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May 8, 2024

The Honorable Richard J. Durbin  
Chairman  
The Honorable Lindsey Graham  
Ranking Member  
Committee on the Judiciary  
United States Senate

The Honorable Jim Jordan  
Chairman  
The Honorable Jerrold Nadler  
Ranking Member  
Committee on the Judiciary  
House of Representatives

Subject: *Department of Justice: Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Justice (DOJ) titled “Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities” (RIN: 1190-AA79). We received the rule on April 23, 2024. It was published in the *Federal Register* as a final rule on April 24, 2024. 89 Fed. Reg. 31320. The effective date is June 24, 2024.

According to DOJ, it is issuing this final rule to revise the regulation implementing title II of the Americans with Disabilities Act to establish specific requirements, including the adoption of specific technical standards, for making accessible the services, programs, and activities offered by state and local government entities to the public through the web and mobile applications. See generally Pub. L. No. 101-336, title II, 104 Stat. 327 (July 26, 1990).

Enclosed is our assessment of DOJ's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to this final rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Jennifer Mathis  
Deputy Assistant Attorney General  
Department of Justice

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF JUSTICE,  
TITLED  
“NONDISCRIMINATION ON THE BASIS OF THE DISABILITY;  
ACCESSIBILITY OF WEB INFORMATION AND SERVICES  
OF STATE AND LOCAL GOVERNMENT ENTITIES”  
(RIN: 1190-AA79)

(i) Cost-benefit analysis

The Department of Justice (DOJ) prepared an analysis of the cost and benefits for this final rule. DOJ estimates the annual benefits to total \$5.3 billion. DOJ stated that benefits annualized over a 10-year period total \$5.2 billion per year, at a 3 percent discount rate, and \$5.0 billion per year, at a 7 percent discount rate. DOJ also stated that the net annualized benefits over the first 10 years post publication of this rule total \$1.9 billion per year at a 3 percent discount rate and \$1.5 billion per year at a 7 percent discount rate. According to DOJ, the costs for each government entity type and size are generally estimated to be below 1 percent of revenues (the one exception is small independent community colleges, for which the cost-to-revenue ratio is 1.05 percent and 1.10 percent at a 3 percent discount rate and a 7 percent discount rate, respectively), therefore, DOJ does not believe the rule will be unduly burdensome or costly for public entities.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

DOJ prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. DOJ stated that the FRFA includes an explanation of steps that it has taken to minimize the impact of the rule on small entities, responses to a comment by the Chief Counsel for Advocacy of the Small Business Administration (SBA), a description of impacts of this rule on small entities, alternatives DOJ considered related to small entities, and other information required by RFA.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

DOJ determined that this final rule is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to

section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

DOJ did not discuss the Act in this final rule. In its submission to us, DOJ indicated that the Act does not apply to the rule because it does not increase direct spending.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On August 4, 2023, DOJ published a notice of proposed rulemaking (NPRM). 88 Fed. Reg. 51948. DOJ stated that it received approximately 345 comments from members of the public, including individuals with disabilities, public entities, disability advocacy groups, members of the accessible technology industry, web developers, and many others. DOJ also stated that it attended listening sessions with various stakeholders while the public comment period was open.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

DOJ determined that this final rule does not contain any collections of information as defined by PRA.

Statutory authorization for the rule

DOJ promulgated this final rule pursuant to sections 301 of title 5; sections 509 and 510 of title 28; and sections 12134, 12131, and 12205a of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

OMB determined that this final rule is economically significant under the Order.

Executive Order No. 13132 (Federalism)

DOJ determined that this final rule has federalism implications because title II of the Americans with Disabilities Act (ADA) covers state and local government entity services, programs, and activities. But according to DOJ, ADA and the title II regulation are not novel for state and local government entities. DOJ stated that in the NPRM for the rule, it solicited comments from state and local officials and their representative national organizations on the rule’s effects on state and local government entities. DOJ also stated that it attended three listening sessions on the NPRM hosted by the SBA’s Office of Advocacy, the Association on Higher Education and Disability, and the Great Lakes ADA Center at the University of Illinois at Chicago, in conjunction with the ADA National Network. DOJ noted that, consistent with section 12201 of title 42, the rule will preempt state laws affecting entities subject to ADA only to the extent that those laws provide less protection for the rights of individuals with disabilities, but the rule does

not invalidate or limit the remedies, rights, and procedures of any state laws that provide greater or equal protection for the rights of individuals with disabilities. Lastly, DOJ asserts that the rule does not change public entities' obligations under state and local laws governing the types of content that public entities must provide or make available online; rather, the rule requires public entities to ensure that content made available on the web and mobile applications comply with the requirements set forth in the final rule.