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Re: Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Government Entities, RIN 1190–AA79

The undersigned members of the Consortium for Constituents with Disabilities (CCD) Rights, Education, and Technology and Telecommunications Task Forces as well as disability organizations from across the United States applaud the Department of Justice for releasing this Notice of Proposed Rulemaking (NPRM) implementing Title II of the Americans with Disabilities Act for web- and mobile-app-based information and services. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. In these comments, the **264** undersigned organizations urge the Department of Justice to eliminate the exceptions and adopt the latest WCAG standard. We expect that this work will not always be easy, but the result of making websites and apps accessible is greater fairness and effectiveness in government services, programs, and activities.

Contents

Background	3
General Matters	4
Websites and mobile apps, and all forms of ICT, must be accessible to people with disabilities.....	4
The Department should adopt the most recent WCAG standard, which will be WCAG 2.2, Level AA.....	5
The compliance timeline should be shortened, especially for new content and large special government districts.....	6
Compliance and Enforcement: The Department should pair the WCAG standard with a functional definition of accessibility.....	6

The undue burden and fundamental alteration defenses obviate the need for exceptions, which undermine the goal of the regulation and overlook that accessibility is usually achievable.	7
Entities will need ample technical assistance to confidently comply with the regulation.	8
Eliminate the exception for public postsecondary institutions' password-protected course content	9
Inaccessible content has serious implications for students' on-time completion of their chosen course of study.	9
Eliminating this exception will create an expectation that vendors and individual professors make course platforms and materials accessible.	10
Course materials can be complex with images, graphs, and the use of specialized software, so it is better for institutions to plan for accessibility rather than to remediate each course on demand and on a deadline while students fall behind.	10
Postsecondary institutions regularly use or offer mobile apps to offer access to course content, and these apps typically require the use of a password.	11
Eliminate the exception for public elementary and secondary schools' password-protected course content.	11
This exception would continue to normalize the exclusion of people with disabilities, put students behind in their classes, and create additional work for teachers.	12
Schools do not generally have a standing notification process, and schools often are not fully in control of their content.	13
Students of all ages are expected to use mobile apps to complete coursework, practice reading, and communicate with teachers.	14
Eliminate the exception for web content posted by a third party, which will undermine disabled people's access to necessary information.	14
Covered entities regularly ask third parties to post content on their websites and mobile apps that is instrumental to participation in governmental and educational activities.	14
People with disabilities will lose access to time-sensitive information, educational content, and robust opportunities to participate in public feedback sessions.	16
Eliminate the exception for linked third-party web content	18
Third-parties must share some of the responsibility for making their content accessible, and public entities must have the responsibility to select accessible content that is linked on their websites or apps.	18
Libraries must expend time and effort to provide accessible books to patrons because publishers frequently deliver inaccessible content.	19
Eliminate the exception for individualized, password-protected documents	20
There is a huge variety in the types of individualized, password-protected documents and many are time-sensitive.	20

The time entities would spend on building a notification process would be better spent on making the documents accessible from the start.21

This exception would reverse progress made on making these documents accessible.21

Eliminate the exception for pre-existing conventional electronic documents.22

This exception will lead to confusion about what information is required to participate in public activities, resulting in unequal access for people with disabilities.....22

People with disabilities must not be required to disclose their disabilities and wait for remediation to access documents intended to be made available to the public.23

Eliminate the exception for archived web content.24

People with disabilities will be denied access in perpetuity to a range of important historical information.24

Making archival documents accessible is generally achievable.25

Conclusion26

Background

There are more than 60,000,000 people with disabilities in the United States according to the Centers for Disease Control and Preventionⁱ. That is more than one in six people. This rule will have a profound impact on a significant proportion of our population by requiring public entities to plan for the diversity of ways that people use the internet to access public services, programs, activities, and information. People who are blind may use screen readers to convert code to audible text and use a keyboard to navigate. People with low vision may use screen magnification and rely on high contrast to visually perceive content. People with manual dexterity disabilities may use switches or gestures to navigate a website or app. People who are deaf or hard of hearing benefit from captioned videos or ASL interpretation. People with cognitive disabilities benefit from websites and apps that are clearly organized, do not require puzzle solving, and that allow users ample time to complete tasks. People with speech disabilities may rely on text-based alternatives to voice communication modes and require alternatives to recorded responses. People with seizure disorders often cannot use websites or video content that produce rapid and unexpected flashes or animation. People with print and learning disabilities may use speech-to-text and text-to-speech software to facilitate reading and writing. Websites and mobile applications must be accessible and provide interoperability with assistive technology.

This rule is vitally important for people with disabilities to have equal access to government services and community living – whether they are blind, deaf, hard of hearing, or deafblind or have low vision, seizure disorders, limited manual dexterity, speech disabilities, learning disabilities, or cognitive disabilities. Digital information and services are easier and quicker to access and provide benefits to state and local governments by enabling the rapid distribution of

information and reducing barriers of distance and time of travel. However, for too long, the benefits of governments' digital infrastructure have been denied people with disabilities because so many websites and mobile applications have been designed and developed in a way that excludes people with disabilities, including those who use assistive technology.

This rule could dramatically alter the way that people with disabilities are able to live in their communities and will contribute to further community integration in the full spirit of the Americans with Disabilities Act. The benefits of this rule are hard to summarize. It will expand access to transportation, enable parents to support their children in public schools, expand access to public education at all levels, make voting registration and information more available, allow homeowners to access utility bills and public filings about their own home, ease applications for identification cards, improve 311 services, and facilitate emergency responses. It will help people with disabilities get timely vaccines and health services, apply for eligible food and income assistance, apply for jobs and contracts with public agencies, participate in public input sessions, request waste removal services, participate in local sports teams and recreation camps, order a child's birth certificate, file police reports, borrow library books, conduct research, track a bus arrival, and so much more. When it comes to the availability of public health and emergency information, website and mobile app accessibility can even be life-saving. State and local governments play a broad and important role in the lives of their residents, and people with disabilities must not be discriminated against in the enjoyment of those activities.

We are grateful that this NPRM provides a solid starting point for regulating digital accessibility, but this rule must be improved to protect fully the rights of people with disabilities. This regulation has the potential to dramatically shift the accessibility landscape for individuals and covered entities tasked with complying with the accessibility requirements. Most entities have no explicit desire to exclude people with disabilities from their programs, yet the current web development and content management landscape does not provide accessibility by default. **A strong rule will clarify that accessibility is the expectation, not the exception, across all programs and services and will bring covered entities' many vendors and third-party partners into compliance as well.** We urge the Department to adopt the changes that we describe in this comment to eliminate confusion and loopholes and to align this rule with existing provisions of the Americans with Disabilities Act.

General Matters

Websites and mobile apps, and all forms of ICT, must be accessible to people with disabilities.

Question 48: Which provisions of this rule, including any exceptions (e.g., the exceptions for individualized, password-protected conventional electronic documents and content posted by a third party), should apply to mobile apps?

This rule will make a significant impact on the lives of millions of people with disabilities in the United States by covering websites and mobile apps. As such, we strongly urge the department to make the whole rule apply to mobile apps – though, as we will explain, we broadly oppose the inclusion of any exceptions. Mobile apps are widely used for purposes as disparate as providing 311 services, paying for parking and other public services (e.g., taxes, fees etc.), reading public library books, and accessing varied course content materials in all levels of education. In fact, we propose that the department should go further to cover “Information and Communications Technologies.” The Federal government’s Section 508 rules appropriately cover this more comprehensive set of technologies in recognition that effective communication and equal access are important regardless of the technological means of access. Like websites and mobile apps, technologies like kiosks, desktop apps, and email communications are also very important components of public entities’ service and program delivery. For example, a transit agency may employ digital maps and dynamic timetables at bus stops, a professor may assign homework using software programs like MATLAB, and local governments use emails to deliver emergency alerts. In an increasingly digital world, websites and mobile apps are just some of the digital technologies that public entities must make accessible to people with disabilities.

The Department should adopt the most recent WCAG standard, which will be WCAG 2.2, Level AA.

Question 3: Are there technical standards or performance standards other than WCAG 2.1 that the Department should consider? For example, if WCAG 2.2 is finalized before the Department issues a final rule, should the Department consider adopting that standard? If so, what is a reasonable time frame for State and local compliance with WCAG 2.2 and why? Is there any other standard that the Department should consider, especially in light of the rapid pace at which technology changes?

Congress intends the ADA to be forward-looking. The standards that the Department adopts must be “clear,” “consistent,” “enforceable,” and “strong.” The W3C Web Content Accessibility Guidelines are international standards informed by experts in digital accessibility. The multiyear consultations for each new standard ensure that the standards are achievable, effective, and clear, and regular updates ensure that they meet the current state of technology. Currently, WCAG 2.1, Level AA, is the most recent standard and would thus be sufficient today. However, WCAG 2.2 is already available in near final form and is expected to be adopted as a recommendation this fall. The changes would eliminate one success criteria and add six Level A and AA criteria, such as setting a minimum target size and providing alternatives to dragging motions. The proposed criteria are achievable and will provide substantial additional benefits to people with disabilities over WCAG 2.1. Considering that the new standard should be adopted well before the publication of the final rule and that the Department intends to provide a period of time for entities to become familiar with the rule, we do not think that awareness of WCAG 2.2 presents a significant obstacle to adopting the most recent standard. To create a strong, up-to-date standard, we urge the Department to adopt the most recently adopted WCAG standard for all content without exception. We expect WCAG 2.2, Level A and AA, to be that standard as of

the publication of this final rule. We further encourage the Department to update the rule regularly as new standards emerge.

The compliance timeline should be shortened, especially for new content and large special government districts.

Question 10: How will the proposed compliance date affect people with disabilities, particularly in rural areas?

The proposed compliance timeline is exceptionally long, considering the rapidity with which websites and mobile apps are updated and how frequently web content is created. The Department makes no distinction between new content, which for the most part can be made accessible immediately, and existing content which may take some time to audit and remediate. The compliance timeline does not consider that many entities are already largely in compliance with the proposed rule. Moreover, for students with disabilities who have faced significantly increased digital barriers since the pandemic began in 2020, they will have had to wait more than half of their primary and secondary education years for their district to come into compliance. In addition, a three-year compliance period would be longer than most graduate degrees and nearly as long as most bachelor's degrees. Noting that the department allowed only 18 months before the 2010 regulations went into effect and considered a six-month period, we urge the department to shorten the timelines. At a minimum, new content could be made accessible within 6 months while existing content may need to be allowed a longer compliance period unless individuals with disabilities request access to that content at an earlier date.

In addition, we note that lumping all "special government districts" in with small entities does not make sense. Rather, we expect that most or all special government districts are aware of the size of the regions they serve and are able to establish whether they fall within the threshold for small entities. For example, the Mosquito Abatement District-Davis covers Davis County, Utah, and the South Cook County Mosquito Abatement District covers 10 townships. The populations of these counties and townships are readily discoverable in US Census Bureau data. We believe it makes no sense to lump transit agencies serving millions of passengers in New York City, San Francisco, Washington, DC, or Houston with Kenedy County, TX (population of 350).

Compliance and Enforcement: The Department should pair the WCAG standard with a functional definition of accessibility.

The Department asks a series of questions about measuring compliance and enforcement of the proposed rule, including in Question 63. We encourage the department to consider adopting a functional definition of accessibility in addition to setting a minimum standard of accessibility. A website or mobile app should enable individuals with disabilities to access the same information as, to engage in the same interactions as, to communicate and to be understood as effectively as, and to enjoy the same services as are offered to, other individuals with the same privacy, same independence, and same ease of use as, individuals without disabilities. WCAG

2.2, Level AA, is our recommended clear and consistent standard for achieving that level of access. However, we acknowledge that there may be circumstances, as the department notes, in which nonconformance with the technical standards does not erode access, privacy, independence, or ease of use. An example may be the absence of alt-text on visual elements that convey no additional meaning and do not contribute to the structure of a page. While entities should be expected to fix such issues, they are not priorities for enforcement. At the same time, it is also possible that conformance with WCAG 2.2, Level AA, could still result in a lack of equivalent access to people with disabilities, such as with the use of certain authentication measures. As such, we suggest that the Department's questions about an alternative compliance regime are best addressed by adopting a functional definition of disability that complements the technical standard rather than any of the other proposed schemes: e.g., requiring a percentage of conformance or demonstrating organizational maturity.

The undue burden and fundamental alteration defenses obviate the need for exceptions, which undermine the goal of the regulation and overlook that accessibility is usually achievable.

In general, we strongly urge the Department to eliminate the proposed exceptions. The difficulties named in addressing each of the proposed exceptions do not substantively add to entities' existing defenses where compliance would result in undue burden or fundamental alteration. Instead, the proposed exceptions generate substantial confusion about what must be made accessible and make the rule less "clear, strong, consistent, and enforceable." They will have significant impacts on whether people with disabilities can fully participate in education and other activities, and they will effectively enshrine the status quo into law. These exceptions are confusing, unnecessary, and burdensome, and they undermine the intent of the regulation.

Today, the Department holds that entities must make their websites accessible, yet people with disabilities still frequently encounter access barriers. Thus, people with disabilities must request that websites be made accessible or provided in an alternative format. **It is a substantial burden on people with disabilities to continue to disclose their disability, to request that every exempted entity make their services accessible, and to wait until a time that a public entity employee is available to provide assistance. In reality, people with disabilities often forego the service or rely on a companion for assistance instead of requesting an accessible version.** Because filing complaints and requesting materials is burdensome, entities may not be aware of the extent to which people with disabilities are being excluded or disadvantaged in the use of their websites or apps.

It is further unrealistic to expect that entities will consistently remember to provide individual customers with disabilities with a special alternative to their otherwise automated utility bills or that schools will be able to entirely remediate all documents, websites, apps, and other services used in a given course within five days. Entities currently have an unsatisfactory track record on both accounts. Rather, public entities often rely on vendors, contractors, and automated systems to deliver web content, and it is those entities that must be informed, conduct testing, remediate the product, and turn the accessible product around to the school or individual in a

timely manner. The proposed exceptions on third party posts and linked content muddy the water by casting doubt on whether these vendors, contractors, and other third-party partners must provide accessible content to and on behalf of covered entities. Designing for accessibility is most effective and timely for the covered entity when done on an ongoing basis rather than on request.

The goal of this regulation is to make websites and applications used by covered entities fully accessible to people with disabilities. Websites and applications that are born accessible benefit people with disabilities and do not create a remediation obligation for covered entities. In spite of this, the seven proposed exceptions ensure that people with disabilities will continue to be excluded from certain content. They will also make the job of covered entities harder by requiring them to remediate content on a case-by-case basis, including content that is produced by an external entity or automated system. Third parties that contract with or even partner with covered entities must share some of the responsibility for making their content accessible, and public entities must have the responsibility to select accessible content that is integrated with or linked to on their websites or apps.

From this point forward technology needs to be born accessible. Over time, inaccessible content will become less and less common. It will take work to shift expectations, roles, workflows, and knowledge about accessibility, but the final product of this work is more effective and fair governance. Moreover, accessibility is achievable in the current environment with the growing availability of accessible website templates and tools that prompt content managers to add accessibility features. The future of AI could lead to new technologies that make accessibility even easier. The proposed exceptions are focused on what is hard now, and they do not consider future improvements. Instead, they enshrine current difficulties across the life of this regulation, which may very well last decades, and set a bad precedent for other regulations. This regulation must drive new technology to be born accessible. If we achieve a state where accessibility is the default, inaccessible content will become less and less common as it is deprecated. On the other hand, if we exempt certain categories of content, we will ensure a large volume of content remains inaccessible.

To make an undue burden or fundamental alteration determination, entities may need additional guidance to know when and how they can or cannot invoke an undue burden or fundamental alteration defense. In addition, we recommend that the Department require entities claiming undue burden to provide an accessibility statement identifying the inaccessible content and a reliable contact for people with disabilities seeking assistance. They should also create and publish a remediation plan identifying the timeline on which inaccessible content will be made accessible.

Entities will need ample technical assistance to confidently comply with the regulation.

While we strongly believe that complying with this rule is achievable given the undue burden defenses, we acknowledge that many entities will face challenges of implementation, including

budget prioritization and staff constraints. Many entities, especially small entities, will benefit from an aggressive public awareness campaign, training, and technical assistance. Each entity will need to inform their legal team, IT team, content managers, and product vendors of their compliance responsibilities. Content managers, IT professionals, and vendors will need training in understanding WCAG and how to test for and implement it. We urge the Department to consult with the disability community and to work with all available partners, including the ADA National Network, to provide ample free or low cost training. Entities should be informed through all available channels that this rule is going into effect, including professional associations for state and local government employees. At some point, it may also make sense for state and local government entities to be able to participate in a training program and community of practice like DHS's Trusted Tester program that has been adapted for this regulation. Given that lack of knowledge is a commonly cited reason for website and application inaccessibility, technical assistance must be available to ensure all entities, including the smallest ones, have the knowledge needed to comply.

Eliminate the exception for public postsecondary institutions' password-protected course content.

Inaccessible content has serious implications for students' on-time completion of their chosen course of study.

This exception must be eliminated to protect the ability of people with disabilities to attend and graduate from college. In one study during the pandemic, 57 blind or low vision higher education students reported dropping a class, taking an incomplete, leaving their program, or having to file an official complaint because of inaccessibility in hybrid or online courses.ⁱⁱ In addition, the harms caused by inaccessible educational platforms and instructional materials are sharply depicted by the *Payan v. Los Angeles Community College District* litigation, Case No. No. 2:17-cv-01697 (C.D. Cal.). For years, blind students Roy Payan and Portia Mason were excluded from education because of inaccessible classroom materials, textbooks, websites, and educational applications (like MyMathLab and Etudes). They could not keep up with reading assignments, follow along with in-class PowerPoints, complete classroom activities, or participate in online classroom discussions. They could not independently enroll in classes or use library databases. Access was so delayed that they had to choose between dropping classes or accepting lower grades. A jury found that the exclusions caused Mr. Payan more than \$200,000 in damages.

It does not make sense for the DOJ to place an exception on requirements for accessibility as it relates to password protected course content when colleges and universities are already required to make *all* course materials accessible under the ADA,ⁱⁱⁱ and in fact, many are already striving to comply. To require accessibility only upon gaining knowledge of a student with a disability registering for a course sets current law and best practice back, and it harms access to important course content for a person with a disability attending a post-secondary institution. Among its flaws to ensure accessibility for all individuals with disabilities, the exception does not

anticipate late registrants to courses, who may add or drop courses as allowed under an institution's registration policy. In this case, a student would have to wait days or even weeks before accessing course content. The consequences are even more severe for students taking a January or summer term course in which a 5-day delay may be a third of the entire course.

The regulations must clarify that all course content must be *designed and developed* to be accessible, usable, and interoperable with assistive technology whether from inception (e.g., new and teacher created) or from procurement. Course materials that exist within a password protected area are no exception.

Eliminating this exception will create an expectation that vendors and individual professors make course platforms and materials accessible.

Question 27: How difficult would it be for public postsecondary institutions to comply with this rule in the absence of this exception?

We appreciate that DOJ has confirmed that the Learning Management Systems (LMS) platforms that public elementary and secondary schools, colleges, and universities use must comply with proposed § 35.200. 88 Fed. Reg. 51948, 51970. However, because LMS are in widespread use and no longer considered 'new' technology, the exception must not waive or deter expanded compliance by allowing schools to rely upon use of such systems as a way to justify the need for an exception that would enshrine any course content (including digital) behind a wall. Additionally, federally funded technical assistance resources exist for college/university use and include actionable language for developing a coordinated system that leads to the timely provision of accessible materials and technologies in higher education settings for all students who need them.^{iv} The DOJ must promote a policy consistent with its existing policy, including the May 19, 2023, Dear Colleague Letter on Online Accessibility^v that supports people with disabilities and also clarifies for all public entities that they must develop coordinated accessible and usable online systems that support interoperability with assistive technology.

Course materials can be complex with images, graphs, and the use of specialized software, so it is better for institutions to plan for accessibility rather than to remediate each course on demand and on a deadline while students fall behind.

Question 33: How long would it take to make course content available on a public entity's password-protected or otherwise secured website for a particular course accessible, and does this vary based on the type of course? Do students need access to course content before the first day of class? How much delay in accessing online course content can a student reasonably overcome in order to have an equal opportunity to succeed in a course, and does the answer change depending on the point in the academic term that the delay occurs?

Most website templates and/or basic website platforms (e.g., Google, WordPress) offer options to ensure the site is accessible and interoperable with assistive technology, so the time commitment is not extensive, but must be intentional. Easy-to-use tools and free resources also exist (and have existed for some time) to support the accessible design of the learning platforms and digital materials that do not come from a template.^{vi} Importantly, the availability of these and other resources reinforce both the current capacity and the critical need to assure from here forward that all course content offered via the web must be *designed and developed* accessible, usable, and interoperable with assistive technology. Course materials that exist within a password protected area are no exception. And, public entities are also beneficiaries of accessible design: Creating a new document that is accessible will prevent entities from having to recreate the document. Frequently, the same document will have to be remediated multiple times as the inaccessible document is used in multiple courses or at different institutions. For the remaining parts of the question, it is unconscionable that in 2023 the DOJ expects any person with a disability to 'wait' for their content and to overcome a delay when other students are not required to do so. Equal opportunity begins with equal access, and in this context, there is every capability and expectation that an institution receiving public funds must not delay compliance with the law.

Postsecondary institutions regularly use or offer mobile apps to offer access to course content, and these apps typically require the use of a password.

Question 34: To what extent do public postsecondary institutions use or offer students mobile apps to enable access to password-protected course content? Should the Department apply the same exceptions and limitations to the exceptions under proposed § 35.201(e) and (e)(1)-(2), respectively, to mobile apps?

Postsecondary institutions regularly use or offer mobile apps to offer access to course content or other information. All content must be required to be accessible, including fully interoperable with assistive technology, and it must not be subject to any exceptions, including password protection or otherwise.

Eliminate the exception for public elementary and secondary schools' password-protected course content.

This exception must be eliminated to protect students' access to their education. Most web and app content is provided through some kind of authenticated system as it facilitates student privacy, cybersecurity, assigning grades to individual students, saving student progress, and the organization of class content. While we are grateful that the Department has considered the needs of parents with disabilities in crafting the exception, parents and students with disabilities would be better served by creating a consistent expectation of accessible course and class content.

While DOJ states that “this rulemaking would build on, and would not supplant, [the] preexisting requirements [of the Individuals with Disabilities Education Act (IDEA) and section 504 of the Rehabilitation Act]”, this exception ignores and undermines requirements of the IDEA which mandate equitable access to learning opportunities for students with disabilities, including equal access to printed materials, digital materials, and technologies^{vii}. Specifically, the exception conflicts with the U.S. Department of Education recommendations to States and school districts regarding the best ways to exemplify conditions and services for creating and sustaining a statewide, high-quality accessible, educational materials (AEM) provision system that is also designed to meet statutory requirements under the IDEA^{viii} and to assure students have access to the requisite assistive technology^{ix} to access AEM. If the exception remains, virtually every student with a relevant disability would be discriminated against.

This exception would continue to normalize the exclusion of people with disabilities, put students behind in their classes, and create additional work for teachers.

Question 37: What would the impact of this exception be on people with disabilities?

Recently, the American Foundation for the Blind conducted research into educational barriers faced by blind and low-vision students during the COVID-19 pandemic. The research documented the discriminatory impact of inaccessible digital equipment, platforms, programs, and instructional materials. One of the most significant barriers was the use of websites and applications – such as those used for student learning and curriculum, classroom management, file creation, and communication – that were inaccessible to blind or low vision students and family members. These are typically accessed via a password protected portal or learning management system. Nearly 60 percent of educators surveyed reported that their blind and low vision students could not access at least one digital classroom tool or program; 35 percent reported that their students could not access at least two tools.^x Family members surveyed reported their children were expected to use an average of 4.9 different tools or programs but, on average, 2.7 tools or programs were inaccessible.

During hybrid and online learning, preschool and elementary school students were unable to complete required assignments and often needed continuous support from a family member; this negatively affected the family member’s ability to work. Unable to participate and access lessons like their peers, blind and low-vision students felt frustrated, discouraged, and excluded. Educators had to invest additional resources to create alternative lessons for their students with disabilities or, in the absence of an alternative, simply exempted the child from lessons delivered via inaccessible digital platforms.^{xi}

One family member wrote:

“My biggest frustration is overall accessibility. Example, the class is assigned an online science simulation on creating circuits that is produced by a curriculum company. The

science simulation is visual with no auditory information and the only way to connect the pieces is by using finger gestures. My child can't see the parts so can't do the assignment. The common answer for this situation is to exempt my child because it is too visual. Why? [...] Why does my child not have the opportunity to learn ideas and concepts because companies don't make things accessible, schools buy those inaccessible programs and then don't provide an alternative way to learn the same information?"^{xii}

As DOJ knows, websites and apps are ubiquitous in public education, both at the K-12 and postsecondary levels. Even before the onset of the COVID-19 pandemic, public schools were rapidly adopting LMS – the online software programs that help educators create, manage, organize, and deliver learning materials for students via a password-protected website or app.^{xiii} The pandemic accelerated this trend. Most K-12 schools and public universities use LMS^{xiv} - only 6 percent of K-12 educators said their district doesn't use an LMS.^{xv} Unfortunately, too often developers and publishers do not create accessible platforms and educational products, creating barriers for students with disabilities as schools have moved to online learning spaces in 2020 and beyond.^{xvi} Importantly, tools do exist (and have existed for some time) to support the accessible design of the learning platforms and digital materials.^{xvii} Given the ever growing trend and expanded need to place student course content onto the web for all students, including this exception sets us back, prevents a planning and design process that ensures technology and digital materials are 'born accessible', and would be extremely detrimental to K-12 students with disabilities.

Finally, the exception creates havoc with compliance under a new regulation and adds an onerous burden to the families of students with disabilities. Because federal law requires students with disabilities to exhaust administrative remedies under the IDEA before pursuing ADA enforcement, there will be no way for students to demand access in a timely way to inaccessible course materials.

Given these pervasive and continuing barriers for students with disabilities, we urge the DOJ to adopt a rule that ensures that all technology used in the classroom to deliver instruction be accessible to all individuals with disabilities. This should include websites and applications, third-party websites used for content and any form of information and communication technology including Virtual Reality (VR).

Schools do not generally have a standing notification process, and schools often are not fully in control of their content.

Question 40: Do elementary and secondary schools have a system allowing a parent with a disability to provide notice of their need for accessible class or course content?

We are unaware of any school/district making a system or mechanism available to communicate a need for accessible class or course content for students or parents. While the Department notes that the exception does not apply for students whose parent, because of a

disability, would be unable to access the content available on the secured website for the specific class or course, there is still great concern about how a parent would communicate the need for access in a timely manner. Both students and parents are harmed by the delay. Further, the Department assumes this content (at a school level) is all controlled by the school when, in fact, the state or district may determine what content is used and may also control the state of accessibility due to procurement agreements.

Students of all ages are expected to use mobile apps to complete coursework, practice reading, and communicate with teachers.

Question 43: To what extent do public elementary or secondary schools use or offer students or parents mobile apps to enable access to password-protected class or course content? Should the Department apply the same exceptions and limitations to the exceptions under proposed § 35.201(f) and (f)(1)-(4), respectively, to mobile apps?

Students as young as kindergarten are using mobile devices to access course materials, complete coursework, communicate with teachers and more. Most systems also include apps, and parents are expected to encourage and support work done on these apps. Given this reality, all content (in any format, including apps accessed through third-party links) must be accessible and fully interoperable with assistive technology, without any exception for password-protected content.

Eliminate the exception for web content posted by a third party, which will undermine disabled people's access to necessary information.

Covered entities regularly ask third parties to post content on their websites and mobile apps that is instrumental to participation in governmental and educational activities.

Question 21: What types of third-party web content can be found on websites of public entities and, how would foreseeable advances in technology affect the need for creating an exception for this content? To what extent is this content posted by the public entities themselves, as opposed to third parties? To what extent do public entities delegate to third parties to post on their behalf? What degree of control do public entities have over content posted by third parties, and what steps can public entities take to make sure this content is accessible?

One significant venue for this content is the social media profiles of covered entities because most social networks allow for comments on profile owners' posts by default. While Title II entities rarely delegate posting to others, the capacity to comment makes social media a natural location for discussion. In these conversations, individuals and private organizations sometimes weigh in with crucial updates on local events.^{xviii} Social media is particularly conducive to

spreading the news of an ongoing emergency in a specific place. A private person's comment on a municipal Facebook post during an active shooter situation or natural disaster may be more current than the Facebook post itself, or local news coverage.^{xix}

Covered entities' social media profiles are also spaces for complaining about community conditions, getting advice, and getting organized.^{xx} Similarly, these spaces are sometimes forums for discussing matters of legal and financial significance including zoning, small business issues, public comments, and public contracts.^{xxi} Such conversation may have significance for the property rights and financial wellbeing of disabled people, a group that disproportionately lives in poverty,^{xxii} and to promote such conversations through inaccessible means excludes many people with disabilities. For these reasons, it is crucial that disabled people have access to third party content posted to Title II entities' social media platforms.

Off social media, covered entities run other digital venues where third parties may post or upload content that is of interest to the general public, including users with disabilities. Here, there is often substantially more delegation to third parties to post content. Providing access to these venues will give more equal opportunity to participate in decision making and to promote individuals' right "to petition the Government for a redress of grievances," a constitutional right. For example, many government entities solicit public comments,^{xxiii} and these public comment opportunities are often required by law. Third party posts and uploads to these spaces are often available to the public either immediately or after the closure of the comment period, and they are relevant to issues of widespread public concern. In some cases, entities use apps and websites to solicit real-time feedback during public meetings, and that information is often inaccessible to people with disabilities, especially when presented in dynamic word clouds.^{xxiv} These tools may be difficult to use for someone who is blind, has a print-processing disability, or has a cognitive disability.

Public entity websites and online profiles on third-party sites are sources of information about contracting and procurement, which may present significant financial opportunities.^{xxv} Public universities sometimes run job boards for their graduates where private employers- many covered by Titles I and III- can post.^{xxvi} If people with disabilities are prevented from accessing the content, they will miss out on pathways to financial stability and professional achievement. People who are unable to find the first rung of the career ladder when they complete their academic programs do not always fully recover. This will be the experience of some disabled people if covered entities are not required to ensure that third party web content whose publicization they facilitate is accessible.

In addition, public school teachers and college professors often assign discussion work that requires students to post a video, essay, wiki page, or other work to a class message board to which all students are expected to respond. Students with disabilities cannot fully complete the response portion of the assignment if they cannot access other students' content.

If the exception were eliminated, covered entities could take many basic steps to ensure that their content is accessible to all users, including people with disabilities. These include changing settings on some social media profiles to promote accessibility, setting rules for public comment

and bid document submission (such as requiring all .pdf documents to be accessible for a contract application to be considered), and providing users with guidance on why access is important. This would give larger covered entities, with stronger online presences and more political and economic activity, more work to do to ensure access, but those governmental organizations are also the most resourced and best equipped to take this on. Attention to web access has increased in recent years.^{xxvii} Major social networks have implemented new accessibility features.^{xxviii} For this reason, foreseeable technological developments will likely continue to make it easier to implement accessibility features. Removing the exception and relying on the traditional undue burden standard – making states, cities, and counties responsible for enacting these simple measures – would protect equal access to crucial information without harming covered entities that already adjust their social media settings and set rules for processes like public contracting.

People with disabilities will lose access to time-sensitive information, educational content, and robust opportunities to participate in public feedback sessions.

Question 22: What would the impact of this exception be on people with disabilities?

The proposed exception would provide many people with disabilities limited and unequal access to crucial information. Public entities maintain knowledge documentation tools for important reasons such as informing the public on community news and events.^{xxix} Allowing states, counties, and municipalities to avoid responsibility for ensuring this content's accessibility would deprive many people with disabilities of participation in the full social and political lives of their communities. It may also create confusion about Title III entities' web access obligations. For these reasons, the proposed exception is unnecessary and harmful to disabled people.

The exception will create significant harms as applied to social media. In circumstances where the most updated information available about an ongoing emergency is the comments or replies to social media posts by a covered entity, poor access could prove life-threatening. A flash flood warning can tip off residents that there are hazardous conditions in their county or town. Discussion on the city Facebook page, however, might be the quickest way for them to find out that the specific location of the hazard is their street.^{xxx} If this content is inaccessible, some disabled people will be less likely to find out essential information in time. People with disabilities face disproportionately bad outcomes in natural disasters.^{xxxi} Failing to mandate full access to a source of potentially lifesaving information would be a missed opportunity to prevent more of these deaths.

The exception may also limit disabled residents' access to discussion of shared grievances and concerns in their communities. Lack of information limits their ability to seek redress for those grievances. This poses barriers to people with disabilities working with their neighbors to address problems at the state and local levels and has the potential to thwart not just the spirit of the ADA but also their constitutional rights. Similarly, failing to ensure the accessibility of third party posts will lock disabled users out of certain discussions. This is likely to prevent some

people with disabilities from finding out all available information about planning and zoning matters that may pertain to their homes or businesses or about employment, employment training, and contracting opportunities. The exception risks cutting off some routes to economic opportunity for people already struggling to achieve financial success.

The exception will also increase the likelihood of litigation, both by making it harder for people with disabilities to access online content and vindicate their rights to do so and by causing confusion at the intersection of Title II and Title III web access obligations. First, covered entities' existing Title II obligations will be insufficient to ensure access to important third-party content in light of the exception. Requiring state and local governments to make third party content - even new third-party content going forward - accessible on the request of a specific person who needs the content for a particular purpose is inadequate. It is unclear how people with disabilities will learn what specific items in the mass of third-party content that expands with every passing day are necessary for them to request that those items be made accessible. The experience of some disabled users will be like trying to navigate an academic database without abstracts that provide information on which documents may inform one's research.

The Department's example in its discussion of the exception is illustrative of how disastrous this approach would be for equal access to information and the right to participate in legal proceedings. Litigants, especially *pro se* litigants, will be impeded in their efforts to determine which uploaded documents are relevant to their needs in e-file systems that may not give them much more than case names and file names. Lawyers with disabilities will experience unfair disadvantages in their representation of clients. Similarly, disabled people seeking access to information from third party social media or website content will have trouble identifying what to request. This is likely to lead to avoidably broad requests for accessible copies of documents, state and local governments asserting undue burden as defense, and people with disabilities giving up on equal access or enforcing their rights through litigation. Accessibility at the outset could prevent these issues.

Second, individuals are not the only ones generating web content by interacting with Title II entities online. Organizations covered by Title III also engage in these public conversations.^{xxxii} These posts may contain particularly important information for community members, including people with disabilities.^{xxxiii} Title III entities have strong web access obligations.^{xxxiv} Presumably, Title III- and Title I- obligations remain in force even when covered businesses and nonprofits post to a Title II entity's Facebook group. However, Title III entities may be less mindful of their ADA obligations if they are under no pressure from the state or local government running the digital venue and perceive the rule as only ambiguously applicable to their conduct. This is true even where that government may have gone out of its way to facilitate an interaction by holding a joint event or encouraging third party posts and uploads.

Uncertainty about who is liable would make litigation more difficult for people who seek to vindicate their rights. Due to public-private collaborations, there are situations where third-party content may not be directly posted or shared by an organization covered by Title II, but entities engaged in conduct covered by Titles I and III have received significant governmental support,

encouragement, and facilitation in posting the content.^{xxxv} This problem will be particularly severe on social media. If the boundary of liability comes down to whether the Title II entity's employee or volunteer actually hit "post" or "share," the exception will give Title II entities broad leeway to skirt their obligations under the rule by letting other entities post to their social media profiles. If significant encouragement or facilitation by the Title II entity is enough, the ambiguity will give rise to litigation. After all, every online interaction with a Title II entity is only possible because of a degree of facilitation of the interaction by the state or local government.

The gray area of how much public entity involvement is required for liability to attach to the organization covered by Title II will be the purview of the courts. This will harm people with disabilities by making their enforcement of their rights slow, laborious, and expensive where it is feasible at all. It will also cause problems throughout society at large. The expense of litigation will be detrimental to states, counties, cities, the programs, and the activities these governments fund. Ultimately, this avoidable burden will fall on local taxpayers.

Eliminate the exception for linked third-party web content

This exception along with the exception for third-party content posted on public entity websites and apps creates confusion about the extent to which public entities' third-party vendors, contractors, and partners must participate in making public entities' services, programs, and activities accessible. Further, it absolves entities of their responsibility to make sure that they are providing accessible information to the public. Given the likely confusion this exception will create and the limited number of links that could definitively be identified as not part of an entity's services, programs, and activities, this exception should be eliminated.

Third parties must share some of the responsibility for making their content accessible, and public entities must have the responsibility to select accessible content that is linked on their websites or apps.

Question 23/24: Do public entities link to third-party web content to allow members of the public to participate in or benefit from the entities' services, programs, or activities? What would the impact of this exception be on people with disabilities and how would foreseeable advances in technology affect the need for this exception?

Linked third party web content should be fully accessible regardless of whether it is used to facilitate a service program or activity of the government entity. Significant and important information is published via third party linked content, and these providers are often themselves Title III covered entities or have nondiscrimination obligations under the Rehabilitation Act. In addition, many third-party content providers benefit financially from such linkage on Title II sites and apps.

Information linked to on public entities websites is typically provided as part of the entity's public information activities or is necessary for taking part in the activities of a public program. For

example, a government entity may provide up to date information about a sudden or ongoing shortage of a particular medication (common for people with epilepsy and other medical conditions like diabetes and for vaccine distribution) and identify which pharmacies still have a supply by linking to Title III pharmacy websites. Likewise, information on access to specialized healthcare services such as family planning not provided directly as a service program or activity of a government entity is often provided via linked content. It is vital that this information be accessible to all, but this exception creates uncertainty about whether the link is providing information as a service of the public entity or of the private entity. We believe that websites are a program in and of themselves, and this exception undermines public entities' obligation to provide accessible information.

Government entities have also wholly outsourced to outside providers what were once services, programs or activities they provided. For example, many students used to learn how to drive during their educational experience. In many, if not most, jurisdictions, this once government function is now only available by Title III businesses. If the entity links to those Title III entities as a way of providing information, the content must be accessible to all.

The Proposed Rule uses the example of providing links to a Title III restaurant's website as something that should fall within the exception. This appears to allow a government entity's entire tourist function to be outsourced to Title III entities (that DOJ has been timid to regulate) via outside links. By this logic, information about virtually every Title III tourist attraction would be available to some but not all. If providing tourism information is an activity of a public entity, the entity should be responsible for selecting accessible sources of information.

To the extent that an entity does not have control over the linked content to remediate accessibility barriers, the entity can still choose not to link to information that discriminates against people with disabilities. We are also concerned that this exception will undermine entities' attempts to bring their vendors and partners into compliance with the law. Covered entities need to be able to clearly point to the regulation to hold those vendors accountable for creating accessible web and mobile app content. Given that it is DOJ's timidity in regulating title III entities that much of the information linked to on these Title III entities' websites and apps will be inaccessible, this exception should be eliminated.

Libraries must expend time and effort to provide accessible books to patrons because publishers frequently deliver inaccessible content.

Question 26: Are there particular issues relating to the accessibility of digital books and textbooks that the Department should consider in finalizing this rule? Are there particular issues that the Department should consider regarding the impact of this rule on libraries?

Digital books, materials, and technologies should conform to the standards for accessibility under WCAG 2.2. While more flexible than print, if accessibility is not considered from the start, digital materials can present many of the same barriers as their print-based counterparts. And the technology that delivers those materials, from e-reader devices to learning management

systems, must work with accessible digital materials, so that individuals with disabilities have the same experience as those who do not have disabilities.

Libraries and schools are also heavily dependent on publishers to deliver accessible book formats. As such, the Department should clarify that while the public school or library may be ultimately responsible, the third-party publisher plays a significant role in delivering accessible digital books and textbooks. If all public libraries and schools required publishers to deliver accessible versions of their books and could point to this regulation, it would reduce the work required by those libraries to remediate books and reduce the amount of time that patrons with disabilities wait for access.

Eliminate the exception for individualized, password-protected documents.

In accordance with current law, many of the documents covered by this exception are already made accessible by state and local governments. The introduction of this exception in the proposed rule would encourage those same public entities to utilize this easy way out of making the individualized documents accessible. Thus, this exception should be eliminated.

There is a huge variety in the types of individualized, password-protected documents and many are time-sensitive.

Question 45: What kinds of individualized, conventional electronic documents do public entities make available and how are they made available (e.g., on websites or mobile apps)? How difficult would it be to make such documents accessible? How do people with disabilities currently access such documents?

State and local governments often make individual property tax, pet licenses, and other bills available online as documents through password-protected websites apps that can be accessed from anywhere at any time.^{xxxvi} Public universities make transcripts available in PDF formats that must be appended to job or graduate school applications. Utility companies provide records of current and past bills online that can be referred to when questions arise. Many bills include additional information relevant to rate increases or service disruptions. In addition, governments provide vehicle registration information, parking and moving violation information, and other transportation information online in these document formats. Theaters and public university sports teams may provide tickets via a pdf document. Some of these systems may also use html formats, but many others provide conventional electronic documents such as PDFs. Doing so makes the document sharable and printable, so that, for example, they can be used to provide proof of residency or school attendance or to access services in person. It would not be difficult to make the vast majority of these documents accessible from the beginning as a matter of course. Pursuant to current law, many of these documents are already accessible, so people with disabilities can access them using assistive technology. For those that are not accessible, people with disabilities must rely on third parties to read their documents, attempt to request

accessible formats, or pursue legal action. It can be time consuming and frustrating to constantly request that available materials be made accessible on a recurring basis. Furthermore, setting a consistent expectation of accessibility should ensure that vendors provide accessible automated document generation systems to public entities, reducing the work of remediating each individual document.

The time entities would spend on building a notification process would be better spent on making the documents accessible from the start.

Question 46: Do public entities have adequate systems for receiving notification that an individual with a disability requires access to an individualized, password-protected conventional electronic document? What kinds of burdens do these notification systems place on individuals with disabilities and how easy are these systems to access? Should the Department consider requiring a particular system for notification or a particular process or timeline that entities must follow when they are on notice that an individual with a disability requires access to such a document?

State and local government entities generally provide no clear means for a resident to notify them of the need for accessible documents, either on the login pages of their password-protected portals or within the system. They may provide a webmaster or contact person from whom to request accommodations for meetings or hearings. If this exception were to remain in place, it is essential that there be a clear accessible mechanism, on the front page of the portal and throughout the online system, to request accessible versions of the provided documents. Moreover, because these are often bills and other time-sensitive matters, it is essential that state and local governments be required to provide accessible format documents quickly, and well in advance of any deadline for the documents. The person with a disability is likely to miss a payment deadline at least once waiting for an accessible document. In addition, once a request is made, the public entity should provide a means such that no further individualized requests from that person with a disability are required and all future notices or documents sent to that individual are automatically delivered in an accessible format. The Social Security Administration, Internal Revenue Services and several state benefits agencies have demonstrated examples of such an opt-in approach to default accessible formats. It would be far better, however, for all documents to be accessible to prevent the possibility of unexpected documents requiring an individual to pursue the process anew.

This exception would reverse progress made on making these documents accessible.

Question 47: What would the impact of this exception be on people with disabilities?

This exception would be a step backward for people with disabilities. Just when entities are beginning to make progress and government bills and other information is finally available in

formats that are easily made accessible, this exception would reverse course and allow those formats to remain inaccessible. People with disabilities would continue to have difficulty paying bills and taxes, receiving notices from the government, reviewing and using transcripts, reading job offer letters or notices related to a contract, accessing medical records, and more. It would delay access to information, increase the likelihood of missing a payment deadline, and increase frustration and effort. It would also disincentivize entities from prioritizing accessibility when building online portals now and in the future.

Eliminate the exception for pre-existing conventional electronic documents.

This exception should be eliminated. The electronic document file formats that are covered by this exception are far too broad and, in general, are made easily accessible. We can think of no reason why word processing, presentation, and spreadsheet documents should not be required to be accessible. The only documents such an exception could even arguably be justified for would be PDF documents, yet many PDF documents are readily made accessible with limited effort or could be replaced with other formats that are easier to make accessible. In addition, given the departments' 2-3 year compliance timeline, this exception will allow entities to accumulate additional documents that are inaccessible and that will nonetheless be of value to people with disabilities. However, given the existing exceptions for undue burden and fundamental alteration, this newly proposed exception is, at best, unnecessary.

This exception will lead to confusion about what information is required to participate in public activities, resulting in unequal access for people with disabilities.

Question 19: Would this “preexisting conventional electronic documents” exception reach content that is not already excepted under the proposed archived web content exception? If so, what kinds of additional content would it reach?

Covered websites often host community information sheets, flyers, proposals, and other important updates to their websites using these formats. Entities build databases to provide public information about programs as well as to directly carry out those programs. These documents are often living documents and subject to change. Documents are often not archived for a period of several years. Thus, while it is true that the Department has proposed a limitation to safeguard access to services and programs, there will still be a significant number of documents for which entities will have to make a determination on a case-by-case basis about whether people with disabilities deserve access to them. This erodes one of the key benefits of the rule - a consistent expectation of accessibility.

This exception could negatively impact disabled people's ability to access crucial data because these documents are important for understanding covered entity programs, activities, and services, but are not “used” to access them. It is also confusing. For example, will a description

of a public park be considered subject to the exception when it is not “used” to “apply for, gain access to, or participate in” the public park program? Entities may not consistently apply the limitations of this exception.

People with disabilities must not be required to disclose their disabilities and wait for remediation to access documents intended to be made available to the public.

Question 20: What would the impact of this exception be on people with disabilities? Are there alternatives to this exception that the Department should consider, or additional limitations that should be placed on this exception? How would foreseeable advances in technology affect the need for this exception?

Agencies may deny that descriptive and informative conventional electronic documents are used to access programs, services, or activities, and therefore, decline to make them accessible. For example, a state park website is likely to host several years’ worth of completed and in progress management plans. They may include information pertinent to planned construction near a community or planned closures. This document is not used to apply for, gain access to, or participate in the services, programs, or activities. Yet, this document would be useful to refer to in responding to a public input period or to understand changes in traffic flows in a community. Entities also create an abundance of manuals and materials that are used in employment settings. Adult education programs play an important role in advancing job opportunities for people with disabilities, and having access to the documents needed to learn tools, skills, and programs is very important. For example, if a bus repair manual has been produced by the adult learning program, the program may have to make the manual accessible, but if the manual is produced by, say, a transit agency, that entity may consider them to be excluded under this exception. Much public information is highly useful but not necessarily used in the ways envisioned by the limitation.

In addition, according to the NPRM, small entities will have three additional years to create inaccessible PDFs, presentations, word documents, databases, and spreadsheets that are unusable by people with disabilities. That could result in thousands of new inaccessible documents. For example, many boards and councils must keep meeting materials and information available on their websites for several years without archiving them. These materials may even be required by law to be made public. Because these documents could be interpreted not to be subject to the limitation, they may not need to be made accessible. However, if a person with a disability wants to respond to a public input period on a street redesign or school construction project, it would be helpful to review presentation documents that were presented at a prior time, yet they may not be able to do so because the documents remain inaccessible. They must disclose their disability, go through a process to request an accessible format, and wait until they can be made accessible. This exception limits the scope of information and research available to people with disabilities. Like some of the other proposed exceptions, excluding existing documents limits access to public information and data, impedes the work of researchers with disabilities, and could even impede the right “to petition the Government for a

redress of grievances.” Given the existing defenses of undue burden and fundamental alteration, the preexisting electronic documents exception seems unnecessary at best and actively harmful at worst.

Eliminate the exception for archived web content.

People with disabilities will be denied access in perpetuity to a range of important historical information.

Question 16: What would the impact of this exception be on people with disabilities?

Unfettered access to all current and archived public documents is foundational to an individual and the public right to know, the right to petition, and to engage in every facet of American Democracy, and should not be abridged on the basis of disability or any other exclusionary reason. Public records, as the name implies, even when archived, should be readily available to all members of the community. However, this is decidedly not the case: Currently, archived records are regularly available in inaccessible formats for people with disabilities. The final rule must put this right rather than sanction and perpetuate it for time immemorial.

Unfortunately, the NPRM creates an exception that would exempt public entities from ever having to make any archived materials in public and digitally accessible formats. This is nonsensical and overly sweeping. The message it sends is deeply disturbing and inconsistent with ADA – namely that people with disabilities who need to access information in accessible formats quite simply have no real need, no business, nor the right to do so. The proposed exception cannot be read to mean anything other than this.

We recognize the difficulty in making a large number of archived documents fully accessible especially in one fell swoop. However, we likewise strenuously reject the premise the proposed exception seems to be based on which is that most archived materials can never be made publicly available in a digitally accessible format in a way that is planful, reasonable and achievable.

Instead, the proposed exception would levy an unfair and unworkable “access to information tax” on individuals with disabilities that would never be imposed on any other class of people. Under this exception, the person must know the exact document they are looking for when requesting a converted copy. However, a person may not know precisely what they are looking for. For instance, a person may need to access information about their property, such as surveys, deeds and historical commission decisions, requiring them to comb through multiple city documents. In such a circumstance, they will be unable to name the exact document they need. As a result, city residents with disabilities should have full access to all archived documents available to all other local residents. University students and professors must also access individual documents in historical archives that have been digitized to complete coursework and research projects. Genealogists with disabilities and others should have the same access.

Additionally, we note the definition of archived content is expansive. Public entities must by law make numerous documents used “exclusively for reference, research, or recordkeeping” (especially recordkeeping) available to the public. In some cases there are financial penalties for not making records available for public inspection. Such an exception undermines these laws by allowing as many as 1 in 6 members of the public to be excluded in whole or in part from such information. Even if they are archived, these local records may need to be frequently accessed to fulfill job responsibilities or participate in civic discussions.

Making archival documents accessible is generally achievable.

Question 17: Are there alternatives to this exception that the Department should consider, or additional limitations that should be placed on this exception?

We strongly contend that entities will be able to make their archives accessible in a manageable and efficient process. If an entity has a truly unmanageable amount of archived web content, they would qualify for an undue administrative burden defense, dependent upon their budget, number of staff, and other factors. To the extent that entities can claim that exception, they should then be required to create a schedule to convert archived documents in a way that prioritizes the needs of their constituents. They may make a distinction between record keeping documents related to planned construction projects and out of date web pages, such as the website of a former governor, that may be maintained on the archive section of the website solely to create a historical record. They might start with prioritizing more popularly accessed records or more chronologically recent documents.

In addition, the proposed text of the rule currently is unclear about whether upon request, the local entity must provide an accessible version of the document in an accessible format in a timely manner. If this exception is permitted in any capacity, the department should define the time frame for providing access to the documents, so a person with a disability is not waiting indefinitely to receive the documents. This time frame must not be longer than a few business days. Additionally, this process and time length should be posted clearly on local government websites so the requester understands the time frame they must wait before receiving the accessible document. However, we note that requesting inaccessible documents is the status quo, and people with disabilities currently do not receive effective access to documents in a timely manner, and in some cases, the alternative version is not as effective as the original document.

In addition, even if this exception is put into place, it should not be applicable to future archived documents. In other words, when documents are created by local governments and other Title II entities moving forward from the official start date of the regulation, the Title II entity must ensure that all future created documents that move into archived systems are made accessible to prevent future access barriers. The Title II entity must ensure that the systems that archive any documents must not convert the documents into an inaccessible format. As a result, as things move forward, more of the archived documents will be accessible and will not be in need of conversion. Making new content accessible will improve access for people with disabilities and reduce the amount of content entities must remediate.

Conclusion

We look forward to the department's final rule requiring state and local government entities to make their websites and applications accessible to all. However, we urge the Department to eliminate the proposed exceptions, adopt the most recent WCAG standard, and set a firm, consistent expectation that new and existing content be accessible to people with disabilities and interoperable with assistive technology. This regulation so amended would set an expectation of inclusion and accessibility and rapidly advance progress toward fair delivery of government services, programs, and activities. We greatly appreciate the opportunity to provide comments on this consequential and historic rulemaking. Should you have any questions, please contact Sarah Malaier at smalaier@afb.org.

Sincerely,

CCD Members

Access Ready

ALS Association

American Association of People with Disabilities

American Association on Health and Disability

American Council of the Blind

American Foundation for the Blind

American Printing House for the Blind

Amputee Coalition

Assistive Technology Industry Association (ATIA)

Association of Assistive Technology Act Programs

Association of People Supporting Employment First (APSE)

Association of University Centers on Disabilities

Autism Society of America

Autistic Self Advocacy Network

Autistic Women & Nonbinary Network

CAST

Center for Learner Equity

Center for Public Representation

Christopher & Dana Reeve Foundation

CommunicationFIRST

Council for Learning Disabilities

Council of Parent Attorneys and Advocates (COPAA)

Council of State Administrators of Vocational Rehabilitation (CSAVR)

Disability Rights Education and Defense Fund

Easterseals

Eggleston

Epilepsy Foundation

Family Voices

Learning Disabilities Association of America

Muscular Dystrophy Association
National Association of Councils on Developmental Disabilities
National Association of the Deaf (NAD)
National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE)
National Center for Learning Disabilities
National Council on Independent Living
National Disability Institute
National Disability Rights Network
National Down Syndrome Society (NDSS)
National Industries for the Blind
Paralyzed Veterans of America
Perkins School for the Blind
RespectAbility
TASH
The Advocacy Institute
The Arc of the United States
The Partnership for Inclusive Disaster Strategies
United Spinal Association
Vision Serve Alliance
World Institute on Disability

National Disability Organizations

ACB Diabetics In Action
ACB Government Employees
ACB Next Generation
ACB Radio Amateurs
Accessible Avenue
American Association of Blind Teachers
American Association of Kidney Patients
American Council of the Blind Families
Association for Education and Rehabilitation of the Blind and Visually Impaired
Association of Late-Deafened Adults
Autistic People of Color Fund (Autistic Women & Nonbinary Network affiliate)
Blind LGBT Pride International
Blinded Veterans Association
Center for Autism and Related Disorders
Council of Citizens with Low Vision International
Council of Citizens with Low Vision International (CCLVI)
Davis Phinney Foundation for Parkinson's
Disability Rights Advocates
Foundation Fighting Blindness
Global Liver Institute
Guide Dog Users, Inc.

Hearing Loss Association of America
Infusion Access Foundation
Knowbility
Lakeshore Foundation
Leader Dogs for the Blind
Library Users of America
Lupus and Allied Diseases Association, Inc.
National Coalition for Mental Health Recovery
National Federation of the Blind
National Organization of Nurses with Disabilities (NOND)
Not Dead Yet
Organic Acidemia Association
Partnership to Improve Patient Care
PAVE
Preparedness and Treatment Equity Coalition
Prevent Blindness
RetireSafe
SYNGAP1 Foundation
TDIforAccess, Inc.
Teach Access
The Braille Revival League
The National Research & Training Center on Blindness & Low Vision
TSC Alliance
Whistleblowers of America
Wilson Disease Association

State and Local Disability Organizations

ACB Capital Chapter of the California Council of the Blind (Sacramento, CA)
ACB of Maryland (Silver Spring in Baltimore, MD)
ACB Students (Brooklyn Center, MN)
Access Living of Metropolitan Chicago (Chicago, IL)
Access Technologies, Inc. / Oregon's Statewide AT Program (Salem, OR)
Advocates for Justice and Education, Inc. (Washington, DC)
Alabama Disabilities Advocacy Program (Tuscaloosa, AL)
Alamance County Council of the Blind (Burlington, NC)
Alliance on Aging and Vision Loss (AAVL) (Falls Church, VA)
American Council of the Blind of Connecticut (Milford, CT)
American Council of the Blind of Minnesota (St. Paul, MN)
American Council of the Blind of New York (Albany, NY)
American Council of the Blind of Ohio (Columbus, OH)
American Council of the Blind of Texas (Dallas, TX)
American Council of the Blind of Virginia (ACBVA) (Falls Church, VA)
Arizona Center for Disability Law (Phoenix, AZ)
Arizona Council of the Blind (Tucson, AZ)

Arkansas Council of the Blind (Little Rock, AR)
Association for the Blind & Visually Impaired South Carolina (Charleston, SC)
Association for the Blind and Visually Impaired (Grand Rapids, MI)
Bay State Council of the Blind (Watertown, MA)
Bestwork Industries for the Blind (Cherry Hill, NJ)
Bluegrass Council of the Blind, Inc. (Lexington, KY)
Brain Injury Association of New York State (Albany, NY)
California Council of the Blind (Sacramento, CA)
California Council of the Blind, Greater Los Angeles Chapter (Los Angeles, CA)
Capital District Chapter-American Council of the Blind (Albany, NY)
Center for Living & Working, Inc. (Worcester, MA)
Colorado Council of the Visually Impaired & Blind (Lakewood, CO)
Colorado Cross Disability Coalition (Denver, CO)
Colorado Sickle Cell Association, Inc. (Denver, Colorado)
Community Alliance for Special Education (San Francisco, CA)
D.C. Council of the Blind (Washington, DC)
DakotaLink (Sioux Falls, SD)
Delaware Council of the Blind and Visually Impaired (Newark, DE)
Department of Blindness and Low Vision Studies, Western Michigan University (Kalamazoo, MI)
Disability Law Center of Alaska (Anchorage, AK)
Disability Law Center of Utah (Salt Lake City, UT)
disAbility Law Center of Virginia (Richmond, VA)
Disability Law Center, Inc. (Boston, MA)
Disability Network West Michigan (Muskegon, MI)
Disability Policy Consortium (Boston, MA)
Disability Rights Arkansas (Little Rock, AR)
Disability Rights California (Sacramento, California)
Disability Rights Center - NH (Concord, NH)
Disability Rights Connecticut (Hartford, CT)
Disability Rights Florida (Tallahassee, FL)
Disability Rights Iowa (Des Moines, IA)
Disability Rights Maine (Augusta, ME)
Disability Rights North Carolina (Raleigh, NC)
Disability Rights Ohio (Columbus, OH)
Disability Rights Oregon (Portland, OR)
Disability Rights Pennsylvania (Harrisburg, PA)
Disability Rights South Carolina (Columbia, SC)
Disability Rights South Dakota (Pierre, SD)
Disability Rights TN (Nashville, TN)
Disability Rights Washington (Seattle, WA)
Disability Rights Wisconsin (Madison, WI)
District of Columbia Council of the Blind (Washington, DC)
Durham Council of the Blind (Durham, NC)
Easterseals Iowa (Des Moines, IA)

Epilepsy Foundation Alabama (Hoover, AL)
Epilepsy Foundation Alaska (Anchorage, AK)
Epilepsy Foundation Arizona (Phoenix, AZ)
Epilepsy Foundation Arkansas (Little Rock, AR)
Epilepsy Foundation Central & South Texas (San Antonio, TX)
Epilepsy Foundation Eastern PA (Philadelphia, PA)
Epilepsy Foundation Florida (Brandon, FL)
Epilepsy Foundation Greater Orange County (Newport Coast, CA)
Epilepsy Foundation Indiana (Indianapolis, IN)
Epilepsy Foundation Iowa (Des Moines, IA)
Epilepsy Foundation Los Angeles (Los Angeles, CA)
Epilepsy Foundation Louisiana (New Orleans, LA)
Epilepsy Foundation Maryland (Bowie, MD)
Epilepsy Foundation Metro D.C. (Bowie, MD)
Epilepsy Foundation Mississippi (Ridgeland, MS)
Epilepsy Foundation Montana (Missoula, MT)
Epilepsy Foundation Nebraska (Omaha, NE)
Epilepsy Foundation Nevada (Las Vegas, NV)
Epilepsy Foundation New England (Lowell, Massachusetts)
Epilepsy Foundation New Jersey (Hamilton, NJ)
Epilepsy Foundation New Mexico (Albuquerque, NM)
Epilepsy Foundation North Carolina (NC)
Epilepsy Foundation North Dakota (Fargo, ND)
Epilepsy Foundation Northwest Illinois (IL)
Epilepsy Foundation of Colorado & Wyoming (Centennial, CO)
Epilepsy Foundation of Delaware (Newark, DE)
Epilepsy Foundation of East Tennessee (Knoxville, TN)
Epilepsy Foundation of Georgia (Atlanta, GA)
Epilepsy Foundation of Greater Chicago (Chicago, IL)
Epilepsy Foundation of Greater Southern Illinois (Belleville, IL)
Epilepsy Foundation of Kentuckiana (Louisville, KY)
Epilepsy Foundation of Michigan (Southfield, MI)
Epilepsy Foundation of Minnesota (Bloomington, MN)
Epilepsy Foundation of Northeastern New York (Albany, NY)
Epilepsy Foundation of San Diego County (San Diego, CA)
Epilepsy Foundation of Texas (Houston, Texas)
Epilepsy Foundation of Virginia (Charlottesville, VA)
Epilepsy Foundation Ohio (Dayton, OH)
Epilepsy Foundation Oklahoma (Oklahoma City, OK)
Epilepsy Foundation Oregon (Portland, OR)
Epilepsy Foundation South Carolina (SC)
Epilepsy Foundation South Dakota (Sioux Falls, SD)
Epilepsy Foundation Utah (UT)
Epilepsy Foundation Washington (Seattle, WA)

Epilepsy Foundation West Virginia (Clarksburg, WV)
Equip for Equality (IL)
Familia Unida Living with MS (Los Angeles, CA)
Family Voices NJ (Newark, NJ)
Florida Council of the Blind (Daytona Beach, FL)
Friends In Art of ACB (Monroeville, PA)
Georgia Advocacy Office (Decatur, GA)
Georgia Council of the Blind (Trion, GA)
Goodwill of the Finger Lakes (Rochester, NY)
Greater Louisville, Council of The Blind (Louisville, KY)
Greater Orlando Council of the Blind (Orlando, FL)
Hawaii Association of the Blind (Honolulu, HI)
Hawaii Disability Rights Center (Honolulu, HI)
Health Hats (Arlington, MA)
Helping Hands for the Disabled of NYC (New York City, NY)
Illinois Council of the Blind (Springfield, IL)
Inclusive Diversity of California (Sacramento, CA)
Indiana Disability Rights (Indianapolis, IN)
Iowa Council of the United Blind (Des Moines, Iowa)
Jacksonville Council of the Blind (Jacksonville, FL)
Kansas Association for the Blind and Visually Impaired Inc. (Topeka, KS)
Kentucky Council of Citizens with Low Vision (Louisville, KY)
Kentucky Council of the Blind (Louisville, KY)
Lighthouse Louisiana (New Orleans, LA)
Lighthouse Vision Loss Education Center (Sarasota, FL)
Long Island Council of the Blind (Levittown, NY)
Maine Parent Federation (Farmingdale, ME)
Metropolitan Seattle Sickle Cell Task Force (Seattle, WA)
Michigan Council of the Blind and Visually Impaired (Wyoming, MI)
Minnesota Disability Law Center (Minneapolis, MN)
Mississippi Council of the Blind (Jackson, MS)
Missouri Council of the Blind (St. Louis, MO)
Mountain State Council of the Blind (Romney, WV)
Native American Disability Law Center (Farmington, NM)
Nevada Council of the Blind (Las Vegas, Pahrump, Reno, NV)
Nevada Disability Advocacy & Law Center (Reno, NV)
New Jersey Blind Citizens Association, Inc. (Leonardo, NJ)
New York Vision Rehabilitation Association (New York, NY)
NewView Oklahoma (Oklahoma City, Oklahoma)
North Carolina Council of the Blind (Raleigh, NC)
North Dakota Association of the Blind (North Dakota, ND)
Northern Kentucky Council of The Blind (Covington, KY)
Parents Reaching Out (Albuquerque, NM)
Pennsylvania Council of the Blind (Volant, PA)

Raleigh/Wake Council of the Blind (Raleigh, NC)
South Central Kentucky Council of the Blind (Bowling Green, KY)
South Dakota Association of the Blind (SDAB) (Sioux Falls, SD)
Southwest Florida Council of the Blind (Fort Myers, FL)
SPAN Parent Advocacy Network (Newark, NJ)
St. Louis Northern Light Council (Florissant Mo, MO)
TCS Access (Silver Spring, MD)
Tennessee Council of the Blind (Nashville, TN)
Tennessee Disability Coalition (Nashville, TN)
The Epilepsy Foundation of Connecticut (Middletown, CT)
The Epilepsy Institute DBA EFMNY (New York, NY)
The New York Institute for Special Education (Bronx, NY)
The Parents' Place of MD (MD)
Tools for Life/ Ga Assistive Technology Program (Atlanta, GA)
Vision Forward Association (Milwaukee, WI)
Vote Nevada (Las Vegas, NV)
Washington Council of the Blind (WA)
Westchester Council of the Blind of New York (White Plains, NY)
Wisconsin Board for People with Developmental Disabilities (Madison, WI)
Wisconsin Council of the Blind & Visually Impaired (Madison, WI)

ⁱ Centers for Disease Control and Prevention, National Center on Birth Defects and Developmental Disabilities, Division of Human Development and Disability. Disability and Health Data System (DHDS) Data [online]. [accessed Oct 3, 2023]. URL: <https://dhds.cdc.gov>

ⁱⁱ Unpublished data from Rhoads, C.R., Bleach, K., Chatfield, S. & Camarilla, P. (2022). The Journey Forward: Impact of COVID-19 on Blind, Low Vision, and Deafblind U.S. Adults. American Foundation for the Blind. www.afb.org/JF

ⁱⁱⁱ 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(1)(i) and (2).

^{iv} See: National Center on Accessible Educational Materials (2020). *Higher Education Critical Components of the Quality Indicators for the Provision of Accessible Educational Materials Accessible Technologies*. Wakefield, MA: National Center on Accessible Educational Materials at: <https://aem.cast.org/get-started/resources/2020/higher-education-critical-components-of-the-quality-indicators-for-the-provision-of-accessible-educational-materials--accessible-technologies>

^v See: U.S. DOJ Consent Decree with University of California, Berkeley and ...more than 1,000 cases in recent years related to digital access that were triggered by complaints of discrimination by members of the public. These agreements address the accessibility of public-facing websites, learning management systems, password-protected student-facing content, and mass email blasts of colleges, universities, and other postsecondary institutions (pg. 2), *Joint U.S. Department of Education and U.S. Department of Justice Dear Colleague Letter on Online Accessibility at Postsecondary Institutions May 19, 2023* https://www.justice.gov/d9/case-documents/attachments/2023/05/19/letter-dear_colleague.pdf

^{vi} See: Creating Accessible Websites at: <https://aem.cast.org/create/creating-accessible-websites>

^{vii} See: 84 FR 56154 which interprets “print instructional materials” in section 674(e)(3)(C) of IDEA ([20 U.S.C. 1474\(e\)\(3\)\(C\)](https://www.ecfr.gov/current/title-20--chapter-1--part-1474--section-1474.103)) to include digital instructional materials.

^{viii} See: National Center on Accessible Educational Materials (2020). *AEM Quality Indicators with Critical Components for K–12*. Wakefield, MA: National Center on Accessible Educational Materials, at: <https://aem.cast.org/binaries/content/assets/common/publications/aem/k12-aem-qualityindicators-criticalcomponents.pdf>

^{ix} 34 C.F.R. § 300.324(a)(2)(iv) and (v)

^x American Foundation for the Blind, *Access and Engagement II*, Research Report (May 2021) at 64.

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- ^{xi} Silverman, A., Bleach, K., Mungia Rodriguez, G., Rhoads, C. & Hernandez Legorreta, C. (2022). Access and Engagement III: An Extended Examination of the Impact of the COVID-19 Pandemic on Students with Visual Impairments, Their Families, and Professionals. American Foundation for the Blind. <https://www.afb.org/research-and-initiatives/education/covid19-education-research/access-and-engagement-iii/access>
- ^{xii} American Foundation for the Blind, *Access and Engagement II*, Research Report (May 2021) at 64.
- ^{xiii} See Fortune Business Insights, "[Learning Management System \(LMS\) Market Size, Share, and COVID-19 Impact Analysis](#)" (May 2023) (citing 2020 Capterra report that 64 percent of K–12 schools and 36 percent of higher education institutions were using LMS in 2020).
- ^{xiv} Lauraine Langreo, "[What Teachers Really Think About Their Learning Management Systems](#)," EdWeek (Sept. 21, 2022)
- ^{xv} See also Imed Bouchrika, Phd, "[5 Top College Trends on LMS Use by Universities in 2023](#)," Research.com (2020).
- ^{xvi} Mythili Sampathkumar and Maya Shwayder, "[The Mass Migration to Online Learning Is Leaving Disabled Students Behind](#)," Digital Trends (Mar. 27, 2020).
- ^{xvii} See: Creating Accessible Websites at: <https://aem.cast.org/create/creating-accessible-websites>
- ^{xviii} See Georgia DNR Wildlife (@GeorgiaWild), X (Nov. 15, 2022), <https://twitter.com/GeorgiaWild/status/1592509698414374912> (State and local governments share safety information on social media, such as this warning about bears. Public commentary on posts like this sometimes provides further warnings about bear sightings and activity in specific places.); see also *Getting Social During a Disaster*, General Code (last visited Sept. 11, 2023, 6:11 PM), <https://www.generalcode.com/blog/getting-social-during-a-disaster/>.
- ^{xix} See Andy Castillo, Social media can play an important role in a community's emergency response, American City and County (Oct. 1, 2021), <https://www.americancityandcounty.com/2021/10/01/social-media-can-play-an-important-role-in-a-communitys-emergency-response/> (An article on a website for city and county governments describes using social media to share updates in real time in disaster situations and coordinate professional and volunteer emergency response); see also Dionne Mitcham, Morgan Taylor, and Curtis Harris, *Utilizing Social Media for Information Dispersal during Local Disasters: The Communication Hub Framework for Local Emergency Management*, 18 Int'l. Journal of Env'tl. Research and Public Health 20, 10784 (2021).
- ^{xx} See Barbara D (@Menopausalins01), X (Aug. 25, 2023), <https://twitter.com/Menopausalins01/status/1694964254799978808>, (A person replied to a tweet by the governor of New Jersey, saying "...I keep asking @GovMurphy why he wants to contribute to breweries closing, increased unemployment, & lost revenue to surrounding businesses by not signing bipartisan-passed bill 3038/4630..."); see also City of Monterey, California (@cityofmonterey), Instagram (Aug. 8, 2023), <https://www.instagram.com/p/CvsnUtMymFx/> (A third party who self-identifies as disabled left a comment on this Instagram post complaining about parking enforcement in the city.); Schenectady Police Department (Schenectady Police Department), Facebook (July 19, 2023), <https://www.facebook.com/photo/?fbid=606649371572185&set=a.267037512200041> (Two different discussions by private persons- one on opioid use and narcan, the other on police conduct- transpired in the comments on a Facebook post by the local police in Schenectady, New York).
- ^{xxi} See Atlanta Department of Procurement (@atlprocurement), Instagram (last visited Sept. 11, 2023, 10:28 PM), <https://www.instagram.com/atlprocurement/> (Atlanta, Georgia has an Instagram account for its procurement department that shares information about contracting opportunities); see also Smithfield North Carolina (Town of Smithfield, NC Government), Facebook (Aug. 25, 2023), <https://www.facebook.com/photo/?fbid=691995036292051&set=a.225523152939244> (When a small town in North Carolina announced a public meeting, two other parties asked questions relevant to public involvement in the comments); Decatur, Georgia (City of Decatur GA- Government), Facebook (June 20, 2023) (Decatur announced a planning meeting to discuss changes to an important, local thoroughfare. Members of the public brought up concerns and complaints in the comments), <https://www.facebook.com/photo/?fbid=637440421744748&set=a.230709499084511>.
- ^{xxii} Rebecca Vallas, Kimberly Knackstedt, and Vilissa Thompson, *7 Facts About the Economic Crisis Facing People with Disabilities in the United States*, Century Foundation (April 21, 2022), <https://tcf.org/content/commentary/7-facts-about-the-economic-crisis-facing-people-with-disabilities-in-the-united-states/>.

^{xxiii} See The State Bar of California, *Public Comment Archives* (last visited Sept. 12, 2023, 4:00 PM), <https://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Public-Comment/Public-Comment-Archives/2023-Public-Comment>.

^{xxiv} See Poll Everywhere, Create a word cloud with the audience,

<https://www.pollerywhere.com/word-cloud> (“When you create a word cloud using Poll Everywhere, each word comes from the audience. You ask the question, the audience responds on their phones, and together you see opinions become artwork. Words move and grow with each new response.”)

^{xxv} See City of Dallas, *Past Public Opportunities*, Procurement Portal (last visited Sept. 12, 3:05 PM), <https://dallascityhall.bonfirehub.com/portal/?tab=pastOpportunities> (Third party uploads on successful contracts might be very helpful to an aspiring public contractor. If these are inaccessible, this learning opportunity and the prospect of financial benefit might be off limits to some members of the disability community).

^{xxvi} See University of North Carolina School of Social Work, *Online Job Board* (last visited Sept. 12, 2023, 4:23 PM), <https://ssw.unc.edu/alumni-friends/jobs/> (The UNC School of Social Work has a job and internship board for its students and alumni. There are already some requirements for posting. Posts are subject to approval, demonstrating that some covered entities, such as this college of a public university, are already imposing some requirements on third party posts to websites they control.).

^{xxvii} See Lisa Siebert, *Understanding The Importance Of Web Accessibility*, Forbes (Mar. 20, 2023), <https://www.forbes.com/sites/forbesbusinesscouncil/2023/03/20/understanding-the-importance-of-web-accessibility/?sh=2fa3660377f3>.

^{xxviii} See Mitchell Clark, *Twitter is testing changes to make image descriptions easier to access*, The Verge (Mar. 9, 2022), <https://www.theverge.com/2022/3/9/22969304/twitter-image-description-alt-text-test-accessibility>; see also Meg Miller and Ilaria Parogni, *The Hidden Image Descriptions Making the Internet Accessible*, The New York Times (Feb. 18, 2022), <https://www.nytimes.com/interactive/2022/02/18/arts/alt-text-images-descriptions.html>.

^{xxix} See Issaquah, Washington (cityofissaquah), Instagram (June 2, 2023), https://www.instagram.com/p/CtAiX73pkCr/?img_index=1 (Issaquah, Washington marked Pride Month on its Instagram account. Community members discussed the recognition of other times of significance in the comments.); see also City of Hallandale Beach, Florida (myhbeach), Instagram (last visited Sept. 12, 2023, 10:17 AM), <https://www.instagram.com/p/Cw48UzBO1iX/> (Hallandale Beach puts everything from dog park closures to community events to reminders about tax-free back-to-school shopping to recognition of National Suicide Prevention Week on its Instagram account. Third parties have used the comments to publicly respond to some posts); Brent Barnhart, *Social media and government: how to keep citizens engaged*, Sprout Social (Jan. 13, 2022), <https://sproutsocial.com/insights/social-media-and-government/> (This blog post provides guidance to state and local governments on how to promote online community engagement regarding important issues).

^{xxx} See Zenaida Gonzalez Kotala, *When Hurricanes Strike, Social Media Can Save Lives*, UCF Today (last visited Sept. 11, 2023, 9:42 PM), <https://www.ucf.edu/news/when-hurricanes-strike-social-media-can-save-lives/>.

^{xxxi} See Amal Harrati, Sarah Bardin, and David R. Mann, *Spatial distributions in disaster risk vulnerability for people with disabilities in the U.S.*, 87 Int'l. J. Disaster Risk Reduction, 103571 (Mar. 2023).

^{xxxii} See Northeastern Ohio Regional Sewer District (@neorsd), X (last visited Sept. 12, 2023, 1:46 PM), <https://twitter.com/neorsd> (This active sewer district X account engages back and forth with individuals but also entities that may be covered by Title III.).

^{xxxiii} See City of Chicago (City of Chicago- Government), Facebook (Aug. 19, 2023), <https://www.facebook.com/photo?fbid=620041563647012&set=a.420537146930789> (Chicago posted information on Facebook on disaster recovery for both residents and business owners. As of writing, the discussion on the post has been individual and political, but this is the kind of forum in which people working on behalf of entities covered by Titles I and III might

^{xxxiv} See *Robles v. Domino's Pizza, LLC*, 913 F.3d 898 (9th Cir. 2019); see also United States Dep't. of Justice, *Guidance on Web Accessibility and the ADA* (Mar. 18, 2022), <https://www.justice.gov/opa/pr/justice-department-issues-web-accessibility-guidance-under-americans-disabilities-act>.

^{xxxv} See Historic Downtown Smithfield, NC (Historic Downtown Smithfield, NC), Facebook (last visited Sept. 12, 2023, 2:21 PM), <https://www.facebook.com/DowntownSmithfield>; and see *About the DSDC*, Downtown Smithfield Historic District (last visited Sept. 12, 2023, 2:24 PM),

<https://www.downtownsmithfield.com/about-the-dsdc>) (A private nonprofit likely covered by Title III and possibly by Title I but deeply entangled with and partially funded by a Title II entity work closely together on Facebook, demonstrating the frequent enmeshment of and faint boundaries between online activity covered by different titles of the ADA.

^{xxxvi} See Arlington County, Customer Assessment and Payment Portal (CAPP),

<https://capp.arlingtonva.us/>