

**INTERIM SECTION 102(b) REPORT:
Electronic Information Systems**

**Review and Report on the Applicability to the
Legislative Branch of Section 508 of
The Rehabilitation Act of 1973, as Amended**

**Submitted by the Board of Directors of the Office of Compliance
Pursuant to Section 102(b) of the Congressional Accountability Act
of 1995, 2 U.S.C. 1302(b)**

November 13, 2001

I. Introduction

The Board of Directors (“the Board”) is charged with monitoring Federal law relating to terms and conditions of employment and access to public services and accommodations. The Congressional Accountability Act instructs the Board to report to Congress biannually: (1) whether or not those provisions are applicable to the Legislative Branch; and (2) whether inapplicable provisions should be made applicable to the Legislative Branch. Section 102(b)(1)&(2) of the Congressional Accountability Act (CAA), (2 U.S.C. 1302(b)(1)&(2)). However, the CAA does not prohibit the Board from reporting to Congress on an interim basis, in appropriate circumstances, when such a report would best effectuate the purposes of the statute.

II. Section 508, Rehabilitation Act Amendments of 1998

The Board’s December 31, 2000 Report did not address certain 1998 amendments¹ to section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), which subsequently were implemented by Executive Branch regulation in June 2001.² The essence of these amendments requires that Executive Branch agencies provide their disabled employees and disabled members of the public with access to an agency’s electronic data and information. For example, visually impaired persons must be able to utilize agency web sites through software that converts visual information to an effective audio format. In those rare instances where such compliance would impose an *undue burden* on an agency or department, section 508 permits delivery of those services in *alternate* manner. Section 508 does not apply to the employing offices covered by the CAA, or to the Congressional instrumentalities GAO, GPO, or Library of Congress.³

The section 508 amendments originated in Senate Bill S. 1579. The Labor and Human Resources Committee’s Report articulated that this legislation stemmed primarily from the need to “reestablish[] and realign[] the national workforce development and training system to make it more user-friendly and accessible.” Sen. Rept. 105-166 at 2 (Mar. 2, 1998). Thus, the legislation was primarily perceived as a vocational rehabilitation and training matter. However, there is no doubt that the particular purpose of the proposed amendments to section 508 was to:

¹ P.L. 105-220, 112 Stat. 1202, §408(a) (Aug. 7, 1998).

² 65 FR 80500 (Dec. 21, 2000), *codified at*, 36 CFR part 1194 (2001).

³ The CAA applies the Americans with Disabilities Act (“ADA”) directly to these instrumentalities. Some of the other statutes referenced in the CAA, such as Occupational Safety & Health Act (“OSHA”) and the Family Medical Leave Act (“FMLA”), are applied to GAO and the Library of Congress through the CAA, as regulated by the Office of Compliance. The Office has no regulatory authority of any kind with respect to GPO.

require[] each Federal agency to procure, maintain, and use electronic and information technology that allows individuals with disabilities the same access to information technology as individuals without disabilities. Id. at 58.

The section 508 amendments require that employees and the general public, irrespective of disability, have *comparable* access to electronic information systems. The Senate proposal was incorporated as part of the Senate amendments to H.R. 1385, the Workforce Investment Act of 1998 and largely adopted in the Conference Report.⁴

III. The Office’s Existing Efforts to Enhance Electronic Information Access under the Americans with Disabilities Act of 1990

The Office of Compliance already maintains an active role regarding employee accessibility to electronic information systems through the requirements of the Americans With Disabilities Act of 1990 (ADA), which is applied to employing offices of the Congress in the Congressional Accountability Act (“Act”). Section 201(a) of the Act (2 U.S.C. §1311(a)) states, in relevant part, that “[a]ll personnel actions affecting covered employees shall be made free from any discrimination based on . . . (3) disability within the meaning of . . . sections 102 through 104 of the . . . [ADA]”.⁵

Section 210 of the Act (2 U.S.C. §1331) applies the ADA’s public access requirements to employing offices, and authorizes ADA court proceedings regarding alleged violations by GAO, GPO, and the Library of Congress. The executive branch regulations implementing the public access provisions of the ADA have included the requirements at 28 CFR §35.160 that:

(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

28 CFR §36.302 also requires in relevant part:

(a) *General.* A public accommodation shall make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities,

⁴ H. Conf. Rept. 105-659, 105th Cong., 2d Sess. (July 29, 1998).

⁵ Section 201 of the CAA also applies, for purposes of proscribing employment discrimination, the meaning of “disability” as set forth in section 501 of the Rehabilitation Act. However, section 508 of the Rehabilitation Act is a separate and free standing provision and is not incorporated into the CAA simply by reason of the application of section 501.

unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations. . . .

In 28 CFR §36.303, the concept of “auxiliary aids and services” is set forth as one form of “reasonable accommodation”:

(a) *General.* A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the . . . services . . . being offered or would result in an undue burden

(b) *Examples.* The term ‘auxiliary aids and services’ includes

(1) Qualified interpreters, note takers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD’s), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large printed materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(c) *Effective communication.* A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.

These ADA regulations, already promulgated by the Attorney General pursuant to Title II and Title III of the ADA, and in use in the executive branch, were among those which the Board of Directors of the Office of Compliance submitted to the Senate on January 7, 1997 for final adoption as regulations under the Congressional Accountability Act. The same proposed regulations were submitted to the House two days later. Congress did not approve these proposed regulations. Consequently, pursuant to section 411 of the CAA (2 U.S.C. §1411), the Executive Branch regulations became applicable “by default” to all employing offices under the CAA.

In December, 1998, the General Counsel of the Office of Compliance submitted a Report on Inspections for Compliance with the Americans with Disabilities Act, as required by section 210(f)(2) of the CAA (2 U.S.C. §1331(f)(2)). The Report outlined the requirements of the ADA,

including the fact that “[t]he ADA requires that aids to communication, called auxiliary aids, be furnished to persons with disabilities when necessary for effective communication.” Id. at 8. The Report (at 16) also highlighted the role of electronic communication in this effort:

Legislative Information on the Internet A large amount of legislative information is now available on the Internet. The Library of Congress’s Thomas site (<http://www.loc.gov>), for example, has the text of bills and information about their status; copies of the Congressional Record; committee schedules, reports, and selected hearing transcripts; House and Senate Roll Call Votes; and links to other sites with legislative information. Most Senators and Members of the House of Representatives also maintain web sites as a means of communicating with their constituents.

Persons with disabilities are often avid users of the Internet and other electronic information services. In addition to making legislative information readily available to individuals with hearing or mobility impairments, the Internet also serves people who are blind. Text on the Internet can be read aloud by a computer equipped with a speech synthesizer and text-to-speech software or can be converted to a Braille format.

The usability of the web site for a person who is blind depends on its design. For example, if image maps are used on a Member’s web site, there should be an alternate method of selecting options so the text-to-speech software can process the information. Unless this is done, it will be difficult or impossible for a blind user to get access to information on the site. . . .

In the past several years, the Office staff has also responded to a number of inquiries from employing offices about the 1998 section 508 amendments to the Rehabilitation Act. The Office has informed offices regarding the section 508 required amendments in the Federal Acquisition Regulation (FAR), and has further explained that “the public access provisions of the CAA do not apply section 508 of the Rehabilitation Act to the entities of the Legislative Branch”

Because the CAA does not give the Office or its General Counsel authority to require that electronic information systems meet applicable accessibility standards absent a specific complaint from an individual with a particular disability, our ADA enforcement activities - as distinct from our educational activities - have been necessarily restricted and reactive rather than pro-active.

IV. The Impact of Section 508's Implementing Regulations

On December 21, 2000, the Architectural and Transportation Barriers Compliance Safety Board published its final regulations including “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.” See note 2 *supra*. The effective date of those regulations was February 20, 2001. The final amendments to the Federal Acquisition Regulation implementing section 508 were published on April 25, 2001, and went into effect as of June 25,

2001.⁶ There now exists a web site concerning section 508 standards, issues, and developments in the executive branch: www.section508.gov. Individuals with specific questions are encouraged to visit that site.

There are substantial differences between the standards mandated by Title II of the ADA and by section 508 of the Rehabilitation Act. Although the two regulatory schemes overlap, there is little question that section 508 applies significantly more stringent technical requirements for electronic information technology accessibility. While the ADA requires that public entities - including employing offices under the CAA - provide reasonably equivalent access to information, the methodology for delivering that access remains flexible. Thus, for example, if a sight impaired employee or member of the public cannot access material on an employing office's web site, under ADA that office can satisfy its responsibility to either individual by having the relevant material read to that person. Under section 508, however, an agency of the executive branch must offer technology through its web site that allows all individuals, with or without disabilities, to obtain the information directly through the site itself. For instance, an agency must upgrade its site with a capacity to reformat the information for sight impaired individuals by means of a "screen reader," which translates the visual material on a computer screen into automated audible output⁷. Thus, section 508 requires that the means to access information exist within the electronic medium itself.

Consequently, this Office's existing authority, confined to enforcement case-by-case of the ADA requirements and the provision of general information about section 508, does not fully effectuate the public policy goal of the section 508 amendments.

The Office, therefore, wishes to amplify its December 31, 2000 Report to Congress by reporting that the legislative branch is not mandated to meet the higher level of electronic information accessibility which Congress requires of the executive branch pursuant to section 508.

V. The Recommendation of the Board of Directors

When the section 508 amendments were enacted as part of the Workforce Investment Act of 1998, much if not most of the technology necessary to carry out its substantive mandates did not exist. Indeed, even at this stage, some in the electronic information community consider fully compliant technology to be non-existent. In any event, the Executive Branch is fully engaged in reaching section 508 compliance. Furthermore, both the Library of Congress and the Government Printing Office, each of which maintains extensive and heavily visited web sites

⁶ 66 FR 20893 (Apr. 25, 2001), *codified at*, 48 CFR part 39 (2001).

⁷This document is not the appropriate venue for any extensive technical description of the differences between section 508 and ADA requirements.

(GPO operates approximately 30 web sites for other executive and legislative branch agencies), have announced that they are proceeding voluntarily to achieve section 508 compliance. However, absent Congressional action, universal legislative branch electronic information accessibility will remain optional, and not a legal requirement.

The Congress commissioned this Board to monitor and comment on all laws which concern “access to public services and accommodations.” This responsibility of the Board helps ensure that the Legislative Branch is kept apprized regarding advances in access to electronic information technology, and is advised “whether such provisions should be made applicable to the legislative branch.”

Pursuant to that mandate, the Board of Directors of the Office of Compliance recommends that the Congress enact amendments to sections 201 and 210 of the CAA to incorporate the substantive employee access and public access requirements of section 508 of the Rehabilitation Act of 1973 for all CAA-covered employing offices. We further suggest that the Office’s existing section 401 and section 210 regulatory and enforcement authorities covering both employee and public access to electronic information systems be extended to include section 508 substantive requirements. Finally, we suggest that section 508 requirements regarding employee and public access also be applied to the Government Printing Office, Government Accounting Office, and Library of Congress.

The Office of Compliance stands ready to participate in the coordination of section 508 training and education for those in Congress and in the instrumentalities who are responsible for the maintenance and development of electronic information systems.

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This Supplemental Section 102(b) Report is also available on the web site of the Office of Compliance, at www.compliance.gov.