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The Accessibility of Federal Information and Data: A Brief Overview of Section 508 of the Rehabilitation Act

Nearly one in four Americans has a disability, according to 2018 estimates from the U.S. Census Bureau. Congress has recognized that in addition to making federal information and data available to the public, it must also be made accessible to people with disabilities. Section 508 of the Rehabilitation Act of 1973 (P.L. 93-112), as amended (29 U.S.C. §794d), provides that federal information and data are to be accessible to individuals with disabilities.

Accessibility in this context means ensuring that members of the public and federal employees with disabilities have access to and use of information and data that is comparable to what is provided to people without disabilities.

These statutory requirements—commonly known to practitioners as Section 508—concern the accessibility of *electronic and information technology* (EIT) of federal departments and agencies. The law’s coverage and requirements illustrate the evolution of accessibility policy in the United States and how Congress has addressed the changing nature of barriers confronted by people with disabilities.

Using accessible EIT may advance inclusion, equity, and innovation among and for people with disabilities. Research also suggests that providing accessible EIT improves the experiences of users both with and without disabilities.

This In Focus provides an overview of Section 508, as well as the standards for information technology and data accessibility that are set by the Architectural and Transportation Barriers Compliance Board (also referred to as the Access Board in 29 U.S.C. §792(a)(1)).

Section 508 Statutory Requirements

When Section 508 was first added to the Rehabilitation Act in 1986 (P.L. 99-506), the statute was concerned with the accessibility of electronic office equipment to people with disabilities. Congress substantially amended Section 508 as part of the Workforce Investment Act of 1998 (P.L. 105-220) requiring federal agencies, including the U.S. Postal Service (USPS), to develop, procure, maintain, or use electronic and information technology that is accessible to federal employees and members of the public seeking information, data, or services.

The law requires the creation of standards to implement the requirements necessary for accessible EIT (29 U.S.C. §794d(a)(2)(A)). Furthermore, these standards are to be incorporated into the Federal Acquisition Regulation, and each federal agency is to incorporate the standards into procurement policies and directives under its control (29 U.S.C. §794d(a)(3)).

The Access Board is an independent agency responsible for establishing the Section 508 Standards. Thirteen members of the board are appointed by the President, of which at least a majority are individuals with disabilities. An additional 12 members are the heads of certain executive agencies (or their designees). The board is authorized by statute to conduct investigations, hold public hearings, and issue orders necessary to ensure compliance with various accessibility standards (29 U.S.C. §792(e)(1)).

Section 508 Standards

The Access Board issued the first EIT accessibility standards in 2000 (referred to as the “Original 508 Standards”). The standards were revised in 2017 (often called the “Revised 508 Standards”). The board has the authority to periodically amend the standards to reflect technology advances or changes in EIT (29 U.S.C. §794d(a)(2)(B)).

Accessible electronic data and information. The standards are published in the *Code of Federal Regulations* (36 C.F.R. §1194 Appendix A). They direct executive agencies and the USPS to ensure that all information and communication technology (ICT) is accessible and usable by individuals with disabilities, either directly or with the use of assistive technology. ICT includes the technologies, equipment, systems, or processes that create, manipulate, store, display, receive, or transmit electronic data and information, as well as any associated content. The standards apply to

- hardware (e.g., a desktop computer; a cell phone);
- software and applications, including user interfaces (e.g., a word processing computer program);
- electronic content, including public-facing content such as agency webpages (e.g., an online application portal); and
- certain official, nonpublic-facing electronic content that constitutes an agency’s official business (e.g., training materials; an intranet page).

The Section 508 Standards incorporate several standards for ICT developed by standard-setting entities outside the federal government, including the Web Content Accessibility Guidelines (WCAG) 2.0. The WCAG 2.0 is an international standard developed in 2008 by the World Wide Web Consortium. The WCAG 2.0 provides direction on how to present information and data on the internet in specific ways that meet the specific needs of individuals with disabilities. The WCAG 2.0 focuses on four

“principles of accessibility.” Content must be “perceivable, operable, understandable, and robust.” As websites become increasingly dynamic and interactive, questions may remain over whether Section 508 and the WCAG 2.0 can ensure accessibility to these evolving forms of content.

Agency Compliance with Section 508

Agency Roles. Section 508 requires the Access Board and General Services Administration (GSA) to provide technical assistance to individuals and federal agencies on the law’s requirements (29 U.S.C. §794d(b)). In 2013, the Office of Federal Procurement Policy within the Office of Management and Budget (OMB) issued a memorandum to agencies with a strategic plan to improve Section 508 implementation and management. The memo said Section 508 implementation at the time was inconsistent. It called for a more comprehensive plan to build and sustain an accessible federal technology environment. The plan called for GSA to develop a one-stop source of information for agencies to successfully implement and manage compliance with Section 508. The website it created is <http://www.section508.gov>.

The OMB memo required each agency chief information officer to establish a Section 508 program with a Section 508 coordinator. Contact information for Section 508 coordinators is publicly available on the Section 508 website. Section 508 coordinators develop and maintain policies that implement information and communications technology accessibility laws and regulations in their agency, such as procurement, software development, and content development and publication policies. Coordinators are also to ensure that information and computer technology meet the “success criteria” established in the Section 508 Standards and assess and report on compliance activities to OMB.

Allegations of Noncompliance. Federal employees and members of the public may submit complaints to federal agencies alleging noncompliance with Section 508’s accessibility requirements (29 U.S.C. §794d(f)(2)). Agencies must resolve Section 508 complaints using their internal procedures for complaints under Section 504 of the Rehabilitation Act, which, among other things, prohibits disability discrimination by executive agencies and the USPS (29 U.S.C. §794(a)).

Courts generally hold that individuals cannot sue federal agencies under Section 508 unless they claim that the agencies violated the law in their capacity as providers of federal financial assistance. Instead, federal employees can sue under Section 501 of the Rehabilitation Act, which prohibits disability discrimination in federal employment (29 U.S.C. §791), while members of the public can sue under Section 504. A violation of Section 508 may also be a violation of Sections 501 or 504 of the Rehabilitation Act, but the standards for determining the violations are not identical. Some courts and federal agencies have suggested that plaintiffs may also be able to enforce Section 508 in court through the Administrative Procedure Act.

Exemptions and Alternative Means. Several exemptions to an agency’s compliance with ICT accessibility are

permitted under the law and the Section 508 Standards. These exemptions to compliance include, among others: (1) lack of commercially available ICT, (2) compliance that creates an “undue burden” to an agency, and (3) ICT that would require a “fundamental alteration.” For these specific exemptions, an agency must provide access to the information and data by an alternative means that meets the identified needs of individuals with disabilities.

Availability of Reporting. OMB requires the largest agencies (i.e., those named in the Chief Financial Officers [CFO] Act) to report twice a year on the maturity of their ICT accessibility program. Non-CFO Act agencies are also encouraged to report. The reporting supports the Chief Information Officers Council and GSA efforts to improve the management of accessibility programs, reduce redundancies, and improve collaboration across agencies.

On a biweekly basis, GSA monitors agency conformance to some of the Section 508 Standards by scanning the homepage of each federal government website. The results of the scan are contained in an accessibility compliance and conformance dashboard that is currently available to certain government users within federal agencies.

The Department of Justice (DOJ) is required to submit a biennial report to the President and Congress containing information and recommendations on the state of federal agency compliance with Section 508 and actions that agencies have taken on allegations of noncompliance (29 U.S.C. §794d(d)(2)). According to DOJ’s Section 508 webpage, the most recent report it issued was in 2012.

Issues for Congress

The extent to which Section 508 is successful in ensuring EIT and ICT are accessible to people with disabilities is difficult to ascertain despite the number of institutions, roles, and activities that are involved in its implementation. This raises several potential issues Congress may consider:

- Congress could require that GSA’s accessibility compliance and conformance dashboard is available to the public to improve accountability to the public across executive agencies. Congress may also seek to require GSA to incorporate additional areas of Section 508 compliance into the dashboard to better inform assessments of implementation.
- To increase knowledge of the benefits and costs of making EIT accessible, Congress may call for a study of federal customer experiences with accessible ICT and the challenges of providing accessible EIT.
- Congress may take action to ensure that it receives current reporting from DOJ on the state of agency compliance with Section 508 and on the resolution of Section 508 complaints. Congress could also examine whether the Access Board is sufficiently involved in issues of Section 508 noncompliance to better assess the extent to which noncompliance is a significant issue.

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