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THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

JAN 10 2005

TO: All Operating Division Heads

SUBJECT: HHS Policy for Section 508 Electronic and Information Technology (EIT)

In 1998, Congress amended the Rehabilitation Act of 1973 to require Federal agencies to make their electronic and information technology accessible to people with disabilities. Inaccessible technology interferes with an individual's ability to obtain and use information quickly and easily. Section 508 was enacted to eliminate barriers to using information technology, to make available new opportunities for people with disabilities, and to encourage development of technologies that will help achieve these goals.

The law applies to all Federal agencies when they develop, procure, maintain, or use electronic and information technology. Under Section 508, the Department of Health and Human Services (HHS) must give those employees and members of the public with disabilities access to information that is comparable to the access available to others without disabilities.

Attached is the policy for implementation of Section 508 within your respective Division. All Operating Division Heads and the Office of the Secretary (which includes all Staff Divisions) are required to adhere to the Electronic and Information Technology Accessibility Standards as published in the *Federal Register* of December 21, 2000. All Operating Division Heads and the Office of the Secretary are also required to adhere to the Federal Acquisition Regulations on Electronic and Information Technology Accessibility as published in the *Federal Register* of April 25, 2001.

This policy has been developed by the Section 508 Program Team, which includes members from many Divisions. See attached. The Office on Disability will coordinate education and training on implementing this policy. For more information on Section 508, your staff may visit the website of www.Section508.gov. For questions specific to the HHS policy on Section 508, please have your staff contact your agency's Section 508 Program Team member or the HHS Office on Disability at (202) 401-5844.

Tommy G. Thompson

Tommy G. Thompson

Attachments:
--Summary of HHS Policy for Section 508 EIT
--List of Section 508 Team Members
--HHS Policy for Section 508 Electronic and Information Technology (EIT)

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Summary of HHS Policy for Section 508

Electronic and Information Technology (EIT)

This policy for implementing Section 508 of the Rehabilitation Act of 1973, as amended, follows up on Secretary Thompson's August 30, 2001 Memorandum to all HHS Employees on Accessibility to Federal Electronic and Information Technology (EIT). In this memorandum the Secretary stated, "Every HHS employee has a collective responsibility for compliance with Section 508's mandate to make our information accessible to individuals with disabilities. This means that HHS employees must take proactive actions to ensure that all electronic and information technology and all new or revised information made available on the Internet and the Intranet meet the new accessibility standards."

The attached policy will ensure that all HHS employees, Divisions and contractors are in full compliance with Section 508. This policy applies to all Departmental electronic and information technology developed, procured, maintained, or used after June 21, 2001.

The policy requires that each HHS Operating Division Head and the Office of the Secretary (which includes all Staff Divisions) will designate an individual at the senior manager level as the Division's Section 508 Official. The designated Division Section 508 Official will facilitate that Division's implementation of the Section 508 standards, regulations, policies and procedures. Each Operating Division and the Office of the Secretary will develop a Section 508 Implementation Plan, which will include:

- Procedures for processing exception requests, including undue burden exceptions to Section 508.

- Procedures for ensuring Section 508 employment discrimination complaints are forwarded to the HHS Equal Employment Opportunity (EEO) Office and other complaints from employees, applicants for employment, or members of the public alleging a failure to comply with Section 508 are forwarded to the HHS Office for Civil Rights (OCR) for investigation and resolution.

- Procedures for handling other Division Section 508 responsibilities such as:

    - Providing such information to the Attorney General as the Attorney General determines is necessary to prepare biennial reports.

    - Maintaining copies of the Division's approved and denied undue burden exceptions and other requests.

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- Description of the roles and responsibilities of the various Division individuals who have ongoing Section 508 responsibilities.

- Description of ongoing Division Section 508 outreach activities. This should include items, such as Section 508 training for all employees, both as part of new employee orientation, and Project Officer training.

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U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES SECTION 508 PROGRAM TEAM MEMBERS

Administration for Children and Families (ACF)	Linda Adams
Agency for Healthcare Research and Quality (AHRQ)	Geri Michael-Dyer
Administration on Aging (AoA)	Susan Banning
Assistant Secretary for Budget, Technology, and Finance (ASBTF)/Information Technology Service Center (ITSC)	Billy Absher
Assistant Secretary for Budget, Technology, and Finance (ASBTF)/Information Technology Service Center (ITSC)	Gail Becker
Centers for Disease Control and Prevention (CDC)	Susan Wilkin
Centers for Medicare and Medicaid Services (CMS)	Gerald Sagel
Food and Drug Administration (FDA)	Jennifer Croft
Health Resources and Services Administration (HRSA)	Art Smith
Indian Health Service (IHS)	Joye Howe
National Institutes of Health (NIH)	Marcella Haynes
Office for Civil Rights (OCR)	John Halverson
Office on Disability (OD)	Eileen Elias
Office of the General Counsel (OGC)	Jeffery Davis
Office of Inspector General (OIG)	Brian Carman
Program Service Center (PSC)	Monte Washburn
Substance Abuse and Mental Health Services Administration (SAMHSA)	Clinton Scott

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Department of Health and Human Services

HHS Policy for Section 508 Electronic and Information Technology (EIT)

January 2005

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1.0 Purpose

This document establishes policies and responsibilities for implementing Section 508 of the Rehabilitation Act of 1973, as amended, throughout the United States Department of Health and Human Services (HHS).

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2.0 Background

In 1986, Congress added Section 508 to the Rehabilitation Act of 1973. Section 508 established non-binding guidelines for Information Technology (IT) accessibility. On August 7, 1998, the President signed into law the Workforce Investment Act of 1998 (P. L. 105-220), which included the Rehabilitation Act Amendments of 1998. These amendments significantly expanded and strengthened the IT accessibility requirements in Section 508 and made them binding on Federal agencies.

In the December 21, 2000, *Federal Register*, the Architectural and Transportation Barriers Compliance Board (Access Board) published the Electronic and Information Technology (EIT) Accessibility Standards; Final Rule (36 CFR Part 1194). These standards became effective on June 21, 2001.

In the April 25, 2001, *Federal Register*, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) published a Final Rule amending the Federal Acquisitions Regulations (FAR), Electronic and Information Technology Accessibility (48 CFR, Chapter 1, Parts 2, 7, 10, 11, 12, and 39). These regulations became effective on June 25, 2001.

2.1 Summary of Section 508 Requirements

Section 508 requires that, when Federal agencies develop, procure, maintain, or use EIT, (1) individuals with disabilities who are Federal employees have access to and use of information and data that is comparable to the access to and use of the information and data by Federal employees who are not individuals with disabilities; and (2) individuals with disabilities who are members of the public seeking information or services from a Federal department or agency to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities (FAR 39.201 and 36 CFR 1194.1). Comparable access is not required if it would impose an undue burden on the agency.

Procurement awards made on or after June 25, 2001, are subject to the Section 508 FAR Final Rule. In addition, software applications and operating systems; Web-based information, systems or applications (Internet, Intranet or Extranet); telecommunications products; video and multimedia products; self contained, closed products; and desktop and portable computers developed, procured, or used on or after June 21, 2001, must be Section 508 compliant.

The Section 508 requirements do not apply retroactively to EIT existing prior to June 21, 2001, as it relates to enforcement. Specifically, the *Access Board's Electronic and Information Technology Accessibility Standards: Economic Assessment* states that:

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> The standards are to be applied prospectively and do not require Federal agencies to retrofit existing Electronic and Information Technology. As agencies upgrade and change their Electronic and Information Technology, they must comply with the standards (FAR Final Rule, Chapter 2.1 Final Standards).

In addition to the Access Board EIT Accessibility Standards Subpart B Technical Standards (Appendix B) the Functional Performance Criteria requirements that are listed in Subpart C (Appendix B), state that at least one mode of operation and information retrieval that does not require user vision, hearing, speech, or fine motor control shall be provided, or support for assistive technology used by people with disabilities shall be provided.

The Access Board EIT Accessibility Standards Subpart D (Appendix B) Information, Documentation and Support, requires that (a) product support documentation provided to end-users shall be made available in alternate formats upon request, at no additional charge, (b) end-users shall have access to a description of the accessibility and compatibility features of products in alternate formats or alternate methods upon request, at no additional charge, and (c) support services for products shall accommodate the communication needs of end-users with disabilities.

In his August 30, 2001, memorandum to all HHS employees on accessibility to Federal EIT, the Secretary stated:

> Every HHS employee has a collective responsibility for compliance with Section 508's mandate to make our information accessible to individuals with disabilities. This means that HHS employees must take proactive actions to ensure that all Electronic and Information Technology ... and all new or revised information made available on the Internet and the Intranet meet the new accessibility standards.

The requirements imposed on Federal agencies under Section 508 are not altogether new. Section 508 strengthens an existing obligation imposed on Federal agencies under Section 504 of the Rehabilitation Act. Section 504 requires Federal agencies to take appropriate steps to communicate effectively with applicants, participants, and members of the public to ensure that individuals with disabilities are able to obtain information as to the existence and location of services, activities, and facilities (45 CFR § 85.51).

Under both Section 508 and Section 504, Federal agencies are not required to take any action that they can demonstrate would result in an "undue burden." Undue burden is defined as significant difficulty or expense and is based on case law interpreting Section 504. In the context of Section 508, in determining what is significant difficulty or expense of compliance, each agency must consider all agency resources available to its program or component for which the product or service is

being developed, maintained, used or procured. Undue burden determinations are made on a case-by-case basis. Under both Section 504 and Section 508, if a particular action would impose an undue burden, an agency still has an obligation to use alternate methods to provide individuals with disabilities with access to and use of information and data.

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2.2 Federal Accessibility Requirements

Other Federal regulations and statutes (e.g., Section 501 and Section 504 of the Rehabilitation Act) also require equal access to information for individuals with disabilities. Therefore, Federal agencies are required to provide, upon request, information and data to individuals with disabilities through an alternate method of access.

2.3 Other Applicable Federal Regulations and Guidance

On April 19, 2000, the Department of Justice issued its first report to the President on the extent to which the EIT of the Federal Government is accessible to individuals with disabilities. Every two years thereafter, the Attorney General of the United States must report to the President and Congress on Federal agency compliance with the requirements of the law and on any actions on individual complaints.

The Office of Management and Budget (OMB) references Section 508 in Circular A-11 for purposes of budget preparation. In Section 33.4 Systems Acquisitions, A-11 (Revised 2003) states:

> You [agencies] should ensure Electronic and Information Technology acquisitions meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended and upon becoming effective to allow individuals with disabilities comparable access to and use of data as allowed individuals without disabilities, unless providing such accessibility would impose an undue burden on your agency.

OMB further references Section 508 in Circular A-11 Section 53.1 (Revised 2003) for Agency IT Investment Portfolio (Exhibit 53):

> Ensure that spending on IT supports agency compliance with the requirements of Section 508 of the Rehabilitation Act Amendments of 1998 (Electronic and Information Technology Accessibility) and Section 504 of the Rehabilitation Act of 1973 (Reasonable Accommodation).

2.4 Computer/Electronic Accommodations Program (CAP)

The Computer/Electronic Accommodations Program (CAP), http://www.tricare.osd.mil/cap/, in the Office of the Assistant Secretary of Defense (Health Affairs) was established to eliminate employment barriers for people with disabilities. CAP helps eliminate those barriers by providing assistive technology and services at no cost to the agency. To assist with Section 508 compliance, CAP provides:

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- Technical assistance to all Department of Defense (DoD) and partner organizations.
- Demonstrations of assistive technology and accessible environments at the CAP Technology Evaluation Center (CAPTEC) in the Pentagon.
- Assistance to the DoD Chief Information Officer (CIO) community in understanding Section 508 requirements.
- Assistance to acquisition organizations in learning accessibility requirements.
- Assistance to office automation organizations to ensure help desk understanding of accessibility requirements and compatibility issues.

The Department of Health and Human Services, through a memorandum of agreement, is a partner with CAP. HHS employees with disabilities are able to benefit from the full range of CAP services.

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3.0 Scope

This policy applies to all departmental EIT developed, procured, maintained, or used by HHS on or after June 21, 2001; and is to be implemented by all HHS employees and contractors.

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4.0 Policy

In accordance with Section 508 of the Rehabilitation Act of 1973, as amended, when the Department develops, procures, maintains, or uses EIT, each HHS Operating Division and the Office of the Secretary shall ensure that (1) individuals with disabilities who are Federal employees have access to and use of information and data that is comparable to the access to and use of the information and data by Federal employees who are not individuals with disabilities; and (2) individuals with disabilities who are members of the public seeking information or services from a Federal department or agency have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities (FAR 39.201 and 36 CFR 1194.1). Comparable access is not required if it would impose an undue burden on the agency.

Each HHS Operating Division and the Office of the Secretary shall adhere to the EIT Accessibility Standards (36 CFR Part 1194) as published in the *Federal Register* of December 21, 2000. Each HHS Division shall adhere to the Federal Acquisition Regulations on Electronic and Information Technology Accessibility (48 CFR, Chapter 1, Parts 2, 7, 10, 11, 12, and 39) as published in the *Federal Register* of April 25, 2001. EIT developed, procured or maintained for HHS by a contractor must also comply with the standards and regulations. Standards are organized into four subparts:

Subpart A – General (36 CFR §§ 1194.1-1194.5): Describes the types of covered technologies and applications, explains what is exempt, defines terminology, and recognizes that acceptable alternatives that provide equivalent access to and use of a product for people with disabilities are permissible.

Subpart B –Technical Standards (36 CFR § 1194.21-1194.26): Provides criteria specific to various types of technologies and provides performance-based requirements for systems and applications.

- Software applications and operating systems (36 CFR § 1194.21)
- Web-based intranet and internet information and applications (1194.22)
- Telecommunications products (36 CFR § 1194.23)
- Video and multimedia products (36 CFR § 1194.24)
- Self contained, closed products (36 CFR § 1194.25)
- Desktop and portable computers (36 CFR § 1194.26)

Subpart C – Functional Performance Criteria (36 CFR § 1194.31): Provides performance requirements for overall product evaluation and for technologies or components for which there is no specific requirement under the technical standards in Subpart B.

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Subpart D –Information, Documentation, and Support (36 CFR § 1194.41): Addresses access to all information, documentation, and support provided to end-users of covered technologies, and identifies formats to be used.

4.1 Implementation

Each HHS Operating Division and the Office of the Secretary shall designate a single individual at the senior management level as the Section 508 Official. The designated Operating Division and the Office of the Secretary Section 508 Official shall facilitate implementation of the Section 508 standards, regulations, policies, and procedures as defined in this policy. For a more detailed listing of the Section 508 Official's responsibilities, refer to Section 5.11.

Each Operating Division and the Office of the Secretary shall develop a Section 508 Implementation Plan. The Plan is to be reviewed annually and submitted to the HHS Section 508 Coordinator for review and comment. The HHS Section 508 Coordinator will then provide a recommendation for approval/disapproval to the Director of the Office on Disability. Each Operating Division's and the Office of the Secretary's Section 508 Implementation Plan, at a minimum, shall include procedures that address:

- Processing exception requests, including commercial nonavailability and undue burden exceptions to Section 508. These procedures must address Section 508 within the Requirements Determination and Pre-Procurement process.
- Procedures for annually reviewing approved undue burden exceptions and re-certifying the waiver if appropriate.
- Procedures for ensuring Section 508 employment discrimination complaints are forwarded to the Equal Employment Opportunity Program Group (EEOPG), Office of Human Resources (OHR), Office of the Assistant Secretary for Administration and Management (ASAM), Office of the Secretary (OS), and other complaints from employees, applicants for employment, or members of the public alleging a failure to comply with Section 508 are forwarded to the HHS Office for Civil Rights (OCR) for investigation and resolution.
- Handling other Operating Division/Office of the Secretary Section 508 responsibilities, such as:
    - Responding to the biennial Department of Justice Section 508 survey.
    - Requirements for maintaining copies of the approved and denied commercial nonavailability and undue burden exceptions, as well as other exception requests.

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- Preparing quarterly reports of the approved and denied commercial nonavailability and undue burden exceptions, as well as other exception requests, and forwarding the report to the HHS Section 508 Coordinator for processing.

    - The report should list all approved or denied exceptions requests submitted within the current quarter. Supporting documentation for each approved or denied exception should also be included with the report.

    - If applicable, the report should also list undue burden exceptions that the Operating Division/Office of the Secretary has reviewed and re-certified within the current quarter. Supporting documentation for the exception waiver should also be included with the report.

In addition, the plan shall address:

- Descriptions of the roles and responsibilities of the various Operating Division/Office of the Secretary individuals who have ongoing Section 508 responsibilities.

- Descriptions of ongoing Operating Division/Office of the Secretary Section 508 outreach activities including those coordinated by the Office on Disability. For example, outreach activities may include Section 508 training for all employees, both as part of new employee orientation and Project Officer training.

4.2 Exceptions Approval

4.2.1 Oversight Responsibility for Exceptions Approval

The Office on Disability has the oversight responsibility to insure Operating Division/Office of the Secretary commercial nonavailability and undue burden exceptions meet the standards established in 36 CFR Part 1194 and FAR 39.2.

4.2.2 Approval Granted According to Operating Division/Office of the Secretary Implementation Plan

Exceptions, including commercial nonavailability and undue burden, will be processed according to each Operating Division's and the Office of the Secretary's Section 508 Implementation Plan. The Operating Division and the Office of the Secretary has the responsibility to insure commercial nonavailability and undue burden exceptions meet the standards established in 36 CFR Part 1194 and FAR 39.2.

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4.3 Section 508 Compliance Exceptions

4.3.1 Commercial Nonavailability Exception Determination and Certification

In order for an acquisition to qualify for this exception, the definition given in FAR Subpart 2.101 for the term "commercial item" should be followed. The requesting official should document individual Section 508 standards that the product does not meet. If products are commercially available that meet some but not all of the standards, the agency must procure the product that best meets the standards. Each agency will use the standards established in 36 CFR Part 1194 and FAR 10.001(a)(3)(vii) to conduct its market research. See Section 11.2 of this document for more information.

The certification statement should contain the following language:

> I have determined and hereby certify that the procurement of the applicable EIT product(s) or services required by my organization that are subject to Section 508 of the Rehabilitation Act of 1973, as amended, in accordance with 36 CFR Part 1194, is 'commercially not available', nor expected to become available in a compliant version in time to satisfy agency delivery requirements (36 CFR 1194.2(b) and FAR 39.203(c)). I have conducted the required market research and have not found an accessible product.

At a minimum, the documentation should discuss the following information:

- The products or services required to meet the agency's needs and the estimated timeframe of acquiring the products or services.
- Identification of the applicable technical provisions (Appendix B) that cannot be met with products or services available from the marketplace, which concluded in the determination that a compliant product or service was not available.
- A description of the extent and how market research was performed and details of the subsequent findings to locate a commercially available item, which concluded in the determination that a compliant product or service was not available.
- Plan for providing information to persons with disabilities in an alternate format if proposed noncompliant products or services are purchased.

Each entity is still responsible for addressing how it will accommodate persons with disabilities. In addition, Operating Divisions and the Office of the Secretary should

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compile their market research in such a way that will make it efficient to report activity on the biennial Department of Justice Section 508 survey.

This certification should be signed by the requesting official and the requesting component's authorized official. The certification should contain both individuals' signatures, printed names, dates, and phone numbers. The determination and certification documentation should be attached to the Purchase Request and shall be processed in accordance with each Operating Division's and the Office of the Secretary's Section 508 Implementation Plan.

Each Operating Division's and the Office of the Secretary's approved or denied commercial nonavailability exceptions are to be reported to the HHS Section 508 Coordinator on a quarterly basis. See Section 4.1 of this document for more information.

4.3.2 Undue Burden Exception Determination and Certification

Undue burden exceptions to this policy shall be based on whether compliance efforts result in "significant difficulty or expense." In determining whether a particular action is an undue burden under Section 508, the Operating Division and the Office of the Secretary should consider the difficulty or expense of compliance, and all agency resources available to its program or component for which the product or service is being developed, procured, maintained, or used. Each undue burden exception will be determined on a case-by-case basis and will require annual renewal in accordance with the Operating Division's and the Office of the Secretary's Implementation Plan. The undue burden exception request must contain a plan for providing individuals with disabilities with the information and data involved by an alternative means of access, as required by 36 CFR 1194.2 (a)(1).

An undue burden exception determination and certification must be completed when compliance with any part of the Section 508 standards would impose an undue burden. This would typically be determined either before the completion of the Purchase Request, or during the offer/proposal evaluation. See Section 11.3 of this document for more information.

For each provision of 36 CFR Part 1194 that an Operating Division or the Office of the Secretary finds to be an undue burden, the requesting official must document in writing the basis for an undue burden decision. At a minimum, the significant difficulty or expense must be substantiated with the following documentation:

- The products or services required to meet the agency's needs and the estimated cost of acquiring the products or services including all options.

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Undue burden justification, i.e., the significant difficulty or expense the government would incur in order to comply with a particular standard(s). If the expense is deemed prohibitive, explain the costs and how they were estimated.

- Market research conducted and subsequent findings to locate the product or service that meet the applicable provisions.

- Plan for providing information to persons with disabilities regardless of current noncompliant products or services.

The certification statement should contain the following language:

> I have determined and hereby certify that development, procurement, maintenance, or use of the applicable EIT product(s) or services required by my organization that are subject to Section 508 of the Rehabilitation Act of 1973, as amended, in accordance with 36 CFR Part 1194, present an 'undue burden' (36 CFR 1194.4 and FAR 39.204(e)).

This certification should be signed by the requesting official and the requesting component's authorized official. The certification should contain both individuals' signatures, printed names, dates, and phone numbers. The determination and certification documentation should be attached to the Purchase Request and shall be processed in accordance with the Operating Division's or the Office of the Secretary's Implementation Plan.

If an undue burden exception is granted, the Operating Division or the Office of the Secretary must still provide information and data to individuals with disabilities through an alternate method of access the individuals can use.

The approval of an undue burden exception by the Operating Division or the Office of the Secretary does not mean that the Operating Division/Office of the Secretary should not make a good faith effort to meet Section 508 requirements nor does the approval of an undue burden exception provide a safe harbor. If an employee, applicant, or member of the public files a Section 508 complaint, the justification provided by an agency to support its request for an undue burden exception could be reexamined either by the Equal Employment Opportunity Program Group (EEOPG) Office or the Office for Civil Rights during the complaint investigation. If a determination is made that an Operating Division or the Office of the Secretary failed to consider the proper factors in determining that a particular action would result in an undue burden, then the entity would be required to take appropriate steps to comply with Section 508.

Each Operating Division's or the Office of the Secretary's approved or denied undue burden exceptions are to be reported to the HHS Section 508 Coordinator on a quarterly basis. See Section 4.1 of this document for more information.

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4.3.3 General EIT Procurement Exceptions

All exceptions listed in this section should include the following certification statement:

> I have determined and hereby certify that this procurement required by my organization is not subject to Section 508 of the Rehabilitation Act of 1973, as amended, in accordance with 36 CFR Part 1194.3* and/or FAR 39.204*.

* State the specific procurement exception as listed below that applies to your purchase request.

This certification should be signed by the requesting official and the requesting component's authorized official. The certification should contain both individuals' signatures, printed names, dates, and phone numbers. No other certification signature is required for exceptions in this section. The determination and certification forms should be attached to the Purchase Request and will be processed according to each Operating Division's and the Office of the Secretary's Section 508 Implementation Plan.

Section 508 does not apply to:

- Micro-Purchases: (It should be noted that this exception is set to expire April 1, 2005)
    - The exception is for a one-time purchase that totals less than $2,500, made on the open market rather than under an existing contract. The micro-purchase exception does not exempt all products that cost less than $2,500. For example, a $1,800 software package that is purchased as part of a larger $3,000 purchase is not considered a micro-purchase.
    - Regardless of purchase price, the agency is still required to provide accommodation for individuals with disabilities under Section 504 of the Rehabilitation Act of 1973.
    - Each Operating Division and the Office of the Secretary should, in accordance with their Implementation Plan, decide what exception documentation, if any, is required for micro-purchases made by the respective entity's government personnel who are not warranted contracting officers using Government-wide commercial purchase cards.
    - Each Operating Division's and the Office of the Secretary's Section 508 exception documentation requirements, if any, for micro-purchases should be provided in that entity's Government-wide Commercial Purchase Card Program guidelines. (FAR 39.204 (a)).

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EIT for national security systems, as the term is defined in Section 5142 of the Clinger-Cohen Act of 1996 (40 USC 1452). This exception does not include systems used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications) (36 CFR Part 1194.3(a) and FAR 39.204(b)).

- EIT products a contractor develops, procures, maintains, or uses that are incidental to a contract (36 CFR Part 1194.3(b) and FAR 39.204(c)).

- EIT "back office" equipment located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment, such as telecommunications equipment switches, servers, and other similar equipment that is used for equipment maintenance and administration (36 CFR Part 1194.3(f) and FAR 39.204(d)).

4.3.4 General Section 508 Exceptions

In addition to the exceptions listed in 4.3.3 above, the Access Board Final Rule (36 CFR 1194.3) lists other general exceptions that are exempt from compliance with the Section 508 statute. These exceptions do not require a certification statement.

- Except as required to comply with the provisions of 36 CFR Part 1194, Section 508 does not require the installation of specific accessibility-related software or the attachment of an assistive technology device at the workstation of a Federal employee who is not an individual with a disability. It is not expected that every computer will be equipped with a refreshable Braille display, or every software program will have a built-in screen reader, unless such installation is required to comply with 36 CFR Part 1194. Such assistive technology, however, may be required as part of a reasonable accommodation for an employee with a disability (36 CFR Part 1194.3(c)).

- Section 508 does not require an agency to make equipment owned by the agency available for access and use by individuals with disabilities at a location other than that where the EIT is provided to the public, or to purchase equipment for access and use by individuals with disabilities at a location other than that where the EIT is provided to the public. The accessibility of the location would be addressed under Section 504 of the Rehabilitation Act or other Federal laws (36 CFR Part 1194.3(d)).

- Section 508 does not require a fundamental alteration in the nature of a product or its components. Fundamental alteration means a change in the fundamental characteristic or purpose of a product or service, not merely a cosmetic or aesthetic change. For example, adding a large display to a small pager may fundamentally alter the device by significantly changing its size to such an extent

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that it no longer meets the purpose for which it was intended (36 CFR Part 1194.3(e)).

4.3.5 FAR Contract Exceptions

The FAR Final Rule lists specific exceptions for contracts executed before June 25, 2001 (*Federal Register* Vol. 66, Page 20,894 "Supplementary Information"). For more detailed exception information, see the Applicability section of the FAR Final Rule. The Access Board's EIT standards at 36 CFR part 1194 do not apply to:

- Taking delivery for items ordered prior to June 25, 2001.
- Contracts awarded before June 25, 2001, including option year renewals.
- Indefinite-quantity contracts even though requiring and ordering activities must ensure Section 508 compliance prior to placing an order or document an exception. However, indefinite quantity contracts may include noncompliant items, provided that any task or deliver order issued for noncompliant EIT meets an applicable exception or was issued on or after June 25, 2001 using the indefinite-quantity contract (FAR 39.203 (b)(2)(3)).
- Within-scope modifications of contracts awarded before June 25, 2001.
- Exercising unilateral options for contracts awarded before June 25, 2001.
- Multi-year contracts awarded before June 25, 2001.

4.4 HHS Accessibility Intent

Although the Section 508 requirements do not apply retroactively to pre-existing EIT, it is HHS' intent to meet the spirit of the law for Subpart B – Technical Standards (36 CFR § 1194.21), Subpart C – Functional Performance Criteria (36 CFR § 1194.31) and Subpart D – Information, Documentation, and Support (36 CFR § 1194.41).

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5.0 Roles and Responsibilities

5.1 Director of the Office on Disability (OD)

The OD is responsible for:

- Leading Department-wide compliance efforts with the technical standards and acquisition regulations for EIT.
- Submitting reports and survey data related to EIT to appropriate government and other oversight organizations.
- Reviewing and evaluating the Operating Divisions' and the Office of the Secretary's commercial nonavailability and undue burden exceptions reports to ensure they meet the applicable Section 508 requirements and that uniform standards are applied Department wide.
- Maintaining a record of HHS approved commercial nonavailability and undue burden exceptions.
- Evaluating and reporting HHS' approved commercial nonavailability and undue burden exceptions to the appropriate government oversight agencies.
- Approving HHS Operating Divisions' and the Office of the Secretary's Section 508 Implementation Plans.
- Making recommendations to Operating Divisions and the Office of the Secretary in appointing members to the HHS Section 508 Program Team.
- Evaluating and reporting HHS' programmatic and technical compliance to the appropriate government oversight agencies.
- Providing technical assistance to individuals, Operating Divisions and the Office of the Secretary relating to the Access Board's technical standards and the corresponding Federal Acquisition Regulations implementing Section 508.
- Performing administrative functions necessary to support the HHS Section 508 program.
- Designating the HHS Section 508 Coordinator.

5.2 Assistant Secretary for Budget, Technology, and Finance (ASBTF)

The ASBTF is responsible for:

- Advising the Department on IT policy matters affecting accessibility of EIT for individuals with disabilities within the HHS community, including participation in policy development activities and HHS Operating Divisions' and the Office of the Secretary's work groups on Section 508 implementation.

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Recommending appropriate members for the Section 508 Program Team in the area of IT.

- Advising the Operating Divisions and the Office of the Secretary on EIT aspects of requests for exceptions for commercial nonavailability or undue burden.
- Submitting reports and survey data related to EIT to appropriate government and other oversight organizations.

5.3 Assistant Secretary for Administration and Management (ASAM)

The ASAM is responsible for:

- Ensuring enforcement of Section 508 as it relates to the provision of specialized equipment, workspace, and employment programs and activities conducted by the Department, as the primary official responsible for procurement, buildings, and personnel management.
- Recommending appropriate members for the Section 508 Program Team from the Equal Employment Opportunity Program Group (EEOPG), Office of Grants Management and Policy (OGMP) and Office of Acquisition Management and Policy (OAMP).
- Providing technical assistance and guidance to HHS procurement offices in the conduct of procurements of EIT resources to achieve compliance with Access Board Section 508 standards as published in the December 21, 2000, Federal Register (65 F.R. 80499).
- Ensuring that HHS acquisitions procured on or after June 25, 2001, adhere to the Federal Acquisition Regulations; Electronic and Information Technology Accessibility (48 CFR, Chapter 1, Parts 2, 7, 10, 11, 12, and 39).
- Ensuring the required Section 508 exception documentation is included in the contract file for any instance when HHS or its Operating Divisions/Office of the Secretary are unable to comply with Section 508.
- Submitting reports and survey data related to EIT to appropriate government and other oversight organizations.

5.4 Deputy Assistant Secretary for Information Resources Management (DASIRM), ASBTF

The DASIRM is responsible for:

- Providing programmatic and technical guidance and assistance to each Operating Division and the Office of the Secretary concerning the implementation of the requirements and standards of Section 508.

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Providing technical assistance concerning the Access Board's technical standards and the corresponding Federal Acquisition Regulations implementing Section 508.

- Submitting reports and survey data related to EIT to appropriate government and other oversight organizations.

5.5 Deputy Assistant Secretary for Human Resources (DASHR), ASAM

The DASHR is responsible for:

- Advising the Department on human resources policy matters affecting accessibility of EIT for individuals with disabilities within the HHS community, including participation in policy development activities and HHS Operating Divisions' and the Office of the Secretary's work groups on Section 508 implementation.

- Serving as the liaison between Section 508 stakeholders and those involved in Section 508 implementation, including facilitating meetings among Section 508 stakeholders.

- Tracking and monitoring HHS compliance with Section 508 requirements as it relates to employment-related matters.

- Initiating such other actions as may be necessary to facilitate and ensure compliance with Section 508 consistent with the procedures of 29 CFR Part 1614.

- Submitting reports and survey data related to EIT to appropriate government and other oversight organizations.

5.6 Director of the Office for Civil Rights (OCR)

In accordance with the Letter of Delegation signed by the Secretary on August 30, 2001, the Director of the OCR is responsible for:

- Accepting and investigating complaints, other than employment-related complaints filed by employees, applicants for employment at the Department, or members of the public alleging a failure to comply with Section 508 consistent with the procedures set forth in 45 CFR Part 85.

- Providing technical assistance to HHS components regarding the resolution of Section 508 non-employment complaints.

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Evaluating the effectiveness of Section 508 complaint processing by OCR and providing reports to appropriate oversight organizations.

- Initiating such other actions as may be necessary to facilitate and ensure compliance with Section 508 consistent with the procedures set forth in 45 CFR Part 85.

In pursuit of the responsibilities set forth in the Letter of Delegation, OCR shall also:

- Develop and implement procedures governing the processing of complaints that are not Section 508 employment-related, and develop procedures for referring employment-related complaints to the Equal Employment Opportunity Program Group (EEOPG) for processing.
- Inform the Office on Disability of the status and disposition of complaints filed.
- Provide policy interpretations regarding the nondiscrimination requirements of Section 508.
- Disseminate information on Section 508 nondiscrimination requirements.
- Submit reports and survey data related to EIT to appropriate government and other oversight organizations.
- Recommend appropriate membership on the Section 508 Program Team.

5.7 Director of the Equal Employment Opportunity Program Group (EEOPG)

The Director of the EEO Program Group, OHR, ASAM, is responsible for:

- Accepting and investigating (as designated by the HHS EEOPG Director) employment-related complaints filed by Federal employees and applicants for employment at the Department alleging a failure to comply with Section 508 consistent with the procedures set forth in 29 CFR Part 1614.
- Ensuring enforcement of Section 508 as it relates to employment programs and activities conducted by the Department.
- Providing technical assistance to HHS components regarding the resolution of Section 508 employment-related complaints.
- Informing the Office on Disability of the status and disposition of complaints filed.

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Evaluating the effectiveness of Section 508 employment-related complaints processing by HHS and providing reports to the appropriate oversight organizations.

- Developing and implementing procedures governing the processing of employment-related Section 508 complaints, and developing procedures for referring complaints that are not employment-related to OCR for processing.
- Disseminating information on Section 508 policies, standards, procedures and guidance, and available assistive technologies for use by employees with disabilities.
- Submitting reports and survey data related to EIT to appropriate government and other oversight organizations.
- Recommending appropriate members for the Section 508 Program Team.

5.8 HHS Section 508 Coordinator

The HHS Section 508 Coordinator is responsible for:

- Representing the Department on the Federal IT Coordinator Initiative and other Section 508 oversight government programs.
- Establishing, facilitating, and overseeing the HHS Section 508 policies, procedures, and guidelines and the HHS Section 508 program.
- Ensuring information sharing through appropriate HHS Section 508 Web sites.
- Reviewing and commenting on each Section 508 Implementation Plan.
- Appointing subject matter experts to the HHS Section 508 Program Team in accordance with the Section 508 Program Team charter.
- Reviewing, in conjunction with the HHS Section 508 Program Team, the Operating Divisions' and the Office of the Secretary's commercial nonavailability and undue burden exception reports and forwarding recommendations to the Director of the Office on Disability, when necessary, to ensure Section 508 requirements are being approved in a uniform manner through out the Department.
- Maintaining a record of HHS approved commercial nonavailability and undue burden exceptions.

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Preparing reports and survey data related to HHS EIT usage and HHS commercial nonavailability and undue burden exceptions to appropriate government oversight organizations.

5.9 HHS Section 508 Program Team (508 PT)

The HHS Section 508 Program Team:

- Shall be chaired by the HHS Section 508 Coordinator and shall be comprised of the designated members from each HHS Operating Division and the Office of the Secretary who have the authority to represent their respective Section 508 matters.
- Shall meet at least quarterly to provide guidance and direction for the HHS Section 508 Program, by developing the governance structure for the Section 508 program. This will include documents covering areas such as policy, procedures and guidance.
- May include subject matter experts appointed by the HHS Section 508 Coordinator.
- May be tasked with performing studies on the state of Section 508 compliance across HHS at the request of bodies like the CIO Council or the Office on Disability.
- Shall review the Operating Divisions' and the Office of the Secretary's commercial nonavailability and undue burden exception reports, in conjunction with the HHS Section 508 Coordinator, and make recommendations, when necessary, to the Director of the Office on Disability to ensure the exceptions meet Section 508 requirements and are approved in a uniform manner through out the Operating Divisions and the Office of the Secretary.
- Submit reports and survey data related to EIT to appropriate government and other oversight organizations.

5.10 Operating Division Head

The Operating Division Head shall be responsible for:

- Ensuring the Operating Division's compliance with Section 508, as amended.
- Designating a senior-level manager as the Operating Division's Section 508 Official.

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Submitting reports and survey data related to EIT to appropriate government and other oversight organizations.

5.11 Office of the Secretary Head

The Office of the Secretary Head shall be responsible for:

- Ensuring the Office of the Secretary Staff Divisions' compliance with Section 508, as amended.
- Designating a senior-level manager as the Office of the Secretary's Section 508 Official.
- Submitting reports and survey data related to EIT to appropriate government and other oversight organizations.
- Ensuring that each Staff Division in the Office of the Secretary designates a senior-level manager as the Staff Division's responsible person to address Section 508 matters.

5.12 Operating Division and Office of the Secretary Section 508 Official

Each Operating Division and the Office of the Secretary Section 508 Official shall be responsible for:

- Leading the Operating Divisions' and the Office of the Secretary's Section 508 Program.
- Facilitating the Operating Divisions' and the Office of the Secretary's Section 508 implementation and adherence to the Federal and HHS Section 508 standards, regulations, policies, plans, and procedures.
- Facilitating efficient communication of Section 508 issues within the Department.
- Reviewing exception requests, including commercial nonavailability and undue burden exceptions, for Section 508 compliance and forwarding quarterly exception reports to the HHS Section 508 Coordinator for processing. If the exception is for a multi-year contract then the exception waiver will be reviewed at the conclusion of the given contract time period.
- Submitting reports and survey data related to EIT for inclusion in required Departmental documents, in accordance with the Operating Divisions' and the Office of the Secretary's established procedures.

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Assuring that an Implementation Plan for Section 508 is developed covering each Operating Division's and the Office of the Secretary's procedural methodology for performing Section 508 activities. The Director of the Office on Disability shall approve these Plans. Each Plan is to be reviewed annually by the Operating Division/Office of the Secretary and submitted to the HHS Section 508 Coordinator for review and comment.

- Maintaining a record of each Operating Divisions's and the Office of the Secretary's approved and denied exceptions, including commercial nonavailability and undue burden exceptions, and Section 508 complaints.

- Assuring that information about Section 508 activities is shared within the Operating Divisions, the Office of the Secretary's Staff Divisions and among interested internal partners.

5.13 Operating Division and Office of the Secretary Authorizing Officials

Each Operating Division and the Office of the Secretary Authorizing Officials shall be responsible for:

- Processing all EIT purchase requests in accordance with their Section 508 Implementation Plan.

- Reviewing, certifying and forwarding for additional approvals new and previously approved EIT exceptions for commercial nonavailability and undue burden in compliance with Section 508.

- Reviewing and certifying all other EIT exceptions to Section 508 compliance as required.

5.14 Operating Division and Office of the Secretary Requesting Officials

Each Operating Division and the Office of the Secretary Requesting Officials shall be responsible for:

- Preparing and processing all EIT purchase requests in accordance with their Section 508 Implementation Plan.

- Reviewing the Access Board standards and determining which Section 508 Accessibility Standards (36 CFR Part 1194) apply to the specific EIT product or service being procured.

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Performing market research, in accordance with FAR 10.001, to determine the commercial availability of products and services that meet the applicable technical provisions. The requiring official must identify which technical provisions, if any, do not apply due to an exception, such as commercial nonavailability or undue burden.

- Developing technical specifications and minimum requirements based on the results of market research and Operating Division and Staff Division needs. This information must be submitted along with the purchase request, including commercial nonavailability or undue burden documentation as appropriate, to the contracting officer for inclusion in the contract file. Documentation must include a description of market research performed and identification of the applicable Section 508 Accessibility Standards (36 CFR Part 1194) that are satisfied or not satisfied.

- Determining and documenting commercial nonavailability and undue burden EIT exceptions for compliance with Section 508, as applicable. See Sections 4.3.1 and 4.3.2 of this document for more information.

- Certifying and forwarding for approval EIT exceptions for compliance with Section 508.

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6.0 Applicable Laws/Guidance

The following Federal documents are applicable:

- 29 USC §794d – Section 508 of the Rehabilitation Act of 1973, as amended.
- Public Law 105-220 – Workforce Investment Act of 1998.
- 36 CFR Part 1194 – Electronic and Information Technology Accessibility Standards; Final Rule.
- 48 CFR, Chapter 1, Parts 2, 7, 10, 11, 12, and 39 – Federal Acquisition Regulations; Electronic and Information Technology Accessibility.
- 29 CFR 1614.203 – Federal Sector Equal Employment Opportunity.
- 29 USC § 791– Section 501 of the Rehabilitation Act of 1973, as amended.
- 29 USC § 794 – Section 504 of the Rehabilitation Act of 1973, as amended.
- 44 USC §3501 et seq. – Paperwork Reduction Act (PRA) of 1980, as amended.
- 40 USC §11101; 40 USC § 11103 – Information Technology Management Reform Act of 1996 (Clinger-Cohen Act).
- Public Law 101-336 – Americans with Disabilities Act of 1990.
- Public Law 100-542 – The Telecommunications Accessibility Enhancement Act of 1988.
- Public Law 97-410 – Telecommunications for the Disabled Act of 1992.
- Public Law 100-394 – Hearing Aid Compatibility Act of 1988.
- OMB Circular A-130 – Management of Federal Information Resources.
- Executive Order 13011 – Federal Information Technology.
- OMB Circular A-11 – Preparation, Submission, and Execution of the Budget.

The following Internet sites provide detailed guidance, tools, and references to assist with Section 508 compliance requirements:

- http://www.section508.gov
- http://www.access-board.gov
- http://www.usdoj.gov/crt/508

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7.0 Information and Assistance

Direct questions, comments, suggestions or requests for further information to the HHS Section 508 Coordinator at (202) 401-5844.

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8.0 Effective Date/Implementation

The effective date of this policy is the date the policy is approved.

The HHS policies contained in this issuance shall be implemented in accordance with Public Law 93-638, the Indian Self-Determination and Education Assistance Act, as amended, and the Secretary's policy statement dated August 7, 1997, as amended, titled "Department Policy on Consultation with American Indian/Alaska Native Tribes and Indian Organizations." It is HHS' policy to consult with the American Indians/Alaska Natives to the greatest practicable extent and to the extent permitted by law before taking actions that affect these governments and people so as to assess the impact of the Department's plans, projects, programs, and activities on tribal and other available resources, and to remove any procedural impediments to working directly with tribal governments or the American Indians/Alaska Natives.

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9.0 Approved

Tommy G. Thompson
Secretary

JAN 10 2005
Date

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10.0 Glossary

Term	Definition
Access Board	The Architectural and Transportation Barriers Compliance Board (Access Board) is an independent Federal agency whose primary mission is to promote accessibility for individuals with disabilities. The Rehabilitation Act Amendments of 1998 requires the Access Board to publish standards setting forth a definition of electronic and information technology and the technical and functional performance criteria necessary for such technology to comply with Section 508.
Agency	A Federal department such as HHS or Department of Justice (DOJ).
Alternate Formats	Formats that are usable by people with disabilities. Those formats may include, but are not limited to Braille, ASCII text, large print, recorded audio, and electronic formats that comply with Section 508 standards (36 CFR § 1194.4).
Alternate Methods	Different means of providing information to users of products, including product documentation such as voice, fax relay service, TTY, internet posting, captioning, text-to-speech synthesis, and audio description (36 CFR § 1194.4).
Assistive Technology	Any item, piece of equipment, or system whether acquired commercially, modified, or customized, that is commonly used to increase, maintain, or improve functional capabilities of individuals with disabilities. This may include screen readers, which allow persons who cannot see a visual display to either hear screen content or read the content in Braille.
CFR	Code of Federal Regulations
Commercial Item	Any item that can be purchased off-the-shelf and used without making changes, except those designed within the equipment or software. Reference FAR Subpart 2.101 for a comprehensive definition of "commercial item."
Commercial Nonavailability	Refers to circumstances where no commercial items are available that meet the applicable Access Board's technical

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Term	Definition
	provisions (directly or through equivalent facilitation) in time to satisfy the agency's delivery requirements. If products are available that meet some, but not all, applicable provisions, agencies cannot claim a product as a whole is nonavailable just because it does not meet all of the applicable technical provisions. The requiring official must document commercial nonavailability in writing (FAR.203(c) and 36 CFR 1194.2(b)).
Department	The Department refers to the Department of Health and Human Services. The Secretary, the Under Secretary and their immediate offices, the Operating Division, the Staff Division, and the Regional Directors and their offices collectively are the Department.
Division	A Division is an HHS Operating Division (OPDIV) or Staff Division (STAFFDIV). An Operating Division is an organization whose primary function is to direct and manage the substantive programs of the Department and whose head reports directly to the Secretary. The Staff Division is an organization within the Office of the Secretary carrying out the routine internal functions within HHS such as policy, planning and budget. There are 13 HHS OPDIVs and 12 HHS STAFFDIVs.
Division Head	Is an individual with the lead responsibility in the Operating Division for administration and program planning.
Electronic and Information Technology (EIT)	Includes "Information Technology" and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term includes, but is not limited to, telecommunication products (such as telephones), information kiosks and transaction machines, World Wide Web sites, multimedia, and office equipment such as copiers and fax machines. The term does not include any equipment that contains embedded Information Technology that is used as an integral part of the product, but the principal function of which is not

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Term	Definition
	the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where Information Technology is integral to its operation, is not Information Technology.
Exception Request	A formal request for an exemption from a Section 508 Standard as outlined in each of the Operating Division's and the Office of the Secretary's Implementation Plan. See Section 4.3 for a list of exceptions and requirements.
Extranet	An extension of an institution's intranet, especially over the World Wide Web, enabling communication between the institution and people it deals with, often by providing limited access to its intranet.
FAR	Federal Acquisition Regulations
Health and Human Services Section 508 Program Team (HHS 508 PT)	The Program Team, consisting of membership from each Operating Division and Staff Division and chaired by the HHS Office on Disability Section 508 Coordinator, provides guidance and direction for the HHS Section 508 program. It develops policies and processes; recommends undue burden and commercial nonavailability exceptions to the Office on Disability; and, as request, conducts studies and surveys on the effectiveness of the Section 508 Program.
Information Technology (IT)	Any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. It includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources. (This definition is identical to the definition of Information Technology in the Clinger-Cohen Act.)
Market Research	A process used to collect, organize, maintain, analyze, and present data for the purpose of maximizing the capabilities, technology and competitive force of the marketplace to meet

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Term	Definition
	an organization's needs for supplies or services. Market research information will differ depending on whether the research is being conducted to develop a requirements document, support preparation of a solicitation, or both. Market research examples are available on the Section 508 Website at http://www.section508.gov.
Office of the Secretary	The Secretary, the Deputy Secretary and their immediate offices, the Staff Division, and the Regional Directors and their offices collectively are the Office of the Secretary.
Product	Shorthand for Electronic and Information Technology.
Section 504 of the Rehabilitation Act of 1973	Section 504 of the Rehabilitation Act of 1973 as amended, prohibits discrimination on the basis of disability in programs or activities conducted by Federal agencies. The Section 504 federally conducted regulations are found at 45 CFR Part 85.
Self-Contained Closed Products	Products that generally have embedded software and are commonly designed in such a fashion that a user cannot easily attach or install assistive technology. These products include, but are not limited to, information kiosks and information transaction machines, copiers, printers, calculators, fax machines, and other similar types of products.
Telecommunications	The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.
TTY	An abbreviation for teletypewriter. Machinery or equipment that employs interactive text based communications through the transmission of coded signals across the telephone network. TTYs may include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. TTYs are also called text telephones.
Undue Burden	Significant difficulty or expense. In determining whether an action would result in an undue burden, an agency shall consider the difficulty or expense of

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Term	Definition
	compliance, and all agency resources available to its program or component for which the product or service is being developed, procured, maintained, or used.

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11.0 Appendix A

11.1 Section 508 Compliance Reference

The scope of Section 508 is limited to the Federal sector. It does not apply to the private sector, nor does Section 508 impose requirements on the recipients of Federal financial assistance. Procurement information is available at www.section508.gov in the Acquisition FAQs section.

Compliance with Section 508 only applies to EIT as stated in Appendix B. A Federal agency is not required to acquire Section 508 compliant EIT if an exception applies. The Access Board and the FAR Councils specify several exceptions to Section 508 compliance.

A brief description of the exceptions is listed in the following sections. See Section 4.3 of this document for more information.

11.2 Commercial Nonavailability Exception

In order for an acquisition to qualify for this exception, the definition given in FAR Subpart 2.101 for the term "commercial item" should be followed. The requesting official should document individual Section 508 standards that cannot be met, but still must procure the product that best meets the standards. Agencies must comply with those accessibility standards that can be met with supplies and services available in the commercial marketplace in time to meet the agency's delivery requirements. Each agency will use the standards established in 36 CFR Part 1194 and FAR 10.001(a)(3)(vii) to conduct its market research. If products are commercially available that meet some, but not all applicable Section 508 standards, the agency cannot claim a product, as a whole, is not available just because it does not meet all of the Section 508 standards (FAR 39.203).

An item is commercially available if:

- It is for sale in the commercial marketplace.
- It will be on the market in time to satisfy the solicitation.
- With minor modification, the item could be available in time to satisfy the solicitation.

See Section 4.3.1 of this document for more information.

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11.3 Undue Burden Exception

The undue burden exceptions shall be based on "significant difficulty or expense to the agency." In determining whether an action would result in an undue burden, an agency shall consider the difficulty or expense of compliance, and all agency resources available to its program or component for which the product or service is being developed, procured, maintained, or used. Each undue burden exception will be determined on a case-by-case basis (FAR 39.204 (e) and 36 CFR 1194.2) and will require annual renewal in accordance with the Operating Division's/Office of the Secretary's Implementation Plan.

When procuring a product, if a Federal department or agency determines that compliance with any provision of Section 508 imposes an undue burden, the documentation by the department or agency supporting the procurement must explain why, and to what extent, compliance with each provision creates an undue burden (36 CFR 1194.2(a)(2). Additionally, if a department or agency determines that a procurement would impose an undue burden, the Federal department or agency must provide individuals with disabilities with the information and data involved by an alternative means of access that allows the individual to use the information and data (36 CFR 1194.2(a)(1)).

The requesting official must document in writing the basis for an undue burden decision and provide the documentation to the contracting officer for inclusion in the contract file. When acquiring commercial items, an undue burden determination is not required to address individual standards that cannot be met with supplies or services available in the commercial marketplace in time to meet the agency delivery requirements (see 39.203(c)(2) regarding documentation of commercial nonavailability).

The significant difficulty or expense must be substantiated with the following:

- The products or services required to meet the agency's needs and the estimated cost of acquiring the products or services, including all options.
- Undue burden justification, i.e., the significant difficulty or expense the agency would incur in order to comply with a particular standard(s). If the expense is deemed prohibitive, explain the costs and how they were estimated.
- Market research conducted and subsequent findings to locate the product or service that meet the applicable provisions.
- Plan for providing information to persons with disabilities regardless of current noncompliant products or services.

See Section 4.3.2 of this document for more information.

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11.4 General EIT Procurement Exceptions

The Access Board standards (36 CFR 1194.3) and the FAR regulations (FAR 39.204) do not apply to EIT that:

- Is purchased in accordance with FAR Subpart 13.2 (micro-purchases) prior to October 1, 2004. However, for micro-purchases, contracting officers and other individuals are strongly encouraged to comply with the applicable accessibility standards to the maximum extent practicable (FAR 39.204 (a)).
- Is for national security systems (36 CFR 1194.3 (a)).
- Is acquired by a contractor incidental to a contract (FAR 39.204 (c) and 36 CFR 1194.3 (b)).
- Is located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment, sometimes referred to as 'back office' equipment (FAR 39.204 9(d) and 36 CFR 1194.3 (f)).

See Section 4.3.3 of this document for more information.

11.5 General Section 508 Exceptions

In addition to the exceptions listed in Section 11.4 above, the Access Board Final Rule (36 CFR 1194.3) lists other general exceptions that are exempt from compliance with the Section 508 statute.

- Installation of specific accessibility-related software or the attachment of an assistive technology device at a workstation of a Federal employee who is not an individual with a disability unless compliance with Section 508 is required by 36 CFR Part 1194.
- Purchasing or making products available at a location other than where the EIT is provided to the public, 36 CFR Part 1194.3(d).
- Fundamental alteration in the nature of a product or its components, 36 CFR Part 1194.3(e).

See Section 4.3.4 of this document for more information.

11.6 FAR Contract Exceptions

The FAR Final Rule lists specific exceptions for contracts executed before June, 25, 2001 (*Federal Register* Vol. 66, Page 20,894, "Supplementary Information"). The Access Board's EIT standards at 36 CFR Part 1194 do not apply to:

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- Taking delivery for items ordered prior to June 25, 2001.
- Contracts awarded before June 25, 2001, including option year renewals.
- Indefinite-quantity contracts even though requiring and ordering activities must ensure Section 508 compliance prior to placing an order or document an exception. However, indefinite quantity contracts may include noncompliant items, provided that any task or deliver order issued for noncompliant EIT meets an applicable exception or was issued on or after June 25, 2001 using the indefinite-quantity contract (FAR 39.203 (b)(2)).
- Within-scope modifications of contracts awarded before June 25, 2001.
- Exercising unilateral options for contracts awarded before June 25, 2001.
- Multi-year contracts awarded before June 25, 2001.

For more detailed exception information, see the Applicability section of the FAR Final Rule and Section 4.3.5 of this document.

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12.0 Appendix B

12.1 Access Board Final Rule (36 CFR Part 1194)

12.1.1 Subpart B -- Technical Standards

§ 1194.21 Software applications and operating systems.

(a) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.

(b) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.

(c) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that assistive technology can track focus and focus changes.

(d) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to assistive technology. When an image represents a program element, the information conveyed by the image must also be available in text.

(e) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.

(f) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.

(g) Applications shall not override user selected contrast and color selections and other individual display attributes.

(h) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.

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(i) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(j) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.

(k) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.

(l) When electronic forms are used, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

§ 1194.22 Web-based intranet and internet information and applications.

(a) A text equivalent for every non-text element shall be provided (e.g., via "alt", "longdesc", or in element content).

(b) Equivalent alternatives for any multimedia presentation shall be synchronized with the presentation.

(c) Web pages shall be designed so that all information conveyed with color is also available without color, for example from context or markup.

(d) Documents shall be organized so they are readable without requiring an associated style sheet.

(e) Redundant text links shall be provided for each active region of a server-side image map.

(f) Client-side image maps shall be provided instead of server-side image maps except where the regions cannot be defined with an available geometric shape.

(g) Row and column headers shall be identified for data tables.

(h) Markup shall be used to associate data cells and header cells for data tables that have two or more logical levels of row or column headers.

(i) Frames shall be titled with text that facilitates frame identification and navigation.

(j) Pages shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.

(k) A text-only page, with equivalent information or functionality, shall be provided to make a web site comply with the provisions of this part, when compliance cannot be accomplished in any other way. The content of the text-only page shall be updated whenever the primary page changes.

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(l) When pages utilize scripting languages to display content, or to create interface elements, the information provided by the script shall be identified with functional text that can be read by assistive technology.

(m) When a web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies with §1194.21(a) through (l).

(n) When electronic forms are designed to be completed on-line, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

(o) A method shall be provided that permits users to skip repetitive navigation links.

(p) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.

Note to §1194.22:

1. The Board interprets paragraphs (a) through (k) of this section as consistent with the following priority 1 Checkpoints of the Web Content Accessibility Guidelines 1.0 (WCAG 1.0) (May 5, 1999) published by the Web Accessibility Initiative of the World Wide Web Consortium:

Section 1194.22 Paragraph	WCAG 1.0 Checkpoint
(a)	1.1
(b)	1.4
(c)	2.1
(d)	6.1
(e)	1.2
(f)	9.1
(g)	5.1
(h)	5.2
(i)	12.1
(j)	7.1
(k)	11.4

2. Paragraphs (l), (m), (n), (o), and (p) of this section are different from WCAG 1.0. Web pages that conform to WCAG 1.0, level A (i.e., all priority 1 checkpoints) must also meet paragraphs (l), (m), (n), (o), and (p) of this section to comply with this section. WCAG 1.0 is available at http://www.w3.org/TR/1999/WAI-WEBCONTENT-19990505.

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§ 1194.23 Telecommunications products.

(a) Telecommunications products or systems which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. Microphones shall be capable of being turned on and off to allow the user to intermix speech with TTY use.

(b) Telecommunications products which include voice communication functionality shall support all commonly used cross-manufacturer non-proprietary standard TTY signal protocols.

(c) Voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their TTYs.

(d) Voice mail, messaging, auto-attendant, and interactive voice response telecommunications systems that require a response from a user within a time interval, shall give an alert when the time interval is about to run out, and shall provide sufficient time for the user to indicate more time is required.

(e) Where provided, caller identification and similar telecommunications functions shall also be available for users of TTYs, and for users who cannot see displays.

(f) For transmitted voice signals, telecommunications products shall provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, at least one intermediate step of 12 dB of gain shall be provided.

(g) If the telecommunications product allows a user to adjust the receive volume, a function shall be provided to automatically reset the volume to the default level after every use.

(h) Where a telecommunications product delivers output by an audio transducer which is normally held up to the ear, a means for effective magnetic wireless coupling to hearing technologies shall be provided.

(i) Interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize the telecommunications product.

(j) Products that transmit or conduct information or communication shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide the information or communication in a usable format. Technologies which use encoding, signal compression, format transformation, or similar techniques shall not remove information needed for access or shall restore it upon delivery.

(k) Products which have mechanically operated controls or keys, shall comply with the following:

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(1) Controls and keys shall be tactilely discernible without activating the controls or keys.

(2) Controls and keys shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls and keys shall be 5 lbs. (22.2 N) maximum.

(3) If key repeat is supported, the delay before repeat shall be adjustable to at least 2 seconds. Key repeat rate shall be adjustable to 2 seconds per character.

(4) The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.

§ 1194.24 Video and multimedia products.

(a) All analog television displays 13 inches and larger, and computer equipment that includes analog television receiver or display circuitry, shall be equipped with caption decoder circuitry which appropriately receives, decodes, and displays closed captions from broadcast, cable, videotape, and DVD signals. As soon as practicable, but not later than July 1, 2002, widescreen digital television (DTV) displays measuring at least 7.8 inches vertically, DTV sets with conventional displays measuring at least 13 inches vertically, and stand-alone DTV tuners, whether or not they are marketed with display screens, and computer equipment that includes DTV receiver or display circuitry, shall be equipped with caption decoder circuitry which appropriately receives, decodes, and displays closed captions from broadcast, cable, videotape, and DVD signals.

(b) Television tuners, including tuner cards for use in computers, shall be equipped with secondary audio program playback circuitry.

(c) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain speech or other audio information necessary for the comprehension of the content, shall be open or closed captioned.

(d) All training and informational video and multimedia productions which support the agency's mission, regardless of format, that contain visual information necessary for the comprehension of the content, shall be audio described.

(e) Display or presentation of alternate text presentation or audio descriptions shall be user-selectable unless permanent.

§ 1194.25 Self contained, closed products.

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(a) Self contained products shall be usable by people with disabilities without requiring an end-user to attach assistive technology to the product. Personal headsets for private listening are not assistive technology.

(b) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.

(c) Where a product utilizes touchscreens or contact-sensitive controls, an input method shall be provided that complies with §1194.23 (k) (1) through (4).

(d) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.

(e) When products provide auditory output, the audio signal shall be provided at a standard signal level through an industry standard connector that will allow for private listening. The product must provide the ability to interrupt, pause, and restart the audio at anytime.

(f) When products deliver voice output in a public area, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.

(g) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(h) When a product permits a user to adjust color and contrast settings, a range of color selections capable of producing a variety of contrast levels shall be provided.

(i) Products shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.

(j) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following:

(1) The position of any operable control shall be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the product within the 48 inch length.

(2) Where any operable control is 10 inches or less behind the reference plane, the height shall be 54 inches maximum and 15 inches minimum above the floor.

(3) Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height shall be 46 inches maximum and 15 inches minimum above the floor.

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(4) Operable controls shall not be more than 24 inches behind the reference plane.

§ 1194.26 Desktop and portable computers.

(a) All mechanically operated controls and keys shall comply with §1194.23 (k) (1) through (4).

(b) If a product utilizes touch screens or touch-operated controls, an input method shall be provided that complies with §1194.23 (k) (1) through (4).

(c) When biometric forms of user identification or control are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.

(d) Where provided, at least one of each type of expansion slots, ports and connectors shall comply with publicly available industry standards.

12.1.2 Subpart C -- Functional Performance Criteria

§ 1194.31 Functional performance criteria.

(a) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for assistive technology used by people who are blind or visually impaired shall be provided.

(b) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for assistive technology used by people who are visually impaired shall be provided.

(c) At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for assistive technology used by people who are deaf or hard of hearing shall be provided.

(d) Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.

(e) At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for assistive technology used by people with disabilities shall be provided.

(f) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.

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1194.3 Subpart D -- Information, Documentation, and Support

§ 1194.41 Information, documentation, and support.

(a) Product support documentation provided to end-users shall be made available in alternate formats upon request, at no additional charge.

(b) End-users shall have access to a description of the accessibility and compatibility features of products in alternate formats or alternate methods upon request, at no additional charge.

(c) Support services for products shall accommodate the communication needs of end-users with disabilities.