



Legislative Agenda of Blind Americans Priorities for the 118th Congress, First Session

The National Federation of the Blind is a community of members and friends who believe in the hopes and dreams of the nation's blind. Every day we work together to help blind people live the lives we want.

- **Websites and Software Applications Accessibility Act**

Websites are required by law to be accessible, but without implementing regulations most businesses and retailers have little understanding of what accessible means. The Websites and Software Applications Accessibility Act will end website and software application inaccessibility for blind Americans.

- **Medical Device Nonvisual Accessibility Act**

Inaccessible digital interfaces prevent blind individuals from independently and safely operating medical devices that are essential to their daily healthcare needs. The Medical Device Nonvisual Accessibility Act will end unequal access to medical devices for blind Americans.

- **Blind Americans Return to Work Act**

Current Social Security law contains a policy that has the unintended consequence of discouraging blind Americans from maximizing their earnings potential. The Blind Americans Return to Work Act will eliminate the Social Security Disability Insurance earnings cliff and create a true work incentive for blind Americans.

These priorities will remove obstacles to website access, independent living, and maximizing earning potential.

We urge congress to support our legislative initiatives.

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Websites and Software Applications Accessibility Act

Issue—Websites are required by law to be accessible, but without implementing regulations most businesses and retailers have little understanding of what accessible means.

Websites and mobile applications are an essential part of modern living. More than 307 million Americans use the internet,¹ and 81 percent of Americans say that they access the internet at least once each day.² That means that nearly the entire country is accessing websites and mobile applications every day. However, the need to access websites and mobile applications doesn't stop when it reaches Americans with disabilities. According to the American Community Survey, conducted by the United States Census Bureau, there are approximately forty-one million Americans who currently have a disability.³ This means that millions of disabled Americans are using websites and mobile applications.

The Department of Justice announced its intention to publish accessible website regulations more than a decade ago. On July 26, 2010, the twentieth anniversary of the passage of the Americans with Disabilities Act (ADA), the government published an advance notice of proposed rulemaking to address website accessibility.⁴ After that initial announcement, the Department of Justice failed to publish a notice of proposed rulemaking, and by extension, final regulations. Without these final regulations in place, blind and disabled Americans face significant difficulty in electronically accessing businesses, applying for jobs, or working due to the barrier of website inaccessibility.

The past few years have seen a significant increase in the prevalence of so-called “click-by” lawsuits. Many businesses are required by law to make their websites accessible but claim to have no clear-cut definition of what “accessible” actually means. Meanwhile, people with disabilities must cope with inaccessible websites. ADA Title III lawsuits, which include website accessibility suits, hit record numbers in 2019, topping 11,000 for the first time.⁵ The number of lawsuits has been increasing steadily since 2013, when the figure was first tracked.⁶ Businesses yearn for a clear definition of website accessibility and to be able to expand their potential customer pool to consumers they were not reaching before.

Solution—Websites and Software Applications Accessibility Act will:

Direct the Department of Justice (DOJ) and Equal Employment Opportunity Commission (EEOC) to promulgate accessibility regulations. The DOJ and EEOC will have twelve months following the enactment of the legislation to issue a notice of proposed rulemaking regarding website and mobile application accessibility, then an additional twelve months to issue the final rule.

Establish a comprehensive statutory definition for “accessibility.” A comprehensive and clear-cut definition of “accessibility” will end any confusion regarding the requirements that covered entities and commercial providers need to meet.

Establish a technical assistance center to provide technical assistance to covered entities, commercial providers, and individuals with disabilities. The technical assistance centers aid in the construction, development, design, alteration, and modification of websites in accordance with the rules. The Attorney General, the Commission, the Secretary of Education will award a grant program to a qualified technical assistance provider to support the development, establishment, and procurement of accessible websites and applications.

Ensure that accessibility regulations keep pace with new and emerging technologies. A periodic review of the regulations is required and the DOJ and EEOC are required to update the regulations if necessary.

GOAL—END WEBSITE AND SOFTWARE APPLICATION INACCESSIBILITY FOR BLIND AMERICANS.

Cosponsor the Websites and Software Applications Accessibility Act.

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For more information, contact:

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¹ Statista. “Countries with the highest number of internet users as of January 2022.” July 2022. <https://www.statista.com/statistics/262966/number-of-internet-users-in-selected-countries/>

² Andrew Perrin & Madhu Kumar. “About three-in-ten U.S. adults say they are ‘almost constantly’ online.” July 25, 2019. <https://www.pewresearch.org/fact-tank/2019/07/25/americans-going-online-almost-constantly/>

³ United States Census Bureau, American Community Survey. “The number of non-institutionalized, male or female, all ages, all races, regardless of ethnicity, with all education levels in the United States reported a disability in 2019.” Compiled by Cornell University. <https://www.disabilitystatistics.org/reports/acs.cfm?statistic=1>

⁴ Federal Register. “Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations.” July 26, 2010. <https://www.federalregister.gov/documents/2010/07/26/2010-18334/nondiscrimination-on-the-basis-of-disability-accessibility-of-web-information-and-services-of-state>

⁵ Minh Vu, Kristina Launey, & Susan Ryan. “2019 Was Another Record-Breaking Year for Federal ADA Title III Lawsuits.” February 20, 2020. <https://www.adatitleiii.com/2020/02/2019-was-another-record-breaking-year-for-federal-ada-title-iii-lawsuits/>

⁶ Ibid.



Medical Device Nonvisual Accessibility Act

Issue—Inaccessible digital interfaces prevent blind individuals from independently and safely operating medical devices that are essential to their daily healthcare needs.

Medical devices with a digital interface are becoming more prevalent and less accessible for blind Americans. The rapid proliferation of advanced technology is undeniable. Most new models of medical devices, such as glucose and blood pressure monitors, along with the emergence of in-home devices that offer medical care options, such as chemotherapy treatments and dialysis, require consumers to interact with digital displays or other interfaces. This new technology is constantly being developed and deployed without nonvisual accessibility as an integral part of the design phase, which creates a modern-day barrier. The inaccessibility of these medical devices is not a mere inconvenience; when accessibility for blind consumers is omitted from the medical technology landscape, the health, safety, and independence of blind Americans are in imminent danger.

Telehealth currently makes up 20 percent of all medical visits, and more healthcare providers are looking to expand telemedicine services.¹ The National Center for Health Statistics also reported in 2021 that 37 percent of all adults used telehealth.² Unfortunately, these visits assume that a person has easy access to accessible medical devices to take their own vital signs. As a result of inaccessibility, blind and low-vision Americans are at a distinct disadvantage when it comes to receiving the same virtual healthcare as their sighted counterparts.

Nonvisual access is achievable, as demonstrated by several mainstream products. Apple has incorporated VoiceOver (a screen reading function) into all of its products, making iPhones, Macbooks and Mac desktops, and iPads fully accessible to blind people right out of the box. Virtually all ATMs manufactured in the United States are accessible, and every polling place is required to have a nonvisually accessible voting machine. Frequently, a simple audio output or tactile feature can make a product accessible at little to no additional cost for manufacturers.

Current disability laws are not able to keep up with advancements due to the expeditious evolution of medical technology and its incorporation into medical devices. Although the Americans with Disabilities Act and other laws require physical accessibility for people with disabilities (e.g., wheelchair ramps, Braille in public buildings), no laws protect a blind consumer's right to access medical devices. The National Council on Disability concluded that accessibility standards lag behind the rapid pace of technology, which can interfere with technology access.³ This trend of inaccessibility will continue if accessibility solutions are ignored. Only a fraction of medical device manufacturers have incorporated nonvisual access standards into their product design, while others continue to resist these solutions.

Solution—Medical Device Nonvisual Accessibility Act:

Calls on the Food and Drug Administration (FDA) to promulgate nonvisual accessibility regulations for Class II and Class III medical devices. The FDA will consult with stakeholders with disabilities and manufacturers and issue a notice of proposed rulemaking no later than twelve months after the date of enactment of the act. No later than twenty-four months after the date of enactment of the act, the FDA will publish the final rule including the nonvisual accessibility requirements.

Requires manufacturers of Class II and Class III medical devices to make their products nonvisually accessible. Manufacturers will have twelve months following the publication of the final rule to ensure that all the Class II and Class III medical devices they produce are nonvisually accessible.

Authorizes the FDA to enforce the nonvisual access requirements for Class II and Class III medical devices. Any manufactured device found to be out of compliance, whether by a public complaint to the FDA or by an independent FDA investigation, will be considered an adulterated product under the Federal Food, Drug, and Cosmetic Act. Manufacturers may file for an exemption for one of two reasons: clear and convincing evidence that making the medical device nonvisually accessible would fundamentally alter the use of the product; or proof that modifying the medical device would create an undue burden for the company.

GOAL—END UNEQUAL ACCESS TO MEDICAL DEVICES FOR BLIND AMERICANS.

Sponsor the Medical Device Nonvisual Accessibility Act.

For more information, contact:

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¹ See Center for Connected Medicine, *Telehealth utilization settles in at 20% or less of medical appointments*, available at <https://connectedmed.com/resources/post-pandemic-telehealth-utilization-settles-in-at-20-or-less-of-medical-appointments/>

² See National Center for Health Statistics, *Telemedicine Used Among Adults: United States, 2021*. Available at <https://www.cdc.gov/nchs/products/databriefs/db445.htm>

³ See NATIONAL COUNCIL ON DISABILITIES, *National Disability Policy Progress Report: Technology that enables access to the full opportunities of citizenship under the Constitution is a right* at 19 (October 7, 2016), available at <https://ncd.gov/progressreport/2016/progress-report-october-2016>



Blind Americans Return to Work Act

Issue—Current Social Security law contains a policy that has the unintended consequence of discouraging blind Americans from maximizing their earnings potential.

The Social Security Disability Insurance (SSDI) program has a built in “earnings cliff.”

Title II of the Social Security Act provides that disability benefits paid to blind beneficiaries are eliminated if the beneficiary exceeds a monthly earnings limit.¹ This earnings limit, often called the “earnings cliff,” is in effect a penalty imposed on blind Americans when they work. For example, the earnings limit in 2023 for a blind person is \$2,460 per month. If a blind individual earns more than that threshold, even by just one dollar, they are engaged in substantial gainful activity (SGA). Under the current law, any individual engaged in SGA is not entitled to any SSDI benefits. This means that if a blind person earns just one dollar over the earnings limit, all benefits are lost.

The earnings cliff has the unintended consequence of creating an incentive for blind people to remain unemployed or underemployed, despite their desire to work. In a 2018 survey, National Industries for the Blind (NIB) found that 21 percent of respondents from thirty-four of their non-profit associations had turned down a raise or promotion to retain their SSDI benefits.² The survey also found that 37 percent of respondents had turned down additional hours or even asked to reduce their hours in order to retain their SSDI benefits.³ Blind Americans who are willing and capable to work are intentionally limiting themselves in order to keep from suddenly losing all of their SSDI benefits.

The current work incentive in the form of the trial work period is needlessly complicated and counterintuitive. Under the current SSDI program, if a blind worker wants to try and earn more money they will likely trigger a nine-month trial work period. These nine months do not have to be consecutive, but instead are any nine months during a rolling sixty month period in which the worker earned more than a certain amount (for 2023 this amount is \$1,050 per month). When all of those nine months are exhausted, the worker is once again subject to the earnings cliff if they cross the SGA threshold. This is supposed to act as an incentive for blind recipients to determine if they are ready to work, but the complexity of the rules makes it easier to just ignore the process altogether. Additionally, 80 percent of respondents to NIB’s 2018 survey said they did not have access to coaching or guidance on federal benefits.⁴

Solution—Blind Americans Return to Work Act will:

Eliminate the earnings cliff by instituting a two-for-one phase-out of earnings over the SGA limit. For every two dollars a blind worker earns above the SGA threshold, their benefits amount will be reduced by one dollar.

Create a true work incentive for SSDI recipients. With a phase-out model, blind workers will always be better off striving to earn as much as possible, which will facilitate the transition of those workers from the SSDI system as benefits are gradually reduced. With this model, blind Americans will never lose by working. As an added benefit, fewer workers earning SSDI benefits and instead paying into the Social Security Trust Fund means a more balanced Trust Fund in time.

Simplify the SSDI system by eliminating the trial work period and grace period, making the rules more compatible with the Supplemental Security Income (SSI) program. Under the proposed system, the SSDI program will become less complicated. With both programs using similar rules, there will be less confusion, and the incentive for blind people to return to work will be consistent and clear.

**GOAL—ELIMINATE THE SSDI EARNINGS CLIFF AND
CREATE A TRUE WORK INCENTIVE FOR BLIND AMERICANS.**

Sponsor the Blind Americans Return to Work Act.

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¹ 42 U.S.C. Sec. 423.

² *Commitment to Serve*, A presentation given at the 2018 NIB/NAEPB Training Conference and Expo.

³ *Ibid.*

⁴ *Ibid.*