



October 3, 2023

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
150 M. St. NE, 9th Floor
Washington, DC 20002

Re: Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities
Notice of Proposed Rulemaking RIN 1190-AA79, Docket No. 144

To Whom It May Concern:

The Council of Large Public Housing Authorities (“CLPHA”) and Reno & Cavanaugh, PLLC (“Reno & Cavanaugh” or “R&C”) are pleased to submit comments in response to the Department of Justice’s (“DOJ”) Notice of Proposed Rulemaking entitled “Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities” published in the Federal Register on August 4, 2023 (the “Web Accessibility NPRM”).

CLPHA is a non-profit organization that works to preserve and improve public and affordable housing through advocacy, research, policy analysis, and public education. We support the nation’s largest and most innovative public housing authorities (“PHAs”) by advocating for policies and programs that most effectively serve low-income residents and provide them with long-term economic opportunities. Our members own and manage nearly half of the nation’s public housing program, administer a quarter of the Housing Choice Voucher (“HCV”) program, and operate a wide array of other housing programs. CLPHA members collectively serve over one million low-income households.

Reno & Cavanaugh has represented hundreds of PHAs throughout the country. The firm was founded in 1977, and over the past three decades, the firm has developed a national practice that encompasses the entire real estate, affordable housing, and community development industry. Though our practice has expanded significantly over the years to include a broad range of legal and legislative advocacy services, Reno & Cavanaugh’s original goal of providing quality legal services dedicated to improving housing and communities still remains at the center of everything we do.

We applaud DOJ’s commitment to providing public entities greater clarity in exactly how to meet their obligations under Title II of the Americans with Disabilities Act (“ADA”) with regards to web and mobile applications as well as DOJ’s commitment to ensuring that individuals with disabilities have equal access to public entities’ services, programs, and activities.

We have concerns, however, regarding the source of funding and the financial burden that the Web Accessibility NPRM will place on Public Housing Authorities (PHAs). We are further concerned that DOJ’s implementation of these accessibility requirements prioritizes enforcement without providing the necessary tools, guidance, and resources to PHAs and other housing providers to comply with these mandates.

Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied benefits of the services, programs, or activities of a State or local government entity.” Title II of the ADA applies to all public entities, which includes “any department, agency, special purpose district, or other instrumentality of a State or States or local government.” PHAs are therefore subject to Title II of the ADA to the extent they meet the ADA’s definition of a public entity.

The Web Accessibility NPRM adopts an internationally recognized accessibility standard for web access, the Web Content Accessibility Guidelines 2.1 (“WCAG 2.1”), as the technical standard for web content and mobile application accessibility under Title II of the ADA. While the Web Accessibility NPRM states that compliance with WCAG 2.1 will not be required to the extent compliance imposes undue financial and administrative burdens or results in a fundamental alteration of the services, programs, or activities of the public entity, this standard is vague and does not provide sufficient guidance to PHAs to determine whether this vague exception applies. Further, given the historical and continued underfunding of PHAs across the country, it is likely cost prohibitive for PHAs to procure vendors to figure out the costs required for accessibility features in the first place.

Additionally, application of website accessibility requirements has already resulted in less information made available on PHA websites because such information cannot be posted on the website with sufficient accessibility. PHAs have had to make the difficult choice to remove things such as board reports, annual plans, flyers, and press releases because compliance with accessibility requirements was cost and time prohibitive.

We therefore recommend that DOJ work with PHAs to develop safe harbors that would allow PHAs to determine what information and documents are “vital” that require website accessibility compliance while permitting PHAs to make non-vital information available on websites without the added cost and burden of accessibility compliance. We further recommend that DOJ coordinate with the U.S. Department of Housing and Urban Development (“HUD”) to develop and provide technical assistance and training to PHAs to assist their compliance efforts. Given the cost prohibitive nature of these accessibility standards, corresponding grant funding should also be provided to PHAs.

Thank you for the opportunity to submit these comments to the Web Accessibility NPRM. CLPHA and Reno & Cavanaugh look forward to working with DOJ on this and future rulemaking.

Sincerely,



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