

NLWJC - Kagan

DPC - Box 013 - Folder 007

Disabilities - Section 508



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

May 5, 1997

MEMORANDUM

To: Elena Keagan, Office of the Chief of Staff/White House
Elaine Karmarck, Domestic Policy/Office of the Vice
President
Diana Fortuna, Domestic Policy Council/White House
Thomas Kalil, National Economic Council/White House
Bill White, Office of the Public Liaison/White House
Lisa Fairhall, Office of Management and Budget

Through: Judith E. Heumann, *J.E.H.* Assistant Secretary
Office of Special Education and Rehabilitation Services
U.S. Department of Education

From: Howard Moses, *H.M.* Deputy Assistant Secretary
Office of Special Education and Rehabilitation Services
U.S. Department of Education

Subject: Amendments to Section 508 of the Rehabilitation Act of
1973 During Development of Floor Managers Report for
H.R. 1385, the "Employment, Training and Literacy
Enhancement Act of 1997

Background: Section 508 of the Rehabilitation Act of 1973, as amended in 1992, essentially requires that the Secretary of Education establish Guidelines for electronic equipment accessibility for individuals with disabilities for all technology-related equipment and electronic devices purchased by the Federal government. The Guidelines are to be established in consultation with the General Services Administration and the technology industry.

The history of the enforcement of Section 508 since its enactment in 1988 has been ineffectual at best. Guidelines were established during the Bush Administration. However, the enforcement of Section 508 requires two elements in order to be effective:

- o useable, understandable, reasonable and up-to-date Guidelines; and
- o effective contract and procurement procedures at the Federal and Department levels that assure compliance during procurement and contract activities.

As to the first element, the Department of Education is currently proceeding with an update of the current Section 508 Guidelines.

This is being done in cooperation with the General Services Administration, the Architectural and Transportation Barriers Compliance Board, and numerous technical experts funded through grants by the National Institute on Disability and Rehabilitation Research/Department of Education. I can share with you our workplan for this effort later in the week.

As to the second element, the General Services Administration has funded technical assistance activities but little or no effective government-wide contract and procurement strategies for enforcement at the Department level. The de-regulation of procurement and contract policies and structures by the General Services Administration and the Office of Management and Budget have effectively eliminated any enforcement structure for this aspect of implementing the Guidelines. The overall impact is that significant sectors of the the Federal Government's technology infrastructure (computer equipment, software, suite/platforms, websites) are inaccessible to disabled individuals as employees or customers of the Federal government.

The Department of Education is currently developing procurement and contract regulations amendments that may very well provide a workable model for other Federal Departments. We will be glad to discuss those activities in detail at any time.

Also important to this issue is the April 5 announcement by the White House -- initiated by Thomas Kalil, NEC -- for the Federal government to enter into partnership with the technology industry through the World Wide Web Consortium (W3C) to establish a project for the technology industry's own development of accessibility standards and specifications for the Internet. The Department of Education (NIDRR/OSERS) and the National Science Foundation are contributing up to \$800,000 over the next three years for this initiative. The Vice President's recent report on public policy for technology also cited the need for making sure that the nation's technology infrastructure is accessible to individuals with disabilities.

Immediate Issues: During the development of the Floor Manager's Report for H.R. 1385, the "Employment, Training and Literacy Enhancement Act of 1997," by the House Committee on Education and the Workforce, consideration will be given to amending Section 508 of the Rehabilitation Act to improve federal agency compliance with requiring information technology purchased by the Federal government is accessible to employees and customers with disabilities. This is the result of legislation introduced by U.S. Representative Anna Eshoo (D-14th Dist/CA). Attachment A includes the Eshoo announcement of her legislation and proposed bill drafters language developed as a substitute to the Full Committee's report.

The critical element of the language directs the Office of Management and Budget to set up uniform procedures for federal agencies to report their compliance with government accessibility

guidelines. It requires agencies to provide written verification of their compliance each year and gives OMB the ability to monitor and enforce compliance as needed.

The Office of Federal Procurement Policy/OMB has expressed its concern in being provided this responsibility. Attachment B details alternative language developed by Office of Information and Regulatory Affairs staff, removing OMB's obligations.

The critical issue at hand here is the second element of Section 508 enforcement discussed above -- procurement and contract enforcement strategies. OMB's recommended alternative ignores this aspect of the enforcement issue. The Department of Education will issue appropriate and updated Guidelines dealing with the technical aspects of technology accessibility.

However, the contract and procurement enforcement strategies must be grounded in the current A-130 Circular and recently-enacted Chief Information Officers Act responsibilities which currently reside with the Office of Management and Budget.

OMB must have a role in the enforcement of the proposed legislative changes.

All of the entities receiving copies of this memorandum are willing and ready to discuss with the White House and OMB how we can successfully make the promise of Section 508 a reality for the first time in its more-than-a-decade of existence. This policy is consistent with the President's technology initiatives and policies, as well as the philosophy of his policies towards individuals with disabilities.

cc: Marca Bristo, Chair, National Council on Disability
Liz Savage, Department of Justice
Paul Miller, Commissioner, Equal Employment Opportunity Act
John Lancaster, President's Committee on Employment of
People with Disabilities
Thea Spires, Office of the Secretary, HUD
Susan Daniels, Social Security Administration
Katherine Seelman, Director, NIDRR/OSERS/ED
Larry Roffee, Architectural and Transportation Barriers
Compliance Board
Carol Cichowski, ODS/ED

Attachment A

Anna Eshoo

U.S. House of Representatives
14th Congressional District of California



FOR IMMEDIATE RELEASE/April 9, 1997

CONTACT: Lewis Roth/(202) 225-8104

Eshoo Bill Improves Information Technology Accessibility For People With Disabilities

Washington, D.C.—Rep. Anna Eshoo (D-CA) today introduced legislation to improve federal agency compliance with an existing law that requires information technology purchased by the federal government to be accessible to employees with disabilities. Section 508 of the Rehabilitation Act of 1973 currently calls on agencies to buy accessible technology, but contains no enforcement mechanism. As a result, many agencies do not comply with the requirement.

"While a few federal agencies have made significant efforts to make their information technology systems accessible to employees with disabilities, this hasn't been the case across the board," said Rep. Eshoo. "There is simply no reason why federal bureaucracies should be allowed to ignore the law and deny the full benefits of high technology to their workers. My legislation will add teeth to the current statute and help ensure that agencies comply with existing accessibility guidelines."

Eshoo's Federal Electronic and Information Technology Accessibility Compliance Act directs the Office of Management and Budget (OMB) to set up uniform procedures for federal agencies to report their compliance with government accessibility guidelines. It requires agencies to provide written verification of their compliance each year and gives OMB the ability to monitor and enforce compliance as needed.

In addition, the Act continues the existing expectation that states will comply with federal accessibility guidelines in exchange for federal disability funding. States currently are expected to follow the guidelines in exchange for federal dollars under the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994, which is due to expire in 1999. The Eshoo legislation inserts the Technology-Related Assistance Act provision on Section 508 guidelines into the Rehabilitation Act as one of the expectations for states to meet in exchange for federal vocational rehabilitation funding.

Approximately 7.5% of federal employees--about 145,000 workers--have disabilities of some sort. The Department of Veterans' Affairs, the Department of Navy, the Department of Army, the Department of Air Force, and the Department of Agriculture employ 62% of the federal workers with disabilities. Most federal employees with disabilities work in professional, administrative, or technical occupations for the government.

In the general population, nearly one in five Americans--or 49 million people--have a disability. According to recent studies, 8% of World Wide Web users report having disabilities. Further, blind and visually impaired people are as likely as the general population to use personal computers, the Internet, and online services. An estimated 43% of employed people who are blind or visually impaired use computers to write.

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AMENDMENT TO H.R. 1385**OFFERED BY MR. TIERNEY**

(Page & line nos. refer to the Amendment in the Nature of a
Substitute Offered by Mr. Goodling)

Page 298, after line 25, insert the following (and re-designate provisions and conform the table of contents accordingly):

1 **SEC. 2282A. REQUIREMENT THAT FEDERAL AGENCIES PRO-**
2 **VIDE CERTIFICATION OF COMPLIANCE WITH**
3 **ELECTRONIC AND INFORMATION TECH-**
4 **NOLOGY ACCESSIBILITY GUIDELINES UNDER**
5 **THE REHABILITATION ACT OF 1973.**

6 Section 508(b) of the Rehabilitation Act of 1973 (29
7 U.S.C 794d(b)) is amended to read as follows:

8 "(b) COMPLIANCE.—

9 "(1) IN GENERAL.—Each Federal agency shall
10 comply with the guidelines established under this
11 section.

12 "(2) CERTIFICATION.—

13 "(A) ESTABLISHMENT OF CERTIFICATION
14 PROCEDURES.—The Director of the Office of
15 Management and Budget shall establish uni-
16 form procedures under which the head of each
17 Federal agency shall submit to the Director a
18 written certification, containing such informa-

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1 tion as the Director may reasonably require,
2 that such agency is in compliance with the
3 guidelines established under this section.

4 "(B) SUBMISSION OF CERTIFICATION.—
5 Not later than September 30 of each year, the
6 head of each Federal agency shall submit to the
7 Director of the Office of Management and
8 Budget a written certification in accordance
9 with the procedures established under subpara-
10 graph (A).

11 "(C) REVIEW OF CERTIFICATION.—The
12 Director of the Office of Management and
13 Budget—

14 "(i) shall review each certification
15 submitted by each Federal agency under
16 subparagraph (B); and

17 "(ii) shall provide notice to each such
18 Federal agency that such agency is either
19 in compliance or not in compliance with
20 the guidelines established under this sec-
21 tion, as the case may be.

22 "(D) ASSISTANCE FOR AND MONITORING
23 OF AGENCIES NOT IN COMPLIANCE.—In the
24 case of a Federal agency that is not in compli-
25 ance with the guidelines established under this

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1 section, the Director of the Office of Manage-
2 ment and Budget—

3 “(i) shall assist such agency in its ef-
4 forts to comply with such guidelines; and

5 “(ii) shall monitor the progress of
6 such agency to comply with such guide-
7 lines.”

Page 284, after line 8, insert the following:

8 (16) in paragraph (35), by striking “and” at
9 the end;

Page 284, strike lines 9 through 15 and insert the
following (and redesignate provisions accordingly):

10 (17) in paragraph (36)—

11 (A) in subparagraph (B)(i), by moving the
12 margin two ems to the left;

13 (B) in clauses (i), (ii), and (iii) of subpara-
14 graph (C) (including subclause (II) of each of
15 such clauses (ii) and (iii)), by moving the mar-
16 gin two ems to the left; and

17 (C) by striking the period at the end and
18 inserting “; and”;

19 (18) by adding at the end the following:

20 “(37) provide assurances that the State, or any recip-
21 ient of funds made available to the State under this title,

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Rep. Anna Eshoo

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1 will comply with the guidelines established under section
2 508(a) of this Act."; and

Attachment B

Subject: Proposed language
Author: Lewis W. Oleinick@oa.eop.gov at Internet
Date: 4/28/97 6:33 PM

Message Creation Date was at 28-APR-1997 18:33:00

in Sec. 3, under (2) CERTIFICATION I would change (A) to read:

"(A) ESTABLISHMENT OF CERTIFICATION PROCEDURES. -- The head of each Federal agency shall establish uniform procedures under which the Chief Information Officer and Chief Financial Officer, or the appropriate counterparts in agencies not having one or the other, shall provide written certification, containing such information as the head of each Federal agency may reasonably require, that such agency is in compliance with the guidelines established under this section."

In the same Section under I would change (B) to read:

"(B) SUBMISSION OF CERTIFICATION. -- Not later than September 30 of each year, the head of each Federal agency shall submit to the (fill in the appropriate agency that has expertise on accessability), and to appropriate interagency councils, a written certification in accordance with the procedures established under subparagraph (A)."

You could also propose that the head of each Federal agency publish said certification in the Federal register, but I'll leave that call up to you.

I would change (C) to read:

"(C) REVIEW OF CERTIFICATION. -- The (fill in the appropriate agency that has expertise on accessability) --
(i) shall review each certification submitted by each Federal agency under subparagraph (B); and
(ii) shall provide notice to each such Federal agency that such agency is either in compliance or not in compliance with the guidelines established under this section, as the case may be."

I would change (D) by striking "the Director of the Office of Management and Budget" and replacing it with "the Head of (fill in the appropriate agency that has expertise on accessability)"

The language I have suggested does not preclude using the CIO Council.

Lewis W. Oleinick
04/29/97 01:33:31 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Jasmeet K. Seehra/OMB/EOP, Bruce W. McConnell/OMB/EOP, Peter N.

Weiss/OMB/EOP
Subject: Accessibility language going forward

Hi all.

FYI.

I've learned that the Democrat and Republican staffers are in agreement on the language in HR 1255, the IT accessibility certification bill. The language as it stands has OMB certifying agency compliance with accessibility guidelines -- this obviously requires a policy call from our senior people. HR 1255 looks like it will be rolled into HR 1385 tomorrow in full committee mark-up.

-- Lew

M e s s a g e S e n t

To: _____
Daniel J. Chenok/OMB/EOP
Lisa B. Fairhall/OMB/EOP
Constance J. Bowers/OMB/EOP
Maureen H. Walsh/OMB/EOP
Patricia A. Smith/OMB/EOP