



CONSORTIUM FOR CONSTITUENTS
WITH DISABILITIES

Statement for the Written Record
from the Undersigned Members of the

Consortium for Constituents with Disabilities (CCD)

**Special Committee on Aging
United States Senate**

Hearing on:

“Click Here: Accessible Federal Technology for People with Disabilities,
Older Americans, and Veterans”

July 28, 2022

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Chairman Casey, Ranking Member Scott, and Members of the Senate Special Committee on Aging:

On behalf of the undersigned members of the Consortium for Constituents with Disabilities (CCD) Technology & Telecommunications and Rights Task Forces, we write to thank the Committee for holding today's hearing on the critical issue of ensuring that federal agencies are held accountable for achieving digital accessibility under Section 508 of the Rehabilitation Act (an outcome that should have been achieved years ago). We thank the Committee for its attention to these issues and urge Congress to work with the Administration to ensure that the federal government takes all necessary and sufficient steps to advance diversity, equity, inclusion, and accessibility (DEIA) in the federal workforce, including implementing meaningful consequences for agencies that continue to renege on their legal obligations under Section 508.

The CCD is the country's largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance.

Importance of Federal Digital Accessibility

The development, procurement, maintenance, and use of websites, online systems, mobile applications, and other forms of information and communication technology (ICT)¹ are central to the operation of Federal agencies in the 21st century. Reliance on the Internet and intranets has dramatically changed the way agencies conduct work and communicate internally as well as with the public, including the manner in which individuals apply for jobs. Further, agency use of email and social media is dramatically changing the way agencies communicate, both internally and externally.

On June 25, 2021, President Biden issued [Executive Order No. 14035 on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce](#),² establishing that diversity, equity, inclusion, **and accessibility**³ are priorities for the Biden administration and

¹ The term "information and communication technology" means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include but are not limited to: computers and peripheral equipment; information kiosks and transaction machines; telecommunication equipment; customer premise equipment; multifunction office machines; software; applications; web sites; videos; and electronic documents. [Appendix A to Part 1194, E103.4; Architectural and Transportation Barriers Compliance Board (U.S. Access Board); Information and Communication Technology (ICT) Standards and Guidance, 82 Fed. Reg. 5,790 (January 18, 2017).]

² Exec. Order No. 14035, 86 C.F.R. 123 (2021). Available at <https://www.federalregister.gov/documents/2021/06/30/2021-14127/diversity-equity-inclusion-and-accessibility-in-the-federal-workforce>

³ The term "accessibility" means the design, construction, development, and maintenance of facilities, information and communication technology, programs, and services, so that all people, including people with disabilities, can fully and independently use them. Accessibility includes the provision of accommodations and modifications to ensure equal access to employment and participation in activities for people with disabilities, the reduction or elimination of physical and attitudinal barriers to equitable opportunities, a commitment to ensuring that people

detailing additional procedures to advance these priorities across the Federal workforce.⁴

[Section 508 of the Rehabilitation Act](#)⁵ requires agencies to provide federal employees and members of the public with disabilities access to information and data that is comparable to the access provided to federal employees and members of the public without disabilities. Consistent with the Section 508 statute, [regulations implementing Section 508](#)⁶ also require that ICT developed, procured, maintained, and used by federal agencies be accessible to and usable by people with disabilities.

We applaud the Biden Administration for including “accessibility” as a cornerstone of efforts in E.O. 14035 to “cultivate a workforce that draws from the full diversity of the Nation.” In particular, we strongly support the unequivocal directive in the Executive Order and the [Government-wide DEIA Strategic Plan](#)⁷ that:

- “All information and communication technology and products developed, procured, maintained, or used by Federal agencies are accessible and usable by employees with disabilities consistent with all standards and technical requirements of the Rehabilitation Act of 1973” [E.O. 14035§ 10(b)(iii)(F)] and
- “[the federal government] Ensure all technology, whether developed in-house or externally, is compliant with Section 508 of the Rehabilitation Act before deployment.” [Government-wide DEIA Strategic Plan, § 4 Accessibility Roadmap, p. 14].

Further, we applaud the technical assistance materials prepared by the Administration for use by federal agencies in achieving digital accessibility, particularly the guidance on [www.Section508.gov](#) titled “[Integrating Accessibility into Agency Diversity, Equity, Inclusion, and Accessibility \(DEIA\) Implementation Plans](#).”⁸ But we believe that these efforts, alone, will not ensure achievement of these goals, and that additional proactive steps need to be taken to ensure that the charge of the President’s Executive Order is realized and Section 508 is fully implemented.

Recommendations for Implementing EO 14035 and Section 508 Requirements

with disabilities can independently access every outward-facing and internal activity or electronic space, and the pursuit of best practices such as universal design. [E.O. 14035, § 2(e)]

⁴ See Appendix for a more comprehensive description of digital accessibility provisions in E.O. 14035 and the [Government-wide Strategic Plan to Advance Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce](#).

⁵ Rehabilitation Act of 1973 § 508, 29 U.S.C. §794(d). Available at:

<https://www.dol.gov/agencies/oasam/regulatory/statutes/section-508-rehabilitation-act-of-1973>

⁶ Architectural and Transportation Barriers Compliance Board (U.S. Access Board); Information and Communication Technology (ICT) Standards and Guidance, 82 Fed. Reg. 5,790 (January 18, 2017). Available at:

<https://www.federalregister.gov/documents/2017/01/18/2017-00395/information-and-communication-technology-ict-standards-and-guidelines>

⁷ *Government-wide Strategic Plan to Advance Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce* (November 2021). Available at: <https://www.whitehouse.gov/wp-content/uploads/2021/11/Strategic-Plan-to-Advance-Diversity-Equity-Inclusion-and-Accessibility-in-the-Federal-Workforce-11.23.21.pdf>

⁸ Available at: <https://www.section508.gov/manage/deia-guidance/>

As the Committee considers opportunities for Congressional action to advance digital accessibility, we encourage you to work with the Biden Administration to identify legislative, regulatory, subregulatory, and other avenues to achieve these goals in the short, medium, and long-terms. In particular, we have identified the following recommendations for Administrative action, and encourage the Committee to raise these ideas with the Domestic Policy Council and other facets of the Administration.

1. In accordance with current legislative and regulatory requirements, ensure that the Department of Justice (DOJ) conducts a regular, comprehensive review of compliance with Section 508 by federal agencies and submits periodic reports to the President and Congress. As was noted in the June 30, 2022 letter⁹ led by Chairman Casey, Ranking Member Scott, and leaders of other relevant Senate Committees, this mandatory audit review is required to be conducted biennially under §(d)(2) of Section 508, but has not been completed since 2012.
2. Direct the Office of Management and Budget (OMB) to update the [2013 Strategic Plan for Improving Management of Section 508 of the Rehabilitation Act](#).¹⁰ The update should include, among other things, a directive that each federal agency proactively engage with users and take proactive steps to modernize infrastructures and support the rapid adoption of technological innovations that reduce reliance on inaccessible formats (such as paper and ink signatures), in-person meetings, and telephone interactions, including ensuring accessibility and usability for people with disabilities at the initial design stages. The current Strategic Plan requires agencies to report to OMB regularly on their progress in improving baseline assessment measures. These reports, or a summary developed by OMB, should be made public on an annual basis to enhance transparency and ensure progress in advancing accessibility goals.
3. Direct federal agencies to explicitly report on digital accessibility efforts in annual reporting required by § 3(d) of the 21st Century Integrated Digital Experience Act (IDEA).¹¹
4. Require that the annual report to the President regarding implementation of EO 14035 [§ 4(c)] include a specific section on digital accessibility and that each federal agency submit quarterly progress reports to the Domestic Policy Council regarding digital accessibility. These reports should also incorporate by reference the accessibility sections included in the aforementioned 21st Century IDEA reports, and report on planned activities to address outstanding requirements under this legislation and any barriers to accessibility identified in these reports.

⁹ Available at <https://www.aging.senate.gov/press-releases/casey-leads-bipartisan-letter-demanding-answers-from-department-of-justice-on-lack-of-web-accessibility-for-people-with-disabilities>.

¹⁰ Office of Management and Budget, *Strategic Plan: Improving Management of Section 508 of the Rehabilitation Act: A Framework for Enhancing and Sustaining Management Improvements to Increase the Accessibility of Electronic and Information Technology* (2013). At: <https://obamawhitehouse.archives.gov/sites/default/files/omb/procurement/memo/strategic-plan-508-compliance.pdf>

¹¹ 21st Century Integrated Digital Experience Act, Pub. Law 115-136.

5. Require that compliance with and implementation of Section 508 is included in audits conducted by each agency's Inspector General and include Section 508 compliance in OMB Circular A-123 audits.
6. Require that federal agencies appoint a Chief Accessibility Officer who is responsible for ensuring compliance with Section 508 agency-wide and implementing the digital accessibility roadmap prescribed by E.O. 14035 and the Government-wide Strategic Plan.
7. Establish and communicate to federal agency officials clear consequences for failures to comply with and implement Section 508 and the digital accessibility initiatives included in E.O. 14035.
8. Require that all federal agencies include in their DEIA strategic plan specific goals, objectives, and benchmarks for carrying out the roadmap for achieving digital accessibility set out in "Integrating Accessibility into Agency Diversity, Equity, Inclusion, and Accessibility (DEIA) Implementation Plans."
9. Require third party certification (verification) of vendor accessibility claims including usability testing by actual users with disabilities (in procurement, require a certification of 508 compliance from a qualified third party with material experience in the space).
 - a. Certification must come from a legitimate expert in the space with the systems and methodology to make a valid determination of compliance.
 - b. Certification must also cover the vendor's "accessibility maturity" (i.e., the product should not just be evaluated for accessibility at a single point in time; vendors must have the systems and processes in place to maintain a product's compliance as it "matures").
10. Review, expand, and improve the Voluntary Product Accessibility Template (VPAT) process and documentation.
 - a. Vendors should provide a warranty related to the product's accessibility covered in their VPAT.
 - b. The US Access Board panel setting applicable standards should include a balance of representatives with all types of disabilities and technical experts including those who have actually built a product.
 - c. The current VPAT form, which is cumbersome and confusing, should be reviewed and replaced with a process that makes sense both from the vendors' and reviewers' point of view.
 - d. Require, if possible, accessibility features be turned on by default—avoiding a decision by buyers/operators who may not understand the requirement.
 - e. The agency should report who evaluated Section 508 compliance in the process, as well as:
 - i. The results of that assessment;
 - ii. The way that assessment maps back to the regulatory requirements; and
 - iii. The way that assessment was scored as part of the overall process.
11. Modify the complaint resolution process to safeguard federal employees who find and report that something does not work.
12. Include the Section 508 requirements in all procurements of technology by default.

13. Require the personal certification of the procurement officer and report of such certification back to the public.
14. Review the application of the National Security Exemption in the Section 508 regulation [36 C.F.R. 1194 (Appendix A, E. 202.3)] to determine whether it is being applied to ICT operated by agencies as part of a national security system [as defined in 40 U.S.C. 11103(a)] in a manner that unnecessarily screens out or tends to screen out qualified individuals with disabilities in military, intelligence, and/or foreign affairs agencies.

Implementing these recommendations would help ensure that all federal agencies finally make digital accessibility a core aspect of “doing business” so that applicants and employees with disabilities enjoy a genuine, effective, and meaningful opportunity to participate in the federal workforce.

We appreciate the opportunity to provide the Committee with our perspective on the importance of federal action to enhance accessibility of information and communication technology covered under Section 508. The Consortium for Constituents with Disabilities and its members look forward to working with Congress and the Administration to ensure that people with disabilities can access and use the federal technology they encounter.

If you have any questions or if we can be of any assistance, please do not hesitate to reach out to Joe Nahra, CCD Technology & Telecommunications Task Force co-chair, at Joseph.Nahra@PowersLaw.com. Thank you for your consideration of these recommendations.

Sincerely,

The Undersigned Members of the Consortium for Constituents with Disabilities

Access Ready
American Council of the Blind
American Foundation for the Blind
American Therapeutic Recreation Association
The Arc of the United States
Assistive Technology Industry Association
Association of Assistive Technology Act Programs
Association of People Supporting Employment First
Autistic Self Advocacy Network
Autistic Women & Nonbinary Network
Center for Public Representation
Disability Rights Education and Defense Fund
Epilepsy Foundation
National Disability Rights Network
Perkins School for the Blind
TASH
Telecommunications for the Deaf and Hard of Hearing
United Spinal Association
The Viscardi Center