



## U.S. Department of Justice

### Civil Rights Division

*Disability Rights Section*

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## Information Regarding Section 508 of the Rehabilitation Act

### Existing Systems

Section 508 requires that Federal agencies must ensure comparable accessibility to persons with disabilities whenever that agency **uses** electronic or information technology, unless such access would impose an undue burden.<sup>1</sup>

Therefore, if an agency uses word processing software that is incompatible with adaptive equipment on a small local area network, Section 508 may require that the agency replace the software, if replacing that software does not impose an undue burden. Even if the agency could claim that it would be an undue burden immediately to replace the software, it should ensure that any replacement or upgraded software be accessible to persons with disabilities.

### Development of Standards for Procurement

The scope of Section 508 is expansive. "Electronic and information technology" potentially includes any technology that is used in the "automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information." 40 U.S.C. § 1401(3) (definition of "information technology"). This broad definition potentially includes all telecommunications devices (including telephones, voice-mail systems, pagers, facsimile machines, and related technology) and any technology used to convey, transmit, or receive any kind of information.

The Architectural and Transportation Barriers Compliance Board ("Access Board"), in consultation with certain other government agencies and private organizations, is responsible for developing standards for complying with Section 508. These responsibilities include developing standards for electronic and information technology covered by Section 508 and defining what technology constitutes "electronic and information technology" for purposes of Section 508. The Access Board must complete its regulations by February 7, 2000. Ultimately, these requirements

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<sup>1</sup> Even if providing this access or use would impose an undue burden, the agency is still obligated to provide such information in an alternative means that allows individuals with disabilities to use the information. Another narrow limited exception is provided for national security systems, as that term is defined in Section 5142 of the Clinger-Cohen Act of 1996. 40 U.S.C. § 1452.

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will be incorporated into the Federal Acquisition Regulation (“FAR”) by August 7, 2000. All Federal agencies and departments must then revise their procurement policies and directives to incorporate the new standards. If the Access Board later revises its standards for compliance with Section 508, then both the FAR and the procurement policies and directives of all Federal agencies must be revised within six months. If procuring electronic and information technology that complies with the standards developed by the Access Board would impose an undue burden on the agency, it must explain why compliance would create an undue burden in the documents supporting the procurement that does not comply with the Access Board's standards.

### **Enforcement**

If a Federal agency procures electronic and information technology after August 7, 2000, that does not comply with the standards developed by the Access Board, it is subject to administrative complaints and private lawsuits by employees and members of the public. Agencies receiving administrative complaints must apply the complaint procedures established to implement Section 504 of the Rehabilitation Act for resolving the allegations of discrimination. In private lawsuits, the rights and remedies of the parties are the same as in litigation under Section 504 of the Rehabilitation Act as it applies to federally conducted programs.

### **Immediate Requirements for Federal Agencies**

In addition to complying with the future Access Board standards, Section 508 imposes other important duties on Federal agencies.

First, even though the Access Board has not published its guidelines, Federal agencies must make their **current** information and electronic technologies accessible to employees with disabilities and members of the public with disabilities. Furthermore, Federal agencies should be incorporating the needs of persons with disabilities when it makes any changes to its current information and electronic technologies.

Second, Federal agencies must conduct a self-evaluation and submit a report to the Department of Justice regarding the accessibility of their electronic and information technology. All Federal agencies must evaluate the extent to which their electronic and information technology is accessible to and usable by individuals with disabilities and submit a report containing their evaluation to the Department of Justice by June 15, 1999. Agencies are strongly encouraged to submit component self-evaluations through a web site that will be established by the Department of Justice, and to provide an additional comprehensive agency-wide report to the Department. The Department must then evaluate this data and report to the President by February 7, 2000. Thereafter, all Federal agencies must provide information that the Attorney General deems necessary to assess the ongoing compliance with Section 508 and must cooperate with the Attorney General's efforts at assessing this compliance.

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Many Federal agencies are currently purchasing or upgrading computer-based systems to ensure effective operation after the year 2000 (so-called "Y2K projects"). Because Section 508 may significantly affect all of these purchases or upgrades, information on Section 508 responsibilities must be disseminated quickly.

To ensure a successful self-evaluation, the Department of Justice recommends that each agency designate a coordinating person or office ("Designated Agency Official") and distribute this memorandum and appropriate portions of this package to the following personnel within your agency:

- all staff responsible for information technology, including telecommunications equipment and computer systems (such as web pages and software development).
- any agency staff authorized to commit agency funds, including all contracting officers, contracting officer technical representatives, and all employees with procurement warrants.

### **Current Guidelines for Agencies**

Section 508 became effective the day it was enacted, August 7, 1998. Although the Access Board has not yet developed standards for compliance with Section 508, Federal agencies must nonetheless ensure that their electronic and information technology is accessible to persons with disabilities.

Some of the more significant issues covered by Section 508 are discussed below. In addition, the accompanying Resource Guide provides a useful starting point for making your agency's electronic and information technology accessible to persons with disabilities. It includes resources from both the public and private sectors and addresses a wide range of issues.

### **Computer Hardware and Electronic Equipment Accessibility**

Section 508 requires that each Federal agency consider the needs of persons with disabilities when it procures or uses new electronic or information technology hardware or equipment. For instance, office equipment routinely shared among employees (e.g. copiers and fax machines) should be accessible to persons with disabilities. Also, information kiosks or other ITM's — "information/transaction machines" are automated interactive devices, such as automated teller machines, ticket vending machines, electronic building directories, and other devices that provide information or conduct transactions with users — used by Federal agencies to provide information or services to members of the public should be accessible to persons with disabilities. The accompanying Resource Guide provides insight into the design considerations for making this technology accessible.

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Section 508 does not, however, require the installation of adaptive hardware or software at the work station of a non-disabled employee. Section 508 also does not require that an agency purchase equipment to provide information for persons with disabilities at locations other than where that information is provided to others. Sections 501 and 504 of the Rehabilitation Act may require specific modifications as reasonable accommodations in particular instances.

### **Computer Software**

Federal agencies should consider the accessibility of computer software that they develop, procure, maintain, or use. Computer software includes the programs or sets of instructions used by a computer for processing input and information. Without proper software, a computer is useless. Fortunately, making computer software accessible to persons with disabilities can be relatively easy. The accompanying Resource Guide highlights the work done in the public and private sectors in developing standards for accessible computer software.

### **Federal Agency Web Sites**

Many Federal agencies use the Internet to disseminate information publicly or use private intranets to distribute information to their employees. These are examples of electronic and information technology **developed, maintained, or used** by Federal agencies and Section 508 requires that they be made accessible to persons with disabilities. Again, the accompanying Resource Guide provides valuable information into making this technology accessible to persons with disabilities.