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Proposed Accessibility Standards for Federal Government Websites Highlights Double Standard Justice Department Seeks to Impose on Public Accommodations

By Seyfarth Shaw LLP on February 23rd, 2015

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By Minh N. Vu and Kristina M. Launey

On February 18, 2015, the U.S. Architectural and Transportation Barriers Compliance Board (“Access Board”) issued a proposed rule (“NPRM”) which would, among other things, adopt the WCAG 2.0 Level AA Guidelines (“WCAG 2.0 Level AA”) as the standard for federal government websites. Section 508 of the Rehabilitation Act requires federal government websites and off-line documents and software to be accessible, but the Section 508 standard for accessible websites has been, since it issued in 2000, a list of 16 requirements that are less rigorous than the WCAG 2.0 Level AA Guidelines. The issuance of this NPRM underscores that even while the Justice Department (“DOJ”) has been demanding that public accommodations make their websites conform to WCAG 2.0 Level AA neither it nor any other federal agency is presently required to meet this standard. As we have reported, the DOJ has entered into a number of settlements and a consent decree with public accommodations which reference WCAG 2.0 Level AA as the accessibility standard. DOJ has done so even though it still has not issued a proposed rule that adopts a legal standard for accessible public accommodations websites. DOJ started

this rulemaking process more than four years ago and has stated that it will issue a rule in June of this year. Whether this projected deadline will be pushed back again remains to be seen.

The government has faced scrutiny and even been sued for its own inaccessible websites. As we previously reported, last year an advocacy group sued the United States General Services Administration, alleging GSA's own website, SAM.gov, is inaccessible and does not comply with Section 504, leaving certain blind and visually impaired government contractors unable to register or timely renew their government contracts. The NPRM even notes that some federal agencies have had trouble complying with the less demanding existing Section 508 standards.

In announcing the NPRM, the Access Board noted that adoption of WCAG 2.0 Level AA for federal agency websites would promote consistency with the Department of Transportation's recent final rule which adopted the same standard for air carrier and ticket agent websites, and accelerates the spread of web accessibility.

The Access Board will provide a 90 day public comment period and will hold a public hearing on March 5 at the CSUN conference in San Diego, and on March 11, at the Access Board in Washington, D.C. After the public comment period closes, the Access Board will consider the comments and issue a Final Rule. We will be watching with great interest to see whether federal agencies, including DOJ, will support the adoption WCAG 2.0 Level AA for their own websites and how much time they will give themselves to remediate and conform their websites to this new standard.

Tags: Access Board, Department of Justice, NPRM, public accommodation, WCAG 2.0, website

Seyfarth Shaw LLP • 131 South Dearborn Street • Suite 2400 • Chicago, IL 60603-5577

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