



THE SHIFTING GROUND: HOW DIGITAL ACCESSIBILITY REGULATIONS ARE CHANGING AND HOW THOSE CHANGES GET MADE

AHEAD 2026

Judith Risch | July 24, 2026

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Judy is one of the nation's foremost experts on digital accessibility. She is a twenty-year veteran of the Office for Civil Rights, including five years as Project Director of the National Digital Accessibility Task Force, where she oversaw Section 504 and ADA Title II enforcement across educational institutions and contributed to the 2024 DOJ ADA Title II digital accessibility regulation.

Judy's practice encompasses both policy guidance and technical implementation. On the policy side she assists educational institutions with compliance guidance, civil rights investigations, institutional accessibility strategy and governance, and training for administrators, legal counsel, and IT staff. On the technical side she aids her clients with WCAG 2.0/2.1/2.2 conformance review and remediation planning, manual and automated accessibility audits (JAWS, NVDA), VPAT review, and accessible technology procurement.

Considerations and Disclaimers

This is not legal advice. Consult your legal counsel before making any decisions.

Road Map for the Presentation

- Background
- Process for the ADA Title II Digital Accessibility Regulations
- 2025 and 2026 Developments
- First Steps
- Conclusion

ADA and Section 504

ADA Title II (Public)

“...no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (1990).

ADA Title III (Private)

“No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.”

Americans with Disabilities Act of 1990, 42 U.S.C. § 12182 et seq. (1990).

Section 504

“No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...”

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

How Federal Rules Get Made (the Short Version)

Laws like the ADA are broad. Federal agencies write rules that spell out the details.

1. The agency announces it is thinking about a rule and asks for public input.
2. It writes a draft and estimates what the rule will cost.
3. Other parts of the government review the draft.
4. The public gets about 90 days to read the draft and comment.
5. The agency reads the comments and revises the rule.
6. One more round of government review.
7. The final rule is published. This whole process usually takes years.

The 2024 Rule: A Brief History

Digital Accessibility

Background & Early Attempts

- 2010 — The DOJ first published an Advance Notice of Proposed Rulemaking (ANPRM) signaling its intent to establish web accessibility standards for public entities.
- 2016 — DOJ published a Supplemental ANPRM (SANPRM), continuing the early rulemaking process.
- December 26, 2017 — The DOJ published a document withdrawing four rulemaking actions, including the Title II and III web rulemakings, stating it was evaluating whether promulgating specific web accessibility standards was necessary and appropriate to ensure ADA compliance.

Title II Process for Creating the Digital Accessibility Regulations

- July 20, 2023 — The DOJ published the Notice of Proposed Rulemaking (NPRM) explaining how it proposed updating Title II ADA regulations to add more specific requirements about web and mobile application accessibility. It was formally published in the Federal Register on August 4, 2023.
- August–October 2023 — The NPRM included more than 60 questions for public input. The public comment period closed on October 3, 2023. The DOJ received approximately 345 comments from members of the public, including individuals with disabilities, public entities, disability advocacy groups, members of the accessible technology industry, web developers, and many others.
- April 24, 2024 — The Federal Register published the DOJ's final rule updating its regulations for Title II of the ADA. The final rule has specific requirements about how to ensure that web content and mobile applications are accessible to people with disabilities. This marked the first time the DOJ issued formal regulations for accessibility in the digital realm.

Key Differences : 2023 NPRM vs. 2024 Final Rule: Coverage Changes

- **Third-Party Content — Clarified:** The final rule added language confirming that content delivered via contracts or licensing arrangements is covered. The NPRM left this scope ambiguous.
- **Password-Protected Courses — Removed:** The NPRM exempted password-protected course content. DOJ dropped this after public pushback.
- **New Section 35.205 — Minimal Nonconformance:** Entities can show that people with disabilities are not "substantially hindered" even if their technology isn't fully conformant — a limited alternative compliance path.
- **Vendor Content — Explicitly Covered:** Government services delivered by vendors must meet accessibility standards.

What's Happened in 2025 and 2026

2025: The Rule Comes Under Pressure

- Spring 2025 — Higher education associations asked the federal government to delay or clarify the 2024 web accessibility rule.
- September 2025 — The DOJ announced it would reconsider parts of the rule to see if compliance could be made less costly. No timeline was given.
- October–November 2025 — A six-week federal government shutdown slowed everything down.

2026: A Surprise Move by the DOJ

- February 2026 — Instead of the normal draft-and-comment process, the DOJ with OIRA (Office of Information and Regulatory Affairs) moved to revise the rule using an “Interim Final Rule” — a faster path that takes effect first and asks for public comment afterward.
- March 2026 — Before the revised rule was finalized, the government held over 20 meetings with outside groups who wanted to weigh in.

Who asked for those meetings tells the story:

- Cities and counties — worried about cost and asking for delays or exemptions.
- Disability rights groups — urging the government to keep the rule intact.
- Accessibility professionals and educators — including community college voices.

The big concern: changing the rules this way skips the public’s chance to comment before changes take effect.

Who Wants the Rule Changed — and Why

Mainly cities and counties (the groups that have to pay for compliance)

Their Concerns

- **Costs are blowing budgets:** Compliance is costing far more than what was budgeted — sometimes five times more.
- **Old documents:** Fixing old PDFs is slow, manual work — one county reported over 1,000 staff hours.
- **Vendor systems:** They are on the hook for vendor systems (like bill pay) they don't control.
- **Small towns:** Thousands of small towns have tiny IT budgets; some say they may take websites down entirely.

What They're Asking For

- **Extend the deadline** by at least one year for everyone
- **Exempt** small towns (under 10,000 people) from the rule entirely
- **Use an older, easier standard** instead of the current one
- **A chance to fix problems** before any penalties kick in
- **More exemptions** for social media, maps, and archived content

Who Wants the Rule Kept — and Why

Disability rights organizations, technology policy groups, and accessibility professionals

- **This wasn't rushed** — the rule took 14 years and hundreds of public comments to finish. The ADA itself is 36 years old; no one is surprised by these obligations.
- **The shortcut isn't fair** — changing the rule without public comment first skips the normal democratic process.
- **Inaccessible sites cause real harm** — research shows blind users hit barriers on roughly 1 in 5 government web pages, losing over an hour each time. Most report barriers in education specifically.
- **Weakening the rule won't save money** — building accessibility in from the start is cheaper than fixing problems one lawsuit at a time.
- **People have already invested** — many institutions have spent real money preparing. Changing course now wastes that investment and creates more uncertainty.

DOJ's Rationale Doesn't Hold Up

- Claim: AI can't yet automate remediation.
- Reality: The 2024 rule never assumed it would. No AI reliably produces accessible content without human review.
- Claim: WCAG 2.1 supplementary guidance keeps changing.
- Reality: The rule incorporates a static 2018 version by reference. That text has not changed.
- Claim: Small businesses and cities raised new concerns.
- Reality: The same objections were filed in 2023 and addressed in the 2024 final rule. Relitigating them is procedurally questionable.
- Claim: There wasn't time for a full regulatory process.
- Reality: Concerns surfaced in spring 2025; the agenda item appeared in September 2025. The urgency was self-created.

Keep in Mind

- “Regardless of the compliance dates, covered entities have an ongoing obligation to ensure that their services, programs, and activities offered using web content and mobile apps are accessible to individuals with disabilities in accordance with their existing obligations under title II of the ADA.”

Litigation Won't Wait for the Deadline

Courts are already enforcing existing Title II duties — independent of the 2024 rule



CASE IN POINT

Ellerbee v. State of Louisiana Division of Administration

M.D. La., 3:24-cv-00219

January 2025: court rejected the state's argument that the case was premature because the 2024 deadlines had not yet arrived.

What this means

Title II web accessibility duties exist now — not in 2027 or 2028.

Extending deadlines does not insulate entities from suit.

Private litigation and attorneys' fees remain a live risk today.

What's Missing from the Rule

- Third-party vendors: Much of public-sector web content ships from vendors. If products are inaccessible at purchase, more time doesn't fix them. The rule should push vendors — including generative AI tools — toward accessibility by design.
- Technical assistance: Entities asked for guidance on fundamental alteration and undue burden defenses. DOJ extended the deadline instead. No additional guidance is promised.
- A new NPRM in one year?: DOJ hedges on whether it will issue a new NPRM before the revised deadline. Completing a rulemaking cycle that quickly — amid staffing uncertainty — is unlikely.

Where Things Stand Today

- The revised rule is in place as “emergency regulations,” and a 60-day public comment period is closed.
- The compliance deadlines have moved back one year: Now is April 26, 2027, for larger entities and April 26, 2028, for smaller ones. The DOJ says it may still run a full rulemaking process — whether that happens is an open question.

HHS – SECTION 504 REGULATIONS – ON THE EFFECTIVE DATE

- Feasibility: HHS now believes many recipients — especially small/medium entities and local governments — can't meet the deadlines due to resource constraints, staffing limits, and reliance on third-party vendors.
- Borrowed evidence: Much of the support comes from DOJ Title II comments (NACo's 18-county survey, National League of Cities) rather than healthcare recipients, despite different needs.
- Litigation risk: Section 504's private right of action exposes recipients to injunctions and attorneys' fees; risk heightened by potentially inaccessible AI-generated content.
- Defenses insufficient: HHS expects "widespread" invocation of fundamental-alteration/undue-burden defenses — costly to assert and no substitute for compliance.
- Education confusion: Removal of proposed course-content exceptions "may have led to confusion," cited as needing more time (though this followed normal notice-and-comment).
- Deregulatory framing: Classified as cost-relief under EO 14192 (~\$52M annualized savings); used to justify skipping notice-and-comment, aligned with DOJ's parallel delay.
- Net cost-benefit: By HHS's own figures, the delay forgoes more in benefits (~\$190–205M) than it saves in costs (~\$93–114M).
- Bottom line: The deadline moved, not the law — Section 504's underlying accessibility obligations remain in full effect.

What Could Happen Next?

- Lawsuits challenging the changes. NFB filed on May 21, 2026.
- A court could put the rule on hold.
- The deadlines could be pushed back again.
- The rule could be rewritten in a big way.
- Course content behind a login could become exempt again.
- A cap could be set on how much entities must spend.
- Or nothing changes — and everything takes effect on the new timeline.

By the Numbers, the Rulemaking Process

Stage	Date Last Time	Days Between	Getting it Done by April 26, 2027
Draft Regulation Published	August 4, 2023 (was given out on July 23)	11 days	April 6, 2026
Comments Completed	October 3, 2023	60 days	June 5, 2026
Final Rule is Issued	April 24, 2024	265 days	February 25, 2027
Rule Becomes Effective	June 24, 2024	61 days	April 26, 2027
WCAG Compliance Date Large Entities	April 24, 2026	791 days	April 26, 2027
WCAG Compliance Date Small Entities	April 26, 2027	1,158 days	April 26, 2028

Final Thoughts

- This is not a quick fix; this is a process and it does not end.
- Don't let the perfect be the enemy of the good.
- This is about risk mitigation; there is no perfection.
- This is about changing culture and making sustainable processes.

Resources – The Regulations

Department of Justice – Americans with Disabilities Act Title II:

[Title II Regulations](#)

[Title II Fact Sheet](#)

[Title II Small Entities Compliance Guide](#)

[Title II State and Local Governments: First Steps Toward Complying](#)

[Federal Register - Extension](#)

Some of What I Do

- Policy and Process Development
- Review of Websites and Learning Management System Content
- Recommend vendors and suggest approaches to keep costs down
- Training
- Support Tracking Data
- Procurement Processes

Thank You

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Questions?