

**TO:** House Committee on Energy and Digital Infrastructure (HEDI)

**FROM:** Emily Ray, hello@emilyray.com

**DATE:** April 13, 2026

**RE:** Technical Clarifications on ADA Title II Digital Accessibility

Dear Chair James and members of the Committee:

This memo provides several technical clarifications where statements made during the April 10 Universal Digital Accessibility Project Walk-Through and Testimony do not fully align with the DOJ ADA Title II Final Rule’s requirements or with how accessibility functions in practice.

These points are offered to help ensure the Committee is evaluating compliance and risk on an accurate basis during upcoming and future oversight hearings.

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## **“Substantial Compliance” Is Not a Recognized Standard**

Testimony referenced vendor assurances of “substantial compliance.”

This is not a defined or accepted standard under ADA Title II.

For critical user functions—such as filing legal documents, accessing case information, completing required forms, applying for benefits, or reviewing budget cycle documents—accessibility operates in practice as a binary condition: either the user can complete the task independently, or they cannot.

If a required system cannot be used by an individual with a disability, it is not compliant for that user, regardless of overall system performance metrics.

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## **Automated Scan Scores Do Not Represent Compliance**

Legislative testimony cited an approximate “85% compliance” level while also indicating heavy reliance on automated scanning tools.

Automated tools are useful for identifying certain classes of issues. However:

- They detect only a limited subset of accessibility barriers (commonly estimated at 20–40%<sup>1</sup>)
- They do not evaluate functional usability of workflows
- They cannot validate critical requirements such as logical focus order, form behavior, custom widget behavior (e.g., menus) or assistive technology compatibility

As a result, automated scores should not be interpreted as indicators of actual compliance. A system may score highly in automated scans while still preventing users from completing essential tasks.

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## **OCR and File Conversion Do Not Establish Accessibility**

Testimony suggested that OCR and document conversion workflows address PDF accessibility.

They do not.

- OCR enables text recognition but does not create navigable structures
- Converting a Word document to a PDF does not ensure accessibility
- Accessible PDFs require proper tagging, reading order, and structural validation

Without these elements, documents may appear readable while remaining unusable for assistive technology.

While relying on public complaints as a trigger for remediation is understandable, that approach does not meet the functional requirements of ADA Title II compliance. It also places the State’s responsibility for accessibility on the person with a disability.

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<sup>1</sup> Testimony included W3C’s Web Accessibility Evaluation Tools List. W3C qualifies this list, stating: “Tools cannot check all accessibility aspects automatically. Human judgement is required. Sometimes evaluation tools can produce false or misleading results. Web accessibility evaluation tools cannot *determine* accessibility, they can only *assist* in doing so.”  
<https://www.w3.org/WAI/test-evaluate/tools/selecting/>

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## **“Archived” Content Is Narrowly Defined**

Testimony indicated that documents from prior biennium may be designated as archived.

Under the DOJ Final Rule, archived content is generally exempt only if it is not actively used to access services or participate in government programs.

If a document—regardless of when it was created—is still functionally relevant (e.g., forms, policies, testimony, budgets, or other materials used by the public or State employees), it must meet current accessibility requirements.

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## **No 48 Hour Cure Period Exists**

Testimony indicated the belief that a 48 Hour “grace period” operates as a defined compliance safe harbor.

It does not.

Although operational remediation timelines were discussed during the 2024 rulemaking process, no such provision exists in the Final Rule.

- It would be impossible to define when the 48 hours begins (e.g., when the error is made, when it’s discovered, or when it’s reported.)
  - For critical services (e.g., voting information, emergency alerts, or judicial functions including filing motions, accessing case dockets, or receiving time-sensitive hearing notices), waiting 48 hours to remediate a barrier is incompatible with the requirement for immediate and continuous access to public services.
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## **Vendor Assurances Do Not Transfer Responsibility**

Testimony indicated reliance on vendor assurances, including statements that systems will be “substantially compliant.”

Public entities remain responsible for the accessibility of all services they provide, including those delivered through third-party platforms.

This is particularly significant for systems that are required for participation, such as e-filing platforms or public access portals<sup>2</sup>. If these systems are inaccessible, the obligation to provide access under ADA Title II remains with the State.

Testimony referenced the use of third-party platforms in connection with required services, including instances where users are directed to external systems accompanied by disclaimers stating that the State is not responsible for the content or accessibility of those systems.

Such disclaimers do not alter the State’s responsibility where the service itself is required for participation in a public program.

In addition, the use of third-party systems introduces broader governance and contractual considerations, particularly where users are required to agree to external terms of service (TOS) in order to access a public function.

While these considerations extend beyond accessibility alone, they are relevant to the Committee’s broader oversight responsibilities. A separate analysis, “Third-Party Platform Governance in State Digital Systems: Accessibility, Consent, and Oversight Risks” has been submitted to provide the Committee with additional detail it may find useful regarding systems used by all three branches.

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<sup>2</sup> While this memo responds to testimony from the Judiciary and Legislative branches, similar accessibility concerns have been identified across public-facing systems used by Executive branch agencies, including public access portals required for participation in a wide range of state programs. These patterns are consistent and not limited to a single branch or system.

## **Protected Classes and Equal Access Are Not The Same**

Discussion indicated the belief that “protected classes” and “equal access” are equivalent.

They are not.

Protected classes define eligibility.

Equal access defines the legal obligation.

ADA Title II does prohibit discrimination against protected classes. However, equal access is a *functional* requirement to ensure those protected individuals can participate in society equally. Compliance is not determined by whether a system is broadly available or functional for most users, but by whether individuals with disabilities can access and complete the same services.

This distinction is critical when evaluating required digital systems, particularly because testimony appeared to conflate technical utility with legal compliance.

Under ADA Title II, the focus is on the *barrier* to access.

For example, if a person with a manual dexterity disability or limb difference cannot operate a smartphone, or a person with a cognitive disability cannot navigate a complex multi-factor authentication (MFA) “push” notification or SMS code, the State creates a barrier to a public service if it requires their use.

When a State mandates a digital system as the exclusive way to file court documents, and that system requires a secondary device (a phone), the State is constructively excluding anyone who cannot access or operate that device.

Under the DOJ’s 2024 Final Rule, the State must provide an “equally effective” alternative. A help desk is not “equally effective” if it doesn’t allow for the same 24/7 filing and data access as the digital system. Alternative methods that introduce delay, reduced functionality, or limited availability do not meet the standard.

This distinction has direct implications for how security controls are implemented.

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## **Security Controls Must Not Introduce Accessibility Barriers**

Testimony indicated MFA is a security measure. However, reliance on SMS or phone-based MFA introduces known accessibility limitations alongside documented security weaknesses.

Federal guidance, including NIST SP 800-63B, classifies SMS-based authentication as “restricted” and discourages its use due to known limitations.

When a State requires the use of a security method that is both discouraged under federal standards and introduces barriers for individuals with disabilities, it raises questions as to whether the approach is necessary and narrowly tailored—particularly where alternative authentication methods exist that are both more secure and more accessible.

Under ADA Title II, security measures must be implemented in a way that does not prevent access to public services. If a required authentication method creates a barrier for a subset of users with disabilities, the implementation raises compliance concerns.

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## **Current Approach Creates Measurable Risk Exposure**

Taken together, testimony reflects a compliance framework that lacks independent validation of functional accessibility outcomes. Specifically:

- Reliance on automated scanning as a primary indicator of compliance
- Use of undefined or non-binding standards such as “substantial compliance”
- Dependence on vendor assurances without independent validation or audit mechanisms
- Assumptions that document conversion or OCR workflows produce accessible outputs

This approach does not establish whether individuals with disabilities can access or complete required government functions in practice.

As a result, the State may be unable to demonstrate compliance under ADA Title II's functional access requirements, creating exposure across litigation risk, enforcement actions, and federal funding conditions.

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## **Suggested Follow-Up Questions**

To better assess current readiness, the Committee may wish to request clarification on the following:

### **Evaluation and Testing**

- What proportion of accessibility evaluation is based on manual testing using assistive technologies (e.g., screen readers, keyboard navigation)?
- How are “critical user workflows” defined, documented, and validated for end-to-end accessibility?
- What testing scenarios are used to evaluate real-world task completion, not just component-level compliance?

### **Metrics and Compliance Definitions**

- How is “compliance” defined internally when automated scan scores are cited?
- What specific standards or thresholds are used to determine when a system is considered accessible?
- How is automated testing validated against manual functional outcomes?

### **Vendor and Contract Accountability**

- What contractual provisions require vendors to meet ADA Title II accessibility obligations?
- Who is responsible for validating vendor claims of compliance prior to deployment?
- What enforcement mechanisms exist if vendor systems fail accessibility requirements after procurement?

### **Third-Party Systems and External Dependencies**

- How does the State evaluate accessibility in third-party platforms used for required public services?
- Are accessibility requirements embedded into procurement, renewal, and service-level agreements?
- How are conflicts between vendor terms of service and public access obligations resolved?

### **Document and Content Accessibility**

- What processes ensure accessibility of public documents beyond OCR or file conversion?
- How is structural accessibility (tags, reading order, navigation) validated prior to publication?
- Who is responsible for remediating legacy documents that remain in active use?

### **Risk, Funding, and Operational Impact**

- What is the State's current assessment of ADA Title II litigation risk exposure related to digital services?
- How are federal funding compliance risks being evaluated or tracked?
- What is the cost comparison between proactive accessible-by-design development versus retroactive remediation?

### **Systemic Governance**

- What entity or role has ultimate authority for ensuring ADA Title II digital accessibility compliance across all branches, agencies, and third-party systems?
- How is accountability assigned when accessibility failures occur in systems that span multiple agencies, vendors, or shared infrastructure?
- Is there a centralized inventory of all public-facing digital systems subject to accessibility requirements, or does each agency maintain its own independent tracking?
- How does the State ensure consistent interpretation of accessibility requirements across agencies that may have different technical vendors, procurement practices, or internal standards?

- What governance mechanism exists to prevent divergence in accessibility implementation standards across executive, legislative, and judicial systems?
- When accessibility issues are identified in one agency's system, what formal process exists to ensure those findings are propagated to other systems with similar architectures or vendors?
- How are accessibility requirements enforced across legacy systems that predate current standards but remain actively used for public services?
- What is the escalation pathway when an agency, vendor, or contractor fails to remediate an accessibility barrier within a required timeframe?
- How is accessibility risk tracked and reported at the enterprise level, and who receives those reports for oversight or corrective action?
- In systems where procurement is decentralized, what safeguards ensure that accessibility requirements are not diluted or interpreted inconsistently at the point of contracting?
- How does the State reconcile conflicting priorities between security, usability, procurement constraints, and accessibility when they arise across different agencies?
- Is there a unified testing standard or certification process required before a system can be deployed publicly, or is approval determined independently by each agency?

These questions are intended to clarify whether accessibility is being governed as a coordinated statewide obligation or managed as a distributed set of independent compliance activities across systems and vendors.

Broader framing can help the Committee contextualize accessibility not only as a compliance requirement, but as a risk management and operational planning issue.

Thank you.