

# Plaintiffs Will Continue to Drive Website Accessibility as DOJ Delays Rulemaking

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Since July 2010, the DOJ has sought to issue a proposed rulemaking addressing the applicability of the Americans with Disabilities Act (“ADA”) to private retailers offering goods and services to the public online. The rulemaking has been delayed several times, and was most recently scheduled for a Spring 2016 publication.

However, on November 19, 2015, the federal government released its *Fall 2015 Semiannual Unified Agenda and Regulatory Plan*, identifying regulatory priorities and significant regulatory actions that agencies expect to take in the coming year. The Fall 2015 Unified Agenda indicates that the DOJ is further delaying this much-anticipated proposed rule, and has moved the rulemaking to its “[long term action](#)” list.

Concurrently, the DOJ announced that it expects to publish its proposed rule for website accessibility applicable to State and local governments under Title II in January 2016. In the accompanying [Statements of Regulatory Priorities](#), the DOJ explains that it believes the Title II rulemaking “will facilitate the creation of an important infrastructure for web accessibility” and inform the agency of how it should move forward with its Title III website accessibility rule. Accordingly, the DOJ indicates that it now expects to publish the Title III proposed rule during fiscal year 2018.

Despite significant delays in rulemaking by the DOJ, plaintiffs are resorting to filing lawsuits, sending demand letters, or entering into settlements with companies whose websites and/or mobile applications are not readily accessible to, or usable by, blind individuals. For those businesses who have not yet been the target of such action, precautionary measures can be taken and businesses need look no further than recent settlements with plaintiffs or the DOJ to determine compliance obligations.

If you are unsure whether your site is accessible to the blind, there are ways to find out – either through the use of third-party experts or other free tools that provide a general sense of whether the website can be read by a screen reader. Once you figure out where you stand, it often makes sense to come up with a plan to address any deficiencies. You may not be able to get everything done overnight, but every step in the right direction can help.