Digital Accessibility: Agencies Receive New Guidance from OMB

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The Office of Management and Budget (OMB) has issued guidance to agencies on making websites and digital services accessible to persons with disabilities. OMB's guidance includes information provided in a September 2023 memorandum (M-23-22) on implementing the 21st Century Integrated Digital Experience Act (P.L. 115-336), as well as requirements and recommendations in a December 2023 memorandum (M-24-08) on complying with Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794d).

Section 508 requires that an agency's electronic information technology (EIT)—including hardware, software, and electronic content, such as websites and intranets—is to be accessible to members of the public and federal employees with disabilities. *Accessible* in this context means EIT that enables people with disabilities to have access to and use of information and data that is comparable to the access and use provided to people without disabilities (29 U.S.C. §794d(a)(1)(A)). More information on Section 508 can be found in CRS In Focus IF12093, *The Accessibility of Federal Information and Data: A Brief Overview of Section 508 of the Rehabilitation Act*, by Natalie R. Ortiz.

This Insight discusses OMB's recent guidance to agencies on the accessibility of digital services.

Using Accessibility Standards

Section 752 of the Consolidated Appropriations Act, 2023 (P.L. 117-328), required OMB to disseminate guidance to agencies on conforming digital services to the Section 508 standards, as determined by the appropriate testing. Section 508 of the Rehabilitation Act of 1973 requires the Access Board, an independent federal agency, to develop these standards, which establish technical and performance criteria for EIT that would ensure that individuals with disabilities can access and use federal information and data (29 U.S.C. §794d(a)(2)).

The Access Board incorporates the World Wide Web Consortium's (W3C's) Web Content Accessibility Guidelines (WCAG) 2.0 into the standards it establishes for electronic content (36 C.F.R. §1194 Appendix A E205.4). WCAG 2.0 was issued in 2008 and, therefore, available for the Access Board to incorporate into the standards it promulgated in 2017. W3C released WCAG 2.1 and WCAG 2.2 in 2023. Each successive WCAG adds to the criteria for enabling accessibility.

Enforcement of Section 508 hinges on compliance with the Access Board's standards (29 U.S.C. §794d(f)). Although the Access Board incorporates the earlier WCAG 2.0 into its Section 508 standards, the standards also permit alternative technical and performance features that result in equivalent or greater accessibility than that provided through conformance to the standards (36 C.F.R. §1194 Appendix A E101.2). OMB's September guidance instructs agencies to apply the most current WCAG version—currently WCAG 2.2—to agency websites and internet content where possible. W3C states that content that conforms to WCAG 2.2 also conforms to 2.1 and 2.0. Thus, agencies appear to have discretion to choose WCAG 2.0, WCAG 2.1, or WCAG 2.2 at this time—each of which varies in the criteria used to enable accessibility—and still be in compliance with the Section 508 standards for electronic content.

Assessing Conformance to Standards

OMB suggests a number of practices agencies should use for evaluating conformance to the Section 508 standards. The December 2023 memorandum encourages agencies to validate a vendor's reporting of conformance to accessibility standards prior to purchase. A recent report from the General Services Administration (GSA) stated that some agencies have likely misinterpreted terms used in these accessibility conformance reports, resulting in incorrect assessments of vendor compliance. OMB instructs GSA to identify within one year governmentwide options for standardizing and centralizing EIT conformance reporting.

OMB encourages agencies to formally document processes for conformance testing and to routinely test for accessibility using automated tools and manual processes such as those that incorporate the "ICT Testing Baseline for Web." This testing baseline, however, corresponds to tests for conformance to certain, minimum WCAG 2.0 criteria, whereas OMB encourages agencies to use later WCAGs.

Additionally, OMB recommends that certain agency employees, including Section 508 program managers, participate in conformance testing training, such as the Department of Homeland Security's (DHS's) trusted tester certification program. This program is described as providing a reliable approach to testing web content for conformance to the Section 508 standards. OMB also recommends using conformance to Section 508 standards as a performance measure of an agency's information technology programs, consistent with the requirement for an agency's chief information officer to monitor and evaluate the performance of such programs (40 U.S.C. §11315(c)(2)).

Similar to an emphasis on user research that OMB made in its September 2023 memorandum, OMB recommends that agencies collect feedback on digital services from users with disabilities, including for conformance testing and validating accessibility. OMB indicates that an agency may use this feedback to prioritize inaccessible EIT for remediation.

Considerations for Congress

Responsibilities for EIT accessibility are distributed throughout an agency, involving, among others, its information technology, procurement, and human resources functions. OMB is requiring that agencies design mechanisms by late March 2024 for collecting feedback from the public on issues and complaints about the accessibility of agency EIT. Congress may consider assigning specific responsibility within an agency for how this feedback is tracked, evaluated, and ultimately used to remediate inaccessible EIT. Lawmakers may also identify a role for agency inspectors general to play in increasing accountability for EIT accessibility throughout agencies.

In its December 2023 memorandum, OMB tasked DHS with exploring the scaling of its trusted tester certification program. According to GSA, 39% of respondents to its recent governmentwide survey use trusted tester methods to evaluate conformance to the federal government's EIT standards. Congress may consider allocating budgetary resources to DHS to enable its evaluation of how to scale its program.

Congress may ask DHS to determine how its program will provide testing procedures to accommodate the multiple accessibility standards, such as later versions of WCAG, that agencies are encouraged to adopt. Congress may also determine that another agency should be developing and maintaining the operation of such a program. For example, GSA and the Access Board are required to provide technical assistance to agencies on the requirements of Section 508 (29 U.S.C. §794d(b)).

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