



BITS

FINANCIAL SERVICES
R O U N D T A B L E

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
1425 New York Avenue, NW
Suite 4039
Washington, DC 20005

Sent via Federal eRulemaking Website

January 24, 2011

To Whom It May Concern:

RE: RIN 1190-1161

The Financial Services Roundtable¹, including BITS, appreciates the opportunity to comment on the Department of Justice's Advance Notice of Proposed Rulemaking on Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations. We fully support the Department's efforts to enhance public utility websites for use by individuals with disabilities. We see this as an opportunity to better serve consumers by migrating to an updated, performance-based, international standard.

In order to provide online service to all of their customers, many of our member companies currently comply with various assistive technology guidelines, including Web Content Accessibility Guidelines 2.0 Level AA Success Criteria (WCAG 2.0 AA). We encourage the Department to focus on the WCAG 2.0 AA, rather than Section 508 of the Rehabilitation Act of 1973 standards (Section 508), as it provides an easier to use interface for disabled consumers and stays up-to-date with the changing technology environment.

Responses to Specific Questions

- **Question 1: Adopt the WCAG 2.0's "Level AA Success Criteria."** We would support use of the WCAG 2.0 AA, as it would provide significant benefit to disabled customers. The World Wide Web Consortium (WC3), developer of the WCAG, is an international organization and therefore the majority of service providers and assistive technology developers create their products to comply with these guidelines.

¹ The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$74.6 trillion in managed assets, \$1.1 trillion in revenue, and 2.4 million jobs. BITS is the technology division of the Roundtable. BITS fosters the growth and development of electronic financial services and e-commerce for the benefit of financial institutions and their customers.

- **Question 2: Section 508 Standards vs. WCAG Guidelines.** While Section 508 compliant websites are technically sophisticated, performance of assistive technologies on these sites can be a challenge. By providing less prescriptive requirements, WCAG 2.0 AA will enable companies to provide assistive technology access to traditional websites, as well as to new platforms, such as Multimedia Messaging Service (MMS).

Section 508 Standards should be harmonized with the WCAG 2.0 AA, as a number of business functions, such as recruitment, are required to comply with Section 508. Institutions find difficulty in complying with both as they are inconsistent. Since Section 508 Standards are under revision by the Access Board, we encourage the Department to consider exemptions or other appropriate remedies for the benefit of companies that are subject to both standards, and to take the opportunity to harmonize the standards.

- **Question 4: Performance vs. Technical Standards.** Consumers ultimately care most about performance, so we recommend the Department require performance-based standards. As such, we believe the standards in WCAG 2.0 AA should be adopted by the Department. These allow institutions to develop solutions capable of working effectively with their existing Web frameworks. We encourage the Department to utilize existing standards, as they are employed currently by market participants. In addition, standards such as the WCAG 2.0 AA have established update timelines, which allow for the standard to be applicable to the evolving technology environment.
- **Question 5: Coverage Limitations.** Financial institutions work with a number of online media for distributing product information, including social media websites. Our interpretation of the proposed rulemaking is that social media sites are not included in the scope of rule because most social media sites include “Web content created or posted by Web site users for personal, noncommercial use” ...“even if that content is posted on the Web site of a public accommodation or a public entity.” We encourage the Department to evaluate social media sites and clarify obligations these sites have, specifically when hosting content for public accommodations.

In addition, the Department should provide guidance on the definition of informal *versus* formal selling. An option in defining this may include setting a limit on the amount that a private individual can make in sales *via* a website to be considered an informal seller.

- **Question 6: Department Resources to Offer.** The Department should provide for a sufficiently large customer support technical team to assist in website issues that may arise during the compliance period. Technical customer support consultants should also be available to answer questions regarding website compliance from covered entities and the public.
- **Question 7: Specialized Features that Render Compliance.** The security of customers’ online financial transactions is a primary concern for financial institutions. Many financial institutions employ authentication technology at the point of entry to a customer’s banking website that requires a response from the user within a discrete period of time to increase the security of transactions. Unfortunately, certain assistive technologies may not allow customer authentication to be completed within the established security time limits.

We agree with the WCAG 2.0 AA for assistive technology that allows for time-sensitive applications to occur for essential activity. We interpret customer authentication to be an

essential² exception and our members are prepared to provide alternative access in these situations.

- **Question 9: Proposed Time Frames for Compliance.** We agree with the Department's recommendation to make the effective date for newly created websites or pages six months after publication of the rule.

We suggest the Department re-evaluate the effective date for the entire website. As the Department acknowledged, websites can be quite large and many of our members have websites with thousands of pages. Given the number of pages, it will take a significant amount of time to make an entire site compliant and will be a large burden on smaller community institutions and credit unions. An increased compliance deadline will provide time for developers and technology companies to resolve any technical barriers.

We, therefore, encourage the Department to re-evaluate the compliance deadline. Options include: 1) creating a three year full site compliance deadline with the possibility of extension; 2) developing a structured compliance period based on the number of pages in a website; or 3) requiring a detailed plan of the website update to be submitted within one year of the effective date.

- **Question 11: Incremental Adoption.** To avoid confusion and complication, the Department should not implement an incremental approach by size of entities. Instead, an appropriate timeline, such as three years, should be adopted to ensure all companies have the ability to comply. In addition, as previously discussed, the Department should develop a technical team to assist with questions regarding implementation and compliance.
- **Question 13: Cost of Compliance.** Member institutions estimated the cost of updating sites will be \$50,000 to \$200,000 for each line of business. Some financial institutions have up to 100 lines of business that will require this update.

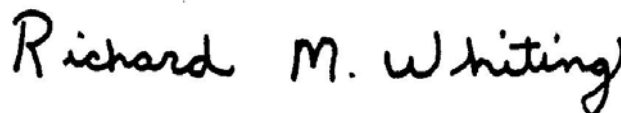
In closing, we reaffirm our support for the Department of Justice's work to standardize websites for use by individuals with disabilities.

Thank you for your consideration of our comments. If you have any further questions or comments on this matter, please do not hesitate to contact either of us, or William Henley, BITS Senior Vice President for Regulation, at 202-589-2402 or William@fsround.org.

Sincerely,



Leigh Williams
President
BITS



Richard M. Whiting
Executive Director and General Counsel
The Financial Services Roundtable

² In WCAG 2.0, an essential exception is "the time limit is essential and extending it would invalidate the activity."