

Congress of the United States

Washington, DC 20510

June 6, 2022

The Honorable Denis McDonough
Secretary
United States Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Secretary McDonough:

We write with continuing concern regarding the Department of Veterans Affairs' (VA's) poor compliance with Section 508 of the Rehabilitation Act of 1973, which was amended nearly a quarter century ago to require government electronic and information technology, including websites, to be accessible for individuals with disabilities.¹ A report required by the VA Website Accessibility Act of 2019² showed that only eight percent of VA's internet sites and six percent of its intranet sites are fully compliant with Section 508.³ This lack of compliance is a problem for the one-quarter of all veterans with a service-connected disability,⁴ as well as the 26 percent of the general public with a disability,⁵ including veterans, VA employees and people who might seek information from the Department on behalf of a veteran. Furthermore, 46 percent of our Nation's roughly 19 million veterans are 65 years or older; as a group, older adults experience higher rates of disabilities than the general population.⁶ Unfortunately, VA's report omitted important details about the Department's plans to address these long-standing problems and, in multiple cases, did not include remediation plans for key organizations within VA. We are also concerned that VA's outreach on Section 508 compliance does not cover a comprehensive range of disabilities and that a lack of clear responsibility within the Department, low prioritization and ongoing contracting problems are hampering VA's ability to correct its deficiencies.

¹ 29 U.S.C. §794d; Section 508 was added to the Rehabilitation Act in 1986, at which time it included non-binding standards for accessible government electronic and information technology. Further amendments in 1998 strengthened those standards and made them a requirement. *See* Department of Veterans Affairs, "Section 508 of the Rehabilitation Act of 1973," Government Services Administration, updated March 2022, <https://www.section508.gov/manage/laws-and-policies/>. *See also* Department of Justice, "Title IV—Rehabilitation Act Amendments of 1998 Section 508: Electronic and Information Technology," n.d., <https://www.justice.gov/sites/default/files/crt/legacy/2009/02/18/deptofed.pdf>.

² Department of Veterans Affairs Website Accessibility Act of 2019, Pub. Law No. 116-213, 134 Stat. 1024 and 1025 (2019).

³ Department of Veterans Affairs, *Report on the Accessibility of Websites of the Department of Veterans Affairs to Individuals with Disabilities*, n.d., at 2. [hereinafter "VA Report to Congress"].

⁴ Census Bureau, *Those Who Served: America's Veterans From World War II to the War on Terror*, June 2020 (ACS-43), <https://www.census.gov/content/dam/Census/library/publications/2020/demo/acs-43.pdf>.

⁵ "Disability Impacts All of Us," Centers for Disease Control and Prevention, last reviewed September 16, 2020, <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>.

⁶ Department of Veterans Affairs, *VA Benefits & Health Care Utilization*, April 21, 2022, <https://www.va.gov/vetdata/docs/pocketcards/fy2022q3.pdf>.

VA's Website Accessibility Act report to Congress was mandated so VA would be required to show how the agency will fix its websites for all Americans, but it was incomplete and lacked key details. The submissions from the National Cemetery Administration and the Veterans Benefits Administration (VBA) were less than one page long and failed to include substantial plans for remediation. The report also: (1) did not include detailed timelines for remediation for VA as a whole or any organizational element except for the Veterans Health Administration (VHA); (2) failed to explain how VA will prioritize websites for remediation; and (3) lacked plans for sustained involvement from stakeholders representing different disabilities. For these reasons, VA's report failed to meet the law's requirements.

Based on recent discussions with veteran service organizations, disability groups, outside experts and VA itself, we do not believe VA is conducting sufficient outreach on Section 508 remediation.⁷ Examples of disabilities protected by Section 508 include, but are not limited to, visual disabilities, hearing disabilities, cognitive impairment and physical disabilities.⁸ Yet, during a meeting on March 24, VA officials stated that they receive "anecdotal feedback" from individuals with disabilities other than blindness, which we view as insufficient. According to VA, "more than 185,000 veterans who use VA for their health care have been diagnosed with at least one [traumatic brain injury]," a condition that can cause cognitive impairment.⁹ VA has also noted that "[h]earing problems... are by far the most prevalent service-connected disability among American veterans."¹⁰ VA's outreach to the blind community is of great importance but should be a starting point rather than an ending point. VA must include a broader range of individuals with disabilities in the remediation process in a substantive and sustained way.

During the March meeting, VA officials indicated that hundreds of thousands of Section 508 compliance issues remain to be resolved across the Department's various websites. Furthermore, they informed our staff that VA has been unable to scan its websites for compliance with Section 508 since October 2021, due to a lapsed contract. Our offices were unaware of that development, which has significant bearing on the agency's ability to ensure its websites are accessible. Such issues are the latest examples of long-standing Section 508 shortfalls facing the VA.¹¹ For example, in 2016, the VA Office of Inspector General (OIG) conducted an audit of the MyCareers@VA website, which found that Department officials "did not address nearly 200 known Section 508 compliance issues and did not seek certification of compliance" before launching an "enhanced version" of the MyCareer@VA website in 2015.¹² The OIG cited

⁷ This is a long-standing issue, as evidenced by the Department of Justice's most recent government-wide Section 508 compliance report, which was released in 2012. That report underscored the importance of such outreach, when it noted that "...agencies can improve accessibility and usability of a web page by including people with disabilities" in Section 508 testing. United States Department of Justice Civil Rights Division ADA, *Section 508 Report to the President and Congress: Accessibility of Federal Electronic and Information Technology*, September 2012, https://www.ada.gov/508/508_Report.htm.

⁸ *Supra*, "VA Report to Congress," note 3.

⁹ "VA research on Traumatic Brain Injury (TBI)," Office of Research & Development, Department of Veterans, last modified February 16, 2022, <https://www.research.va.gov/topics/tbi.cfm>.

¹⁰ "VA research on Hearing Loss," Office of Research & Development, Department of Veterans, last modified February 16, 2022, <https://www.research.va.gov/topics/hearing.cfm>.

¹¹ Department of Veterans Affairs Office of Inspector General, *Review of Alleged Noncompliance With Section 508 of the Rehabilitation Act on MyCareer@VA Web Site*, April 7, 2016 (VA OIG 15-02781-153), <https://www.oversight.gov/sites/default/files/oig-reports/VAOIG-15-02781-153.pdf>.

¹² *Id.*, at 2.

several reasons for this outcome, including inadequate policy guidance from VA leadership, inadequate processes to ensure 508 compliance and inadequate oversight of contractors.¹³

Given the enormous task facing VA, the lack of substantive remediation plans and the uneven progress toward compliance spanning multiple presidential administrations, we seek additional information about the Department's plans to improve its Section 508 compliance. We ask that you continue to provide our offices with briefings from the appropriate VA offices beginning in June 2022. In addition, we ask that VA provide the information and documents requested below:

1. Please resubmit a revised VA Website Accessibility Act report containing the omitted information, including:
 - a. Detailed information for remediating the National Cemetery Administration and VBA websites.
 - b. Detailed information on how VA will involve a range of stakeholders, including people with disabilities and their advocates, in soliciting accessibility problems and testing remediated websites.
 - c. Specific details on how VA is going to prioritize which websites it fixes first, as well as remediation timelines for both the entire VA and each organizational subdivision.
 - d. Please also provide copies of compliance audits completed by VA's Section 508 office that provide supporting evidence for the compliance gaps or barriers to Section 508 compliance identified in VA's plans.¹⁴

2. In VA Central Office and the Office of Information and Technology's report to Congress, the Department states that it will "[a]dvocate for the creation of a VA Accessibility Offic[e]" as part of its Section 508 remediation plan. This office "will provide policy and training support to the enterprise as well as the operational tasks of assisting the enterprise in the remediation of accessibility issues." It would also "combine the Section 501, Section 504 and Section 508 offices" into the new enterprise-wide office.¹⁵ Please provide an update on the status of this office and a timeline for its establishment, and answer the following questions:
 - a. Which office or offices at VA currently has responsibility for overseeing the VA's Section 508 remediation efforts? Please describe how that office oversees the entire agency, and how individual VA organizations like VHA, VBA and the National Cemetery Administration report back to them on their Section 508 efforts.
 - b. Are there specific projects, including but not limited to VA's Electronic Health Record Modernization contract, that are subject to a different Section 508 reporting process than the rest of VA? If so, what is the justification for setting up a different reporting process?

¹³ *Id.*, at 4.

¹⁴ "What is the Role of the Section 508 Office?" Section 508 Office, Department of Veterans Affairs, last modified May 4, 2022, <https://www.section508.va.gov/>. The VA's Section 508 office conducts "audits and validates [Information and Communication Technology] for compliance with Section 508 standards and policies."

¹⁵ *Supra*, "VA Report to Congress," note 3.

- c. In what specific ways would a central VA Accessibility Office help VA improve its Section 508 compliance and remediation process compared to the current structure?
3. Please describe what steps VA is currently taking or will take to engage with groups representing different classes of disabilities. How does VA plan to broaden its current outreach to be more inclusive of different types of disabilities, including but not limited to the ones outlined in this letter?
4. During the March meeting, VA informed our staff that a lapsed contract had rendered the Department unable to scan its websites for compliance with Section 508 since October 2021. Contracting plays a major role in Section 508 compliance, both in the form of remediation and in the form of delivering accessible novel technology.
 - a. Please describe how the VA uses contractors and subcontractors to monitor and remediate Section 508 compliance problems with existing technology.
 - b. Please provide a list of all contracts, including task orders, related to Section 508 monitoring or remediation that have lapsed for any amount of time since January 1, 2019. For each of these lapsed contracts, please describe the capacity that was lost and the services/projects that were delayed while the contract was lapsed.
5. VA recently proposed regulations to improve its evaluation of information technology projects for Section 508 compliance, an issue that the VA's OIG identified as a problem for the Department in 2016. The proposed regulations specifically call for including a Section 508 checklist in VA solicitations and establishing a website to help contractors with Section 508 standards.¹⁶
 - a. How does the VA currently evaluate contractors' ability to meet specific requirements for Section 508 accessibility and ensure that contractors are aware of those requirements?
 - b. Does the VA have plans to further strengthen how it evaluates the ability of contractors to carry out work in compliance with Section 508?
6. Disability advocates have raised concern that VA is seeking waivers from Section 508 for some ongoing projects, including its new electronic health record system.
 - a. Please outline VA's process for determining the need for and approving a Section 508 waiver, including the circumstances under which a waiver can be requested, how these waivers are evaluated and which office or individual is responsible for approving a waiver. Are these processes uniform across VA, its components, contractors and subcontractors? If not, how do they differ, and what is the justification for those differences?

¹⁶ "VA Acquisition Regulation: Acquisition of Information Technology; and Other Contracts for Goods and Services involving Information, VA Sensitive Information, and Information Security; and Liquidated Damages Requirements for Data Breach," Department of Veterans Affairs, 86 Fed. Reg., No. 219, November 14, 2021, *See* VAAR Part 839—Acquisition of Information Technology, at 64137; *see also* VAAR Part 852—Solicitation Provisions and Contract Clauses, at 64139; *see also* proposed regulatory language, at 64157- 64158. <https://www.federalregister.gov/d/2021-24299>

- b. Please provide a list of all waivers or other variances from the requirements of Section 508 of the Rehabilitation Act that VA, one of its components, contractors, or subcontractors, has sought or operated under since January 1, 2019. Please individually justify the rationale for all waivers the Department has sought.
7. Veterans service organizations have expressed concern that VA’s patient check-in kiosks remain an issue for individuals with disabilities. Those kiosks are scheduled to be phased out, but we are concerned that veterans may face access issues in the meantime.
- a. What is the current rollout schedule for VHA’s mobile app? When does the VA currently expect to begin and complete its phase out of kiosks?
 - b. How does VA provide accessible services in the meantime?
 - c. What kind of training is provided to VA staff to assist individuals with disabilities at VA medical centers?
 - d. How will VA ensure that the mobile application replacing the kiosks is accessible to people with disabilities, and ensure that veterans without access to mobile phones will have ready access to VA services?

Given these long-standing issues, we seek your commitment to prioritize Section 508 compliance and keep our offices abreast of developments concerning your remediation efforts. We ask that VA schedule the first briefing to begin answering the above questions by the end of June 2022. In addition to answering our questions, we welcome information about whether VA has the resources, personnel, and legislative authorities necessary to comply with the law and improve accessibility. We look forward to working with you on this important issue.

Sincerely,



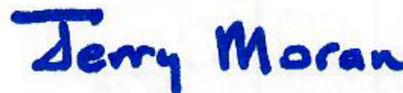
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Chairman
Senate Special Committee on Aging



Tim Scott
Ranking Member
Senate Special Committee on Aging



Jon Tester
Chairman
Senate Committee on Veterans’ Affairs



Jerry Moran
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