

U.S. Access Board Issues Long-Awaited Section 508 Notice of Proposed Rulemaking

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On Feb. 18, the **U.S. Architectural and Transportation Barriers Compliance Board** (also known as the U.S. **Access Board**), publicly released its **Notice of Proposed Rulemaking (NPRM)** to update accessibility requirements for information and communication technology (ICT) under both Section 508 of the Rehabilitation Act of 1973 (Section 508), 29 U.S.C. § 794d, and Section 225 of the **Communications Act** of 1934 (Section 225), 47 U.S.C. § 225. While the NPRM has not yet been published in the Federal Register, it is available on the Board's website. Public comments will be accepted for 90 days following the date of publication in the Federal Register.

Section 508 of the Rehabilitation Act requires that electronic and information technology (including websites) developed, procured, maintained or used by or on behalf of federal agencies be accessible to individuals with disabilities. Compliance with Section 508 also may be required as a condition of certain federal contracts, and states receiving federal funding under the Technology Related Assistance for Individuals with Disabilities Act of 1988 also are required to comply with Section 508. Additionally, certain states also have enacted laws similar to Section 508. Section 225 of the Communications Act requires that telecommunications services be accessible to individuals with hearing impairments and individuals with speech impairments. In addition to websites, the Board's NPRM addresses accessibility requirements for electronic content integral to the use of ICT, both hardware and software components of ICT (where such components transmit information or provide a user interface), and support documentation or services provided for the use of ICT.

With respect to websites and for electronic content generally, the NPRM incorporates by reference the Web Content Accessibility Guidelines 2.0 (WCAG 2.0), developed by the World Wide Web

Consortium, and requires compliance with Success Criteria Levels A and AA. Although the guidelines issued under Section 508 are not directly applicable under titles II and III of the Americans with Disabilities Act (ADA), the U.S. Department of Justice (DOJ) has indicated it will issue NPRMs later this year under titles II and III of the ADA to address accessibility requirements for websites. DOJ is widely anticipated to similarly adopt WCAG 2.0 and require compliance with Success Criteria Levels A and AA. In the interim, DOJ, other agencies, and private litigants have been applying WCAG 2.0 Success Criteria Levels A and AA to define accessibility with respect to websites, mobile apps, and electronic content in litigation and settlements. Additionally, the U.S. Access Board's updated ICT guidelines may well be looked to for guidance in defining "accessibility" with respect to a wide-array of electronic and information devices generally (such as self-service information kiosks or devices) maintained by entities not otherwise subject to Section 508 or Section 225, or for accommodating employees with disabilities who utilize electronic and information technology. Accordingly, the U.S. Access Board's Section 508 NPRM is of interest to any entity covered by the ADA or other disability nondiscrimination laws, even if that entity is not directly subject to either Section 508 or Section 225.

In addition to accepting public comments, the U.S. Access Board will hold two public hearings on the NPRM:

- March 5, 2015, 9:30 to 11:30 a.m., San Diego, CA: Manchester Grand Hyatt Hotel (Mission Beach A & B, 3rd floor), One Market Place, San Diego, CA 92101
- March 11, 2015, 9:30 to 11:30 a.m., Washington, DC: Access Board conference room, 1331 F Street NW., suite 800, Washington, DC 20004

On March 31, the Board also will conduct a public webinar to review the NPRM.

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