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## **ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD**

**36 CFR Parts 1193 and 1194**

**[Docket No. 2011-07]**

**RIN 3014-AA37**

### **Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards**

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) is issuing this second Advance Notice of Proposed Rulemaking (ANPRM) to continue the process of updating its standards for electronic and information technology, which apply to federal agencies, and its guidelines for telecommunications accessibility, which apply to telecommunications manufacturers. The text of the proposed standards and guidelines under consideration by the Board is available on the Board's website ([www.access-board.gov/508.htm](http://www.access-board.gov/508.htm)). The Board invites the public to review and comment on all aspects of this notice and the proposed text, including the advantages and disadvantages of provisions, the organizational approach to presenting the standards and guidelines, alternative policies to those presented, and information on benefits and costs. After reviewing the comments received in response to this advance notice, the Board plans to issue a proposed rule seeking further public comment followed by a final rule.

**DATES:** Comments should be received by [Insert date 90 days from date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by docket number 2011-07 or RIN number 3014-AA37, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Regulations.gov Docket ID is ATBCB-2011-0007.
- Email: [ictrule@access-board.gov](mailto:ictrule@access-board.gov). Include docket number 2011-07 or RIN number 3014-AA37 in the subject line of the message.
- Fax: 202-272-0081.
- Mail or Hand Delivery/Courier: Office of Technical and Information Services, Access Board, 1331 F Street, NW, suite 1000, Washington, DC 20004-1111.

All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Timothy Creagan, Office of Technical and Information Services, Access Board, 1331 F Street, NW, suite 1000, Washington DC 20004-1111. Telephone number: 202-272-0016 (voice); 202-272-0074 (TTY). Electronic mail address: [creagan@access-board.gov](mailto:creagan@access-board.gov).

**SUPPLEMENTARY INFORMATION:**

I. Regulatory History

The (Section 508) Electronic and Information Technology Accessibility Standards (standards) were issued in December 2000, 65 FR 80500 (December 21, 2000). The (Section 255) Telecommunications Act Accessibility Guidelines (guidelines) for telecommunications equipment and customer premises equipment were issued in February 1998, 63 FR 5608 (February 3, 1998). The standards require that when developing, procuring, maintaining, or using electronic and information technology, each federal department or agency must ensure, unless an undue burden would be imposed on the department or agency, that electronic and information technology (regardless of the type of medium) allows individuals with disabilities 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 others without disabilities. The standards include a definition of electronic and information technology, and technical and functional performance criteria for such technology. The Section 255 guidelines require telecommunications manufacturers to ensure that telecommunications equipment and customer premises equipment are designed, developed, and fabricated to be accessible to and usable by individuals with disabilities when it is readily achievable to do so. The term readily achievable is defined in the guidelines as easily accomplishable, without much difficulty or expense.

Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (d) (Section 508) and the Telecommunications Act of 1996, 47 U.S.C. 153, 255 (Section 255) require that the Access Board periodically review and, as appropriate, amend the standards and guidelines to reflect technological advances or changes in electronic and information technology or in telecommunications equipment and customer premises equipment. Once revised, the Board's standards and guidelines are made enforceable by

other federal agencies. Section 508(a)(3) of the Rehabilitation Act provides that within 6 months after the Access Board revises its standards the Federal Acquisition Regulatory Council shall revise the Federal Acquisition Regulation and each appropriate federal department or agency shall revise their procurement policies and directives, as necessary, to incorporate the revisions. Under Section 255 of the Telecommunications Act of 1996, the Federal Communications Commission has the authority to adopt regulations implementing Section 255 including adopting rules consistent with the Access Board's guidelines.

Since the Board first issued the guidelines and the standards, technology has evolved and changed. Therefore, the Board decided to update and revise the guidelines and the standards together to address changes in technology and to make both documents consistent. The Board formed the Telecommunications and Electronic and Information Technology Advisory Committee (TEITAC) in 2006 to review the existing guidelines and standards and to recommend changes. TEITAC's 41 members comprised a broad cross-section of stakeholders. The stakeholders included representatives from industry, disability groups, standard-setting bodies in the U.S. and abroad, and government agencies. TEITAC also included representatives from the European Commission, Canada, Australia, and Japan. TEITAC recognized the importance of standardization across markets worldwide. It coordinated its work with standard-setting bodies in the U.S. and abroad, such as the World Wide Web Consortium (W3C). TEITAC members addressed a range of issues, including new or convergent technologies, market forces, and international harmonization.

On April 3, 2008, TEITAC presented its report to the Board. The report recommended revisions to the Board's Section 508 standards and Section 255 guidelines. The report is available on the Board's website at [www.access-board.gov/sec508/refresh/report/](http://www.access-board.gov/sec508/refresh/report/).

The Board developed an Advance Notice of Proposed Rulemaking (2010 ANPRM) based on the TEITAC report. The ANPRM was published in the Federal Register in March 2010, 75 FR 13457 (March 22, 2010). The Board held two public hearings and received 384 comments on the 2010 ANPRM. This 2011 ANPRM is based on a review of those comments.

The 2010 ANPRM also included a proposal to amend the Americans with Disabilities Act (ADA) Accessibility Guidelines to extend coverage of the guidelines to a variety of self-service transaction machines not previously covered by the guidelines. The Board plans to address this subject at a future date and has not included a proposal in this ANPRM to address such machines subject to the ADA.

## II. Structure of the 2010 ANPRM

The 2010 ANPRM contained proposed updates under consideration by the Board to the requirements for Section 508 and Section 255 and was organized into eleven chapters. The first two chapters were separate introductory chapters (508 Chapter 1 and 255 Chapter 1) outlining scoping, application, and definitions unique to each law. The remainder of the chapters comprised a common set of requirements. The ANPRM used the term "Information and Communication Technology" (ICT), recommended by TEITAC to describe electronic and information technology covered by Section 508 and

telecommunications products, interconnected Voice over Internet Protocol (VoIP) products and Customer Premises Equipment (CPE) covered by Section 255. The new term which was defined in E111 and C109 is consistent with terms previously included in the standards and guidelines but it more accurately describes covered features of electronic and information technology, telecommunications and VoIP products, and CPE. The term ICT is widely used in the public sector and by most other countries. The functional performance criteria and technical requirements set forth in the 2010 ANPRM were intended to apply to ICT subject to either the Rehabilitation Act or the Telecommunications Act of 1996.

508 Chapter 1 contained purpose and application provisions for Section 508 and explained how those provisions are applied to ICT subject to Section 508. The chapter explained how the provisions implement the requirement under Section 508 that federal agencies must ensure that the technology is accessible to people with disabilities, unless an undue burden would be imposed on the department or agency. The meaning of the term “undue burden” remains unchanged. Consistent with Section 1194.4 of the standards, undue burden means significant difficulty or expense to the agency after considering all the agency resources available to the program or component for which the product is being developed, procured, maintained, or used.

255 Chapter 1 contained purpose and application provisions for Section 255 and how that is applied to telecommunications and interconnected VoIP products and CPE subject to Section 255. The chapter explained how the provisions implement the requirement under Section 255 that telecommunications manufacturers must ensure that telecommunications equipment and customer premises equipment are designed,

developed, and fabricated to be accessible to and usable by individuals with disabilities when it is readily achievable to do so. An action that is “readily achievable” can be easily accomplished by a manufacturer without much difficulty or expense.

Chapter 2 included functional performance criteria requiring ICT to provide access to all functionality in at least one of each of the eleven specified modes.

Chapter 3 contained technical requirements applicable to features of ICT that are found across a variety of platforms, formats, and media. Chapters 4, 5, and 6 all contained technical requirements closely adapted from the Web Content Accessibility Guidelines (WCAG) 2.0 Success Criteria which were rephrased in mandatory language. Chapter 4 addressed platforms, applications, interactive content, and applications. Chapter 5 covered access to electronic documents and common interactive elements found in electronic content and Chapter 6 addressed access to audio and visual electronic content and to players of that content. Chapter 7 addressed hardware aspects of ICT, such as standard connections and reach ranges. Chapter 8 addressed ICT that has audio output functionality when that output is necessary to inform, alert, or transmit information or data. Chapter 9 addressed ICT that supports a real time simultaneous conversation. This conversation may be in an audio, text, or video format. Chapter 10 covered product support documentation and services.

### III. Summary of Public Comments to the 2010 ANPRM

Three hundred eighty-four comments were received during the comment period. Comments came from industry, federal and state governments, foreign and domestic companies specializing in information technology, disability advocacy groups,

manufacturers of hardware and software, trade associations, institutions of higher education, research and trade organizations, accessibility consultants, assistive technology industry and related organizations, and concerned individuals who did not identify with any of these groups.

In general, commenters agreed with the Board's approach to address the accessibility features of ICT and not discrete product types. The commenters also expressed strong support for the decision to follow the TEITAC recommendation to require harmonization with WCAG 2.0. In addition they strongly supported the Board's efforts to update the standards to address current technology. However, they raised concerns about the overall length of the document and its organization. Many commenters stated that it was unwieldy and difficult to use at close to 100 pages. They reported that the organization of the material did not add to their understanding of how to apply the requirements. They indicated that the relationship of the chapters to one another was unclear because every chapter seemed to use the term ICT differently, based on the functions addressed by the chapter. Commenters noted that some chapters focused on functional features of accessibility and others addressed specific types of technology. They found that this inconsistency within the document made reading and comprehension difficult.

Commenters from industry and government criticized the approach taken for harmonization with WCAG 2.0. The rephrasing of Success Criteria from WCAG 2.0 into regulatory language introduced subtle changes that called into question the suitability of the wealth of guidance material developed specifically for WCAG 2.0. Commenters in general were confused about how the Board distinguished between software and

documents. Commenters were also confused about the emphasis given to some topics, which were addressed over an entire chapter, while other equally complex topics were addressed in a group of provisions. Many commenters also indicated that the use of advisories throughout the document was unclear and inconsistent, because some provisions had extensive advisories while others had none. Government and industry information technology professionals raised concerns about how some of the provisions could be implemented so that they could successfully determine if ICT is conformant. Persons responsible for procurements, as well as commenters representing individuals with disabilities questioned how conformance with provisions guaranteed actual access to and use of information and data by individuals with disabilities.

Most commenters wanted clarification of the Board's approach to covering electronic content. In addition, many commenters asked for a clearer explanation of the relationship of the functional performance criteria to the technical requirements. In general, commenters criticized the provisions for closed functionality for a lack of substance which made the provisions vague and confusing. Overall, commenters generally favored the Board's approach to streamlining the exceptions to the technical and functional performance criteria. However, a significant number of commenters from government and industry strongly opposed removing the maintenance spaces exception for ICT located in spaces frequented only by service or maintenance personnel. Other commenters, many from government, expressed confusion over the reorganization of the "incidental to a contract" exception as a subset of a provision on federal contracts.

#### IV. Access Board Response to Public Comments

Upon reviewing the comments, the Board sees that the 2010 ANPRM needed major revisions in terms of both structure and content. The Board also recognizes the need to obtain more guidance on certain issues from those affected by the requirements. At the same time, the Board is interested in harmonizing with standards efforts around the world in a timely way. Accordingly, the Board is now releasing this second Advance Notice of Proposed Rulemaking (2011 ANPRM) to seek further public comment on specific questions and to harmonize with contemporaneous standardization efforts underway by the European Commission.

## V. Differences Between the 2010 ANPRM and the 2011 ANPRM

### A. Structural Changes in the 2011 ANPRM

The Board has made significant changes in response to public comments to the 2010 ANPRM. The 2011 ANPRM is more concise than the 2010 ANPRM. It has six chapters instead of ten. The Board consolidated and streamlined provisions and consolidated advisories. The Board also removed scoping and application language from the chapters containing technical provisions and relocated them to new chapters at the beginning of the document. In addition, in response to concerns about an uneven approach taken in the 2010 ANPRM, where some chapters focused on features of products and others addressed specific types of products, the Board standardized the approach by removing references to types of products while focusing instead on specific features of products. The Board revised the overall structure of the functional performance criteria so that the provisions have parallel structure. Further, the Board grouped technical requirements for similar functions together in the same chapter to

improve readability and usability. The Board also removed specific requirements relating to web and non-web electronic content, documents and user applications and referenced WCAG 2.0 instead. This revised text is consistent with and reflects the public comments received. The Board focused on making this draft as accurate and succinct as possible to improve reader comprehension.

## B. Major Issues Identified and Addressed in the 2011 ANPRM

### 1. Relationship between Functional Performance Criteria and Technical Provisions

In Section E103.5 of the 2010 ANPRM the Board proposed language to clarify the relationship between the functional performance criteria and the technical provisions. The Board deemed this clarification to be warranted because the 508 standards currently do not clearly specify when agencies must use the technical provisions and when they must use the functional performance criteria. Subsection E103.5.1 of the 2010 ANPRM proposed that when an agency develops, procures, maintains, or uses ICT, it first must look to the technical provisions. If the technical provisions were fully satisfied, then the agency did not need to apply the functional performance criteria. Consequently, the 2010 ANPRM gave the technical criteria greater weight than the functional performance criteria since the functional performance criteria were used only when the procurement needs of the agency were not fully met by the technical provisions. While the Board intended for the approach taken in the 2010 ANPRM to reflect current practice, commenters objected to this approach, citing the concern that procurements that satisfy

only the technical requirements do not necessarily provide access to information and data for individuals with disabilities.

The Board appreciates this concern and has redefined the relationship between the functional performance criteria and the technical provisions in section E204 of the 2011 ANPRM so that ICT must conform to the functional performance criteria, even when technical provisions are met. This is a significant change from the 2010 ANPRM, which did not require use of the functional performance criteria at all when the technical provisions fully addressed the product being procured. In subsection E101.2 of the 2011 ANPRM the Board retains the approach from subsections E103.5.3 and E106 of the 2010 ANPRM of using the functional performance criteria to evaluate whether using the equivalent facilitation provision provides substantially equivalent or greater access to and use of a product for individuals with disabilities. A covered entity has the option to apply the concept of equivalent facilitation in order to achieve conformance with the intent of the technical requirements, provided that the alternative affords individuals with disabilities substantially equivalent or greater access than would result from compliance with the technical requirements.

## 2. Functional Performance Criterion for Limited Vision

In subsection 202.3 in the 2010 ANPRM, the functional performance criterion for limited vision was changed to require a visual mode of operation which did not require visual acuity greater than 20/200 or a field of vision greater than 20 degrees. Commenters criticized this new approach as inadequate and technically incorrect. Organizations representing persons with disabilities disagreed with the 20/200 requirement, stating that

it did not sufficiently address the needs of users with severe low vision. Industry groups noted that the 20/200 requirement contradicted several technical requirements. Both groups indicated that the approach taken did not address features which could actually improve accessibility for persons with limited vision. In addition, as written, only one feature had to be provided for each mode of operation. Commenters stated that this approach was too limited.

In subsection 302.2 in the 2011 ANPRM the Board has made several changes to the functional performance criterion for limited vision in response to these comments. A functional approach which more closely addresses the needs of users with limited vision replaces the approach which specified a measurement for visual acuity. The functional performance provision for limited vision now requires that when a visual mode of operation is provided, ICT must provide at least one mode of operation that magnifies, one mode that reduces the field of vision, and one mode that allows user control of contrast. The provision also states that these modes must be supplied in the same ICT, but may be supplied either directly or through compatibility with assistive technology.

### 3. Covered Electronic Content: Official Communications

The 2010 ANPRM covered all electronic content used by agencies where it was an official communication by the agency to federal employees or to members of the public. This approach attempted to clarify the approach in the current Section 508 standards. Section 508 requires that agencies ensure that individuals with disabilities have access to and use of information and data that is comparable to the access to and use of information and data by others without disabilities. Arguably, all electronic content

developed, procured, maintained, or used by federal agencies is covered by the Section 508 standards because the standards do not limit the application of the requirements for access to and use of information and data to certain types of communication by an agency. Subsection E103.3.1 of the 2010 ANPRM proposed to cover electronic content only to the extent that it was an official agency communication. Commenters, however, disagreed strongly with this approach because, in their view, all communications by an agency are in some way official business of the agency. Consequently, no electronic content would be exempt. They found this to be overbroad with considerable potential cost in relation to the benefit. Because this requirement potentially would cover all electronic content created by an agency, commenters feared that it would require each employee to be capable of creating accessible content for all of his or her communications. If all employees were required to produce accessible formats for all their work, commenters argued that employees would need considerable training. Commenters cautioned that this practice would consume a large portion of agency resources without necessarily resulting in more accessibility.

In response, the Board proposes a more limited approach in section E205 of the 2011 ANPRM. Coverage of electronic content is limited to nine specific categories of information communicated by agencies to employees or to members of the general public during the conduct of official agency business, as determined by the agency mission. Covered electronic content includes the following: content that is public facing; content that is broadly disseminated within the agency; letters adjudicating any cause within the jurisdiction of the agency; internal and external program and policy announcements; notices of benefits, forms, questionnaires and surveys; emergency notifications; formal

acknowledgements; and educational and training materials. There are two exceptions to covered content: archival copies stored or retained solely for archival purposes to preserve an exact image of a hard copy, and draft versions of documents.

#### 4. Closed Functionality

Section 302 of the 2010 ANPRM substituted the term “closed functionality” for “self-contained, closed products”. The standards permitted ICT to have closed functionality and required it to be accessible to and usable by individuals with disabilities without requiring the attachment of assistive technology. Commenters did not object to the new terminology of “closed functionality” but asked for more detail and clarity in the provisions. In section 402 of the 2011 ANPRM, the Board now provides specific requirements for ICT with closed functionality to ensure that it is accessible to individuals with disabilities. These features include the requirement that ICT with closed functionality must be speech enabled. The term “speech enabled” means speech output. These proposed requirements are derived from Section 707, Automatic Teller Machines and Fare Machines, in the ADA and ABA Accessibility Guidelines and the 2010 Department of Justice ADA Standards for Accessible Design.

#### 5. Exceptions: Maintenance Spaces and “Incidental to a Contract”

In the 2010 ANPRM, the Board reorganized the exceptions in the current standards and recommended deleting three of them as unnecessary. The three exceptions deleted by the Board were 36 CFR 1194.3(c) which stated that assistive technology need not be provided at all workstations for all federal employees; 36 CFR 1194.3(d) which provided that where agencies provide information and data to the public through

accessible ICT, the accessible ICT need only be provided at the intended public location; and 36 CFR 1194.3(f), which stated that products located in spaces used only by service personnel for maintenance and repair need not be accessible. In an effort to simplify the wording, the Board rewrote the exception at 36 CFR 1194.3(b) permitting ICT acquired by a contractor incidental to a contract to not be accessible.

The Board received a number of comments about these proposed changes. Most commenters on this issue supported removing two of the three proposed exceptions. Only the proposed removal of the exception for ICT located in maintenance spaces generated negative comments. Commenters strongly objected to the Board's assertion that many functions could be accessed remotely, noting that there were still many instances when some functions could only be performed in a maintenance space on an infrequent basis. They stated that functions related to maintenance, repair, or occasional monitoring of equipment should not be required to be accessible. The Board has restored this exception in subsection E202.4 of the 2011 ANPRM. The Board revised the language from the current Section 508 standard to make it clear that there are some functions which are only capable of being performed on-site in a maintenance space occupied solely by service personnel. These functions cannot be accessed remotely and include maintenance, repair, or occasional monitoring of equipment.

The Board's efforts at streamlining the exception for ICT purchased by a contractor "incidental to a contract" received many critical comments. The rewritten exception deleted the phrase "incidental to a contract" and was relocated to a new section (E103.4.2) relating to federal contracts. Commenters expressed confusion as to the purpose of the new section and did not recognize the rewritten exception. One federal

procurement official commented that the phrase “incidental to a contract” was more understandable and usable, particularly by contracting officials, who were most affected by this language. In response to comments, the Board has restored the original language from the current Section 508 standards in the 2011 ANPRM at subsection E202.3.

#### 6. WCAG 2.0 Incorporation by Reference Rather than Harmonization

In the 2010 ANPRM, the Board sought public comment on the recommendation of the TEITAC for international harmonization. The 2010 ANPRM included most WCAG 2.0 Level A and Level AA Success Criteria but restated them in mandatory terms more appropriate for regulatory language. In the current 508 Standards, most of the provisions in 36 CFR 1194.22 mirror those of WCAG 1.0. The 2010 ANPRM (subsections E107 and C106) also requested comments on the option to use WCAG 2.0. Commenters noted that deviations from WCAG 2.0 phrasing introduced ambiguities, particularly for those familiar with WCAG 2.0.

The current 508 Standards provide discrete requirements for software (36 CFR 1194.21) and web content (36 CFR 1194.22). As noted in the TEITAC report and the 2010 ANPRM preamble, such distinctions are increasingly arbitrary. The 2010 ANPRM attempted to retain some of this separation by having one chapter of simpler provisions which were applicable to document authors and a chapter of more complex provisions which were applicable only to software developers. Provisions related to multimedia were grouped in a third distinct chapter. Commenters felt that that this separation seemed more arbitrary than useful.

Both of the above weaknesses have been addressed in the 2011 ANPRM.

Proposed subsections E205.1 and C203.1 incorporate WCAG 2.0 by reference, so there is no paraphrasing. WCAG 2.0 is written to be technology neutral, so it is straightforward to apply the WCAG 2.0 Success Criteria and Conformance Requirements to electronic documents and applications, regardless if those documents and applications are rendered within a web browser or within a native application outside the web browser environment.

Referencing WCAG 2.0 is consistent with Office of Management and Budget (OMB) Circular A-119<sup>1</sup> which directs agencies to use voluntary consensus standards in lieu of government-unique standards. The primary benefit is economic in that this practice reduces costs to the government associated with developing its own standards and also decreases the cost of goods and services procured by the government. According to the Web Accessibility Initiative<sup>2</sup>, fragmentation of standards is an economic issue for government, businesses, and web developers. In this case, incorporation by reference also directly serves the best interests of people with disabilities because harmonization of standards can help accelerate the spread of accessibility across the web. The accessibility of the web is essential to enable the participation of people with disabilities in an information society.

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<sup>1</sup> Memorandum for Heads of Executive Departments and Agencies, Circular No. A-119 Revised, February 10, 1998, [http://www.whitehouse.gov/omb/circulars\\_a119](http://www.whitehouse.gov/omb/circulars_a119).

<sup>2</sup> Why Standards Harmonization is Essential to Web Accessibility (draft), W3C Web Accessibility Initiative, Education & Outreach Working Group, June 28, 2011, <http://www.w3.org/WAI/Policy/harmon.html>.

The Board’s proposal to reference WCAG 2.0 as the standard for Section 508 and Section 255 web accessibility is also consistent with the Department of Transportation’s proposed approach in its supplemental notice of proposed rulemaking addressing, among other things, the accessibility of air carrier and ticket agent websites. 76 FR 59307 (September 26, 2011).

The Board’s proposal to incorporate WCAG 2.0 by reference is consistent with activity by other international standards organizations.<sup>3</sup> Australia<sup>4</sup>, Canada<sup>5</sup>, and New Zealand<sup>6</sup> already make direct reference to WCAG 2.0. The European Commission references WCAG 2.0 in its current working draft (under “Mandate M376”<sup>7</sup>). WCAG 2.0 also serves as the basis for web accessibility standards in Germany (under “BITV 2”), France (under “RGAA 2.2.1”) and Japan (under “JIS X 83141”) and has so far generated eight formal authorized translations.<sup>8</sup>

## 7. Clarification of Documentation Requirement for Undue Burden

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<sup>3</sup> Policies Relating to Web Accessibility, W3C WAI, August 25, 2006, <http://www.w3.org/WAI/Policy/>.

<sup>4</sup> World Wide Web Access: Disability Discrimination Act Advisory Notes, Australian Human Rights Commission, October 2010, [http://www.hreoc.gov.au/disability\\_rights/standards/www\\_3/www\\_3.html](http://www.hreoc.gov.au/disability_rights/standards/www_3/www_3.html).

<sup>5</sup> Standard on Web Accessibility, Treasury Board of Canada Secretariat, August 1, 2011, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?section=text&id=23601>.

<sup>6</sup> New Zealand Government Web Standards, Government Information Services, Department of Internal Affairs, November 15, 2011, <http://webstandards.govt.nz/standards/nzgws-2/>.

<sup>7</sup> European Accessibility Requirements for Public Procurement of Products and Services in the ICT Domain, European Commission (EC), November 2, 2011, <http://www.mandate376.eu/>.

<sup>8</sup> Translations of W3C Documents, World Wide Web Consortium, retrieved November 23, 2011, <http://www.w3.org/2005/11/Translations/Lists/ListAuth.html>.

In the 2010 ANPRM, the Board proposed clarifications to the circumstances when documentation for the basis of a determination of undue burden is required, proposing that documentation must be provided in cases of development, maintenance, or use of ICT, as well as procurement. This was a change from 36 CFR 1194.2(2) which only discussed documentation of an undue burden determination during procurement of ICT. 29 USC 794d(a)(4) requires that “documentation by the department or agency supporting the procurement shall explain why compliance creates an undue burden”. 29 USC 794d(a)(1)(B) provides that federal agencies must provide alternative means of access to information and data to individuals with disabilities when development, procurement, maintenance, or use of electronic and information technology would impose an undue burden. The TEITAC recommended that the documentation requirement for undue burden be clarified. Accordingly, the Board added subsection E104.3 in the 2010 ANPRM to require documentation of undue burden determinations in the procurement, development, maintenance and use of ICT. The Board received only two comments, both made by one individual with a disability, in response to this provision. Both comments requested clarification of the factors to be addressed in undue burden documentation. In the 2011 ANPRM, the Board has clarified the factors used as the basis for a determination of undue burden in subsection E202.5.1, and retained the requirement for documentation in subsection E202.5.2.

The Board believes that requiring documentation of undue burden determinations for the use, maintenance, and development of ICT in addition to procurements will result in greater consistency and conformance with the 508 standards. These changes are

consistent with the language of the statute, incorporate current practices, and encourage consistency in the documentation of undue burden determinations.

## VI. Questions

### A. General

In addition to the major policy questions discussed above, this ANPRM includes some non-substantive editorial changes to the first ANPRM that are not detailed in this discussion. In addition to the questions below, the Board seeks general comments on the provisions in this document, including the extent to which they are necessary, their advantages and disadvantages, their quantitative and qualitative benefits and costs, and recommended alternatives. The Board also invites the public to identify any gaps in the draft guidelines and standards, and approaches to addressing such gaps.

### B. Questions

Question 1: As discussed above, in response to public comments, the Board has made significant changes to the 2010 ANPRM by consolidating, streamlining, and removing provisions and advisories to improve readability, comprehensibility, and usability. The Board seeks comment on this new approach.

Question 2: As noted above, the Board has changed the approach taken towards covered electronic content (E205.1) in the 2011 ANPRM. The proposed requirement in Section E205.1 requires electronic content falling into certain categories of official communications by federal agencies to be accessible. Should additional or different types of communications be included in this subsection? What are the benefits and costs of this

approach? Would such an approach have any unintended consequences on federal agency communications?

Question 3: In the discussion above, the Board has changed the approach to the functional performance criteria for limited hearing (302.5) and limited vision (302.2) in the 2011 ANPRM to require three specific features to be provided. These features may be provided either directly or through the use of assistive technology. The Board requests information on whether the features listed in these functional performance requirements will provide accessibility to users with limited vision or hearing, or whether there are other features which should be required in addition or instead. What are the costs and benefits associated with requiring the three features?

Question 4: As noted above, the 2011 ANPRM has changed the relationship between the functional performance criteria and the technical provisions (E204.1). The Board seeks comment on the proposed approach requiring conformance with the functional performance criteria at all times, even when the technical provisions are met. What are the costs and benefits associated with this approach?

Question 5: The 2011 ANPRM requires websites to be accessible to individuals with disabilities by conforming to WCAG 2.0. WCAG 2.0 allows a non-conforming (i.e., inaccessible) webpage to be considered compliant if there is an accessible mechanism for reaching an accessible version of the webpage that is up to date and contains the same information and functionality as the inaccessible webpage. A webpage that meets all these criteria qualifies as a “conforming alternate version” and is intended to provide individuals with disabilities equivalent access to the same

information and functionality as the non-conforming web page. However, unrestricted use of conforming alternate versions may facilitate the emergence of two separate websites: one for individuals with disabilities and another for individuals without disabilities. Alternatively, restricting the use of conforming alternate versions may result in significant costs to federal departments and agencies by limiting their options for providing accessible content.

Should the Board restrict the use of conforming alternate versions? The Board seeks comments on whether allowing inaccessible content, even with conforming alternate versions, negatively affects the usability and accessibility of websites by individuals with disabilities. The Board also requests comments on the difficulty or costs that may be incurred if federal departments or agencies are not free to use conforming alternate versions of content along with inaccessible content.

Question 6: As noted above, Chapter 4 addresses features of ICT which may be used to communicate or produce electronic content or retrieve information or data. Some of the sections addressing these features of ICT include but are not limited to: Two Way Voice Communication (408), Operable Parts (407), and Standard Connections (406). The Board seeks comment on whether it should provide additional provisions to address accessibility concerns associated with features of ICT, such as content displayed on small screens, which are not otherwise addressed. For example the Board is considering whether to allow an exception to subsection 402.4 for text size for ICT which has a smaller screen. Should the Board require a minimum or maximum screen size to display content? Should a minimum text size be specified for display on a screen? When ICT communicates or produces electronic content or retrieves information or data, are there

additional unique limiting features that are not adequately addressed in these provisions, such as screen and text size and battery life, which the Board should address?

Question 7: The 2011 ANPRM has retained the approach of addressing features of ICT which make the ICT accessible and usable to individuals with disabilities. Are there some features or technologies addressed in the ANPRM that are obsolete or that have changed in a way that makes the proposed requirements irrelevant or difficult to apply? If so, commenters should recommend revisions to those section(s) of the ANPRM that should be updated and, if possible, recommend specific changes that would address the needs of individuals with disabilities and the unique characteristics of the technology concerned.

Question 8: Some modern touch screen devices, such as versions of some smartphones and tablets, have proved popular with people who are blind, despite not having keys which are tactilely discernible. Should the provision requiring that input controls be tactilely discernible (407.3) be revised to allow for such novel input methods? Should the Board add an exception to 407.3 to allow for input controls which are not tactilely discernible when access is provided in another way? If so, how should access be addressed when the controls are not tactilely discernible? Should a particular technology or method of approach be specified?

Question 9: As discussed above, the subsection for WCAG 2.0 conformance (E207.2) for user interface components and content of platforms and applications is intended to set a single standard for user interfaces, without regard to underlying rendering mechanisms, such as web browsers, operating systems, or platforms. Is

applying the WCAG 2.0 Success and Conformance criteria to electronic documents and applications outside the web browser environment sufficient and clear to users, or should the Board provide further clarification? Are there other accessibility standards more applicable to user interface components and content of platforms and applications than WCAG 2.0 that the Board should reference?

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Nancy Starnes,  
Chair.

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