



June 22, 2026

VIA ELECTRONIC SUBMISSION

Badar Tareen
Disabilities Rights Section
Civil Rights Division
U.S. Department of Justice
150 M St. NE
10th Floor
Washington, DC 20002

RE: Docket No. CRT150, Extension of Compliance Dates for Nondiscrimination Based on Disability; Accessibility of Web Information and Services of State and Local Government Entities

Dear Mr. Tareen:

On April 20, 2026, the U.S. Department of Justice (DOJ) issued an interim final rule (IFR) extending the compliance dates for state and local governments by one year to be compliant with requirements for web content and mobile application accessibility¹ that were adopted on April 24, 2024.² This letter constitutes the Office of Advocacy's (Advocacy) public comments on the proposed rule.

Advocacy supports the DOJ's proposed extension of accessibility requirements for government websites, which will provide immediate, temporary relief for small businesses. During this period, however, the DOJ should withdraw this rulemaking. The DOJ's 2024 final rule extending Title II of the Americans with Disabilities Act (ADA) to cover website accessibility for state and local governments exceeds its statutory authority under both Supreme Court decisions in *Loper Bright Enterprises v. Raimondo*³ and *West Virginia v. EPA*⁴ because Congress has not clearly authorized regulations in this area.

If the DOJ does not withdraw this rule, Advocacy urges the agency at a minimum to adopt regulatory alternatives that reduce the rule's impact on small governments. Advocacy recognizes the importance of small governments' websites and mobile applications are accessible to people

¹ 91 Fed. Reg. 20902 (Apr. 20, 2026).

² 89 Fed. Reg. 31320 (Apr. 24, 2024).

³ 603 U.S. 369 (2024).

⁴ 597 U.S. 697 (2024).

with disabilities. However, we are concerned that the expense, resource constraints, and litigation risks created by this rule are causing small governments to remove pertinent material or deactivate websites completely, thereby depriving all citizens of access to important information about government services. To address these concerns, Advocacy recommends that the DOJ consider exempting small governments with a population of fewer than 10,000 from this rulemaking. Advocacy also recommends that the DOJ provide safe harbors to reduce litigation risks to small governments.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is a voice within the executive branch that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

The Regulatory Flexibility Act (RFA),⁵ as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),⁶ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.⁷ If a rule is not expected to have a significant economic impact on a substantial number of small entities, agencies may certify it as such and submit a statement of the factual basis for such a determination that adequately supports its certification.⁸

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁹ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the Federal Register, unless the agency certifies that the public interest is not served by doing so.¹⁰

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."¹¹

⁵ Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

⁶ Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

⁷ 5 U.S.C. § 603.

⁸ *Id.* § 605(b).

⁹ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

¹⁰ *Id.*

¹¹ Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

B. Advocacy's History Working on ADA Website Regulations

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination based on disability in services provided by state and local governments. The RFA covers small governmental jurisdictions with a population of fewer than 50,000. This includes cities, counties, towns, villages, school districts, and special districts.¹²

Advocacy has commented on multiple rulemakings issued by the DOJ on website accessibility for state and local governments:

- In 2010, the DOJ issued an advanced notice of proposed rulemaking (ANPRM) seeking input on future website accessibility rules for state and local governments and public accommodations (places open for business) under Title II and Title III of the ADA.¹³ Advocacy submitted a public comment letter to the DOJ stating that these rules would have a significant economic impact on a substantial number of small entities.¹⁴
- On August 4, 2023, the DOJ proposed a rule that adopted the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA as the website accessibility standard for state and local governments under Title II of the ADA. This standard is higher than what is required for federal agencies under section 508 of the Rehabilitation Act of 1973. Federal agencies are required to follow the less burdensome WCAG 2.0 Level A and AA Success criteria.¹⁵ In October 2023, Advocacy submitted a public comment letter to the DOJ asking for additional time to comply, regulatory relief from this rule for small entities with a population of fewer than 10,000, and safe harbors to protect entities from litigation risk.¹⁶
- On April 24, 2024, the DOJ finalized the ADA web accessibility rule for state and local governments. The DOJ did not include any of Advocacy's recommended changes in the final rule.¹⁷

¹² 5 U.S.C. §601(5).

¹³ 75 Fed. Reg. 43460 (Jul. 26, 2010).

¹⁴ U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Proposed Rule on Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of Web Information and Services of State and Local Government Entities and Public Accommodations (Jan. 24, 2011), <https://www.regulations.gov/comment/DOJ-CRT-2010-0005-0359>.

¹⁵ 88 Fed. Reg. 51948 (Aug. 4, 2023). World Wide Web Consortium (W2C), Web Content Accessibility Guides (WCAG) 2.1, <https://www.w3.org/TR/WCAG21/> (last updated May 6, 2025).

¹⁶ U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Proposed Rule on Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of Web Information and Services of State and Local Government Entities (Oct. 17, 2023), <https://advocacy.sba.gov/wp-content/uploads/2024/04/Comment-Letter-Nondiscrimination-on-the-Basis-of-Disability.pdf>.

¹⁷ 89 Fed. Reg. 31320 (Apr. 24, 2024).

II. DOJ’s Website Accessibility Rules Exceed the Agency’s Authority and Conflict with Supreme Court Rulings in *Loper Bright vs. Raimondo* and *West Virginia v. EPA*

On October 29, 2025, Advocacy identified the DOJ’s 2024 ADA final rule as one of Small Business’ Most Wanted Reforms.¹⁸ This designation underscores the potential impact the ADA rule will have on small governments. Advocacy commends the DOJ for issuing this IFR in April 2026 to give all governments an extra year to comply with these accessibility standards; and this action will provide cost savings for small businesses.¹⁹ However, DOJ’s extension does not solve Advocacy’s underlying concerns with this ADA rule.

On April 9, 2025, President Donald J. Trump issued a Presidential Memorandum titled “Directing the Repeal of Unlawful Regulations.”²⁰ The memorandum directed agencies to ensure that their regulations complied with a list of 10 different Supreme Court cases. This list included *Loper Bright Enterprises v. Raimondo*²¹ and *West Virginia v. EPA*.²² The memorandum directs agencies to “immediately take steps to effectuate the repeal of any regulation, or the portion of any regulation, that clearly exceeds the agency’s statutory authority or is otherwise unlawful” and gives priority to rules in conflict with the listed Supreme Court decisions.²³

The DOJ’s rulemaking extending Title II of the ADA to cover websites exceeds its statutory authority under both *Loper Bright* and *West Virginia*, as Congress has not clearly authorized regulations in this area. Accordingly, the DOJ should withdraw this rule. *Loper Bright* asks a simple threshold question: “does the statute authorize the challenged agency action?”²⁴ Additionally, *Loper Bright* directs courts to adopt the “best reading” of the statute, not defer to an agency’s interpretation when Congress has not clearly spoken to the matter at hand.²⁵ In this case, nothing in Title II of the ADA authorizes the DOJ to regulate websites or other digital spaces. When Congress enacted the ADA in 1990, it was completely silent about websites, the internet, and digital technology.²⁶ Congress did not add any reference to websites or online services in the ADA Amendments Act of 2008, even though the internet was well established then.²⁷

¹⁸ U.S. Small Bus. Admin., Office of Advocacy, Small Business’ Most Wanted Reform, available at: <https://advocacy.sba.gov/regulatory-reform/small-businesses-most-wanted-reform/>.

¹⁹ 91 Fed. Reg. 20909,20910 (Apr. 20, 2026). Using data that the DOJ provided in the IFR, Advocacy calculates that this extension will save small governments \$1.47 billion in cost savings over the next 10 years (discounted at 7 percent), or \$210 million per year (annualized at 7 percent).

²⁰ The White House, Memorandum for the Heads of Executive Departments and Agencies, Directing the Repeal of Unlawful Regulations, (April 9, 2025), <https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/>.

²¹ 603 U.S. 369 (2024).

²² 597 U.S. 697 (2024).

²³ The White House, *supra* note 20.

²⁴ *Loper Bright*, 603 U.S. at 375.

²⁵ *Id.* at 371.

²⁶ Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990).

²⁷ ADA Amendments Act of 2008, Pub. L. 110-325, 122 Stat. 3553 (2008).

Title II discusses discrimination in “services, programs, or activities of a public entity,” but it does not define those terms to include websites or digital platforms.”²⁸ The original regulations required state and local governments to provide “auxiliary aids and services” to ensure effective communication for people who have hearing and vision.²⁹ Congress authorized the Attorney General to “promulgate regulations” to implement Title II, not to expand it to new subject matter.³⁰

The DOJ exceeded its statutory authority by interpreting “services” to require state and local governments to make their websites and online services accessible for people with disability. In 2022, DOJ announced on its website that it “has consistently taken the position that the ADA’s requirements apply to all the goods, services, privileges, or activities of state and local governments, including those offered on the web.”³¹ However, an agency’s long held position cannot substitute for clear statutory authorization, particularly after *Loper Bright*.

If Congress intended to authorize the DOJ to regulate websites, it should have amended its statute to do so. For example, in 1998, Congress revised Section 508 Standards for federal agencies to specifically extend to provide accessibility for information and communication technology (ICT), including websites.³² Because Congress has not explicitly authorized the regulation of digital spaces under the ADA, the rule exceeds the agency’s statutory boundaries and must be withdrawn.

Similarly, in *West Virginia*, the Supreme Court invalidated an EPA action where agency tried to discover new powers in old provisions to effect “major questions” and policy decisions that had “economic and political significance.”³³ The court found that there is “reason to hesitate before concluding that Congress” meant to confer such authority.³⁴ In this case, the DOJ regulating all state and local government web content invokes the major questions doctrine, because the agency extended Title II to websites without Congressional intent. The DOJ is attempting to exercise jurisdiction over areas such as local government websites where Congress has not clearly given it authority. Advocacy recommends DOJ withdraw its website rule under both *Loper Bright* and *West Virginia*.

²⁸ 42 U.S.C. § 12132, Discrimination.

²⁹ 42 U.S.C. § 12131, Definitions. The term “auxiliary aids and services” includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; (B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; (C) acquisition or modification of equipment or devices; and (D) other similar services and actions.

³⁰ 42 U.S.C. § 12134(a), Sec. 204, Regulations.

³¹ DOJ, Civil Rights Division, Guidance on Website Accessibility and the ADA, <https://www.ada.gov/resources/web-guidance/> (last updated Mar. 18, 2022).

³² Rehabilitation Act Amendments of 1998, Pub. L. No. 105-220, tit. IV, 112 Stat. 936, <https://www.access-board.gov/about/law/ra.html#section-508-federal-electronic-and-information-technology>.

³³ *West Virginia*, 597 U.S. at 903.

³⁴ *Id.*

III. The DOJ's Extension Does Not Solve Advocacy's Underlying Concerns with the ADA Rule

In spring 2026, Advocacy spoke to hundreds of small government representatives at conferences of the National Association of Counties (NACo), the National League of Cities (NLC) and National Association of Towns & Townships (NATaT). In April, Advocacy also spoke with over 75 small cities about this regulation at a virtual NLC listening session. Small governments are committed to making their websites and essential civic information accessible to people with disabilities; however, the cost of compliance is often not scaled to their limited budgets and staffing.

A. Small Governments Lack the Resources to Comply with DOJ's Accessibility Requirements

The DOJ estimates high costs per small entity to comply with the 2024 final rule: county (\$29,541), municipality (\$90,847), and township (\$74,100). The majority of the compliance costs are expended the first year for website testing, remediation, PDF conversion, and video captioning.³⁵ Small governments reported that they do not have the funding to pay for a complete overhaul of their website, particularly the smallest governments with a population of fewer than 10,000. According to the Fiscally Standardized Cities database, the average city revenue for 38 cities with populations of 15,000 to 50,000 is \$2.7 million.³⁶ According to the NLC, a normal annual budget for small cities with a population of under 10,000 could be \$2 million or less. Most of these cities outsource information technology functions entirely and may have an annual IT budget of \$10,000 or less for these services.³⁷

Advocacy spoke at the NATat conference in April 2026, an association that represents nearly 10,000 towns. Eighty-five percent of these towns have less than 10,000 people and nearly half have fewer than 1,000 residents.³⁸ Many town leaders called the rule an unfunded mandate, as it places significant requirements on entities with no corresponding federal or state funding. Participants commented that small governments operate on budgets proportional only to the basic services they provide, leaving zero dollars allocated for additional compliance burdens. Advocacy also received feedback from the National Special Districts Association, who represents thousands of special districts that provide essential public services, including fire protection, water services, and health services. They commented that while some special districts are large, others operate with limited budgets of as low as \$3,000.³⁹

³⁵ U.S. Dep't of Just., Preliminary Regulatory Impact Analysis, 29 tbl.20: Initial Website Testing and Remediation Costs Per Entity, <https://www.regulations.gov/document/DOJ-CRT-2023-0007-0002> (posted Aug. 4, 2023).

³⁶ Lincoln Inst. of Land Pol'y, *Access FiSC Database*, <https://www.lincolninst.edu/data/fiscally-standardized-cities/access-fisc-database/>.

³⁷ Nat'l League of Cities, Letter to the Office of Information and Regulatory Affairs Re: 12866 Meeting on DOJ's Interim Final Rule (Mar. 4, 2026).

³⁸ Nat'l Ass'n of Towns and Townships, <https://www.natat.org/> (last visited June 9, 2026).

³⁹ Nat'l Special District Ass'n (NSDA), Letter to DOJ (May 29, 2026).

B. Small Governments Are Exposed to Opportunistic Vendors

One of the key challenges facing small municipalities in complying with this rule is lack of sufficient staffing and specialized IT expertise to make websites accessible under the DOJ rule's complex requirements. Many small governments outsource website accessibility to private vendors. However, it is hard for these leaders to know which vendors to hire or how to verify whether a website is compliant with the WCAG 2.1 AA's 50 components. This means they risk spending significant resources to address website accessibility without knowing whether their website is compliant with the DOJ's rule. A government leader of a small city in Georgia commented that it feels like a "gold rush" for vendors, and they are afraid to pay for ineffective vendor work and accessibility solutions.

C. Small Governments Face Major Liability Risks due to DOJ's ADA Website Accessibility Rule

Advocacy is concerned that the DOJ's final rule will make small governments vulnerable to a wave of abusive ADA lawsuits. Under Title II of the ADA, a person with a disability who faces a barrier on a state or government website can file an administrative complaint with the DOJ or a lawsuit in federal court; they can receive injunctive relief (to fix the website), attorney fees, and some compensatory damages in limited circumstances⁴⁰. Since 2011, there have been 142 municipalities in the U.S. that have been sued based on ADA website accessibility.⁴¹

Advocacy has received feedback from dozens of small businesses and some municipalities who have been subject to lawsuits regarding the accessibility of their websites, and some of these entities were sued multiple times. Most entities faced with a demand letter for ADA website violations told Advocacy that they settle for \$10,000 to \$20,000 with the plaintiffs rather than go to court. Advocacy recommends the DOJ adopt safe harbors to mitigate these litigation risks.

D. Small Entities Are Cutting Material, Services, and Websites Due to the Rule

Small government officials alerted Advocacy of what they termed a "digital book burning" taking place across their websites. Municipal leaders are quickly removing materials and even shutting down their websites altogether before the compliance deadlines due to the resource constraints and liability concerns. Many participants stated that their only viable options for compliance may be to completely remove content, documents, records, social media channels, and online streaming of meetings.

These changes in online presence would mean that constituents would have to get their services by attending meetings in person or calling the town to get information. A town commented that they may have to stop taking credit card payments on their website, which would be unpopular

⁴⁰ Barnes v. Gorman, 536 U.S. 181 (2002). This case ruled that compensatory damages against municipalities were permitted under the ADA, Title II does not authorize suits against municipalities for punitive damages.

⁴¹ Delaware Government Information Center, Consequences of Non-Compliance (Aug. 4, 2025), <https://gic.delaware.gov/consequences-of-accessibility-non-compliance/>.

and would require constituents to mail in payments. This would be inconvenient and difficult for many citizens, particularly those with disabilities.

IV. Small Governments Report Difficulties Making PDFs and Documents, Captioning and Audio Description Accessible

A. Small Governments Report Making PDFs and Documents Accessible is Costly and Difficult

Small entities commented that making PDFs and other documents accessible was the most costly and difficult requirement. Entities seeking to make new PDF materials compliant can pay for software subscriptions to make new accessible. For older PDFs, manual remediation costs can range from \$3-\$40 per page depending on how complex a document is.⁴²

Municipalities commented that they have hundreds or thousands of old PDFs and other non-accessible documents on their websites that are costly to manually remediate. For example, these can be meeting minutes, planning board documents, and committee reports that contain signatures, charts, handwritten elements and maps. Multiple vendors commented that they had tools that will help make PDFs and documents readable for a fraction of the price, however customers are unsure whether these tools will be deemed compliant by the DOJ.⁴³ Small governments provided Advocacy many questions for the DOJ on PDFs.⁴⁴ Small governments also expressed confusion on the web accessibility exemptions for archived web content and preexisting conventional electronic documents.⁴⁵

B. Small Entities Report that Adding Captions and Audio Descriptions to Comply with the DOJ Rule is Challenging.

Small governments have cited two other requirements as costly and in need of further guidance: captioning and audio captioning. Under this rule, captions must be provided for all live and pre-recorded content (text to aid individuals with hearing loss); and an audio description must be provided for pre-recorded video content (descriptions of what is happening to aid individuals

⁴² See Harvard University Digital Information Technology, *Digital Accessibility Services, Document Remediation Vendors*, <https://accessibility.huit.harvard.edu/doc-vendors>; Virginia Higher Education Accessibility Partners, Allyant (vendor pricing costs for document remediation), <https://vheap.org/allyant/>. The most expensive document to remediate is a PDF fillable form (starts at \$40 per page).

⁴³Call from Mac Clemmens, SVP, Civic Plus (May 7, 2026). For example, vendor Civic Plus noted that it has 442 cities using a document tool that utilizes AI to open an accessible view, converting PDFs and other documents to HTML. According to Civic Plus, the cost of this AI document tool can be as little as 20 cents per citizen for PDF access, and under \$1.50 per citizen for full compliance for all documents.

⁴⁴ NLC Listening Session (May 14, 2026). Questions on PDFs include:

- (1) What constitutes a compliant PDF or document?
- (2) Whether AI- assisted remediation tools can satisfy the requirement?
- (3) Recommended and approved vendors and accessibility tools.

⁴⁵ 88 Fed. Reg. 51957, §35.104 (Aug. 4, 2023).

with vision loss).⁴⁶ When the DOJ released its supplemental advanced notice of proposed rulemaking (SNPRM) on this issue in 2016 and asked about options for captioning, there was no technology that would allow public entities to efficiently and effectively provide captioning of live content at that time.⁴⁷ In 2023, a business or government would have to pay professionals to caption videos real time at an expensive price per minute or per hour.⁴⁸

Since then, technology has changed dramatically. Automatic speech recognition (ASR) and artificial intelligence (AI) can automatically create captions for videos for much less in the present day. The drawback is that there are some errors in spelling and accuracy in the transcription. Many municipalities commented that they conduct hybrid and fully virtual public meetings by streaming via YouTube, Facebook, and Microsoft Teams using AI captions. The DOJ rule would prevent small governments from being able to offer events and videos that are captioned if this technology is not allowed. As a result, many small governments may remove these online broadcasts completely. Small governments provided Advocacy many questions for the DOJ on captioning.⁴⁹

Audio description makes visual elements more accessible for people who are blind or have low vision; it describes the actions, people, and images in recorded videos and live videos.⁵⁰ Small governments provided had many questions for the DOJ about audio description.⁵¹ Small entities have commented that the audio description (AD) for pre-recorded video content is even more expensive and difficult, and there are few vendors who offer this service.⁵² Advocacy

⁴⁶ See Note 15, See Success Criterion 1.21 Audio-only and Video-only (Prerecorded), 1.22 Captions (Prerecorded), 1.23 Audio Description and Media Alternative (Prerecorded), 1.2.4 Captions (Live), and 1.2.5 Audio Description (Prerecorded).

⁴⁷ 81 Fed. Reg. 28658 (May 9, 2016).

⁴⁸ U.S. Small Bus. Admin., Office of Advocacy, *supra* note 16; Advocacy's prior comment letter discusses manual captioning costs per minute (with the upper bound price at \$15 per minute).

⁴⁹ NLC Listening Session (May 14, 2026). Questions on captioning include:

- (1) Whether ASR and AI use for captioning satisfies the requirement for live captioning despite errors?
- (2) Whether entities must fix the errors for replays of events?
- (3) What languages should a file include?
- (4) Are there formatting standards for captions (font, size, background color)?
- (5) Which meetings are considered archival and exempt from the requirements?
- (6) Recommended and approved vendors and accessibility tools.

⁵⁰ The American Council of the Blind, Audio Description Project: Audio Description FAQs, <https://adp.acb.org/ad-faqs> (last viewed June 8, 2026).

⁵¹ E-mail from Mike Lynch, Regulatory Affairs, National Association of Telecommunications Officers and Advisers (NATOA) (May 12, 2026, 9:52 am EST) (on file with author). This e-mail contained the following AD questions:

- (1) Is AI allowed for AD requirements?
- (2) How much should be described in these videos (such as people, activities)?
- (3) How would it work in longer content work such as council meetings and concerts?
- (4) Can the DOJ provide examples, resources, vendors, and best practices in videos, transcripts, and social media?
- (5) Should both an AD version and a non-AD version be made available?
- (6) Does the audio description need to be in multiple languages?
- (7) Do video replays need AD?

⁵² Visonic, The True Cost of Audio Description, AI vs. Manual in 2026, <https://visonicai.com/stories/true-cost-of-audio-description-ai-vs-manual/> (last viewed June 9, 2026); ViddyScibe, Audio Description Plans, <https://viddyscribe.com/pricing> (last viewed June 9, 2026). The cost of a professional to describe and record the contents of a video could cost from \$15 to \$50 per minute. An AI powered production could be \$5 to \$15 per minute, and there are also subscription services.

recommends that the DOJ consider exempting small governments or a subset of small governments from this provision, as it is expensive and the technology has not sufficiently developed to provide this service at a reasonable price, produce reliable material, nor meet the rule's deadlines.

V. Advocacy Recommends the DOJ Withdraw their Website Rule or, in the Alternative, Provide Regulatory Alternatives and Additional Guidance for Small Governments

Advocacy recommends that the DOJ withdraw this rulemaking. If the DOJ does not withdraw this rule, Advocacy urges the agency to, at a minimum, adopt regulatory alternatives that reduce the rule's impact on small governments.

A. Advocacy Recommends that the DOJ Exempt Small Governments with a Population of Fewer than 10,000 from its Website Rule

When the DOJ issued its SNPRM in 2016, the agency sought public feedback on whether to provide regulatory alternatives for small governments.⁵³ The DOJ asked if it should provide a lower WCAG conformance level to a subset of very small public entities (e.g., entities with populations of 2,500, 1,000, etc.). The agency also sought feedback on what should be considered a "very small public entity." The DOJ also considered whether there was a certain subset of very small public entities (e.g., entities with populations below 500, 250, etc.) for which compliance would be too burdensome, and whether agency should consider deferring compliance altogether at this time for these entities.⁵⁴

Advocacy recommends that the DOJ consider exempting small governments with a population of fewer than 10,000 from this rule. Since small towns are numerous but lightly populated, population cutoffs disproportionately reduce compliance costs relative to forgone benefits. For example, a 10,000-person cutoff exempts 83 percent of towns but only 13 percent of the population (with similar patterns at 5,000: 75 percent/7.5 percent of the population, and 1,000: percent /1.6 percent).⁵⁵

B. Advocacy Recommends that DOJ Create Safe Harbors for Small Entities

Advocacy recommends that the DOJ create safe harbors for small governments to protect them from frivolous litigation challenges. Public entities should not be punished if they are making good faith efforts to make their websites accessible. For example, the DOJ should provide a "notice and opportunity to cure" provision, which will give small governments a grace period to cure any accessibility problems before being sued. There have been multiple federal legislative bills that require a plaintiff to provide a written notice of website accessibility violations to the business or government, and the entity has a set time frame to respond and fix or cure the

⁵³ 81 Fed. Reg. 28658 (May 9, 2016).

⁵⁴ *Id.*

⁵⁵ U.S. Census Bureau, Population Division, Annual Estimates of the Resident Population for Incorporated Places in the United States: April 1, 2020 to July 1, 2025 (SUB-IP-EST2025-POP) (2026).

noncompliance before a complaint can be filed.⁵⁶ Small governments have told Advocacy that web content and mobile apps may be updated frequently, and it is very difficult or impossible to be fully compliant with the high WCAG 2.1 AA technical standard. They seek guidance on what level of compliance would be deemed enough to withstand a litigation challenge.

The final rule states that if the entity cannot bring web content or a mobile app into compliance without a fundamental alteration or an undue burden, “it must take other steps to ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible.”⁵⁷ Small governments seek additional guidance on what constitutes an undue burden, how this would be calculated or proved, and how entities can further protect themselves from unnecessary litigation. Advocacy recommends that the DOJ adopt these safe harbors and clarify these provisions to minimize the litigation risk to small governments.

VI. Conclusion

Advocacy supports the DOJ’s proposed extension of accessibility requirements for government websites, which will provide immediate, temporary relief for small businesses. During this period, however, the DOJ should withdraw this rulemaking. Advocacy urges the DOJ to withdraw the underlying 2024 final rule, because the agency’s decision to extend Title II of the ADA website accessibility requirements to state and local governments exceeds their statutory authority.

If the DOJ does not withdraw this rule, Advocacy urges the agency at a minimum to adopt regulatory alternatives that reduce the rule’s impact on small governments. Advocacy is concerned that the expense, resource constraints, and litigation risks created by this rule are causing small governments to remove pertinent material or deactivate websites completely, thereby depriving all citizens access to important information about government services. To address these concerns, Advocacy recommends that the DOJ consider exempting small governments with a population of fewer than 10,000 from this rulemaking. Advocacy also recommends that the DOJ provide safe harbors to reduce litigation risks to small governments.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Janis Reyes at (202) 798-5798 or by email at Janis.Reyes@sba.gov.

Sincerely,

/s/

Everett M. Woodel, Jr.
Acting Chief Counsel
Office of Advocacy

⁵⁶ ADA 30 Days to Comply Act, H.R.6453, 119th (2025), <https://www.congress.gov/bill/119th-congress/house-bill/6453>; Protecting Small Businesses from Predatory Website Lawsuits Act, H.R.7328 (2026), <https://www.congress.gov/bill/119th-congress/house-bill/7328/text>. The former gives 30 days to cure the accessibility violation, and the later gives 180 days to cure the accessibility violation.

⁵⁷ 88 Fed. Reg. 51,979 (Aug. 4, 2023).

U.S. Small Business Administration

/s/

Janis C. Reyes

Assistant Chief Counsel

Office of Advocacy

U.S. Small Business Administration

Copy to: Mr. Mark Paoletta, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget