Americans with Disabilities Act and Website Accessibility Standards: Practical Information You Need Now

Monday, November 14, 2016

Eastern Time  
2:00 p.m.–3:30 p.m.

Central Time  
1:00 p.m.–2:30 p.m.

Mountain Time  
12:00 p.m.–1:30 p.m.

Pacific Time  
11:00 a.m.–12:30 p.m.
American Bankers Association
ADA and Website Accessibility Standards: Practical Information You Need Now
Monday, November 14, 2016 • 2:00 – 3:30 p.m. ET

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PLEASE READ ALL ENCLOSED MATERIAL PRIOR TO BRIEFING. THANK YOU.

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The Evaluation Survey Questionnaire is available online.
Please complete and submit the questionnaire at:

https://aba.qualtrics.com/SE/?SID=SV_82JekoRVsX2XP1j

Thank you for your feedback.
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Toni Cannady
Toni Cannady is the Senior Research Assistant of the Center of Regulatory Compliance at the American Bankers Association, where she conducts research for the Center’s compliance experts and is responsible for ABA’s enforcement database and matters regarding the Americans with Disabilities Act. Prior to joining ABA in July 2014, Toni served as a clerk in the Washington D.C. office of Greenberg Traurig, LLP.

Toni graduated from Spelman College with a B.A. in English and received her paralegal certificate from Georgetown University. She is currently a J.D. candidate at Catholic University in Washington, D.C. with an expected graduation date of May 2019.

Minh N. Vu
Ms. Vu is a partner in the firm's Washington, D.C. office and the leader of the Firm’s ADA Title III Specialty Practice Team. Ms. Vu’s national practice focuses exclusively on the legal obligations of places of public accommodation, recipients of federal funding, government contractors, and housing providers to individuals with disabilities under Title III of the American with Disabilities Act (ADA), the Rehabilitation Act, the Fair Housing Act (FHA), and various state non-discrimination statutes. Ms. Vu oversaw ADA Title III enforcement and regulation development at the U.S. Department of Justice. Ms. Vu is a recognized thought leader on ADA Title III issues who is known for her practical and business friendly approach to litigation as well as compliance under this law. In 2012, Ms. Vu authored the “ADA Guide for Lodging Owners and Operators,” the first book of its kind published by the American Hotel & Lodging Association (AH&LA) and also testified before Congress on behalf of the AH&LA on new ADA requirements for lifts at pools and spas. Ms. Vu also is the editor of and a primary contributor to Seyfarth’s ADA Title III News & Insights blog which has been quoted in the Wall Street Journal, CNN, and The Economist.

Preety Kumar
Preety Kumar, CEO of Deque Systems, Inc. (Deque), founded Deque in 1999 to pave the way for digital equality both from both user and the technology perspectives. Under Preety’s vision and leadership Deque has developed a uniquely robust suite of accessibility software, including aXe and the WorldSpace family of testing tools, and become a market leader and a thought leader in digital accessibility software and services. In June 2013, Deque was awarded the Computerworld 21st Century Achievement Award for Innovation for the Amaze technology, and the company is regularly included in the Inc. 5000 List of America’s Fastest Growing Companies.

Preety serves on the board of the USBLN, the International Association of Accessibility Professionals (IAAP), and the Yes I Can Foundation. She is an active member of the World Wide Web Consortium and is a member of Women in Engineering, Women in Technology, Northern Virginia Technology Council, IEEE, and the Association of Computing Machinery. Preety is also a contributing author to a book published by the United Nations G3ICT to promote information accessibility to countries around the world.
### PROGRAM OUTLINE

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<td><strong>Pre-Seminar Countdown</strong></td>
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<td>2:00 – 2:02 p.m.</td>
<td><strong>Welcome</strong></td>
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<td>2:02 – 2:05 p.m.</td>
<td><strong>Introductory Remarks and Speaker Introductions</strong></td>
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<td>Toni Cannady</td>
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<td><em>American Bankers Association</em></td>
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<td>2:05 – 2:40 p.m.</td>
<td><strong>The Legal Landscape: Trends, Guidelines, and Demand Letters</strong></td>
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<td>Minh N. Vu</td>
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<td><em>Seyfarth Shaw LLP</em></td>
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<td>2:40 – 3:15 p.m.</td>
<td><strong>Website Accessibility Compliance and WCAG 2.0 Requirements</strong></td>
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<td>Preety Kumar</td>
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<td>3:15 – 3:30 p.m.</td>
<td><strong>Closing Remarks</strong></td>
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Continuing Education Credits Information

The Institute of Certified Bankers™ (ICB) is dedicated to promoting the highest standards of performance and ethics within the financial services industry.

The ABA Briefing/Webcast, “Americans with Disabilities Act and Website Accessibility Standards: Practical Information You Need Now” has been reviewed and approved for 2.0 continuing education credits towards the CRCM designation.

To claim these continuing education credits, ICB members should visit their ICB Certification Manager on the ABA’s Learning Management System (LMS) at https://aba.csod.com/client/aba/default.aspx. You will need your member ID and password to access your personal information. If you have difficulty accessing the Website and/or do not recall your member ID and password, please contact ICB at ICB@aba.com or 202-663-5092.

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1.5 CPE credit hours (Regulatory Ethics) will be awarded for attending this group-live Briefing/Webcast.

Participants eligible to receive CPE credits must sign in and out of the group-live Briefing/Webcast on the CPA Required Sign-in/Sign-out Sheet included in these handout materials. A CPA/CPE Certificate of Attendance Request Form also must be completed online. See enclosed instructions.

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This ABA Briefing/Webcast is not pre-approved for continuing legal education (CLE) credits. However, it may be possible to work with your state bar to obtain these credits. Many states will approve telephone/audio programs for CLE credits; some states require proof of attendance and some require application fees. Please contact your state bar for specific requirements and submission instructions.
CPA Required Sign-in/Sign-out Sheet

CPAs may receive up to 1.5 hours of Continuing Professional Education (CPE) credit for participating in this group-live Briefing/Webcast.

INSTRUCTIONS:
1. Each participating CPA must sign-in when he/she enters the room and sign-out when he/she leaves the room.
2. Name and signature must be legible for validation of attendance purposes as required by NASBA.
3. Unscheduled breaks must be noted in the space provided.
4. Each participating CPA must complete, online a CPA/CPE Certificate of Completion Request Form (instructions found on page VIII).
5. Individuals who do not complete both forms and submit them to ABA will not receive their Certificate of Completion.

This CPE Sign In/Out Sheet must be scanned and uploaded with the CPE / CPA Request for Certificate of Completion form (instructions found on page VIII of this kit) in order for the CPA to receive your Certificate of Completion.
Instructions for Receiving Certificates of Attendance

CPA/CPE Certificate of Attendance

Submission of a sign-in/sign-out sheet AND electronic request for a certificate of attendance are required for the validation process to be completed.

**NASBA requires ABA to validate your attendance** BEFORE you will receive your certificate of attendance.

1. **COMPLETE** a CPA / CPE Certificate of Completion Request Form online at: https://aba.desk.com/customer/portal/emails/new?t=546545
2. **SCAN AND UPLOAD** the completed CPE / CPA Required Sign-in/Sign-out Sheet (enclosed) and include it with the REQUEST for CPE/CPA Certificate of Completion form found in Step 1.
3. **SUBMIT** completed Request Form and Sign-in/out Sheet
4. **VALIDATION** ABA Briefing Staff will VALIDATE your attendance within 10 days from receipt of Request Form and Sign-in/out Sheet
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Presenters

- Minh N. Vu, Partner and ADA Title III Team Leader, Seyfarth Shaw LLP
- Preety Kumar, Founder and CEO, Deque Systems
- Toni Cannady, Senior Research Assistant, Center for Regulatory Compliance, American Bankers Association (Moderator)

Agenda

- The Legal Landscape: Trends, Guidelines, and Demand Letters
- Website Accessibility Compliance and WCAG 2.0 Requirements
- Questions and Answers
WHY SHOULD I BE THINKING ABOUT WEBSITE ACCESSIBILITY NOW?

The Wall Street Journal reports on Nov. 1, 2016:

**Equal Access**
The number of lawsuits brought by plaintiffs’ firms claiming business websites aren’t accessible to the blind is on the rise.

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<tr>
<th>Website lawsuits by industry</th>
<th>Hospitality</th>
<th>Vehicle manufactures</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail</td>
<td>12</td>
<td>15</td>
<td>45</td>
</tr>
<tr>
<td>Restaurant</td>
<td>9</td>
<td>Medical</td>
<td></td>
</tr>
</tbody>
</table>

*Federal court filings through Oct. 20, 2016  Source: Seyfarth Shaw LLP

THE WALL STREET JOURNAL.
Litigation Trends
Five States with Most ADA Title III Lawsuits*

* Filed in a Federal Court
Litigation Trends
States with the Most Website Lawsuits in Federal Court as of October 20, 2016

- Arizona: 43
- California: 5
- Florida: 1
- Indiana: 1
- Massachusetts: 29
- New York: 2
- Pennsylvania: 5
- Texas: 2
- Washington: 3

Litigation Trends
Number of Federal Website Lawsuits by Industry as of October 20, 2016

- Total Lawsuits: 244
- Academic: 148
- Dating Services: 2
- Entertainmen: 1
- Financial: 2
- Gaming: 1
- Hospitality: 4
- Insurance: 4
- Medical: 45
Litigation Trends
Plaintiff’s Firms Filing The Most Federal Website Lawsuits as of October 20, 2016

The DOJ and Advocacy Groups Are Pushing an Aggressive Enforcement Agenda

- DOJ settlements about websites and/or mobile apps of:
  - Peapod (settlement agreement)
  - H&R Block (lawsuit/consent decree)
  - Hilton Worldwide (lawsuit/consent decree)
  - Quick Trip (settlement agreement)
  - Museum of Crime & Punishment (settlement agreement)
  - edX (settlement agreement)
  - Louisiana Tech University (settlement agreement)
  - Harvard & MIT (statement of interest)
  - Florida State (settlement agreement)
  - Law School Admissions Council (settlement agreement)
  - Carnival Cruise Lines (settlement agreement)
  - Miami University (consent decree)
WHAT DOES IT MEAN FOR A WEBSITE TO BE “ACCESSIBLE”? 

What does it mean for a website to be “accessible”?

BASIC CONCEPT:

• Can people with disabilities use the website?
• Types of disabilities that can limit ability to use websites:
  – Blind, color blind, low vision
  – Deaf or hard of hearing
  – Limited mobility or dexterity
  – Epilepsy
  – Cognitive disabilities
What does it mean for a website to be “accessible”?

- No legally binding definition for public accommodations websites yet; regulations under development by DOJ
- Only one case has reached the question of whether an inaccessible website violates CA anti-discrimination statute, but provided no analysis
- Guidelines that have been/are used:
  - Section 508 Website standards (considered outdated)
  - Web Content Accessibility Guidelines (WCAG 2.0)

WHAT'S THE BASIS FOR A CLAIM THAT A WEBSITE THAT IS NOT ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES VIOLATES THE LAW?
Various Laws That Require or May Require Website Accessibility for Banks

- Title III of the ADA (public accommodations)
- Section 503 (government contractors), and 504 (recipients of federal funding) of the Rehabilitation Act

HOW ARE PLAINTIFFS CLAIMING THAT A WEBSITE THAT IS NOT ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES VIOLATES TITLE III OF THE ADA?
ADA Title III prohibits discrimination by public accommodations against individuals with disabilities.

- Title III requires public accommodations provide:
  - Equal access to goods, benefits, and services
  - Auxiliary aids & services (e.g., accessible electronic information technology) at no extra charge to ensure effective communication absent undue burden or fundamental alteration

WHAT STATUTE OR REGULATION TELLS ME IF MY WEBSITE COMPLIES WITH THE TITLE III OF THE ADA?
• Definition of “auxiliary aids and services” lists “accessible electronic information technology;”
• No ADA regulation specifically mentions websites or sets a standard for accessible websites (yet)
• Proposed regulations for public accommodations websites pushed back to 2018
• Proposed regulations for state and government websites in process with DOJ
  – Title II SANPRM comment period closed October 7, 2016

WHAT STANDARD IS THE DOJ CONSIDERING?
Web Content Accessibility Guidelines (WCAG)

Three Levels
- Level A
- Level AA
- Level AAA

• Level AA is the standard expected to be adopted by the DOJ in its regulations
  - Standard used by DOJ in enforcement actions
  - Standard incorporated into private settlement agreements
• The majority of companies that build for accessibility strive to conform to Level A and Level AA.
• Why not AAA?

WHAT ABOUT MOBILE APPS?
### Aren’t mobile phones inherently accessible?

- Generally yes, but those accessibility features only work if the app is coded work properly with built in screen reader software.
- Likely not, but it did seek comments on the issue in the Title II SANPRM
- Not a generally accepted standard like there is for websites
- The W3C is expected to issue mobile app guidelines with WCAG 2.1 in a few years
- Generally, not yet; but it has been included in DOJ and advocates’ settlement agreements

### Is the DOJ considering a standard for mobile apps?

### Is there a standard?

### Have you seen lawsuits/demand letters regarding mobile app accessibility?

### WHAT ABOUT WEB-ONLY BUSINESSES?
What about Web Only Businesses?

- Websites of public accommodations that have a physical place of business are covered by Title III of the ADA.
- Disagreement among courts about whether businesses with no physical location are covered by Title III of the ADA:
  - First Circuit: No need for physical place of business.
  - Ninth, Third, Sixth Circuits (possibly Fifth): Nexus to physical place of business required.
  - District of Vermont/District of MA: Web-only business can be a public accommodation

HOW ARE BUSINESSES RESPONDING TO LAWSUITS AND DEMAND LETTERS?
Virtually all matters settle

Attempts to fight have generally been unsuccessful

- Huntington Bank
- Harvard & MIT
- Harbor Freight

Attempts to fight have generally been unsuccessful

- *Davis v. BMI/BND Travelware* (Colorado Bags N’ Baggage, 2016)
  - CA Superior Court Judge ruled on MSJ retailer violated the ADA and CA Unruh Act because website was not accessible to individuals with vision-related disabilities.
  - Found plaintiff “presented sufficient evidence that he was denied full and equal enjoyment of the goods, services, privileges, and accommodations offered by defendant [via its website] because of his disability.”
  - No detail on whether a certain standard must be met for accessibility.
MY BUSINESS LIKES TO BE PROACTIVE AND STAY AHEAD OF TRENDS LIKE THIS. WHAT CAN WE DO?

What is the usual process for making/keeping an accessible website?

- Commitment to meeting a certain standard (e.g. WCAG 2.0 AA)
- Expert does audit and produces report
- Website development team implements changes to website
- Revise processes for changing website structure & content
- Regular monitoring and auditing
- User feedback & complaint mechanism
What are some of challenges in making and keeping a website accessible we should be aware of?

- Client buy-in: top-down and company wide
  - Culture
  - Funding
  - Branding/marketing considerations
  - Training
  - Diverse content providers
- Finding the right consultant
- Finding skilled employees or vendors to fix website
- Getting vendors to cooperate
- Making sure changes to website don’t negatively impact accessibility

What do I look for in a digital accessibility consultant?

- Determine the key people who will be working on your project (key for bigger companies)
- Involvement with standard setting agencies such as the WC3 and other industry groups
- Work with other clients / references
- How is testing conducted? *(e.g. manual or automated audit, or both)*
- Quality of deliverables (what are you actually getting?)
- What type of certification of compliance will you get at the end of the process?
What else can/should we do?

- Add accessibility policy and link to website (policy and process for customers to provide feedback)
- Include WCAG 2.0 AA compliance in vendor contracts
- Create and implement internal procedures and policies to ensure digital accessibility in websites and mobile apps
- Train all employees who interact with customers (CSRs) or are responsible for websites/mobile apps

What do we do about stuff outside our control?

- Third Party Content:
  - Software licensed from third parties by retailer to perform functions (Google Maps, Recipes feature, circulars, Instagram feeds)
  - Advertising by third parties
  - Payment mechanism
- Many businesses use a vendor to create their websites
- Third-party vendors who have no idea what WCAG is
- Links to third party websites
Form and Modal Dialog Issues are common

Complex images

FROM PAST TO FUTURE....

- Requires creative ideas for text alternatives
- Accessible HTML Alternatives
- Long Descriptions
- Color Blindness Accessibility may require Shapes & Patterns
### Categories of Accessibility Issues

- Site-wide
- Common UI elements
- Visual design issues
- Special issues remaining on unique pages

### DEMO

**Safari**

**Voice Over**

**Spurious broken site**
Overwhelming number of defects

• Be prepared for some shock and protests from your IT/Dev team
• Rather than audit and give comprehensive reports, do an intelligent sampling.
• Use the data to plan quick wins and removal of critical barriers in critical use cases
• Develop the process to make applications and content accessible
• Introduce accessibility into the development process – begin with automated tests + Keyboard

Continuing requirement

• Turns out to be a problem and defects keep recurring.
• To prevent regression, you have to prevent
• How to make prevention easy
• Agile - opportunity and a challenge
• Third Party Acceptance test. Testable requirements. After you accept risk is yours. Without enforcement, procurement action is useless
The speed of agile requires automation

Testing Permutations
- Operating systems
- Browsers
- Device form factors
- Screen Readers

have “exploded”

Agile is fast, continuous
- Batch tools are not
- Full manual testing is slow

Automation is required to keep up!

Accessibility done wrong
Shift Left Testing

Catching a defect in the design and requirements phase can reduce cost to fix by up to 100:1

<table>
<thead>
<tr>
<th>Accessibility Testing Scaling Barriers</th>
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<tbody>
<tr>
<td>• Not enough qualified resources</td>
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<tr>
<td>• No automation</td>
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<tr>
<td>• “Experts” often give conflicting advice</td>
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<tr>
<td>• No prioritization</td>
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<tr>
<th>Scaling Manual Accessibility Testing</th>
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<tbody>
<tr>
<td>• WCAG 2 takes a long time to learn</td>
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<tr>
<td>• WCAG 2 is tricky</td>
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<tr>
<td>• WCAG 2 has been designed to be flexible</td>
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### Assistive Technology - Screen Reader & Browser Testing Stack

- Windows: NVDA + Firefox
- Mac: VoiceOver + Safari
- Mobile: iOS VoiceOver + Safari
- Gov.: JAWS + Internet Explorer
- Test all in latest versions of OS, Screen Reader, and Browser
- Keyboard Only Testing
  NO SCREEN READER
- Keyboard Focus Visibility Testing
  NO SCREEN READER

---

### Lessons we have learned

- Having a policy and enforcing it is the most important part of an accessibility program
- Do version 1 and then there is a version 2 – How do you eat an elephant? A bite at a time
- Categories of defects are important to prioritize. Critical barriers, site-wide issues etc.
- Third party vendors can push-back and there are alternative situations
- Sustaining and scaling a program for accessibility can take some time.
- Risk tolerance for every org is different and budget allocation should take that into consideration
### Accessibility is Change

### Determining Enterprise Scope and Status
- Accessibility is manual (automate ~30%)
- Dynamic applications have conditional functionality
- Sites get “forgotten”
- Content and links can be added and easily removed
- Teaching an entire organization new skills
  - Different skills for different roles
  - High turnover
  - Change management
  - Novice to intermediate to expert

### Accessibility is People

### Consistency in assessments
- Accuracy – did I not miss anything?
- Consistency – does everyone interpret WCAG the same?
- Coverage – do I know what all the functionality is?
- Consistency in recommendations / implementations
  - Best practices vs. accessible
  - Appropriate techniques
  - Platform support
  - Changing technologies
- Writing actionable and complete requirements, acceptance criteria, and test cases
  - Requires deep understanding of AT use
What is a practical way for me to get started?

- Accessibility Policy and Statement
- Accessible Complaint and accommodation request path
- Inventory and then survey of high risk properties
- Planning based on real data gathered through survey
- Put automated tests in place now! Tell your developers to download aXe, open source/free tool

You can use an ERASER on the drafting table or a sledge hammer on the construction site

Frank Lloyd Wright / blog.mensstudio.com
How to Submit Questions

If you are participating on the Web:
Enter your Question in the “Questions” Box
and Press ENTER / SUBMIT

If you are participating by Phone:
Email your question to: aba@1source-intl.net
OR
Press STAR 1 on your telephone key pad.
Based on feedback from our customers, Deque's Accessibility Software Checklist ensures that whatever tool you select will meet the needs of your dynamic website. When you prepare to meet with potential vendors, keep this list handy and make sure that the company you choose meets the criteria listed below.

### The vendor:

- [ ] How long has the company been in the accessibility business?
- [ ] Who are some of the clients that represent their work?
- [ ] Is their focus web and mobile accessibility?
- [ ] Can they handle enterprise-level projects?
- [ ] Have they successfully completed a web project as large as yours?
- [ ] Does the company employ people with disabilities as testers, engineers and consultants?
- [ ] Is their own website compliant with WCAG?
- [ ] Does the vendor provide consulting services to help clients analyze and remediate accessibility issues in their websites and applications?

### The product:

- [ ] Is the software interface itself accessible?
- [ ] Is there a full tool set for the production life cycle, through the design, coding, and testing phases?
- [ ] Which development environments are supported; e.g., Internet Explorer, Visual Basic, Firefox, Chrome, etc.?
- [ ] Does the software fit into other integrated development environments; i.e., Java, C++, Scala, etc.?
- [ ] Can your accessibility software record specific use-case sequences for automated testing; i.e., a login or sales transaction?
- [ ] Does your software tool include the ability to schedule regular automated testing to check up on the accessibility of your site after it's launched?
Next Steps
Schedule a Needs Assessment with a Deque accessibility consultant! Your assessment will help you reduce the risk and better understand the barriers on your website or web application for people with disabilities.

This assessment will:
- Make your website or application accessible
- Ensure compliance with Section 508 or ADA
- Determine the most effective path to accessibility

Visit www.deque.com and schedule your assessment today!

About Deque Systems
Deque is committed to ensuring that websites are usable and barrier free for users with disabilities. The company invented the first accessibility plugin software, the first web-based testing platform, and the first server-based accessibility solution to help organizations become accessible, advance the goals of their organization, and remove barriers for all users on the web.

Deque’s customers include leading Fortune 500 and Fortune 100 companies including many financial institutions. Deque has served the federal government for over ten years, including one of the largest accessibility projects in the Federal government. Deque also works regularly with educational institutions and mission-focused nonprofits to ensure successful and accessible outcomes.
Managing 2017 Compliance Priorities

Presented by: ABA Center for Regulatory Compliance

Wednesday, December 14, 2016 • 2:00–4:00 p.m. ET*

Members of the American Bankers Association’s Financial Institutions Policy and Regulatory Affairs (FIPRA) Group will provide insights on how recent regulatory developments will impact how you manage your compliance risk and examination challenges in 2017 and beyond.

Our panel of ABA experts will give you pointers about what you might expect from regulatory agencies and Congress as only ABA can. Learn what to do to keep pace with the changing regulatory landscape. This program is not a regulation training session, but is designed to give you an update that will help you identify compliance risks to support your assessment process and stay ahead of the evolving compliance oversight curve. Check your “to do list” against our suggestions about what to prepare for in 2017.

The Briefing will focus on:

- BSA/AML/OFAC Still Matter—CDD and sanctions
- HMDA—preparing for the new disclosure regime
- ADA—requirements for accessible websites and mobile Apps
- Mortgage Origination—making sense of TRID and RESPA section 8
- Mortgage Servicing—implementation of the latest amendments
- Fair Lending Enforcement and CRA Performance—lessons learned from recent cases
- Military Lending Act implementation
- The future of small dollar lending and overdraft
- Debt collection—new rules on the horizon
- Flood Insurance—prospects for NFIP reauthorization priorities
- Prepaid final rule implementation
- TCPA—prospects for reform?
- Vendor management on steroids—implications of the FDIC proposed third-party lending guidance
- Diversity Self-Assessments—What the regulators expect

ABA’s FIPRA Group Panelists:

- Virginia O’Neill, SVP
- Nessa Feddis, SVP and Deputy Chief Counsel
- Rob Alba, SVP and Sr. Regulatory Counsel
- Robert Rowe, VP and Associate Chief Counsel
- Krista Shonk, VP and Sr. Regulatory Counsel
- Jonathan Thessin, Sr. Counsel
- Anjali Phillips, Sr. Counsel
- Rick Freer, Sr. Director
- Toni Cannady, Sr. Research Assistant, Compliance

Who Should Attend?

- Compliance Officers
- Compliance Managers
- Bank Counsel
- Risk Managers and Auditors
- Senior Bank Managers
- CRCMs, CPAs

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