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FORTHCOMING DOJ RULES TO REQUIRE WEBSITES AND MOBILE APPS TO BE ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES

The Department of Justice (DOJ) is scheduled to release proposed rules under the American with Disabilities Act (ADA) that will require places of public accommodation that offer products or services to the public through websites to make their websites and mobile applications accessible to and usable by individuals with disabilities.

Generally, the ADA prohibits discrimination on the basis of disability in the activities of places of public accommodation. Enacted in 1990, the ADA does not expressly address whether websites are considered "places of public accommodation" and thus, must be accessible to individuals with disabilities. Federal circuit courts are split on whether and to what degree the ADA applies to websites.

In an Advance Notice of Proposed Rulemaking (ANPR), the DOJ announced its intention to promulgate rules under the ADA that (i) clarify the ADA's applicability to websites and (ii) set forth website accessibility standards. The DOJ also affirmed its prior position that places of public accommodation that provide goods or services solely over the Internet are subject to the ADA's prohibition on discrimination on the basis of disability. The ANPR sought public comments on (x) which website accessibility standards the DOJ should adopt, (y) which covered website activities should be excluded from the rules and (z) the challenges places of public accommodation could encounter in making their websites accessible to individuals with disabilities.

For potential website accessibility standards, the DOJ proposed using either the World Wide Web Consortium's Web Content Accessibility Guidelines 2.0 (WCAG 2.0) or the website accessibility standards for federal government agencies' websites in Section 508 of the Rehabilitation Act. In order for a web page to conform to the WCAG 2.0, the web page must satisfy criteria for 12 web accessibility guidelines under one of three conformance levels: A, AA or AAA. The three conformance levels indicate a measure of accessibility and feasibility. The WCAG 2.0 contains technical standards written for website developers and is publically available.

The projected release date of the DOJ's proposed rules is April 2016 with final rules coming in July 2016. However, the DOJ has delayed the release of the proposed rules multiple times since the DOJ filed the ANPR on July 26, 2010.

ADA compliance is one of the many legal issues that companies offering credit through the Internet or mobile applications should consider. See Susan Manship, *Notice and Understand: Disclosures in Mobile Lending*, 68 Consumer Fin. L.Q. Rep. 186 (2015).

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