



Office of Information Services  
Centers for Medicare & Medicaid Services

Procedure:  
Section 508 Exceptions

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## 1. PURPOSE

This document establishes the procedure for requesting and processing an exemption from complying with Section 508 of the Rehabilitation Act of 1973, as amended, for electronic and information technology (EIT) developed, procured, maintained or used at the Centers for Medicare & Medicaid Services (CMS).

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## 2. REFERENCES

- CMS Policy for Section 508 Compliance
  - Procedure: Determining Section 508 Compliance
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## 3. SCOPE

This procedure applies to all requests for an exception to the Section 508 EIT Accessibility Standards (36 CFR Part 1194) set forth by the Architectural and Transportation Barriers Compliance Board (the “Access Board”), which became effective on June 21, 2001. The Access Board’s technical provisions are mandatory requirements that must be met (directly or through equivalent facilitation) unless a formal request for an exemption from an established Section 508 standard is granted as an approved exception.

EIT acquisitions are not required to meet the technical provisions of the Access Board’s standards, if the acquisition:

- a. is a micro-purchase made prior to April 1, 2005 (FAR 39.204(a));
- b. is for a national security system (FAR 39.204(b) and 36 CFR 1194.3(a));
- c. is acquired by a contractor incidental to a contract (FAR 39.204(c) and 36 CFR 1194.3(b));
- d. is located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment, sometimes referred to as “back office” equipment (FAR 39.204(d) and 36 CFR 1194.3(f));
- e. would require fundamental alteration in the nature of a product or its components (36 CFR 1194.3(e); or
- f. would impose an undue burden on the Agency (FAR 39.204(e) and 36 CFR 1194.2), such that compliance efforts would result in “significant difficulty or expense” after consideration of all CMS and HHS resources available to the component or program.

For the purposes of this procedure, CMS considers items (b) – (e) above as “General EIT” exceptions and item (f) as an “Undue Burden” exception.

An exception to the Access Board’s technical provisions may also be granted if:

- a compliant product or service (if it is a commercial item) is not available; or

- meeting the applicable provisions would require CMS to alter its requirements to the point where the procured EIT would not meet the Agency's needs.

A "Commercial Non-Availability" exception occurs only when no commercial items are available that meet the applicable Access Board's technical provisions (directly or through equivalent facilitation) in time to satisfy CMS' delivery requirements. A "commercial item," as defined by the Federal Acquisition Regulations (FAR) in Subpart 2.101, is any item that can be purchased off-the-shelf and used without making changes, except those designed within the equipment or software. If products are available that meet some, but not all, applicable provisions, CMS cannot claim a product as a whole is non-available just because it does not meet all of the applicable technical provisions. The Agency must procure the product that best meets the standards.

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## 4. ROLES AND RESPONSIBILITIES

The following entities have specific responsibilities related to the implementation of this procedure:

### 4.A. CMS Requesting Officials (Purchase Requestors), Business Owners, and/or Project Managers

For the purposes of this procedure, CMS Requesting Officials (Purchase Requestors), Business Owners, and/or Project Managers are responsible for the following activities:

- In collaboration with the CMS Section 508 Clearance Officer and/or the CMS Section 508 Coordinator, identifying if a Section 508 exception is applicable to a specific EIT procurement;
- In collaboration with the CMS Section 508 Clearance Officer and/or the CMS Section 508 Coordinator, appropriately documenting that a "General EIT", "Undue Burden", or "Commercial Non-Availability" exception applies to a specific EIT procurement in accordance with this procedure;
- Obtaining written approval/certification from his/her CMS Section 508 Clearance Officer for a documented Section 508 exception request;
- Obtaining written approval/certification from his/her CMS Office or Group Director as the "CMS Authorizing Official" for a documented Section 508 exception request;
- Obtaining written approval/certification from the CMS Section 508 Coordinator for a documented Section 508 exception request; and
- Attaching the completed **Section 508 General EIT Exception Determination & Findings Certification** form, **Section 508 EIT "Undue Burden" Exception Determination & Findings Certification** form, or **Section 508 EIT "Commercial Non-Availability" Exception Determination & Findings Certification** form to the corresponding purchase request (i.e., HHS-393 Form or Credit Card Purchase Authorization Form, as applicable) along with the completed **Section 508 Determination & Findings for Purchase Requests** form, and submitting the package through the

standard CMS procurement process as appropriate in accordance with this procedure and the *Procedure: Determining Section 508 Compliance*.

#### **4.B. CMS Section 508 Clearance Officer**

For the purposes of this procedure, the CMS Section 508 Clearance Officer is responsible for the following:

- Providing technical assistance on Section 508 issues within the business component;
- Reviewing new purchase requests originating within the CMS business component to ensure CMS' compliance with Federal requirements relative to Section 508;
- Reviewing all CMS Section 508 exception requests originating within the CMS business component and collaborating with the CMS Section 508 Coordinator to determine the appropriate action(s) to be taken;
- Maintaining copies of all completed **Section 508 General EIT Exception Determination & Findings Certification** forms, **Section 508 EIT "Undue Burden" Exception Determination & Findings Certification** forms, and **Section 508 EIT "Commercial Non-Availability" Exception Determination & Findings Certification** forms requested by the CMS business component; and
- Tracking all documented Section 508 exceptions for the CMS business component for future reporting to the Department of Health & Human Services (HHS) and Department of Justice.

#### **4.C. CMS Authorizing Official**

For the purposes of this procedure, the CMS Authorizing Official is the CMS Office or Group Director of the Requesting Official (Purchase Requestor). The CMS Authorizing Official is responsible for reviewing and approving/certifying a Section 508 exception request that has been initiated by the Requesting Official and subsequently approved by the CMS Section 508 Clearance Officer within the business component.

#### **4.D. CMS Section 508 Coordinator**

For the purposes of this procedure, the CMS Section 508 Coordinator is responsible for the following:

- Providing technical assistance on Section 508 issues;
- Reviewing new purchase requests to ensure CMS' compliance with Federal requirements relative to Section 508;
- Reviewing and approving/certifying all CMS Section 508 exception requests;
- Obtaining written approval/certification from the CMS Section 508 Official for all documented Section 508 "Undue Burden" and "Commercial Non-Availability" exception requests;
- Obtaining written approval/certification from the CMS Administrator or his/her designee for all documented Section 508 "Undue Burden" exception requests;

- Annually reviewing each approved Section 508 “Undue Burden” exception;
- Maintaining copies of all completed **Section 508 General EIT Exception Determination & Findings Certification** forms, **Section 508 EIT “Undue Burden” Exception Determination & Findings Certification** forms, and **Section 508 EIT “Commercial Non-Availability” Exception Determination & Findings Certification** forms; and
- Tracking all documented CMS Section 508 exceptions for future reporting to the Department of Health & Human Services (HHS) and Department of Justice.

#### **4.E. CMS Section 508 Official**

For the purposes of this procedure, the CMS Section 508 Official is responsible for reviewing and approving/certifying all CMS Section 508 “Undue Burden” and “Commercial Non-Availability” exception requests.

#### **4.F. CMS Administrator or Designee**

For the purposes of this procedure, the CMS Administrator or his/her designee is responsible for reviewing and approving/certifying all CMS Section 508 “Undue Burden” exception requests.

#### **4.G. Department of Health & Human Services (HHS) Office on Disability**

For the purposes of this procedure, the HHS Office on Disability is responsible for:

- Reviewing all exceptions approved by the CMS Section 508 Coordinator; and
- Semi-annually reviewing each approved “Undue Burden” exception.

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## **5. PROCEDURE**

The following describes the sequence of steps that comprise the procedure for documenting and formally granting exceptions for Section 508 compliance:

### **5.A. “General EIT” Exception**

The following describes the sequence of steps that comprise the procedure for documenting and granting a “General EIT” exception:

**STEP 1:** The Requesting Official (Purchase Requestor) completes the **Section 508 Determinations & Findings for Purchase Requests** form in accordance with the *Procedure: Determining Section 508 Compliance* up through the point where a “General EIT” exception is determined to apply to the specific EIT procurement (i.e., Section 3 or Section 4 of the **Section 508 Determinations & Findings for Purchase Requests** form).

**STEP 2:** In collaboration with the CMS Section 508 Clearance Officer, the Requesting Official (Purchase Requestor) completes questions 1 thru 3 of the **Section 508 General EIT Exception Determinations & Findings Certification** form, as appropriate for the specific EIT procurement. The CMS Section 508 Coordinator may also be contacted for additional technical assistance as necessary. The Requesting Official (Purchase Requestor) reads the statement regarding certification of the exception, and signs the form on the line appearing under the heading of “CMS Requesting Official”, also including his/her printed name, the date the form was signed, his/her telephone number and position title. The Requesting Official (Purchase Requestor) then gives the **Section 508 General EIT Exception Determinations & Findings Certification** form bearing his/her certification to his/her CMS Section 508 Clearance Officer.

**STEP 3:** The CMS Section 508 Clearance Officer reviews the **Section 508 General EIT Exception Determinations & Findings Certification** form and affirms the certification of the Requesting Official (Purchase Requestor) by signing the form on the line appearing under the heading of “CMS Section 508 Clearance Officer”, also including his/her printed name, the date the form was signed, and his/her telephone number. The CMS Section 508 Clearance Officer then gives the **Section 508 General EIT Exception Determinations & Findings Certification** form bearing his/her certification to the CMS Office or Group Director of the Requesting Official (Purchase Requestor).

**STEP 4:** The CMS Office or Group Director of the Requesting Official (Purchase Requestor) reviews the **Section 508 General EIT Exception Determinations & Findings Certification** form and affirms the certification of the Requesting Official (Purchase Requestor) and the CMS Section 508 Clearance Officer by signing the form on the line appearing under the heading of “CMS Authorizing Official”, also including his/her printed name, the date the form was signed, his/her telephone number and position title. The CMS Office or Group Director then gives the **Section 508 General EIT Exception Determinations & Findings Certification** form bearing his/her certification to the CMS Section 508 Clearance Officer.

**STEP 5:** The CMS Section 508 Clearance Officer meets with the CMS Section 508 Coordinator to review the **Section 508 General EIT Exception Determinations & Findings Certification** form containing the determination and findings certified by the CMS Requesting Official (Purchase Requestor), the CMS Section 508 Clearance Officer, and the CMS Authorizing Official.

If the CMS Section 508 Coordinator concurs with the determination and findings certification of the CMS Requesting Official, the CMS Section 508 Clearance Officer, and the CMS Authorizing Official, the CMS Section 508 Coordinator signs the **Section 508 General EIT Exception Determinations & Findings** form on the line appearing under the heading of “CMS Section 508 Coordinator”, also including his/her printed name, the date the form was signed, and his/her telephone number. The CMS Section 508 Coordinator makes a copy of the completed form for his/her files, and gives the original to the CMS Section 508 Clearance Officer.

If the CMS Section 508 Coordinator does not concur with the determination and findings certification, he/she notifies the CMS Requesting Official, the CMS Section 508 Clearance Officer, and CMS Authorizing Official by email as appropriate. The CMS Section 508

Coordinator works with the CMS Requesting Official and the CMS Section 508 Clearance Officer to appropriately document the exception if applicable, or provides alternative guidance as to what should occur.

**STEP 6:** If the CMS Section 508 Coordinator certified the exception, the CMS Section 508 Clearance Officer makes a copy of the completed **Section 508 General EIT Exception Determination & Findings Certification** form for his/her files, and then gives the original completed form to the Requesting Official (Purchase Requestor).

If the CMS Section 508 Coordinator did not certify the exception, then the CMS Section 508 Clearance Officer works appropriately with the Requesting Official (Purchase Requestor) in accordance with the guidance and direction provided by the CMS Section 508 Coordinator.

**STEP 7:** If the CMS Section 508 Coordinator certified the exception, the Requesting Official (Purchase Requestor) attaches the completed **Section 508 General EIT Exception Determination & Findings Certification** form to the purchase request (i.e., HHS-393 Form or Credit Card Purchase Authorization Form, as applicable) along with the completed **Section 508 Determination & Findings for Purchase Requests** form, and submits the package through the standard CMS procurement process as appropriate, thereby completing this procedure for documenting and granting the “General EIT” exception and the *Procedure: Determining Section 508 Compliance* for the EIT purchase request.

If the CMS Section 508 Coordinator did not certify the exception, the CMS Requesting Official (Purchase Requestor) follows the guidance and direction provided by the CMS Section 508 Coordinator and the CMS Section 508 Clearance Officer.

## 5.B. “Undue Burden” Exception

The following describes the sequence of steps that comprise the procedure for documenting and granting an “Undue Burden” exception:

**STEP 1:** The Requesting Official (Purchase Requestor) completes the **Section 508 Determinations & Findings for Purchase Requests** form in accordance with the *Procedure: Determining Section 508 Compliance* up through the point where an “Undue Burden” exception is determined to apply to the specific EIT procurement (i.e., Section 7 or Section 8 of the **Section 508 Determinations & Findings for Purchase Requests** form).

**STEP 2:** In collaboration with the CMS Section 508 Clearance Officer and the CMS Section 508 Coordinator, the Requesting Official (Purchase Requestor) completes questions 1 thru 6 of the **Section 508 EIT “Undue Burden” Exception Determinations & Findings Certification** form, as appropriate for the specific EIT procurement. The Requesting Official (Purchase Requestor) reads the statement regarding certification of the exception, and signs the form on the line appearing under the heading of “CMS Requesting Official”, also including his/her printed name, the date the form was signed, his/her telephone number and position title. The Requesting Official (Purchase Requestor) then gives the **Section 508 EIT “Undue Burden” Exception**

**Determinations & Findings Certification** form bearing his/her certification to his/her CMS Section 508 Clearance Officer.

**STEP 3:** The CMS Section 508 Clearance Officer reviews the completed **Section 508 EIT “Undue Burden” Exception Determinations & Findings Certification** form and affirms the certification of the Requesting Official (Purchase Requestor) by signing the form on the line appearing under the heading of “CMS Section 508 Clearance Officer”, also including his/her printed name, the date the form was signed, and his/her telephone number. The CMS Section 508 Clearance Officer then gives the **Section 508 EIT “Undue Burden” Exception Determinations & Findings Certification** form bearing his/her certification to the CMS Office or Group Director of the Requesting Official (Purchase Requestor).

**STEP 4:** The CMS Office or Group Director of the Requesting Official (Purchase Requestor) reviews the **Section 508 EIT “Undue Burden” Exception Determinations & Findings Certification** form and affirms the certification of the Requesting Official (Purchase Requestor) and the CMS Section 508 Clearance Officer by signing the form on the line appearing under the heading of “CMS Authorizing Official”, also including his/her printed name, the date the form was signed, his/her telephone number and position title. The CMS Office or Group Director then gives the **Section 508 EIT “Undue Burden” Exception Determinations & Findings Certification** form bearing his/her certification to the CMS Section 508 Clearance Officer.

**STEP 5:** The CMS Section 508 Clearance Officer meets with the CMS Section 508 Coordinator to review the **Section 508 EIT “Undue Burden” Exception Determinations & Findings Certification** form containing the determination and findings certified by the CMS Requesting Official (Purchase Requestor), the CMS Section 508 Clearance Officer, and the CMS Authorizing Official.

If the CMS Section 508 Coordinator does not concur with the determination and findings certification, he/she notifies the CMS Requesting Official, the CMS Section 508 Clearance Officer, and the CMS Authorizing Official by email as appropriate. The CMS Section 508 Coordinator works with the CMS Requesting Official and the CMS Section 508 Clearance Officer to appropriately document the exception if applicable, or provides alternative guidance as to what should occur.

If the CMS Section 508 Coordinator concurs with the determination and findings certification of the CMS Requesting Official, the CMS Section 508 Clearance Officer and the CMS Authorizing Official, the CMS Section 508 Coordinator signs the **Section 508 EIT “Undue Burden” Exception Determinations & Findings Certification** form on the line appearing under the heading of “CMS Section 508 Coordinator”, also including his/her printed name, the date the form was signed, and his/her telephone number. The CMS Section 508 Coordinator gives the **Section 508 EIT “Undue Burden” Exception Determinations & Findings Certification** form bearing his/her certification to the CMS Section 508 Official.

**STEP 6:** The CMS Section 508 Official reviews the **Section 508 EIT “Undue Burden” Exception Determinations & Findings Certification** form containing the determination and findings certified by the CMS Requesting Official (Purchase Requestor), the CMS Section 508

Clearance Officer, the CMS Authorizing Official, and the CMS Section 508 Coordinator. The CMS Section 508 Official signs the **Section 508 EIT “Undue Burden” Exception Determinations & Findings Certification** form on the line appearing under the heading of “CMS Section 508 Official”, also including his/her printed name, the date the form was signed, and his/her telephone number, and gives the form to the CMS Section 508 Coordinator.

**STEP 7:** The CMS Section 508 Coordinator gives the **Section 508 EIT “Undue Burden” Exception Determinations & Findings Certification** form bearing all previous certifications to the CMS Administrator or Designee for final approval/certification. The CMS Administrator or Designee signs the **Section 508 EIT “Undue Burden” Exception Determinations & Findings Certification** form on the line appearing under the heading of “CMS Administrator or Designee”, also including his/her printed name, the date the form was signed, and his/her telephone number, and gives the form to the CMS Section 508 Coordinator.

**STEP 8:** The CMS Section 508 Coordinator makes a copy of the completed **Section 508 EIT “Undue Burden” Exception Determination & Findings Certification** form for his/her files, and then gives the original to the CMS Section 508 Clearance Officer.

**STEP 9:** The CMS Section 508 Clearance Officer makes a copy of the completed **Section 508 EIT “Undue Burden” Exception Determination & Findings Certification** form for his/her files, and then gives the original completed form to the Requesting Official (Purchase Requestor).

**STEP 10:** The CMS Requesting Official (Purchase Requestor) attaches the completed **Section 508 EIT “Undue Burden” Exception Determination & Findings Certification** form to the purchase request (i.e., HHS-393 Form or Credit Card Purchase Authorization Form, as applicable) along with the completed **Section 508 Determination & Findings for Purchase Requests** form, and submits the package through the standard CMS procurement process as appropriate, thereby completing this procedure for documenting and granting the “Undue Burden” exception and the *Procedure: Determining Section 508 Compliance* for the EIT purchase request.

### 5.C. “Commercial Non-Availability” Exception

The following describes the sequence of steps that comprise the procedure for documenting and granting a “Commercial Non-Availability” exception:

**STEP 1:** The Requesting Official (Purchase Requestor) completes the **Section 508 Determinations & Findings for Purchase Requests** form in accordance with the *Procedure: Determining Section 508 Compliance* up through the point where a “Commercial Non-Availability” exception is determined to apply to the specific EIT procurement (i.e., Section 8 of the **Section 508 Determinations & Findings for Purchase Requests** form).

**STEP 2:** In collaboration with the CMS Section 508 Clearance Officer and the CMS Section 508 Coordinator, the Requesting Official (Purchase Requestor) completes questions 1 thru 6 of the **Section 508 EIT “Commercial Non-Availability” Exception Determinations & Findings**

**Certification** form, as appropriate for the specific EIT procurement based on the results obtained from the market research that was conducted. The Requesting Official (Purchase Requestor) reads the statement regarding certification of the exception, and signs the form on the line appearing under the heading of “CMS Requesting Official”, also including his/her printed name, the date the form was signed, his/her telephone number and position title. The Requesting Official (Purchase Requestor) then gives the **Section 508 EIT “Commercial Non-Availability” Exception Determinations & Findings Certification** form bearing his/her certification to his/her CMS Section 508 Clearance Officer.

**STEP 3:** The CMS Section 508 Clearance Officer reviews the completed **Section 508 EIT “Commercial Non-Availability” Exception Determinations & Findings Certification** form and affirms the certification of the Requesting Official (Purchase Requestor) by signing the form on the line appearing under the heading of “CMS Section 508 Clearance Officer”, also including his/her printed name, the date the form was signed, and his/her telephone number. The CMS Section 508 Clearance Officer then gives the **Section 508 EIT “Commercial Non-Availability” Exception Determinations & Findings Certification** form bearing his/her certification to the CMS Office or Group Director of the Requesting Official (Purchase Requestor).

**STEP 4:** The CMS Office or Group Director of the Requesting Official (Purchase Requestor) reviews the **Section 508 EIT “Commercial Non-Availability” Exception Determinations & Findings Certification** form and affirms the certification of the Requesting Official (Purchase Requestor) and the CMS Section 508 Clearance Officer by signing the form on the line appearing under the heading of “CMS Authorizing Official”, also including his/her printed name, the date the form was signed, his/her telephone number and position title. The CMS Office or Group Director then gives the **Section 508 EIT “Commercial Non-Availability” Exception Determinations & Findings Certification** form bearing his/her certification to the CMS Section 508 Clearance Officer.

**STEP 5:** The CMS Section 508 Clearance Officer meets with the CMS Section 508 Coordinator to review the **Section 508 EIT “Commercial Non-Availability” Exception Determinations & Findings Certification** form containing the determination and findings certified by the CMS Requesting Official (Purchase Requestor), CMS Section 508 Clearance Officer, and the CMS Authorizing Official.

If the CMS Section 508 Coordinator concurs with the determination and findings certification of the CMS Requesting Official (Purchase Requestor), the CMS Section 508 Clearance Officer, and the CMS Authorizing Official, he/she will appropriately indicate approval of the documented exception on the form.

If the CMS Section 508 Coordinator does not concur with the determination and findings certification, he/she will work with the CMS Requesting Official (Purchase Requestor) and the CMS Section 508 Clearance Officer to appropriately document the exception if applicable, or will provide alternative guidance as to what should occur. If no adjustments can be made to result in an acceptable exception, the CMS Section 508 Coordinator appropriately indicates disapproval of the documented exception and records the reason for the denial determination on the form. The CMS Section 508 Coordinator also notifies the CMS Requesting Official

(Purchase Requestor), CMS Section 508 Clearance Officer, and CMS Authorizing Official by email as appropriate.

The CMS Section 508 Coordinator signs the **Section 508 EIT “Commercial Non-Availability” Exception Determinations & Findings Certification** form on the line appearing under the heading of “CMS Section 508 Coordinator”, also including his/her printed name, the date the form was signed, and his/her telephone number. The CMS Section 508 Coordinator gives the **Section 508 EIT “Commercial Non-Availability” Exception Determinations & Findings Certification** form bearing his/her determination and certification to the CMS Section 508 Official.

**STEP 6:** The CMS Section 508 Official reviews the **Section 508 EIT “Commercial Non-Availability” Exception Determinations & Findings Certification** form containing the determination and findings certified by the CMS Requesting Official (Purchase Requestor), the CMS Section 508 Clearance Officer, the CMS Authorizing Official, and the CMS Section 508 Coordinator. The CMS Section 508 Official signs the **Section 508 EIT “Commercial Non-Availability” Exception Determinations & Findings Certification** form on the line appearing under the heading of “CMS Section 508 Official”, also including his/her printed name, the date the form was signed, and his/her telephone number, and gives the form to the CMS Section 508 Coordinator.

**STEP 7:** The CMS Section 508 Coordinator makes a copy of the completed **Section 508 EIT “Commercial Non-Availability” Exception Determination & Findings Certification** form for his/her files, and then gives the original to the CMS Section 508 Clearance Officer.

**STEP 8:** The CMS Section 508 Clearance Officer makes a copy of the completed **Section 508 EIT “Commercial Non-Availability” Exception Determination & Findings Certification** form for his/her files, and then gives the original completed form to the Requesting Official (Purchase Requestor).

**STEP 9:** The CMS Requesting Official (Purchase Requestor) attaches the completed **Section 508 EIT “Commercial Non-Availability” Exception Determination & Findings Certification** form to the purchase request (i.e., HHS-393 Form or Credit Card Purchase Authorization Form, as applicable) along with the completed **Section 508 Determination & Findings for Purchase Requests** form and supporting documentation from the market research that was conducted, and submits the package through the standard CMS procurement process as appropriate, thereby completing this procedure for documenting and granting the “Commercial Non-Availability” exception and the *Procedure: Determining Section 508 Compliance* for the EIT purchase request.

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## 6. EFFECTIVE DATES

This procedure becomes effective on the date that the CMS Section 508 Official signs it, and remains in effect until officially superseded or cancelled by the CMS Section 508 Official.

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## 7. INFORMATION AND ASSISTANCE

For further information and/or assistance regarding this procedure, please contact the CMS Section 508 Coordinator within the Office of Information Services.

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## 8. APPROVED

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Julie C. Boughn  
CMS Section 508 Official

\_\_\_\_7/16/2008\_\_\_\_\_

Date of Issuance

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## 9. ATTACHMENTS

The following documents augment this procedure:

- Form: Section 508 EIT “General” Exception Determination & Findings Certification
- Form: Section 508 EIT “Undue Burden” Exception Determination & Findings Certification
- Form: Section 508 EIT “Commercial Non-Availability” Exception Determination & Findings Certification