

U.S. Access Board Releases Information and Communication Technology Standards and Guidelines

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Article By

[Frank C. Morris, JR](#)

[Joshua A. Stein](#)

[Epstein Becker & Green, P.C.](#)

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Monday, January 30, 2017

Earlier this month, in the waning moments of the Obama Administration, the U.S. Architectural and Transportation Barriers Compliance Board (the “Access Board”) took the long-anticipated step of requiring websites of federal government agencies to comply with the Web Content Accessibility Guidelines (“WCAG”) 2.0 Levels A and AA. (The Access Board was established in 1973 to develop and maintain standards for accessible design in the built environment, transit vehicles and systems, telecommunications equipment and electronic and information technology.)

On Thursday, January 5, 2017, the Access Board announced the release of the long anticipated “Information and Communication Technology (“ITC”) Standards and Guidelines,” which update and combine the previously separate requirements of Section 508 of the Rehabilitation Act of 1973 (requiring federal agencies to make their electronic and information technology accessible to people with disabilities) and Section 255 of the Communications Act of 1934 (requiring telecommunication

equipment manufacturers and service providers to make their products and services accessible to people with disabilities), into one rule. The [ITC Standards and Guidelines](#) (also referred to as the “508 Refresh”) were officially released by the Access Board on Monday, January 9, 2017 and published in the Federal Register on January 18, 2017.

This final rule includes the following noteworthy changes from the previously published Notice of Proposed Rulemaking (“NPRM”):

- Provides a “Safe Harbor” provision;
- Incorporates the Web Content Accessibility Guidelines (“WCAG”) 2.0 Levels A and AA by reference;
- Covers all types of public-facing content, as well as nine (9) categories of non-public-facing content that communicate agency official business; and
- Extends the previously contemplated compliance dates.

Application

To Whom Do the ITC Standards and Guidelines Apply?

The Section 508-based ITC Standards apply **only to Federal Agencies** subject to Section 508 of the Rehabilitation Act of 1973 who develop, procure, maintain or use ITC and is intended to ensure Federal employees with disabilities have comparable access to, and use of, such information and data relative to other Federal employees unless doing so would impose an undue burden.

The Section 255-based guidelines apply to manufactures of telecommunication equipment and address the accessibility of newly released, upgraded, or substantially changed telecommunications equipment (as well as support documentation and services, including electronic documents and web-based product support) subject to Section 255 of the Communications Act of 1934.

Who Do the ITC Standards and Guidelines Not Apply To?

- Private Businesses – including healthcare, retail, hospitality, financial services, etc.;
- State and Local Government Agencies;
- Public Schools;
- Colleges; and
- Non Profit Entities.

It should be noted, however, that when the DOJ publishes proposed website accessibility regulations applicable to the private sector, and consistent with the DOJ’s long standing position, website accessibility will very likely be defined as

compliance with WCAG 2.0, levels A and AA, just as the Access Board has used these guidelines in the Section 508 Refresh.

Deadlines

On Tuesday, January 10, 2017 the Access Board held a briefing at their Washington, D.C. office to provide a top level overview of these new rules and to provide a public question and answer session. During this meeting, the Access Board reinforced the following information:

- The final rule was set to be “effective” 60 days from the date of publication in the Federal Register. Therefore, as the final rule was published in the Federal Register on Wednesday, January 18, 2017, the “effective” date was set to be Sunday, March 19, 2017. (It is worth noting on January 20, 2017, White House Chief of Staff Reince Priebus issued a memorandum from the White House to the heads of executive departments and agencies calling for a sixty (60) day postponement of the effective date of regulations that have been published in the Federal Registry but not yet taken effect. Therefore, this date may yet be delayed.)
- Notwithstanding that deadline:
 - Compliance with the Section 508-based Standards is not required until 12 months from the date of publication in the Federal Register. Therefore, the anticipated date of compliance for the Section 508-based Standards will be Thursday, January 18, 2018; and
 - Compliance with the Section 255-based guidelines will not be required until the guidelines are adopted by the Federal Communications Commission.

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