-and-networks/resources/cities-101/city-structures/number-of-municipal-governments-and-population-distribution> (last visited July 27, 2016).

governments, or 3% of this total, have a population over 50,000. Their breakdown by population is as follows<sup>2</sup>:

Population	Number
300,000+	59
200,000 - 299,999	39
100,000 - 199,999	159
50,000 - 99,999	422
25,000 - 49,999	680
10,000 - 24,999	1,505
5,000 - 9,999	1,654
2,500 - 4,999	2,098
1,000 - 2,499	3,593
Less than 1,000	9,283
<b>Total</b>	<b>19,492</b>

**Question 1:** *Although the definition of “Web content” that the Department is considering proposing is based on the “Web Content” definition in WCAG 2.0, it is a less technical definition. Is the Department’s definition under consideration in harmony with and does it capture accurately all that is contained in WCAG 2.0’s “Web content” definition?*

The Department's definition addresses public entities' web content but does not address web browser software. Webmasters must continuously adapt their web content to work within the different levels of web standards adoption by web browser software. If web browser software consistently adopted web standards, this would not be an issue. However, right now, a single website must

<sup>2</sup> *Local Government and Public School Systems by Type and State, 2007*, U.S. CENSUS BUREAU, <http://www.census.gov/govs/cog/GovOrgTab03ss.html> (last visited July 27, 2016).



be coded in different ways in order to appear consistent across multiple web browsers. A web developer doesn't code websites to be accessible to all web browsers, but instead makes sure the website is displayed properly for the browsers the developer feels are the most popular or the ones used by the target demographic.

The same is true for assistive technology interfaces. If a screen reader is to function properly, the website must be coded in a way that the screen reader can translate and communicate the information to the receiver. Certain elements of WCAG 2.0 can be universally beneficial, such as tagging images with a description. No assistive technology could determine the content of the image otherwise. However, ensuring all websites are completely accessible in the future would require website design to be cabined to function with a certain type of assistive technology. Not only would the current providers of that technology receive an unfair competitive advantage in the marketplace, web technology would be stunted as websites must continually be coded within that technological mold and limitations.

So, when the Department offers a definition of web content, it must understand that all content is intertwined with the browser or translation software that makes that content accessible to any end user. If the Department does not mandate a certain assistive technology as the standard, some websites may be coded to be made accessible with a competing assistive technology browser instead. Half of websites may only be fully accessible with one technology, and the other half accessible with another. If the Department does mandate an assistive technology standard, all websites would be forced to comply with that standard—and technology will be stunted and that assistive browser will be vaulted to the top of the market. More efficient, better performing, and more universal ways of making websites accessible for persons with disabilities may never materialize with such a confining mandate.

**Question 2:** *Are there other issues or concerns that the Department should consider regarding the accessibility standard—WCAG 2.0 Level A and Level AA Success Criteria and Conformance Requirements—the Department is considering applying to Web sites and Web content of public entities? Please provide as much detail as possible in your response.*



We believe that a majority of state and local governments do not currently have sufficient technical expertise or available funding to comply with Level AA or A Success Criteria.

For this reason, none of the accessibility standards the Department suggests should be required. State and local governments should be allowed to comply with them on a voluntary basis and should be able to choose which standards to comply with. State and local governments welcome the Department offering technical assistance and adopting voluntary technical standards.

The fact that the Department was only able to identify four states that currently use WCAG 2.0 indicates it is unlikely that most local governments (most of which have significantly fewer resources than a state) are currently complying and/or able to comply in the near future with WCAG 2.0. Similarly, the fact that not all federal agencies are required to comply with WCAG 2.0 suggests that state and local governments should not be required to meet this high standard.

Given the investment different states have made in WCAG 2.0 versus section 508, if the Department concludes that complying with some standard is mandatory, state and local governments should be able to choose which standard to comply with.

If the Department opts to select the WCAG 2.0 standard for its ADA compliance mandate, only Level A—excluding the captioning requirement—approaches feasibility for state and local governments with greater resources. As ANPRM commenters previously pointed out, some Level AA criteria, such as the provision to caption all live-audio content in synchronized media, are extraordinarily expensive, technically difficult to implement, and burdensome for even large media corporations to achieve.

The Department acknowledges in this SANPRM that complying with AAA is a virtual impossibility, but the Department appears to have been led to believe that the lesser standards (Level AA and A) are somehow not similarly infeasible. If the Department is to mandate WCAG 2.0 standards at all it should cherry-pick the practical elements from the World Wide Web Consortium's standards and discard the cost prohibitive and technologically infeasible elements.





WCAG 2.0 Levels A and AA have several elements that are not practical to be included in a mandated standard that will affect all public entities. Complying with the captioning requirements for all media that relies on audio to present information (Level A) would be so expensive many public entities would forego offering such media. Without specialized technology it takes between 5-10 hours to caption one hour of video.<sup>3</sup> Specialized training and voice-to-text software may allow one hour of video to be captioned in several hours depending on the difficulty of the video.<sup>4</sup> Such software requires many weeks of practice so the software may adapt to the user's voice and speech patterns, and is generally considered to produce more errors than writing out captions manually.<sup>5</sup> Third-party captioning services charge approximately \$3 per minute; with complex captioning, such as for multiple people simultaneously speaking, costs increase.<sup>6</sup>

A two-hour recording of a town hall meeting may require less than 30 minutes of labor to upload to a website and write a brief description of the video. However, captioning this video could require 10-20 hours of moderately skilled labor, or \$360 for a third party to caption it.<sup>7</sup> Many state and local governments would not be able to upload the video to their website due to the prohibitive cost of captioning, which dwarfs the entirety of other costs required to make it available to the public. Governments would be forced to eliminate or drastically reduce their content to meet the captioning standard. Instead of

<sup>3</sup> Dina Berdichevsky, *How Long Does It Take to Manually Caption Videos?*, CAPTIONS FOR YOUTUBE BLOG (Aug. 29, 2014), <http://www.captionsforyoutube.com/blog/posts/23-how-long-does-it-take-to-manually-caption-videos?>.

<sup>4</sup> Glenda Sims, *How do You Solve the Accessible Video and Audio Challenge?*, THE DEQUE BLOG (Jun. 26, 2012), <http://www.deque.com/blog/solve-accessible-video-audio-challenge>. Note: Additional time is required for embedding the captioning into the video.

<sup>5</sup> *Id.*; see Courtney Duerig, *Three Captioning Methods Used By Closed Captioning Services*, CAPTIONSYNC BLOG (Aug. 27, 2015), <http://www.automaticsync.com/captionsync/closed-captioning-services-captioning-methods> ("even a small percentage of errors leads to a drastic reduction in intelligibility"); see also *Can Captions be Generated Automatically Using Speech Recognition?*, ACCESSIBLETECH.ORG,

[http://accessibletech.org/access\\_articles/multimedia/captionsGeneratedAuto.php](http://accessibletech.org/access_articles/multimedia/captionsGeneratedAuto.php) (last visited July 27, 2016); G. BOULIANNE ET AL., *Computer-assisted Closed-captioning of Live TV Broadcasts in French* in INTERSPEECH 273-76 (2006), available at [https://crim.ca/Publications/2006/documents/plein\\_texte/PAR\\_BouGals\\_Interspeech06.pdf](https://crim.ca/Publications/2006/documents/plein_texte/PAR_BouGals_Interspeech06.pdf).

<sup>6</sup> Art Morgan, *Closed Captioning Costs and Pricing*, CAPTIONSYNC BLOG (Dec. 8, 2014), <http://www.automaticsync.com/captionsync/closed-captioning-cost>; *Express Account*, 3PLAYMEDIA, <http://www.3playmedia.com/create-express-account> (last visited July 27, 2016).

<sup>7</sup> Captioning a two-hour recording measured at 5-10 times the recording time, or \$3 per minute.

governments being able to use websites to display a variety of media, the use of video and audio tracks would be significantly chilled, resulting in mostly text-based communication.

Posting the video recording of state and local government proceedings from state legislative sessions to city council meetings is very common. For example, the Florida Senate makes videos of all its Senate Sessions available on its website.<sup>8</sup> It would be a real loss to our democracy if these recordings were no longer made available due to onerous accessibility requirements.

Restrictions on the use of color (Level A) and minimum contrast ratios (Level AA) may be counterintuitive for an average web page designer. Instead of being able to unrestrictedly choose colors that make the website more appealing or amplify the message being conveyed, the designer is confined to color schemes that may require testing to assure compliance. Making all webpages accessible via multiple pathways (Level AA) such as by incorporating an additional site map, will be overly burdensome especially as new webpages are being added and the website layout is being altered.

Web development software has made creating and maintaining websites within the grasp of average office professionals. Many state and local governments are using off-the-shelf or open source software to create and maintain their websites. Most of these products do not contain features that would allow a lay web designer to make the website even Level A compliant. A professional web designer may know how to modify these programs, in the case of open source software, or may know how to work with more sophisticated products, but many smaller governments operate websites without dedicated web design staff. For example, Level A criteria such as keyboard navigability requirements may not be difficult or costly for a web professional to implement, but may be impossible for a lay web designer to implement.

In short, adhering to all Level A guidelines may be a task that web professionals can accomplish given necessary resources, but until webpage creation programs incorporate these features automatically, web professionals will be required in order to implement even Level A navigability requirements. If a state or local government cannot afford a dedicated web professional to

<sup>8</sup> Videos, FLORIDA SENATE, <https://www.flsenate.gov/Media/Videos> (last visited July 27, 2016).





handle its website, the site will likely be taken down if Level A compliance is mandatory.<sup>9</sup>

Furthermore, although many of the other WCAG 2.0 measures can be accomplished cost-effectively by IT professionals, the measures in aggregate are expensive to implement. Even experienced web professionals would require significantly more time to generate compliant content, which would in turn limit the amount of new content able to be generated.<sup>10</sup> Time and hourly wages are the main costs of developing websites. Until technology and website creation tools catch up, applying the array of standards could take IT professionals over two or three times as long to generate compliant content.

In summary, unlike adding a ramp or elevator to access a building, which would cost a small fraction of the building cost, implementing WCAG 2.0 standards would be like requiring an additional building to be built at twice the cost to meet accessibility requirements. Imposing these standards prematurely, without waiting for technology to advance to the point where the cost of implementing accessibility standards nationwide is reasonable, risks state and local governments removing websites altogether.

**Question 3:** *Does an effective date of two years after the publication of a final rule strike an appropriate balance of stakeholder interests? Why or why not? Should the Department consider a shorter or longer effective date? If so, what should those timeframes be and why? Please provide support for your view. Should the Department consider different approaches for phasing in compliance? For example, should the Department consider permitting public entities to make certain Web pages (e.g., most frequently used or necessary to participate in the public entity's service, program, or activity) compliant by an initial deadline, and other Web pages compliant by a later deadline? If so, how should the Department define the Web pages that would be made accessible first, and what timeframes should the Department consider? Please provide support for your view.*

<sup>9</sup> Morris Enyeart, *Comment on FR Doc # 2010-18334, CITY CONNECTIONS LLC* (Mar. 1, 2011), <https://www.regulations.gov/#!documentDetail;D=DOJ-CRT-2010-0005-0223>.

<sup>10</sup> *Id.* Some municipalities have statutory ceilings on how much their budget can increase annually. As costs to produce content increase, content would have to be decreased if existing staff could not be increased.





The Department's premise that most public entity websites can be modified in-house with existing staffing levels is unrealistic. Most state and local governments are not sufficiently staffed to do the day-to-day work required to maintain a website let alone implement the scope of changes required to ensure compliance. Money will need to be budgeted to make these changes and in many cases public entities don't have the finances to provide the basics to their constituents.

In the cases where sufficient funding exists, the standard bidding process to overhaul a website takes at least six months. Specifications need to be written, a scope of work has to be defined, and contracts must then be approved. This process alone in total can take more than a year. Finally, after all of this groundwork has been completed, the actual work of making the website compliant can begin.

This question also appears to be based on the premise that in-house staff already have the knowledge of how to comply. No time is budgeted for learning, or for acquiring education on the technological processes that would have to be employed to achieve compliance. Time for finding and purchasing alternate technologies, *if they exist*, is also not accounted for. Jurisdictions that use an outside Content Management System (CMS) vendor or open source systems would be at the mercy of the CMS vendor's compliance, which is not covered in this mandate.

When Ontario, Canada adopted web accessibility guidelines in 2011, three years were allotted for WCAG 2.0 Level A compliance, and ten years for Level AA.<sup>11</sup> Ontario's regulation targeted commercial websites, which may be more nimble and face less budgetary constraints than public entities.<sup>12</sup>

We recommend that if the Department mandates WCAG 2.0 Level AA for state and local governments, it begins by implementing Level A five years from

<sup>11</sup> Minh Vu & Michael Fleischer, *Does Your Company Do Business in Ontario? New Ontarian Website Accessibility Regulations May Apply To You*, SEYFARTH SHAW (Nov. 12, 2013), <http://www.adatitleiii.com/2013/11/does-your-company-do-business-in-ontario-new-ontarian-website-accessibility-regulations-may-apply-to-you>.

<sup>12</sup> See Morris Enyeart, *Comment on FR Doc # 2010-18334*, CITY CONNECTIONS LLC (Mar. 1, 2011), <https://www.regulations.gov/#!documentDetail;D=DOJ-CRT-2010-0005-0223> (Statutory caps on budget increases will make it impossible to allocate sufficient funds for compliance if standards are unleashed en masse.).

when the final regulations are issued and phases in Level AA ten years from when the final regulations are issued. The media captioning requirements of both Level A and AA should be bifurcated and phased in even later during a future rulemaking to give captioning technology more time to become more sophisticated, accurate, and affordable.

Technology will continue to advance during the phasing period, and industry will have time to develop new tools to assist public entities in meeting the regulatory standards. Once other compliance standards are firmly in place, public entities can effectively understand the scope of the costs already incurred before budgeting for captioning services. They can then determine if their websites are sustainable before tackling whether to remove all video content and forego generating new media.<sup>13</sup>

**Question 4:** *Some 2010 ANPRM commenters expressed concern that there is likely to be a shortage of professionals who are proficient in Web accessibility to assist covered entities in bringing their Web sites into compliance. Please provide any data that the Department should consider that supports your view.*

The shortage of IT workers is drastically impinging local governments, and states are having difficulty staffing IT departments and achieving strategic IT initiatives. Although state fiscal conditions are stabilizing,<sup>14</sup> county governments are experiencing only moderate improvements and have not yet achieved pre-recession levels in jobs and unemployment.<sup>15</sup> Similarly, city fiscal conditions still remain weakened, with wages, pensions, and employees costs negatively impacting recovery.<sup>16</sup> In NAGW's experience, local governments are having a

<sup>13</sup> *Id.*; see Crystal Baker, *Comment on FR Doc # 2010-18334: Responses to Questions from Advance Notice of Proposed Rulemaking*, TEXAS HEALTH AND HUMAN SERVICES COMMISSION (Mar. 2, 2011), <https://www.regulations.gov/document?D=DOJ-CRT-2010-0005-0274> (recommending a safe harbor provision for older content due to financial pressure state and local governments face; "No state or local government should be required to prematurely remove older information that is still useful to the majority of the population.").

<sup>14</sup> FISCAL SURVEY OF STATES, FALL 2015 (National Association of State Budget Officers Fall 2015), available at <http://bit.ly/23UBmSI>.

<sup>15</sup> EMILIA ISTRATE & BRIAN KNUDSEN, COUNTY ECONOMIES 2015 (2015), <http://www.naco.org/resources/county-economies-opportunities-challenges>.

<sup>16</sup> CHRISTIANA MCFARLAND & MICHAEL A. PAGANO, CITY FISCAL CONDITIONS 2015 3 (2015), <http://bit.ly/1iOaDDs>.



hard time hiring and retaining technology workers, as they are competing with private firms who pay twice to three times more for the same job positions.

In 2015, the National Association of State Chief Information Officers put together a report on the shortage of state information technology workforce.<sup>17</sup> Even with states faring better than local governments, 92% of states report salary rate is an obstacle for attracting and retaining IT workers, and 86% have trouble filling vacant positions.<sup>18</sup> Furthermore, 66% of states claim the shortage of IT workers is hindering achievement of strategic IT initiatives, and 66% take 3-5 months to fill senior IT positions.<sup>19</sup> Smaller governments have even greater staffing difficulties, constrained by unremittingly floundering fiscal conditions and competition with state and private institutions.

Mandating Level A or AA compliance will require staffing IT workers with specialized training, which are even scarcer. Private institutions and large governments will promptly absorb the current pool of competent professionals, leaving smaller governments with few or no candidates. The gap would eventually be filled by entry level IT workers who adjust their education and career paths, or professionals that carve time to enroll in specialized training programs.<sup>20</sup> At least 5-10 years should be allotted for these skilled professionals to percolate through the education system and substantiate a workforce capable of supplying public entities and small governments in particular. Otherwise, the shortage of capable workers will prevent some governments from being able to bring their websites up to compliance, and they will have no choice but to pull down their content.

The current reality is that most small governments serving fewer than 200,000 people don't have dedicated web professionals in their IT staffs. Most websites are managed and sporadically updated by lay office professionals or IT staff members that likely have no training in web accessibility.

<sup>17</sup> STATE IT WORKFORCE: FACING REALITY WITH INNOVATION (National Association of State Chief Information Officers 2015), <http://www.nascio.org/Publications/ArtMID/485/ArticleID/79/State-IT-Workforce-Facing-Reality-with-Innovation>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Accessibility Certification: The Devil is in the Details*, WEBAIM BLOG, <http://webaim.org/blog/accessibility-certification> (last visited July 27, 2016) (Employers struggle to employ IT professionals to handle web accessibility because "there are insufficient numbers of professionals in accessibility available [] to hire.").



In summary, even if there was a surplus of specialized web accessibility professionals available (which there isn't), hiring them would be cost prohibitive for the majority of public entities. Imposing mandatory compliance requirements would result in fully functional, informative, interactive government content being removed and rendered inaccessible for everyone. State and local governments that outlaid the cost for websites they believed may last over a decade, requiring little expert maintenance, would be wary of budgeting for future web or mobile sites after suffering such a loss.

**Question 5:** *Is there technology available now that would allow public entities to efficiently and effectively provide captioning of live-audio content in synchronized media in compliance with WCAG 2.0 Level AA conformance? If so, what is the technology and how much does it cost? If public entities currently provide captioning for live-audio content, what method, process, or technology do they use to provide the captions? If such technology is not currently available, when is it likely to become available?*

*Services such as 3PlayMedia and Automatic Sync Technologies charge approximately \$3 per minute for captioning videos.<sup>21</sup> Some companies charge over \$5 per minute for captioning service.<sup>22</sup> There are lower cost alternatives, but quality and accuracy level is undesirable.<sup>23</sup> Intelligibility of captions drops significantly at accuracy rates lower than 97%, and automatic captioning software may produce captions at an accuracy rate lower than 80%.<sup>24</sup> Some professional captioning companies use specialized voice recognition and transcription software that requires months of training. The software must adapt to the user's voice and speech patterns, requiring months of interfacing exposure to produce quality results efficiently. Some captioning services do not use voice recognition programs due to its suboptimal error rate. Captioning videos in-house would not likely result in cost savings unless a dedicated staff was trained to use video captioning software, which would require large amounts of regular*

<sup>21</sup> Express Account, 3PLAYMEDIA, <http://www.3playmedia.com/create-express-account> (last visited July 27, 2016).

<sup>22</sup> Closed Captioning Rates, TALKING TYPE CAPTIONS, <http://www.talkingtypecaptions.com/#!closed-captioning-rates/cqh9> (last visited July 27, 2016).

<sup>23</sup> Art Morgan, *Closed Captioning Costs and Pricing*, CAPTIONSYNC BLOG (Dec. 8, 2014), <http://www.automaticsync.com/captionsync/closed-captioning-cost>.

<sup>24</sup> *Id.*



video content to justify the expense. Regardless, small governments do not have the funding to budget for third party captioning, let alone a professional captioner.



**Question 6:** What are the availability and the cost of hiring and using trained professionals who could provide captions for live-audio content in synchronized media? What are the additional costs associated with producing captions for live-audio content in synchronized media, such as the technological components to ensuring that the captions are visible on the Web site and are synchronized with the live-audio content?

*Live captioning is expensive and difficult to implement. Most web streaming coding platforms and technologies were not designed to transmit closed captioning data, and specialized software is required to achieve it.*<sup>25</sup>

The cost of live captioning is extremely high, requiring professional stenographers that specialize in providing the service. Stenographers are also in limited supply, and can cost more than one hundred dollars an hour.<sup>26</sup> Stenography training requires 3-5 years to reach a competent beginner level,<sup>27</sup> and then several more months and specialized training to become adept at live captioning.<sup>28</sup> More advanced dialogue may require a more experienced stenographer, which can further increase costs. Stenographers may require frequent breaks, so longer continuous sessions may require two stenographers.

<sup>25</sup> *Closed Captioning for Web and Mobile*, TELESTREAM, <http://www.telestream.net/captioning/workflow-web.htm> (last visited July 27, 2016).

<sup>26</sup> *Real-Time Captioning*, WEBAIM (Aug. 29, 2013), <http://webaim.org/techniques/captions/realtime>; *What is CART and FAQ's*, COLLABORATIVE FOR COMMUNICATION ACCESS VIA CAPTIONING, <http://cccaptioning.org/faqs-cart> (last visited July 27, 2016). Transcript or page fees can further increase cost.

<sup>27</sup> *How Long Does Court Reporting School Take?*, CAREERIGNITER.COM, <http://www.careerigniter.com/questions/how-long-does-court-reporting-school-take> (last visited July 27, 2016); Gavin Jenkins, *Hanging Out with America's Elite, Underappreciated Court Reporters*, VICE.COM (Aug. 25, 2015), <https://www.vice.com/read/hanging-out-with-americas-elite-underappreciated-court-reporters-812>.

<sup>28</sup> *Real-time Captioning*, MEDIA ACCESS GROUP, [http://main.wgbh.org/wgbh/pages/mag/resources/guides/mag\\_guide\\_vol11.html](http://main.wgbh.org/wgbh/pages/mag/resources/guides/mag_guide_vol11.html) (last visited July 27, 2016).



*Communication Access Real-time Translation (CART) is spoken word transcription that occurs in real time, and is similar to live captioning. CART could be used to meet the live-audio content in synchronized media, but it has significant downsides. CART is not embedded in videos like captioning, it is merely a rolling transcription. Also, CART doesn't incorporate the required audio descriptions that appear in captioning. Still, CART transcribers are in demand, charging \$60-\$200 per hour.<sup>29</sup> Implementing mandatory live captioning standards will likely increase the demand and the cost if sufficient time to allow the market to expand is not allotted.*

*Even the Federal Communications Commission doesn't mandate such onerous captioning standards for live television broadcasts that are simulcast on the internet. The FCC allows internet video clips of live television programming an additional twelve hours before a captioned clip has to be posted.<sup>30</sup> To achieve that high standard, the FCC gave large media corporations years to reach compliance.<sup>31</sup> Still, the FCC settled on standards for televised programming that is released on the internet being allotted 45 days to add captioning, ramping up to only 15 days over a period of two years.<sup>32</sup>*

*To demand live captioning for all public entity websites would be a more oppressive standard than the FCC thought was achievable by television companies that specialize in releasing media content for a profit. Requiring stricter compliance measures for public entities would likely lead to abandoning making audio and video media available to anyone or even producing it.<sup>33</sup>*

To summarize, as technology advances and public entities may want to release more live videos on their websites to increase transparency and promote civic participation, but they will be inhibited from doing so if they must bear the high cost of live captioning. Forcing public entities to engage in live captioning, or

<sup>29</sup> *What is CART and FAQ's*, COLLABORATIVE FOR COMMUNICATION ACCESS VIA CAPTIONING, <http://cccaptioning.org/faqs-cart> (last visited July 27, 2016).

<sup>30</sup> *Captioning of Internet Video Programming*, FEDERAL COMMUNICATIONS COMMISSION, <https://www.fcc.gov/consumers/guides/captioning-internet-video-programming> (last visited July 27, 2016).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> See Morris Enyeart, *Comment on FR Doc # 2010-18334*, CITY CONNECTIONS LLC (Mar. 1, 2011), <https://www.regulations.gov/#!documentDetail;D=DOJ-CRT-2010-0005-0223>.

even a twelve hour standard, would only stymie any efforts to release live content to the public.

**Question 7:** *Should the Department consider a shorter or longer effective date for the captioning of live-audio content in synchronized media requirement, or defer this requirement until effective and efficient technology is available? Please provide detailed data and information for the Department to consider in your response.*

If the Department requires state and local governments to comply with WCAG 2.0 AA it should defer the captioning of live-audio content in synchronized media indefinitely. When the Department next updates these regulations it should determine whether the technology is “effective and efficient.” *Even the captioning of non-live videos is costly and burdensome, and state and local governments should be given longer than three years to comply. It makes little sense to rush out standards for live media. Considering captioning technology is improving, but still not yet able to automatically caption audio at a quality that would make captioning reasonably efficient, the Department should wait to mandate it until an efficient solution is on the horizon.*

*Requiring public entities to caption live-audio content in synchronized media when it is still drastically uneconomical would not spur technological advancement in the field, it would have the opposite effect. Given that the gap between mandated captioning and a potentially successful, economically viable solution is so great, state and local governments are likely to abandon pursuing captioning of live-audio content altogether. As the impetus for producing live content wanes, so will the demand for improving captioning technology.*

*The Department should encourage public entities to voluntarily utilize the current best automated captioning software for live-audio content in synchronized media. Even if available technology does not currently produce an acceptable accuracy rate, voluntary use of such software would encourage the continued improvement of automated captioning technology by increasing its visibility. This solution is an economically feasible alternative that will be a step toward providing quality captioning.*







**Question 8:** *Are there any existing designs, products, or technologies (whether individually or in combination with others) that would result in accessibility and usability that is either substantially equivalent to or greater than WCAG 2.0 Level AA?*

We are not aware of a product that would solve this issue.

**Question 9:** *Are there any issues or concerns that the Department should consider in determining how a covered entity would demonstrate equivalent facilitation?*

A one-size-fits-all mandate will not work for all public entities with different scopes and responsibilities. Public entities should have the choice of demonstrating equivalent facilitation without being forced to comply with a mandatory standard that governs all websites.

The Department is concerned that public entity telephone services and other human assisted translation services are not equally accommodating persons with disabilities. Although websites are available 24 hours a day, and may have other convenience features associated with internet use in comparison to other channels, reasonably equal accommodations do not have to be identical to satisfy the ADA. Bringing some public entity websites up to WCAG 2.0 standards for Level A or Level AA could cost several times more, in both creation and maintenance, than the website itself. If employing human assistance to handle the occasional need for access is a solution that is not cost prohibitive, perhaps that is a better overall accommodation than everyone suffering the consequences of increasing infrastructure costs several fold.

Government websites themselves rarely provide services that cannot be obtained elsewhere. Truly, websites are an expansion in convenience for a relatively modest price. Unfortunately, the same cost-benefit ratio that makes websites a viable product offering is not currently achievable to accommodate all persons with disabilities. If websites are too expensive, governments can simply forego them altogether. If websites were ten times as expensive to create and maintain, many small public entities would stop offering them. As long as a website is not the only route to a service, and a reasonable accommodation can be made for persons with disabilities, equal facilitation should be allowed.



**Question 10:** *Would the Department be correct to adopt the RFA’s definition for a “small governmental jurisdiction” (i.e., governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000) as its population threshold for small public entities? Are there other definitions for “small governmental jurisdiction” the Department should consider using to define the population threshold for small public entities for purposes of this rulemaking? Please provide as much information as possible, including any supporting data for your views.*

Mandating compliance based upon population is somewhat relative and not sufficiently reliable in determining capacity to achieve compliance. We are aware of great differences in budget allocations for web-related activities based on population size. Some government agencies representing 50,000 people may spend 1% of their budget on a website while others may only spend 0.01% or less on their web-related services. Population as a measure also does not work very well for state agencies or county divisions that may maintain individual websites. Finally, population, like total revenue, offers no indication of a community’s relative wealth.

Public entities serving a population of 200,000 people or fewer should be exempted from mandatory compliance indefinitely. For public entities that do not qualify for an exemption based on population; revenue, staffing, and budgetary constraints should be considered in a process for granting special exceptions for public entities that are overly burdened by the compliance standards.

**Question 11:** *Are there technical and resource challenges that smaller entities might face in meeting Level AA conformance? At what level are small public entities currently providing accessibility on their Web sites? Do small public entities have internal staff to modify their Web sites, or do they utilize outside consulting staff to modify and maintain their Web sites? Are small public entities facing budget constraints that may impair their ability to comply with this regulation?*



Yes, smaller entities face technical, staffing, and funding challenges. Governments with populations 50,000 and under rarely have in-house web expertise. Some use outside consultants to update web content because they can't afford the expense of in-house staff. Many of the employees responsible for maintaining the website are non-technical and often include clerks, administrative assistants, or volunteers. Very few have formal training in website design or accessibility. Staff are only able to do the bare minimum to get information posted, and more often than not, updating the website comprises only a small part of their day-to-day responsibilities.

*Captioning and live captioning are prohibitively expensive and time consuming. Most small public entities do not have the resources to employ the IT staff necessary to maintain WCAG 2.0 compliant websites. Some public entities use third party developers to create and maintain their websites, and those costs will increase proportionally to the additional compliance costs those third parties experience.*

*Some website developers for public entities such as NIC Inc. have already structured their accessibility compliance around Section 508 standards, and retrofitting websites to a new standard would incur additional cost. A basic 500 page website such as Alabama.gov may require \$15,000 to bring it from Section 508 to WCAG 2.0 compliance.<sup>34</sup> Larger sites, such as the 2,500 page Alabama Department of Conservation could cost up to \$75,000 to update.<sup>35</sup> Other public entity websites that are not already Section 508 compliant would incur even larger relative costs.*

*Very few, if any, small public entities are currently providing accessibility to their website. Vision Internet, a third party government website designer, surveyed hundreds of local governments and found that 89% had moderate, weak, or no knowledge of website accessibility requirements.<sup>36</sup> Small entities in particular do not have the resources to employ someone with the skill level to make their websites accessible and cannot afford to hire consultants to do so.*

<sup>34</sup> Telephone Interview with Robert Hines, Information Technology Director, Alabama Interactive LLC, (Jun. 16, 2016).

<sup>35</sup> *Id.*

<sup>36</sup> Tom Humbarger, *Thought Leadership, Best Practices, Insights and Examples*, VISION (Apr. 19, 2016). <http://blog.visioninternet.com/almost-everything-you-need-to-know-about-local-government-website-accessibility>.

*Small entities have small budgets; the fact that many have very simple websites illustrates there aren't sufficient resources to spend.*

**Question 12:** *Are there other issues or considerations regarding the accessibility standard—WCAG 2.0 Level A Success Criteria and Conformance Requirements—that the Department is considering applying to Web sites and Web content of very small public entities that the Department should consider? Please provide as much detail as possible in your response.*

Available staff knowledge and financing are large issues. As stated in our response to Question 11, most public entities serving a population of 50,000 or less are forced to stretch staff expertise into areas employees were not originally hired to support. Budget constraints and the slow recovery from the Great Recession has left no room for the additional cost of hiring specialized staff to bring websites in line with rigorous compliance standards such as WCAG 2.0 Level A, let alone regularly maintaining it and scrutinizing the updated content for compliance.

For many governments of this size, having a website is a luxury that is made possible purely by the chance that some of its staff has cross-departmental knowledge enabling them to create basic websites with lay web development software. Requiring websites to be built to a level of compliance that would raise the bar of expertise needed to create websites beyond the simple use of lay web development software would strip small public entities of that already precarious luxury.

**Question 13:** *If the Department were to apply a lower compliance standard to very small public entities (WCAG 2.0 Level A), what would be the appropriate population threshold or other appropriate criteria for defining that category? 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? What would be the consequences for individuals with disabilities if the Department applied a lower compliance standard, WCAG 2.0 Level A, to very small public entities?*





A one-size-fits-all approach is inappropriate, and exceptions should be made for public entities that cannot afford to comply with the standards. As discussed in our answer to Question 10, total revenue, staffing, and budgetary constraints are relevant criteria that should be gauged when determining an exception to the total population standard.

The “lower compliance standard” for small or very small public entities should be that compliance is not required. Public entities serving a population of 200,000 people or less should be exempted from mandatory compliance indefinitely. Even at the 150,000 population level, local governments generally do not have even a small staff of web professionals who could be called upon to maintain an accessible website.

As larger entities are moved toward compliance, the market for compliant web design will improve. Eventually, web development tools will be able to produce compliant websites, and web accessibility expertise will filter down to where some staff members for very small public entities will be able to create compliant sites.

**Question 14:** *Would applying to very small public entities an effective date of three years after the publication of the final rule strike an appropriate balance of stakeholder interests? Why or why not? Should the Department consider a shorter or longer effective date for very small public entities? Please provide specific examples or data in support of your response.*

Granting additional years to very small public entities, serving a population of 50,000 people or less, will do little to remedy the budget and staffing problems they will face when attempting to comply. The Department should focus on recommending that all small and very small public entities strive toward compliance and providing tools and support to do so, not instituting mandatory compliance standards.

After mandatory compliance standards have been adhered to by larger public entities for several years, the Department can reevaluate mandating a compliance standard for small entities based on the updated expertise of web developers, new technology generated by this rulemaking, and the future

financial outlook for state and local governments. Since the imposition of strict compliance standards could lead to many small and very small local governments removing their websites, it would be prudent to wait until the ramifications of requiring larger public entities to comply are known.



**Question 15:** *Should the Department defer compliance with WCAG 2.0 altogether for a subset of very small public entities? Why or why not? If so, what would be the appropriate population threshold or other appropriate criteria for defining that subset of very small public entities? Should the Department consider factors other than population size, such as annual budget, when establishing the subset of public entities subject to deferral? 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? What would be the consequences to individuals with disabilities if the Department deferred compliance with WCAG 2.0 for a subset of very small public entities?*

See our answer to questions 10 and 14. Public entities serving a population of 200,000 people or less should be exempted from mandatory compliance indefinitely. For public entities that do not qualify for an exemption based on population; revenue, staffing, and budgetary constraints should be considered in a process for granting special exceptions for public entities that are overly burdened by the compliance standards.

**Question 16:** *If the Department were not to apply a lower compliance standard to very small public entities (WCAG 2.0 Level A), should the Department consider a deferral of the requirement to provide captioning of live-audio content in synchronized media for very small public entities? Additionally, should the Department consider a deferral of the requirement to provide captioning of live-audio content in synchronized media for all small public entities? Why or why not?*

No matter what the Department otherwise requires, it should defer the captioning of live-audio content in synchronized media indefinitely for small and very small public entities—indeed all public entities. Live captioning is not affordable for almost any public entity except for specialized circumstances. Sufficient technology to automatically caption live-audio does not currently exist,

and the Department should not mandate live captioning for any entity until such technology is affordable. Only once live, automatic voice recognition technology is capable of a transcription rate of at least 95% accuracy at a reasonable cost, should the Department consider mandating live captioning based on that technology on any government entity.

**Question 20:** *Is the definition the Department is considering for archived Web content appropriate?*

The Department's definition is clear if the reader understands how the content was originally authored, which may not always be the case. Most governments scan files and save them as image-based TIFF documents. These documents are not accessible and cannot be made accessible unless they are recreated and scanned using methods that preserve their text-based contents.

**Question 21:** *Does the archived Web content definition and exception under consideration take into account how public entities manage outdated content on their Web sites? How often do individuals seek access to such documents and how long would it take public entities to provide these documents in an accessible format? Are there other issues that the Department should consider in formulating an archived Web content definition or an exception for archived materials on Web sites of public entities?*

We agree with exempting archived content because most of this content is scanned PDF files that are in image-based TIFF format. This historical information cannot be made accessible unless all of these documents are re-authored and then resaved as accessible PDF documents. The amount of work and time to do this would be extensive and cost prohibitive.

**Question 22:** *Would such a definition and exception under consideration make clear the types of documents needed to apply for or gain access to services, programs, or activities? If some versions of documents are accessible and others are not, should the Department require that accessible documents be labeled as such? Are there other issues that the Department should take into consideration with regard to a proposed exception for conventional electronic documents?*





We support the exception for only making conventional electronic documents accessible generally if created after the date the final rule is effective. Labeling different versions of documents as accessible or inaccessible is unnecessary. It would take a lot of resources to identify and modify all the relevant documents; and it would likely be obvious to those seeking access whether or not a document is accessible.

**Question 23:** *Are there additional issues that the Department should take into consideration with regard to linked third-party Web content? Has the Department made clear which linked third-party Web content it is considering covering and which linked third-party Web content the Department is considering excepting from coverage under a proposed rule? Why or why not?*

Public entities should not be responsible for making linked content accessible as this content is out of their control. If the Department deems them responsible for ensuring such content is accessible they will cease to link to any external websites. Continuously monitoring third party websites to ensure they meet accessibility requirements is impractical and would require a considerable amount of work.

**Question 24:** *The Department intends the phrase “content posted by a third party on a public entity’s Web site” to mean content that a third party creates and elects to make available on the public entity’s Web site. Does the Department’s use of the term “posted” in this context create confusion, and if so, is there another term that would be more appropriate for purposes of this exception?*

Most state and local governments do not allow third parties to post content on their official website. *Instead, state and local governments may choose to include information created by third parties on their websites. Usually, this is done by linking to information created by a third party.*

*The Department should not propose rules regarding content posted by third parties. It happens too infrequently to justify adopting rules governing it. To the extent that government websites contain information from third parties that*





*the government has chosen to include on its website such information is generally in the form of links to third-party web content, which the regulations should exempt. To the extent that third-party web content is not in the form of links, state and local governments should not be responsible for making the content accessible as the content does not belong to the state or local government.*

*If the Department wants to propose rules ensuring that third-party information posted on state and local government websites “essential for engaging in civic participation” is accessible, the Department can do so but should drop the notion that third-party information on government website is actually posted by third-parties.*

Other third-party content in relation to state and local government websites is usually in the form of a vendor-provided iframe<sup>37</sup> wrapped or linked web applications providing a service. Examples might include job application software, payment portals, etc. Public entities cannot control or modify these applications to make them accessible.

With the addition of social media websites, public engagement is often performed on those platforms. Public entities should not be made responsible for accessibility of content posted by a third party to a social media site. The logistics of removing third-party posted content, making it accessible, and reposting it is impossible.

**Question 25:** *The Department requests public comment on whether the Department’s rule should except from coverage almost all Web content posted by third parties on public entities’ Web sites. The Department is also interested in obtaining information about what type of Web content is posted by third parties on Web sites of public entities (e.g., whether it contains only text, or includes images, videos, audio content, and other forms of media)?*

See our response to Question 24.

<sup>37</sup> An iframe (inline frame) is a mechanism for embedding web content inside another website.

**Question 26:** *How much content is posted by third parties on public entities' Web sites and how frequently? Please provide as much information as possible, including any supporting data.*

Almost none. See our response to Question 24.

**Question 27:** *To what extent are public entities on notice of postings by third parties on their Web sites? To what extent do public entities affirmatively decide what, or how much, third-party Web content can be posted on their Web sites? If public entities do affirmatively decide what, or how much, third-party Web content to post on their Web sites, please describe how that process works and what factors public entities consider when making such decisions?*

*Most state and local governments think of their website as “government speech” for First Amendment purposes, meaning that the state and local governments have the sole authority to decide what third-party speech appears on their website. More practically speaking, state and local governments (like most businesses and nonprofits) primarily use their websites to inform interested parties about what their city, county, or state is doing/has to offer—not what third parties are doing/have to offer. Some government entities may include information from third parties to the extent it enhances the understanding and perception of their entity.*

Regarding iframe wrapped or linked web applications providing a service, government agencies contract with vendors. This service is typically delivered via the web and iframe wrapped within the official website. While governments have a choice in the software they use, budget is a real consideration. Sometimes only a handful of vendors exist and the product that is within budget is not accessible.

**Question 28:** *What Web content posted by third parties do you consider essential to access in order to engage in civic participation? Is “essential for engaging in civic participation” the appropriate standard for determining whether Web content posted by third parties needs to be made accessible to individuals with disabilities? Please provide as much information as possible, including any supporting material for your views.*





*Information packets for local government board meetings containing information from third-party sources is another example where posts by third parties may be considered essential to access in order to engage in civic participation. But again, in this situation it is the state or local government who will post third-party materials on its website—not the third-party.*

**Question 29:** *What factors should the Department consider when framing the obligation for public entities to make accessible the Web content posted by third parties that is essential for engaging in civic participation? Please provide as much information as possible, including any supporting data.*

*If the Department adopts an essential for engaging in civic participation standard for third-party information the standard should focus on whether the state or local government is likely to consider the information when making a decision.*

**Question 30:** *Is there other third-party Web content that, while not essential for engaging in civic participation, the public entity controls and should not be included within such an exception? How would the Department define that control? How would the Department measure and evaluate that control? Why, in your view, should that third-party Web content be excluded from any such exception? Please provide as much information as possible, including any supporting data.*

*State and local governments should not have to make any third-party content accessible. They do not own third-party platforms and have no control over them. For example, many public entities use Facebook. State and local governments have no authority to make Facebook comply with accessibility standards.*

**Question 31:** *If the Department adopts an exception along the lines currently under consideration, will it prevent constituents with disabilities from accessing important information on public entities' Web sites concerning public entities'*

services, programs, or activities? Please provide as much information as possible, including any supporting data for your views.

Many public entities have multiple ways of accessing information including phone, mail, in-person, website, etc. Providing all services through accessible websites is neither necessary nor feasible for all public entities.

**Question 32:** Are there other issues that the Department should take into consideration with regard to the exception under consideration?

A public entity's website generally is not the only way to access information; most governments have staff who can help those who need assistance. For example, if someone needs to complete an online form that is inaccessible, they can call and have an agency staff member complete the form for them. Particularly for small government entities, this is the most cost-effective method of service delivery given the low number of requests for assistance.

**Question 38:** Please provide any other information or issues that the Department should consider with regard to a proposal to defer applying a technical standard to public entities' use of social media Web sites.

We support the Department's decision to *defer applying a technical standard to public entities' use of social media websites until the Department issues title III regulations*. Also, since state and local governments have no control over third-party social media websites or how they display content, public entities should not be responsible for social media website noncompliance.

**Question 52:** The Department is seeking public comment on how compliance with WCAG 2.0 Level AA should be assessed or measured, particularly for minor or temporary noncompliance. Should the Department consider adopting percentages of Web content that need to be accessible or other similar means of measuring compliance? Is there a minimum threshold that is an acceptable level of noncompliance for purposes of complaint filing or enforcement action? Are



*there circumstances where Web accessibility errors may not be significant barriers to accessing the information or functions of the Web site? Please provide as much detail as possible in your response.*

*Websites are dynamic; many state and local government websites are updated daily. For this reason, 100% compliance isn't practical. Given the vast amount of content on websites, even significant gaps in non-compliance will not necessarily result in persons with disabilities having limited or no access to the information they want. Also, it is difficult to imagine how the Department would determine whether a website was a particular percent compliant.*

**Question 53:** *Should the Department consider adopting accessibility requirements for mobile software applications to ensure that services, programs, and activities offered by public entities via mobile apps are accessible? Please provide any information or issues the Department should consider regarding accessibility requirements for mobile apps provided by public entities.*

There are currently no accessibility standards for mobile applications and, since mobile technology is changing at rapid speed, it is not practical to propose this at this time.

**Question 54:** *The Department is seeking public comment regarding the use of WCAG 2.0, UAAG 2.0, ATAG 2.0, or ANSI/HFES 200 as accessibility requirements for mobile apps. Are there any issues the Department should consider in applying WCAG 2.0, UAAG 2.0, ATAG 2.0, or ANSI/HFES 200 as accessibility requirements for mobile apps? Is there a difference in compliance burdens and costs between the standards? Please provide as much detail as possible in your response.*

See our answer to Question 53.

**Question 55:** *Are there any other accessibility standards or effective and feasible alternatives to making the mobile apps of public entities accessible that the Department should consider? If so, please provide as much detail as possible about these alternatives, including information regarding their costs and effectiveness, in your response.*



See our answer to Question 53.



**Question 64:** *What data is available about usage of public entities' Web sites by the general population and by persons with disabilities? For example, what percentage of the population with disabilities and without disabilities accesses public entities' Web sites, and how often do they do so? If barriers to Web site accessibility were removed, would individuals with disabilities use the Internet at the same rate as the general population? Why or why not?*

The data collected regarding website usage, such as from Google Analytics, does not report the number of persons with disabilities accessing the information and only provides overall access rates. This information would include anyone accessing the website including those with disabilities. Information specific to users with disabilities cannot be isolated in the data provided. Users with disabilities might be reluctant to identify themselves as a person with a disability for a variety of reasons including protecting their privacy.

**Question 66:** *What are the most common reasons for using public entities' Web sites (e.g., to gather information; apply for the public entity's services, programs, or activities; communicate with officials; request services; make payments)?*

The answer to this question varies widely depending on what is offered on the state or local government website. Users come to public entity websites for information about a wide variety of topics. Not all public entity websites offer online services such as job applications and payment portals; however, almost all offer basic level information about hours, contact information, physical addresses, and the like.

The ability to make online payments is the next level of available services; however, generally, payments may still be made by mail and in-person. In addition to payments, some government websites offer online applications for jobs, various permits, licenses, services, reservations, etc. Once again, these services are not confined to an online format—mail, fax, and in-person applications are also generally accepted.

Many local governments have online calendars to display upcoming meetings and events. Registration for these events can usually be done online, via mail, or in-person.

A vast majority of state and local governments offer a range of alternatives to online methods. Moreover, web-based versions are a very recent supplement to standard methods.

**Question 67:** *If a person with a disability is using a public entity's Web site and encounters content that is inaccessible, what do they do (e.g., spend longer trying to complete the task online themselves, ask someone they know for assistance, call the entity, visit the entity in person, abandon the attempt to access the information)?*

Local governments in particular provide multiple ways of accessing information in addition to their website, such as via phone, fax, or walk-in. If information on the website is inaccessible, interested parties can call the government entity to receive assistance.

**Question 68:** *How often are persons with disabilities entirely prevented, due to accessibility barriers, from obtaining access to information or services available on public entities' Web sites, including through alternate means (i.e., how often do persons with disabilities never receive information in any form because it is not available on an accessible Web site)? Are there certain services, programs, or activities that public entities only provide online? How would the Department quantify or monetize the information and services not received by people with disabilities because public entities' Web sites are inaccessible?*

See our answer to Question 67.

**Question 72:** *Are there specific provisions of WCAG 2.0 Level AA that are difficult or costly to implement? Are there specific provisions of WCAG 2.0 Level AA for which the costs outweigh the accessibility benefits?*



WCAG 2.0 Level AA compliance would be cost prohibitive for most state and local governments. The most costly aspect of Level AA is the captioning requirement. Much of the remainder of Level AA compliance is also difficult to implement, requiring trained web developers to accomplish.

**Question 73:** *How would the Department quantify or monetize the resources expended by public entities to assist persons with disabilities by phone or in person? For example, would public entities experience reduced staffing costs due to Web accessibility requirements because fewer staff will be needed to respond to calls or in-person visits from persons with disabilities who will be able to access information via an accessible Web site? How should any reduction in staffing costs be calculated?*

State and local governments generally remain committed to maintaining phone and in-person assistance for all users. The trend for medium and large local governments has been to establish or expand call-centers, not reduce them. Offering the ability to obtain services online is just one avenue state and local governments make available for their constituents. Having more accessible websites will not likely significantly reduce calls or in-person visits as people call and walk-in for many reasons other than website inaccessibility.

**Question 75:** *Would users without disabilities who currently access a public entity's services via an inaccessible Web site save time if the Web site became accessible (for example, because it is easier to find information on the site once the navigation is clearer)? If so, how much time would they save? Please provide any available data or research to support your responses on the time savings for individuals without disabilities from using accessible Web sites instead of inaccessible Web sites.*

The Department groups accessibility and information architecture under the blanket term of usability but they are not the same. Accessibility covers the process of making website content accessible to users with disabilities; information architecture concerns how the information is structured, navigation being a prime component.







The only means of capturing time savings data is by conducting user testing on different website designs based on changes to the information architecture. Results would vary based on the amount of content and the intended goals of the website. With this in mind, it is nearly impossible to measure average time savings accurately, given the number of websites, varying goals, amount of website content, and differing complexity.

**Question 76:** *Should the Department evaluate benefits of a Web accessibility rule by considering time savings? Other than those discussed above, are there other studies that can be used to estimate time savings from accessible public entity Web sites? Please provide comments on the appropriate method for using time savings to calculate benefits?*

No, see our response to Question 75. This is nearly impossible to measure especially on such a large scale.

**Question 77:** *Would users with disabilities who currently access a public entity's services by phone or in person save time if they were able to access the public entity's services via an accessible Web site? If so, how much time would they save? Should this time savings be calculated on an annual basis or for a certain number of interactions with the public entity? Please provide any available data or research on time savings from using accessible online services instead of offline methods.*

Users with disabilities who currently access a public entity's services by phone or in-person would not necessarily save time if websites were accessible. Staff who answer phones or assist walk-ins are usually very familiar with the public entity's processes, policies, website, and website structure because they work with this information every day. Since state and local government employees can quickly provide users with the information they need, contacting the government by phone or in-person could result in time savings over stumbling through a foreign, yet accessible, website.

Time savings, where it exists, is nearly impossible to quantify as users have varying levels of technical adeptness as well as varying disabilities. User testing to determine if calling, visiting, or using the website is quicker may be

possible. However, conclusive results may be elusive because so many variables would have to be tested if the results were to reflect all types of public entities and the myriad of disabilities.

**Question 78:** *Would users with disabilities who currently access a public entity's services via an inaccessible Web site save time if the Web site became accessible? If so, how much time would they save? Would this time savings be limited to users with vision disabilities? If not, is there a difference in the time savings based on type of disability? How would the time savings vary between disability groups (e.g., will individuals with vision disabilities save more time than individuals with manual dexterity disabilities)? Please provide any available data or research to support your responses on time savings for individuals with vision disabilities and other types of disabilities (e.g., hearing disabilities, manual dexterity disabilities, cognitive disabilities, etc.) from using accessible Web sites instead of inaccessible Web sites.*

As touched on in Question 75, it is nearly impossible to measure time savings or quantify the benefit of making websites accessible given the differences in websites and the variety of disabilities.

**Question 79:** *How do public entities currently design and maintain their Web sites? Do they use in-house staff or outside contractors, service providers, or consultants? Do they use templates for Web site design, and if so, would these templates comply with a Web accessibility rule? Is there technology, such as templates or software, that could assist public entities in complying with a Web accessibility rule? Please describe this technology and provide information about how much it costs. What are the current costs of Web site design and maintenance? Does the method or cost of Web site design and maintenance vary significantly by size or type of entity?*

Public entities design and maintain their websites by all of the means described in Question 79, and more. Each public entity has different needs, and most uniquely structure their web development staffing models to achieve their own discrete goals. However, local governments usually have no more than a sparse staff dedicated to their website. In NAGW's experience, if a local government has a web staff, it is usually comprised of one or two people.





When researching the impact the Department’s rule would have on small government entities, we contacted 52 county governments with constituency populations just above 50,000 and 150,000 persons. Most counties in both constituency population classes did not employ any dedicated webmasters or web developers. It was more likely for a county serving 150,000 to staff one person dedicated to web development than counties serving 50,000, but only one county of about 50,000 population, Taney County, Missouri, employed a web staff of two. Some counties outsourced the creation of their websites to a third party, leaving it to office professionals or IT department staff to add content or update the sites. A few counties outsourced the creation and maintenance to a third party altogether, and one county, Centre County, Pennsylvania, outsourced their entire IT department needs to a third party—including its website.

When local governments find room to budget for web developers, these employees frequently wear “multiple hats”—responsible for everything from issuing press releases to updating and maintaining the website. With the addition of social media and mobile applications the responsibilities for a single web person or small staff have increased exponentially over the past few years. Yet, while the amount of work has increased, staff levels in this area have remained stagnant.

Public entities using a web content management system (CMS) typically deploy a single template that controls the overall website structure. That template can be created to comply with accessibility standards; however, using such a template does not guarantee a website’s overall accessibility. The website content providers must ensure that what they are posting is also compliant. This requires training and monitoring. Meanwhile, public entities without the financial means to acquire a CMS are not likely to have a standard template to utilize.

Also, not all CMS vendors write accessible code. If this mandate were enacted, public entities using a CMS would be at the mercy of the CMS vendor, who would not be required to be compliant. There are tools that can help identify non-compliance; however, no automated tools exist to make websites compliant. The changes must be done manually.



Overhauling a website can run anywhere from \$25,000 to over \$100,000 per website. The work required to redesign a website is extensive and usually spans a two- to four-year period, depending on site complexity and the number of staff involved. Costs could include graphic designers, content managers, CMS software, designs software, in-house staff, consultants, or any combination of the above.

If any form of compliance is mandated, the Department should provide a resource library of accessibility tools and applications approved for use on federal sites to state and local governments. Granting public entities access to such privately-developed tools, would be a realistic first step toward making mandated accessibility standards financially achievable. To ease the transition toward compliance, the Department should release “best practices” documents and quote documents for hiring outside consultants to guide in-house public entity staff.

**Question 80:** *How are public entities likely to comply with any rule the Department issues regarding Web accessibility? Would public entities be more likely to use in-house staff or hire an outside information technology consultant? Would training be required for in-house staff, and if so, what are the costs of any anticipated training? Would the likelihood of using outside contractors and consultants vary significantly by size or type of entity? Would increased demand for outside experts lead to a temporary increase in the costs incurred to hire information technology professionals? If so, how much of an increase, and for how long? Aside from the cost of labor, what are the additional costs, if any, related to the procurement process for hiring an outside consultant or firm to test and remediate a Web site?*

We believe that a majority of state and local governments will be without the technical expertise or available funding to comply with the Department’s web accessibility requirements.

Most entities will not be able to achieve compliance with their existing staff due to the nature and volume of the work required to parse existing web pages and make modifications. Jurisdictions without any staff will not be able to absorb the cost of consultants to do the work. Newly-designed websites will be

far more likely to be in greater compliance since they can be designed and funded with accessibility in mind.

If compliance is mandated for public entities, we predict the following will likely occur:

- A few jurisdictions will comply. These will be mostly larger jurisdictions, those currently involved in a redesign, those whose sites are SaaS (Software as a Service) if the service complies, and those who can afford the expense of hiring consultants to do the work.
- Most will ignore the requirements and hope no one complains. The majority of municipalities will fall into this category. This is not because they don't want their websites to be accessible to all but because they don't have the time, money, knowledge, or technical ability to make these changes happen, especially in the time-frame under consideration.
- Some will comply when forced by legal action. Others will simply take their websites down if a complaint is filed and the cost of compliance is more than their budgets allow.

**Question 81:** *Are public entities likely to remediate their existing Web site or create a new Web site that complies with the proposed Web accessibility requirements? Does this decision vary significantly by size or type of entity? What are the cost differences between building a new accessible Web site with accessibility incorporated during its creation and remediating an existing Web site? Do those cost differences vary significantly by size or type of entity? Would public entities comply with a Web accessibility rule in other ways?*

Whether a state or local government would redesign or remediate their existing website depends on many factors, such as how many pages and items per page need to be remediated. In some instances, a complete dismantling and rebuilding of a website may be unnecessary. However, if the existing website has over 10,000 pages, and most pages need to be modified, a redesign may be more cost-effective—yet still unaffordable for state and local governments.





**Question 82:** *If public entities choose to remediate their existing Web content, is there a cost threshold for the expected costs of accessibility testing and remediation above which it becomes more cost effective or otherwise more beneficial for an entity to build a new Web site instead of remediating an existing one? If so, what is that cost threshold? How likely are entities of various types and sizes to cross this threshold?*

Building a new website can cost anywhere from \$25,000 - \$200,000. Typically this is just design and system costs; it does not take into account staff time or include accessibility requirements. While most governments strive to include accessibility with each redesign, 100% compliance is not realistic. NAGW estimates that including WCAG 2.0 Level A accessibility compliance in a redesign would cost at least double the baseline costs plus staff time.

**Question 83:** *Would public entities choose to remove existing Web content or refrain from posting new Web content instead of remediating the content to comply with a Web accessibility rule? How would public entities decide whether to remove or refrain from posting Web content instead of remediating the content? Are public entities more likely to remove or refrain from posting certain types of content? Is there a cost threshold above which entities are likely to remove or refrain from posting Web content instead of remediating the content? If so, what is that cost threshold?*

Yes, we think that many state and local governments would refrain from posting new web content and remove existing web content rather than making it accessible, particularly if remediating the content was time consuming or difficult. Many state and local governments do not have the staff or budget to remediate.

**Question 84:** *In the absence of a Web accessibility rule, how often do public entities redesign their Web sites? Do they usually redesign their entire Web site or just sections (e.g., the most frequently used sections, sections of the Web site that are more interactive)? What are the benefits of Web site redesign? What are the costs to redesign a Web site? If a Web site is redesigned with accessibility incorporated, how much of the costs of the redesign are due to incorporating accessibility?*



NAGW has done a few member surveys and determined that every five to seven years per website is about the average for a redesign. This timeframe is for a complete redesign, which most often also includes the implementation of a new CMS. Small redesigns of sections are done more frequently.

**Question 85:** *Should the Department estimate testing, remediation, and operation and maintenance costs on a cost-per-page basis? If so, how should the average cost per page be determined for testing, remediation, and operation and maintenance? How should these costs be calculated? Should different per-page estimates be used for entities of different sizes or types, and if so how would they vary? Should different per-page cost estimates be used for different types of page content (text, images, live or prerecorded synchronized media) or for static and dynamic content? If you propose using different per-page cost estimates for different types of content, what are the appropriate types of content that should be used to estimate costs (e.g., text, images, synchronized media (live or prerecorded), forms, static content, dynamic content), how much content should be allocated to each category, and what are the appropriate time and cost estimates for remediation of each category?*

The Department's cost estimates are not inclusive. The amount of work required for each page varies greatly, depending on the web page as well as the overall website.

**Question 86:** *If the Department were to use a cost-per-page methodology, how would the average number of pages per Web site be determined? Should the Department seek to estimate Web site size by sampling a set number of public entities and estimating the number of pages on those Web sites? When presenting costs for different categories of Web sites by size, how should Web sites be categorized (i.e., what should be considered a small, medium, or large Web site)? Should Web site size be discussed in terms of the number of pages, or is there a different metric that should be used to discuss size?*

There are so many variables in website size and content, that an average number of pages could not easily be calculated.



**Question 87:** *If a level of effort methodology is used, what are the appropriate Web site size categories that should be used to estimate costs and what are the different categories of Web elements for which remediation time should be estimated (e.g., informative, interactive, transactional, multimedia)? What are appropriate time estimates for remediation for each category of Web elements? What wage rates should be used to monetize the time (e.g., government staff, private contractor, other)?*

Some items to consider might be how much is text vs. how much is images, videos, etc. Each of these types of content require varying levels of work to make them accessible.

**Question 88:** *Do the testing, remediation, and operation and maintenance costs vary depending on whether compliance with WCAG 2.0 Level A or Level AA is required, and if so, how?*

Yes, a higher level of compliance will require more remediation and maintenance.

**Question 89:** *What other methods could the Department use to estimate the costs to public entities of compliance? Which methodology would allow the Department to estimate most accurately the entities' costs for making their Web sites accessible?*

The Department must include staff time in calculating the cost of making public entity websites accessible. Generally, state and local governments don't have the existing staff to do the work. Consultants generally cost 2-3 times more than a full-time staff member.

**Question 90:** *If public entities remediate their Web sites to comply with a Web accessibility rule, would they do so in such a way that accessible Web pages are created and tested before the original Web pages are removed, such that there is no "down time" during the upgrade? If not, how much "down time" would occur, and what are the associated costs?*





Ideally, governments would be able to create and test the content first; however, this requires duplicate work as content has to be first created and tested and then moved to production. Sufficient testing tools do not exist to assist with this.

**Question 91:** *Would public entities incur additional costs related to modifying their current methods for processing online transactions if those are inaccessible due to applications or software currently used? If so, what are these costs, and how many public entities would incur them?*

In most cases state and local governments use outside payment processors. State and local governments have no control over whether the software is compliant.

**Question 92:** *Would there be additional indirect administrative costs associated with compliance with a Web accessibility rule, and if so, what are these costs?*

Yes, more staff will be required to do the work; most public entities are already understaffed.

**Question 93:** *Would there be any costs related to familiarization with the new regulations, and if so, what are these costs? How much time would be needed for regulatory familiarization, and how much would this cost?*

Yes, anyone who works on a state or local government website would require training to become familiar with and implement the requirements of the new regulations. The type and amount of training depends on what level is required, what areas need to be remediated, and the knowledge and skill level of those who update the website.

**Question 94:** *Are there other considerations the Department should take into account when evaluating the time and cost required for compliance with a Web accessibility rule, and if so, what are these costs?*



All of the following should be considered when evaluating time and cost to make a website accessible: staff time to remediate each different item (for example, average time to caption each video based on the length of the video, etc.), cost of each software program to remediate per issue (for example, multiple software could be required depending on issue, etc.), and if consultants need to be hired to remediate and the cost per hour for their time. Time to attend training, the cost of the training, and the cost of hiring temporary workers while regular staff is being trained also should be considered. If a redesign is required its cost must be considered as well.

**Question 95:** *Which public entities have statutes and/or policies that require or encourage their Web sites to be accessible to persons with disabilities and/or to conform to accessibility requirements under section 508, WCAG 1.0, and/or WCAG 2.0? Do these laws and/or policies require (not just suggest) conformance with a particular Web accessibility standard, and if so, which one? Are these laws and/or policies being implemented, and, if so, are they being implemented at just the State level of government or at the local levels as well? The Department asks that the public provide additional information on current State or local policies on Web accessibility, including links or copies of requirements or policies, when possible.*

New York City recently adopted an ordinance requiring “the adoption of a standard for the accessibility of city websites for persons with disabilities, to be based either on federal regulations or the Web Content Accessibility Guideline.”<sup>38</sup>

**Question 98:** *Is the Department correct to evaluate the resources of public entities by examining their annual revenue? Is annual revenue an effective measure of the potential burdens a Web accessibility rule could impose on public entities? Is there other publicly available data that the Department should consider in addition to, or instead of, annual revenue when considering the burdens on public entities to comply with a Web accessibility rule?*

<sup>38</sup> New York City, Law No. 2016/026 (2016), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2230878&GUID=615EF0F8-14DE-46A0-B288-5A22C0DA2B64>.



Annual revenue alone does not provide a complete picture to evaluate a public entity's resources. High annual revenue does not ensure sufficient funding is allocated to the website or, more specifically, to website accessibility. Also, alone, annual revenue does not indicate anything about a state or local government's relative wealth. For example, Detroit has a larger annual revenue than the City of Falls Church, Virginia, but by probably any measure Falls Church is wealthier.

**Question 99:** *Are there resources that a public entity would need to comply with a Web accessibility rule that they would not be able to purchase (e.g., staff or contractors with expertise that are not available in the geographic area)? Are there other constraints on public entities' ability to comply with a Web accessibility rule that the Department should consider?*

We are not aware of any resources available for purchase that ensure accessibility compliance.

**Question 101:** *How many conventional electronic documents currently exist on public entities' Web sites? What is the purpose of these conventional electronic documents (e.g., educational, informational, news, entertainment)? What percentage of these documents, on average, is used to apply for, gain access to, or participate in the public entity's services, programs, or activities?*

The number of conventional electronic documents cannot easily be estimated. Approximately 20-30 percent of content on public entity websites is in the form of PDF documents.

**Question 103:** *What are the costs associated with remediating existing conventional electronic documents? How should these costs be calculated? Do these costs vary by document type, and if so, how? Would these costs vary if compliance with WCAG 2.0 Level A was required instead of compliance with WCAG 2.0 Level AA, and if so, how?*

As previously mentioned in our answers to Questions 20 and 21, it is not possible for all old documents to be remediated unless they are re-authored since many of them exist in TIFF (graphic-based) format. If all of these documents are required to be converted, it would take hundreds, if not thousands, of hours to recreate, rescan, and repost the documents. In the alternative, it would be enormously expensive to hire third parties to perform such a conversion.

**Question 104:** *What costs do public entities anticipate incurring to ensure that the conventional electronic documents placed on their Web sites after the compliance date of any Web accessibility rule are accessible (e.g., will they be created with accessibility built in, or will they need to be remediated)? Would public entities use any specific type of software to ensure accessibility? What is the cost of this software, including the costs of any licenses? What kind of training about accessible conventional electronic documents would be needed, if any, and what would the training cost? How many hours per year would it take public entities to ensure that the conventional electronic documents posted on their Web sites are accessible after the compliance date of any Web accessibility rule?*

If archived documents in TIFF format are required to be converted this would take a long time and cost a significant amount of money.

**Question 105:** *How much synchronized media (live or prerecorded) is available on public entities' Web sites? How much of this synchronized media is live (i.e., streaming) and how much is prerecorded? What is the running time of such media? What portion of the media contains speech, and how much speech does it contain? What is the purpose of the synchronized media (e.g., educational, informational, civic participation, news, entertainment)?*

State legislatures often post videos of their deliberations on the websites. Many local governments have a public access channel and they post videos online from their city council meetings. Often, both are live-streamed and posted on services such as YouTube or Vimeo. The majority of these videos are comprised mostly of speech. The purpose of these videos is informational,



educational, news, and entertainment. Most meetings include a public comment period where residents may also speak.



**Question 110:** *Currently, what are the specific costs associated with captioning prerecorded and live-audio content in synchronized media, including the costs of hiring professionals to perform the captioning, the costs associated with the technology, and other components involved with the captioning process? Aside from inflation, are these costs expected to change over time? If so, why will they change, when will they begin to do so, and by how much?*

As discussed at length throughout these comments, currently these costs are prohibitive for state and local governments which is why many do not already caption.

**Question 112:** *Currently, what are the specific costs associated with audio describing content in synchronized media, including the costs of hiring professionals to perform the description, the costs associated with the technology, and other components involved with the audio description process? Aside from inflation, are these costs expected to change over time? If so, why will they change, when will they begin to do so, and by how much?*

As discussed at length throughout these comments, currently these costs are prohibitive for governments which is why many do not already caption.

**Question 117:** *How large and complex are small public entities' Web sites? How, if at all, do the Web sites of small public entities differ from Web sites of larger public entities? Do small public entities tend to have Web sites with fewer pages? Do small public entities tend to have Web sites that are less complex? Are small public entities less likely to provide information about or access to government services, programs, and activities on their Web sites? Do the Web sites of small public entities allow residents to access government services online (e.g., filling out forms, paying bills, requesting services)?*

Small and large public entity websites differ in terms of budget and staff but typically offer similar services when possible.



**Question 119:** *Is annual revenue an effective measure of the potential burdens a Web accessibility rule could impose on small public entities? Is there other publicly available data that the Department should consider in addition to, or instead of, annual revenue when considering the burdens on small public entities to comply with a Web accessibility rule?*

As discussed in our answer to Question 98, considering annual revenue has a number of limitations. It does not indicate the amount of money allocated to the website, or more specifically, website accessibility. Also, alone, annual revenue does not indicate anything about a state or local government's relative wealth. Many governments have little or no budget for their website.

**Question 120:** *Are there resources that a small public entity would need to comply with a Web accessibility rule that they would not be able to purchase (e.g., staff or contractors with expertise that are not available in the geographic area)?*

Contractors are cost prohibitive, typically costing 2-3 times that of full-time staff. Thus, contractors are not a viable alternative for a government that is faced with reduced staff and strapped finances.

**Question 121:** *Do small public entities face particular obstacles to compliance due to their size (e.g., limited revenue, small technology staff, limited technological expertise)? Do small public entities of different sizes and different types face different obstacles? Are there other constraints on small public entities' ability to comply with a Web accessibility rule that the Department should consider?*

Yes, small public entities face particular obstacles to compliance due to their size. But most public entities, regardless of size, lack the resources and budget to accomplish website accessibility as the Department envisions it.



**Question 122:** *Are small public entities likely to determine that compliance with a Web accessibility rule would result in undue financial and administrative burdens or a fundamental alteration of the services, programs, or activities of the public entity? If so, why would these compliance limitations result?*

Virtually all small and very small public entities are likely to determine that they face an undue burden if WCAG 2.0 compliance is mandated. If they are financially able to redesign their websites to achieve compliance, their services, programs, or activities would certainly be altered, at least from a website perspective.

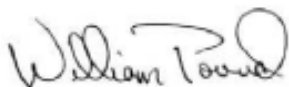
The Department suggests that public entities may not have to strip their websites or pull them down entirely in response to a compliance mandate, if these entities can appropriately claim undue burden status. However, there is a significant cost associated with defending against litigation and proving undue burden. Public entities are likely to preemptively disable their websites in order to avoid absorbing the cost of litigation risk. Instead, the Department should at least grant small and very small public entities a blanket exception to its compliance mandate, so these entities are not forced to choose between disabling their websites or exposing themselves to a significant litigation risk.

**Question 123:** *Are there alternatives that the Department could consider adopting that were not previously discussed that could alleviate the potential burden on small public entities? Please provide as much detail as possible in your response.*

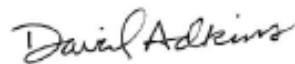
We recommend at this point that compliance with web accessibility standards should be voluntary for all state and local governments. To the extent the Department mandates compliance with a set standard, a tiered approach is warranted, which grants sufficient time for technology and support infrastructure to advance. Some portions of WCAG 2.0, such as audio, video, and live-media captioning, are currently not economically feasible for public entities, and mandating them will have deleterious effects. An indefinite exception with compliance should be made for smaller governments representing 200,000 people or less. For public entities that do not qualify for an exemption based on population; revenue, staffing, and budgetary constraints should be considered in a process for granting special exceptions for public entities that are overly

burdened by the compliance standards. To ease the transition toward compliance, the Department should assist in providing education on developing accessible websites, compliant web development tools, and information on how to write request for proposal (RFP) specifications and how to evaluate software based on those specifications.

Respectfully submitted,



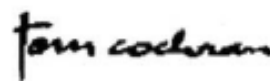
William T. Pound  
Executive Director  
National Conference of  
State Legislatures



David Adkins  
CEO and Executive Director  
Council of State Governments



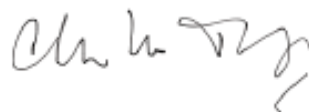
Clarence Anthony  
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Robert J. O'Neill, Jr.  
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