



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 25 2019

The Honorable Thom Tillis
United States Senate
Washington, DC 20510

Dear Senator Tillis:

This responds to your letter to the Attorney General dated July 30, 2019, regarding website accessibility under the Americans with Disabilities Act (ADA). Specifically, you requested an update on the Department of Justice's (Department) work in this area. We apologize for the delay in responding to your letter. We are sending identical responses to the other Senators who joined your letter.

In your letter, you inquire about the steps the Department has taken since your last correspondence to help resolve uncertainty for those seeking to comply with website accessibility requirements under the ADA. On December 3, 2018, the Department delivered a presentation on website accessibility, among other topics, at a roundtable on the ADA hosted by the Small Business Administration's (SBA) Office of Advocacy. This roundtable was widely attended, with over 100 participants from a diverse array of small businesses and trade associations representing credit unions, restaurants, hotels, realtors, movie theaters, and grocery stores. Following the presentation, the Department held a listening session where businesses had an opportunity to provide feedback to the Department on website accessibility and other ADA issues. This event provided an opportunity for the Department to speak directly to businesses and people with disabilities about the ADA's website accessibility requirements and to learn more about both group's concerns.

Over the past year, the Department has met with representatives from a variety of trade associations and businesses over the past year regarding website accessibility. These meetings have provided the Department a valuable opportunity to hear covered entities' experiences regarding website accessibility. The Department also has dedicated multiple resources to responding to inquiries about website accessibility under Title III from covered entities and organizations representing them. In responding, the Department has reiterated its longstanding interpretation that the ADA applies to the websites of public accommodations. This interpretation is consistent with the ADA's requirement that the goods, services, facilities, privileges or advantages of places of public accommodation be equally accessible to people with disabilities.

Over the next year, the Department intends to continue engaging with SBA's Office of Advocacy regarding ways the Department can be helpful as they work with small businesses facing compliance challenges related to website accessibility. The Department will also continue to meet with businesses and their representatives regarding website accessibility.

In your letter, you inquire whether the Department considers WCAG 2.0 an acceptable compliance standard for the public under Title III of the ADA. WCAG 2.0 is a globally recognized, voluntary consensus standard on website accessibility. As such, WCAG 2.0 acts as a helpful resource for public accommodations to reference in determining how to make their websites accessible to individuals with disabilities. However, the Department may not designate WCAG 2.0 as a technical standard for compliance for all businesses subject to Title III of the ADA without following the notice-and-comment rulemaking process required by the Administrative Procedure Act.

Absent the adoption of specific technical requirements for websites through rulemaking, public accommodations have flexibility in how they comply with the ADA. Businesses have the option to look to a number of resources, including voluntary technical standards—such as WCAG 2.0—to inform their understanding of how to make their websites accessible to people with disabilities. Accordingly, noncompliance with a voluntary technical standard for website accessibility, like WCAG 2.0, does not necessarily indicate noncompliance with the ADA. The touchstone for compliance with the ADA with respect to the websites of public accommodations remains the requirements of nondiscrimination and effective communication.

You also inquire about consideration given to the resources available to a business or member of the public seeking to ensure website accessibility. Title III of the ADA and its implementing regulation both contemplate this concept, which is referred to as “undue burden.” Title III of the statute specifically provides that discrimination includes “a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, *unless the entity can demonstrate that taking such steps would . . . result in an undue burden.*” 42 U.S.C. § 12182(b)(2)(A)(iii) (emphasis added); *see also* 28 C.F.R. § 36.303(a).

The regulation implementing Title III of the ADA defines "undue burden" as a "significant difficulty or expense." In determining whether an action would result in an undue burden, several factors should be considered, including:

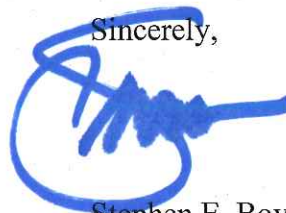
- (1) The nature and cost of the action needed [to comply];
- (2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;
- (3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
- (4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

28 C.F.R. § 36.104. While a public accommodation is not required to provide a particular auxiliary aid or service (items, equipment or services that assist in effective communication with individuals who have a disability) if it would result in an undue burden, it would still need to provide an alternative auxiliary aid or service, if one exists, that would not result in such burden. *See* 28 C.F.R. § 36.303(h).'

The Department remains committed to safeguarding accessibility for individuals with disabilities, while also working with businesses to ensure that compliance with the ADA is feasible and sustainable. To the extent that opportunities for involvement in pending website-accessibility litigation arise, the Department will consider such opportunities on a case-by-case basis, taking into account the particular nature of the case and the Department's resources.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Stephen E. Boyd
Assistant Attorney General