

## LOSS CONTROL TOOLS

# Website Accessibility

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### Financial Institutions Exposed to Growing Litigation

There are a growing number of allegations and settlements<sup>i</sup> regarding website accessibility among organizations, of which financial institutions are not exempt, with some including actual lawsuits and others seeking settlements. The exposure grows<sup>ii</sup> from ensuring websites are accessible per Web Content Accessibility Guidelines<sup>iii</sup> (WCAG) to a wide range of people with disabilities, including blindness and low vision, deafness or hearing loss, learning disabilities, cognitive limitations, limitations of movement, speech disabilities, photosensitivity and any combination of these. These guidelines have grown out of litigation against various defendants and positions stated by the Department of Justice (DOJ). Specifically, the DOJ on September 15, 2010, published the a statement on a final rule<sup>iv</sup> regarding nondiscrimination: "Although the language of the ADA does not explicitly mention the Internet, the Department has taken the position that Title III covers access to web sites of public accommodations." Some courts aren't waiting<sup>v</sup> on these final rules.

### Reduce Risk by Following Existing Guidelines Until Final Regulations Are Issued

As a product of the technological nature of the allegations in question, it's easy for settlement offers or threats of legal action to come from any source, since no visit to a place of public accommodation is necessary. Allegations can include an inability to read product menus, not clearly disclosed rates, inability to access online banking due to short duration of log-in time, or an inability to begin a loan process online. These allegations would require no pre-suit notice, and the cottage industry of attorneys filing suit is growing. While the cost to comply with WCAG 2.0 may be minor, the expenses to defend against these suits can be very high.

Since the DOJ is not likely to release final issuance of regulatory guidance until 2018, the exposure remains of interest to attorneys seeking settlements, and remains an exposure to all organizations conducting business via the Internet. To help reduce the exposure or potential for a claim, financial institutions should consider following WCAG 2.0, which is most likely to be the standard mirrored by the DOJ. In addition, the US Access Board has promulgated standards that apply to electronic and information technology procured by the federal government, which may provide guidance (§508 Standards<sup>vi</sup>). Drawn together, WCAG 2.0 and §508 Standards are recognized as a baseline for website accessibility, and to date represents the basis of settlement letters and initial actions.

### Actions to Take Now

There are some actions that can be implemented beginning now, that will make compliance much easier when the DOJ adopts final rules. In addition to consulting with legal counsel<sup>vii</sup>, these steps include any combination of the following, but should be established in a plan:

- Establish a policy regarding web site accessibility, including a process for

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implementation.

- Ensure that all web pages and content going forward are accessible.
- Develop a plan to make current web site resources and content accessible.
- Adopt a training requirement with regard to in-house staff and contractors who are responsible for web page and content development.
- Provide alternative measures for accessible information, which may include telephone numbers visibly displayed or email addresses. Placing these on the home page or top of every page makes identifying them easier.
- Utilize a disability group to periodically test pages for ease of use.

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<sup>i</sup> United State Department of Justice, Civil Right Division,  
[https://www.ada.gov/enforce\\_activities.htm](https://www.ada.gov/enforce_activities.htm)

<sup>ii</sup> Appleby, Gavin, Petesch, P., and Phillis, M. *The Wave of Website and Other ADA Accessibility Claims – What You Should Know*. 22 Feb 2016.  
<https://www.littler.com/publication-press/publication/wave-website-and-other-ada-accessibility-claims-%E2%80%93-what-you-should-know>

<sup>iii</sup> Web Content Accessibility Guidelines (WCAG) 2.0 <https://www.w3.org/TR/WCAG20/>

<sup>iv</sup> Revised ADA Regulations Implementing Title II and III.  
<https://www.ada.gov/regs2010/ADAregs2010.htm>

<sup>v</sup> Forbes Legal Newslane. *Judges Handling ADA Lawsuits Over Websites Not Waiting on DOJ Regulations*. <http://www.forbes.com/sites/legalnewslane/2016/03/29/judges-handling-ada-lawsuits-over-websites-not-waiting-on-doj-regulations/#34db59d72878>

<sup>vi</sup> Department of Justice Section 508 <https://www.justice.gov/crt/section-508-home-page-1>

<sup>vii</sup> JacksonLewis ADA Title III Section Practice  
<http://www.jacksonlewis.com/practice/disability,-leave-and-health-management/ada-title-iii>