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## CONGRESS PASSES WAR SUPPLEMENTAL “PLUS”

Congress passed, and the President signed into law, a \$120 billion emergency supplemental appropriations bill for FY 2007, the “U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007” (H.R. 2206), funding military operations in Iraq and Afghanistan through the end of the fiscal year. After a long struggle between President Bush and Congressional Democrats, the President agreed to sign the bill because it dropped timelines for withdrawing troops from combat zones. Instead of timelines, the legislation includes 18 benchmarks for the Iraqi government to demonstrate progress toward stabilizing the country. It also would tie economic aid to Iraq to progress in meeting the benchmarks, although the President could waive the restriction.

The measure also contains roughly \$17 billion (down from \$21 billion in previous versions of the bill) for domestic spending, including provisions for continued hurricane recovery aid for the Gulf Coast, an extension of the Work Opportunity Tax Credit (WOTC) program, the first minimum wage increase since 1997, relief for states suffering fiscal shortfalls in the State Child Health Insurance Program (SCHIP) and a number of other provisions of interest to people with disabilities and their families.

Provisions affecting people with disabilities and their families include:

**Federal Emergency Management Agency (FEMA) Disability Coordinator/National Advisory Council** - Contained in Title IV of the legislation is a \$500,000 appropriation for the office of the Disability Coordinator and the National Advisory Council at FEMA pending approval by the House and Senate Appropriations Committees of a “plan for expenditure” to be submitted by FEMA.

**National Council on Disability** - Title VI of the legislation provides \$300,000 for the National Council on Disability to carry out its duties under the Post-Katrina Emergency Management Reform Act of 2006 (P.L. 109-295). (See sidebar on the following page for additional information).

**Department of Housing and Urban Development (HUD) Relief Housing Deadlines Extended** - In Title IV, HUD is directed to extend deadlines on tenant-based rental assistance. Provisions are also included in Title IV to allow Public Housing Agencies (PHAs) to expend unallocated funds from previous years to address housing shortfalls caused by the hurricanes.

**Low Income Housing Tax Credit Deadlines Extended** - In Title VIII, the legislation extends deadlines for the Low Income Housing Tax Credit in 2006, 2007, and 2008 in the Gulf Coast areas affected by the 2005 hurricanes (GO Zone).

**Help America Vote Act (HAVA) Deadlines Extended** - Title VI has an amendment to HAVA that extends the time period that a state has to obtain a waiver from meeting HAVA’s accessibility guidelines requiring that voters be able to vote in a private and independent manner. Previously, all states were to have replaced their punch card and lever voting technology with accessible voting systems by January 1, 2006, when more than half the states were found to be out of compliance with this provision. H.R. 2206 extends the deadline for waivers from the HAVA mandate to March 1, 2008.

**State Children's Health Insurance Program (SCHIP) Shortfalls Addressed** - The problems in financing the SCHIP program are addressed in Title VII of the bill with an appropriation of \$650 billion to eliminate the remainder of FY 2007 shortfalls experienced by a number of states.

**Medicaid Regulations Delayed** - In Title VII there is language delaying by one year Medicaid regulations the Administration says could save \$5 billion. The bill will delay for one year implementation of the Medicaid rule that would limit payment to public providers proposed by the Centers for Medicare and Medicaid Services (CMS). The bill also prohibits any administrative action from being taken on this proposed rule, as proposed in the President's FY 2008 budget plan earlier this year. The bill clarifies that the moratorium on CMS' rulemaking does not undermine CMS' authority to enforce other program integrity requirements.

**Work Opportunity Tax Credit (WOTC) Extended** - In Title VIII, there is also a WOTC extension to August 31, 2011, as well as expansions to the WOTC program, particularly as it serves veterans and youth. WOTC allows employers credits against wages for hiring individuals from one or more of nine targeted groups (such as people with disabilities, recipients of public assistance, qualified veterans on assistance, and high risk youth).

**Minimum Wage Raised** - Title VIII of the bill includes a hike in the minimum wage to \$5.85/hour 60 days after enactment of the legislation, to \$6.55/hour a year later, and to \$7.25/hour in two years.

**Child Care Grant Program Established for Small Businesses** - Title VIII of the legislation also establishes a Small Business Child Care Grant program to assist small businesses to "establish and operate" child care programs, including training of child care providers and assistance for care of children with disabilities.

### **NATIONAL COUNCIL ON DISABILITY GETS SUPPLEMENTAL APPROPRIATIONS TO ASSIST FEMA**

Title VI of the FY 2007 Homeland Security Appropriations bill (P.L. 109-295) is the Post Katrina Emergency Management Reform Act of 2006 (H.R. 5441). Under H.R. 5441, the National Council on Disability (NCD) is specifically named as holding key responsibilities for consultation and oversight with the Federal Emergency Management Agency (FEMA) on disability-related issues in homeland security.

The FY 2007 emergency supplemental appropriations bill, the "U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007" (H.R. 2206), appropriated \$300,000 for NCD to do this work. Some of the tasks in which NCD is specifically mandated to be involved include:

- Appointment of the DHS/FEMA Disability Coordinator;
- Interacting regarding the needs of individuals with disabilities in emergency planning requirements and relief efforts in the event of a natural disaster, act of terrorism, or other man-made disaster;
- Completing, revising, and updating, as necessary, guidelines to define disability-related risk-based target capabilities for federal, state, local, and tribal government

preparedness that will enable the Nation to prevent, respond to, recover from, and mitigate against all hazards, including natural disasters, acts of terrorism, and others;

- Carrying out a national training program to implement disability-related portions of the National Preparedness Goal, National Incident Management System, National Response Plan, and other related plans and strategies;
- Carrying out a national exercise program to test and evaluate the National Preparedness Goal, National Incident Management System, National Response Plan, and other related plans and strategies;
- Establishing a comprehensive system to assess, on an ongoing basis, the Nation's prevention capabilities and overall preparedness, including operational readiness with respect to people with disabilities;
- Establishing a remedial action management program to: (1) analyze training, exercises, and real-world events to identify and disseminate lessons learned and best practices; (2) generate and disseminate, as appropriate, after action reports to participants in exercises and real-world events; and (3) conduct remedial action tracking and long-term trend analysis;
- Developing, coordinating, and maintaining a National Disaster Housing Strategy; and
- Developing guidelines to accommodate individuals with disabilities, including guidelines for: (1) the accessibility of, and communications and programs in, shelters, recovery centers, and other facilities; and (2) devices used in connection with disaster operations, including first aid stations, mass feeding areas, portable payphone stations, portable toilets, and temporary housing.

### **DISABILITY ADVOCATES URGED TO QUESTION STATES THAT DID NOT APPLY FOR “MONEY FOLLOWS THE PERSON” GRANTS, CMS ABOUT REJECTED APPLICATIONS**

Last July HHS announced that CMS would give states a total of \$1.75 billion over five years for the Money Follows the Person (MFP) rebalancing demonstration, the largest demonstration program in the history of Medicaid. The MFP program was designed to help shift Medicaid from its historical emphasis on institutional long-term care services to a system that offers more choices for seniors and persons with disabilities from all age groups, including home and community-based services. "We need to move as quickly as possible to make that shift across Medicaid. With new Federal funding, there is no longer any excuse for the status quo," stated then CMS Administrator Mark McClellan.

When the Medicaid law was enacted forty years ago, institutional care was the norm for elderly persons and persons with disabilities who needed assistance with activities of daily living. Consequently, Medicaid has traditionally paid for institutional care and has required states to get a "waiver" of normal program rules to provide services in other settings.

On January 11, 2007, CMS awarded \$888,625,631 in MFP grants to 17 states (Tier 1) that proposed to transition a total of 23,604 individuals from institutional care. On May 14, CMS awarded an additional \$547,083,848, to 14 states (Tier II) that plan to transition a total of 14,127 individuals. Combined, Tier I and Tier II MFP grants yield \$1,435,709,479 in awards to 31 states and the District

of Columbia to transition 37,731 individuals out of institutional settings over the five-year demonstration period.

Tier I states are those that were funded after submitting initial applications. Tier II awardees are those states that were required by CMS to submit a revised application reflecting the clarifications or changes requested by the agency. Information on each state's number of transitioned persons by type of condition and award amounts are provided in the following table:

<b>TIER I Awards</b>							
State	Transition #	Elderly	MR/DD	PD	MI	Dual	5 year award
WI	1,322	554	337	229	202		\$56,282,998
NY	2,800	1190	140	1190	280		\$82,636,864
WA	660	348	80	172	60		\$19,626,869
CT	700	280	70	140	140	70	\$24,207,383
MI	2,500	1500	1,000				\$67,834,348
OK	2,100	1575	225	3,000			\$41,805,358
AR	305	92	60	146	7		\$20,923,775
MD	3,091	1617	250	1,149	75		\$67,155,856
NE	900	400	200	300			\$27,538,984
NH	370	325	45				\$11,406,499
CA	2,000	400	331	899	185	185	\$130,387,500
IN	1,039	768	71	200			\$21,047,402
TX	2,616	780	1,216	420	160	40	\$142,700,353
SC	192	152	40				\$5,768,496
MO	250	50	125	50		25	\$17,692,006
IA	528		528				\$50,965,815
OH	2,231	1428	584	158	61		\$100,645,125
Totals	23,604	11,459	4,217	6,438	40	320	\$888,625,631
<b>TIER II Awards</b>							
State	Transition #	Elderly	MR/DD	PD	MI	Dual	5 year award
DE	100	32	20	28	20	0	\$5,372,007
DC	1,110	215	150	645	100	0	\$26,377,620
GA	1,347	375	562	375	35	0	\$34,091,671
HI	415	115	58	242	0	0	\$10,263,736
IL	3,357	1,517	105	1,000	735	0	\$55,703,078
KS	934	242	286	406	0	0	\$36,787,453
KY	431	108	216	107	0	0	\$49,831,580
LA	760	364	320	76	0	0	\$30,963,664
NJ	590	174	329	87	0	0	\$30,300,000

NC	552	22	172	202	42	114	\$16,897,391
ND	110	46	30	34	00		\$8,945,209
OR	780	300	179	301	0	0	\$114,727,864
PA	2,600	1400	420	600	180	0	\$98,196,439
VA	1,041	325	358	358	0	0	\$28,626,136
Totals	1,4127	5235	3205	3462	1112	114	\$547,083,848

MR/DD = Mental Retardation/Developmental Disability; PD = Physical Disability; MI = Mental Illness

Grant awards for the 5 year period range from \$8.9 million (ND) to \$142 million (TX) depending on the number of persons to be transitioned from institutional care. For each of these transitioned persons, the federal government will reimburse these states at an “enhanced” federal Medicaid match. An enhanced match rate from the federal government is equal to the regular federal match plus half of the difference between the regular match and 100%, not to exceed 90%. For example, if a state has a 50% federal Medicaid match, then with an MFP grant, that state would receive a 75% federal match for each person transitioned.

All states were eligible to participate in the five-year demonstration program and had to commit to provide demonstration services for at least two years. Why then were only 31 grants awarded totaling only 82% of the \$1.75 billion that had been allocated for the MFP program? The answer, surprisingly, seems to be that many states did not submit initial (tier I) or revised (Tier II) applications and a few had both applications rejected by CMS.

States not receiving MFP grants have thus far missed opportunities to bring thousands out of unnecessary institutional care. The following table provides information about states that did not receive MFP grants. Next to each state are listed “transition numbers” - the number of persons in nursing homes that, according to CMS, expressed/indicated preference to return to the community.

State	Transition #	Did not submit initial (Tier I) application	After initial (Tier I) application was rejected did not submit revised (Tier II) application	Submitted Initial(Tier I) & revised(Tier II) applications which were rejected by CMS
Alabama	3,651	X		
Alaska	172	X		
Arizona	3,188	X		
Colorado	3,741	X		
Florida	19,206		X	
Idaho	1,156		X	
Maine	1,550	X		
Massachusetts	8,982	X		
Minnesota	6,519	X		
Mississippi	1,737			X
Montana	1,307	X		

Nevada	1,344	X		
New Mexico [has a state MFP program]	1,675		X	
Rhode Island	1,546			X
South Dakota	1,053	X		
Tennessee	7,068			X
Utah	1,776	X		
Vermont	711	X		
West Virginia	1,965		X	
Wyoming	537	X		

Disability advocates in these states could do the following:

- For residents of the 17 states that did not submit an initial application - ask state officials why the state did not apply. In addition, pose the following questions: 1) If disability and older American advocates tried to have the state apply and it refused, provide the reasons; 2) Is there any discussion in the state of starting to move people out of institutions; and 3) Does the state have waiting lists for home and community-based services or for waiver services, or can every person, who needs and requests community-based services, receive them?
- For residents of the 4 states that initially applied for a MFP grant in the first tier of applications, were rejected, and then did not reapply for the second tier MFP awards - send a Freedom of Information Act request to CMS and ask for both the application from their state and all CMS correspondence that resulted in the rejection.
- For residents of the 4 states that had initial and revised applications rejected by CMS - send a Freedom of Information Act request to CMS and ask for both the application from the state and all CMS correspondence that resulted in a rejection.

### **New Report Underscores Housing Crisis Facing People with Disabilities**

Every two years since 1998, the Consortium for Citizens with Disabilities (CCD) Housing Task Force and the Technical Assistance Collaborative (TAC) have published *Priced Out*, a report which compares the monthly Supplemental Security Income (SSI) of people with serious and long-term disabilities to local U.S. Department of Housing and Urban Development (HUD) Fair Market Rents for modestly priced one bedroom and studio/efficiency rental units. This year's report includes a forward by Eunice Kennedy Shriver, longtime advocate for people with intellectual and developmental disabilities.

The recently released *Priced Out in 2006* revealed that:

- from 2004-2006, people with disabilities who relied on SSI as their source of income descended further into poverty. In 2006, the average annual income of a single individual receiving SSI payments was \$7,584 – equal to only 18.2 percent of the national median

income for a one-person household and almost 25 percent below the federal poverty level;

- the national average rent for a modest one-bedroom unit climbed to \$715 per month -- equal to 113.1 percent of monthly SSI payments (which on a national average were \$632 per month);
- studio/efficiency rents climbed to \$633 per month -- 100.1 percent of monthly SSI income.

These shocking statistics mean that approximately 4 million SSI beneficiaries with disabilities are shut out of the rental market in every city, town and rural area of the country. For example in the Columbia, Maryland housing market, the federal Fair Market Rent for a modestly priced one-bedroom apartment was 193.2 percent of monthly SSI income – the highest level in the nation. In New Orleans, modest studio/efficiency apartments soared to \$755 a month – a 45 percent increase since Hurricane Katrina. In the rural areas of Nevada, the cost of a one-bedroom unit priced at the HUD Fair Market Rent was \$603 – consuming the entire monthly income of a single individual receiving SSI in that state – leaving a SSI beneficiary totally unable to pay for food, clothing, or out of pocket medical expenses.

As Mrs. Shriver notes, “[H]ow can we possibly expect any individual or family to spend 100-113 percent of their entire monthly income on housing? It is not only mathematically impossible, but morally unconscionable.”

Even more shocking is that *Priced Out in 2006* found a precipitous and relentless decline in housing affordability for SSI recipients since 1998 when the first edition of *Priced Out* was developed. During the past eight years, as funding for low income housing programs has been slashed, the cost of a modest one-bedroom rent rose from 69 percent to 113.1 percent of SSI. During that time, SSI income dropped 26 percent compared to the one-person median income.

*Priced Out in 2006* strongly recommends that the federal government commit to a multi-year plan to create a minimum of 150,000 new federal rent subsidies for people with disabilities with the lowest incomes. Specifically, the report urges Congress to commit to provide 10,000 new Housing Choice Vouchers and 5,000 new Section 811 Supportive Housing for Persons with Disabilities rent subsidies each year for the next ten years.

Every member of Congress, Congressional Committees with jurisdiction over housing programs, the U.S. Department of Housing and Urban Development and other relevant federal agencies are given a copy of *Priced Out*. DPC staff and other members of the CCD Housing Task Force use the report’s compelling data to make a case for retaining and increasing funding and reforming housing programs.

Since the report’s data is broken down by local housing markets, state and local chapters and affiliates are strongly encouraged to use the report in their housing advocacy. The report can be accessed at <http://www.tacinc.org/Pubs/PricedOut.htm>.

## **House Takes Steps Toward Establishment of National Housing Trust Fund**

2007 portends to be the year of significant progress for the National Housing Trust Fund. Upon assuming the chairmanship of the House Financial Services Committee, Rep. Barney Frank (D-MA) stated that expanding affordable housing programs would be his “top priority.”

On May 22, the House of Representatives passed the Federal Housing Finance Reform Act of 2007 (H.R. 1427) by a vote of 312 to 104. The bill includes an Affordable Housing Fund estimated by the Congressional Budget Office to be valued at \$600 million per year. Seventy five percent of the funds would go to the state of Louisiana and 25% to the state of Mississippi for the rebuilding and repair of housing affordable to very low and extremely low income families.

H.R. 1427 also includes a provision to reserve the funds for a future National Housing Trust Fund (NHTF). Legislation to authorize the creation of the NHTF is expected to be introduced in the House later this summer. The proposal, which is similar to bills introduced in past Congresses, would, according to the National Low Income Housing Coalition, provide an “ongoing permanent, dedicated and sufficient sources of revenue to build, rehabilitate and preserve 1.5 million units of housing for the lowest income families over the next 10 years”.

The National Housing Trust Fund campaign’s next step is House passage of the Expanding Homeownership Act of 2007 (H.R. 1852), which includes a provision that will generate approximately \$250 million per year to be reserved for the Trust Fund. UCP and The Arc have been working with the Coalition and other disability groups on the Trust Fund campaign.

### **Section 8 Voucher Reform Act (SEVRA) Progresses in House**

By a large bi-partisan vote of 53-9 the House Financial Services Committee, chaired by Rep. Barney Frank (D-MA), passed H.R. 1851, the Section 8 Voucher Reform Act (SEVRA) on May 24. In addition to including several reforms for the Section 8 Housing Choice Voucher program, SEVRA will also reform the law governing public and assisted housing. Specifically, SEVRA:

- Fixes problems with voucher funding formulas by basing each Public Housing Agency’s (PHA) annual budget on actual vouchers in use and their average cost in the prior year;
- Directs HUD to reallocate unspent balances (above a modest reserve level) to PHAs that can use the vouchers;
- Authorizes 100,000 new Section 8 vouchers over the next 5 years;
- PHAs and HUD must take certain actions to reduce very high rent burdens for voucher holders, including those with disabilities, or explain why they are not taking action. PHAs must also report rent burdens;
- Rep. Gwendolyn Moore (D-WI) offered a successful amendment authorizing a demonstration program for persons with "significant disabilities" to increase their incomes and still remain eligible for the Section 8 voucher program.

No specific date has been set for House floor action and the Senate has not yet moved its version of the bill.

## SENATE AND HOUSE POISED TO PASS VOTING “PAPER TRAIL” LEGISLATION

In early May 2007, the Committee on House Administration reported out H.R. 811, the Voter Confidence and Increased Accessibility Act of 2007. This bill, sponsored by Representative Rush Holt (D-NJ), amends the Help America Vote Act of 2002 (HAVA) to require accessible, voter verifiable paper voting records nationwide, as well as access to ballot verification for individuals with disabilities by 2008 with a possible extension for states to 2010.

Among other provisions, H.R. 811 requires the National Institute of Standards and Technology (NIST) to study, test, and develop best practices to enhance the accessibility of ballot verification mechanisms for individuals with disabilities, voters whose primary language is not English, and voters with difficulties in literacy.

A few weeks later, Senate Rules Committee Chair Senator Dianne Feinstein (D-CA) and Senator Christopher Dodd (D-CT) introduced the Ballot Integrity Act of 2007 (S. 1487), the Senate’s version of a “paper trail” bill. The Ballot Integrity Act requires states to use voting systems with voter-verified paper records in the 2010 federal elections. The bill also has provisions for assisting states to increase the turnout in federal elections and to guard against faulty purges of voting rolls.

Disability-related provisions of the House and Senate bills include:

- Funds (more in the House bill than in the Senate bill) to help states purchase, replace and retrofit paperless electronic voting systems so that they produce an accessible, durable, and permanent paper ballot that can be verified and changed by the voter before the vote is finalized.
- Strategies for the development of electronic voting systems that provide a voter-verified paper record as well as full accessibility for people with all types of disabilities.

The Feinstein/Dodd (Senate) bill further requires an immediate ban on the purchase of any new direct recording election voting systems (DREs) that do not provide an accessible, durable, and permanent voter-verified paper ballot. This provision is disappointing for individuals with vision and/or motor disabilities who have voted barrier-free on DREs (without voter verified paper audit trails). For them, the prospect of reintroducing paper into the voting process means restoring a barrier to access.

### **Is there a voting machine that is both accessible and capable of producing a paper trail?**

Not yet. Many paper-based voting system proponents have used the shortcomings of current electronic interfaces to support a ban on direct response electronic voting machines (DREs) like the one proposed in the Feinstein/Dodd bill. Paper-based voting system proponents complain that DREs are not fully accessible while promoting ballot-marking devices (BMDs) as the desired accessible voting system. Since BMDs and DREs use the same electronic interface for accessibility, neither is inherently more or less accessible than the other.

Any electronic interface is able to deliver any, all, or none of the required access features of the Voluntary Voting System Guidelines (VVSG), standards developed by the National Institute of Standards and Technology (NIST) and adopted by the Election Assistance Commission (EAC).

Thus, regardless of voting system type, all systems with an electronic interface can and will continue to deliver more access features over time.

**Can the experts acknowledge the issues and address the details so that paper-based systems will not disenfranchise voters with disabilities?**

Proponents of paper-based voting have frequently avoided the challenge involved in making paper accessible by simply *calling* for the paper to be “accessible” without addressing the details of how and when that could be accomplished. In a paper-based voting system, full accessibility means voters with disabilities can *generate, verify and cast* the paper ballot privately and independently. The VVSG include two specific access requirements for paper ballots that pose a significant challenge for the current field of “accessible” products:

- Voters with vision disabilities must be able to privately and independently verify the paper ballot when a system with voter verified paper audit trails is used with a DRE. Current versions of VVPAT printer attachments do not provide a mechanism for alternative access to the print on the paper ballot.
- Voters with motor disabilities must be able to privately and independently verify and cast their paper ballot just as voters without disabilities verify and cast theirs. Current versions of BMDs do not have an automatic paper handling mechanism that allows voters with disabilities to verify and cast their vote without manually manipulating the paper ballot.

Some paper ballot proponents have gone so far as to take the position that vote casting does not need to be done independently by voters with disabilities. *Improving Access to Voting: A Report on the Technology for Accessible Voting Systems*, endorsed by paper ballot proponents, states “independence is not required for the parts of the voting process that come before and after vote selection, ballot marking and deposition into a privacy sleeve.” This statement is inconsistent with the plain language of HAVA and the VVSG access requirements.

Currently there is no direct recording electronic voting system with VVPAT that has adequately addressed accessibility of the VVPAT. No currently available ballot marking devices (with or without an electronic interface) have addressed the problem of manual paper handling. As a result, each of the two paper-based “accessible” systems currently available excludes a large disability constituency group. Direct recording electronic voting systems with VVPATs primarily deny full access to people with vision disabilities, and ballot marking devices primarily deny full access to people with motor disabilities.

**Can we “supplement” access by cobbling together the best features of multiple mechanisms until a real voting system that conforms to VVSG requirements is available?**

Many voting jurisdictions have made supplemental voting access mechanisms available to meet specific voter needs. There is danger, however, in inappropriate use of one or more cobbled together technologies. There is even greater danger in labeling it *the* “accessible” voting system since it will invariably fall short of accessibility as required by HAVA. Supplemental techniques offer access to people with a narrow range of functional limitations, leaving the majority of individuals with disabilities without access, as well as increasing the already questionable level of expertise needed by poll workers. Asking poll workers to assume responsibility for matching a voter’s specific limitation to various access technique/mechanisms is far beyond most jurisdictions.

## What is the bottom line for people with disabilities regarding paper ballots?

If paper ballots are to be used to ensure security, those paper ballots must also be accessible to ensure the security of the entire election system and to uphold the rights of voters with disabilities to *generate, verify and cast* their vote privately and independently.

The VVSG requires that systems utilizing a voter verified paper ballot as a “determinative vote of record” to ensure that the paper ballot itself (not the electronic ballot) is accessible to voters with vision disabilities. The VVSG also requires that voters with motor disabilities be able to submit/cast the paper ballot without assistance. This means:

- Voters with disabilities should not be required to handle a paper ballot at any point in the voting process;
- Blind voters should be able to generate their vote using an audio-tactile interface and then should be able to verify/edit and cast the content of the paper ballot using that same interface;
- Voters with low vision who used enhanced visual display on the screen of a voting system to generate their vote should have enhanced visual display available to verify/edit and cast the paper ballot; and
- Voters with motor limitations who used switch input (e.g., sip and puff) to generate their vote should be able to use that same switch input to verify/edit and cast the paper ballot.

## Is there any chance this can all be accomplished by 2008 or even 2010?

Probably not. Experts say the technology is there and some educated estimates for development, deployment, and certification of this technology range from five to ten years. However, the federal agencies responsible for setting standards and certifying systems are not notably quick to implement complex new ideas.

First, the Congress will need to provide adequate resources to support the call for full accessibility of paper ballots and the voting process that involves paper ballots. Then researchers, developers and manufacturers will need clear guidance and time.

It is unclear what expertise and experience the testing entities entrusted with verifying voting system conformance to the access standards testing labs must have to adequately ensure compliance with the accessibility standards. Since the passage of HAVA, systems certified as conforming to existing federal access standards have repeatedly been found to not conform to the law.

These various issues were eloquently summarized at a March 2007 hearing before the Committee on House Administration Elections Subcommittee on Election Reform by Diane Cordry Golden, PhD, Director of Missouri Assistive Technology, board member of the National Association of Assistive Technology Act Programs (ATAP) and consultant to the National Disability Rights Network on voting equipment access issues:

**“If Congress determines that in order to secure the voting process every voter must be able to verify and cast a paper ballot – then all voters must be able to verify and cast paper ballots for our elections to be truly secure. Moreover, verification measures must safeguard the rights voters with disabilities gained under HAVA and must allow all voters to verify their ballot privately and independently. A new access barrier should not be created by the**

addition of a verification requirement. Congress should not develop election access requirements to accommodate equipment vendors or the status of currently available voting products. Accessible verification technology will only develop if the law clearly requires it, and the technology will only be adequate if reasonable time and appropriate resources are allocated to support that development.”

### **CONSORTIUM FOR CITIZENS WITH DISABILITIES RIGHTS TASK FORCE POSITION ON VOTING MACHINE SECURITY AND VOTER VERIFIED PAPER AUDIT TRAILS (VVPAT)**

The Rights Task Force of the Consortium for Citizens with Disabilities (CCD), a coalition of more than 100 national disability organizations, of which The Arc and UCP are members, has issued the following statement on “paper trails:”

“The expertise and primary interest of CCD lies in matters of equal access and the rights of people with disabilities. As it pertains to voting, this involves specifically ensuring enforcement and protection of the rights guaranteed under the Help America Vote Act (HAVA) and other applicable federal law. CCD does not have a blanket policy either for or against Voter Verified Paper Audit Trails (VVPAT) or other means of independent vote verification. CCD seeks to ensure that any and all measures instituted to provide enhanced security, accuracy and/or voter confidence must be developed and implemented in a manner that ensures immediate accessibility for people with disabilities. Such measures must not interfere with the current ability of voters with disabilities to cast private and independent ballots, as mandated by HAVA.

The disability community shares the interest of all Americans in ensuring that elections are fair and secure. The position of CCD is that if a paper audit trail or other means of independent vote verification is used in any jurisdiction, then the means of vote verification must be accessible to all individuals with disabilities at the same time as the requirement goes into effect for all voters. Accordingly, CCD would oppose any paper audit trail or other means of independent vote verification requirement that does not meet this standard.”

### **LOBBY REFORM: WHAT DOES IT MEAN IN THE NON PROFIT WORLD?**

Just before the Memorial Day recess, the House passed lobbying reform legislation in two parts. The Honest Leadership and Open Government Act of 2007 (H.R. 2316), a broad lobbying and ethics reform package, was approved by a vote of 396 to 22. The Lobbying Transparency Act of 2007 (H.R. 2317), a bill primarily addressing the disclosure of “bundling” by lobbyists of campaign contributions, was approved by a margin of 382 to 37. Together, the two measures address a series of lobbying and ethics issues.

H.R. 2316 is the House version of the Senate’s Legislative Transparency and Accountability Act of 2007 (S.1). Like the Senate bill, H.R. 2316 would require quarterly electronic filing of reports and additional reporting of political contributions by federal lobbyists. H.R.2316 and S.1 amend the

Lobbying Disclosure Act of 1995 (LDA), legislation that established the original criteria for determining whether an organization or firm should register their employees as lobbyists. Both bills require quarterly rather than semiannual filings and to mandate that lobbying reports be submitted electronically and be made available to the public within 48 hours of filing. The proposed legislation would also require lobbyists to provide additional information about their prior government service, disclose political contributions, and identify specific earmarks they are seeking on behalf of clients.

During negotiations, the House dropped a proposal contained in the Senate bill that would require Members of Congress and their staff members to wait two years, rather than one year, before they are allowed to lobby the Congress. The Senate bill would also prohibit lobbyists from sponsoring parties at national conventions, but the House legislation stripped that measure out as well.

Both the Senate and the House defeated provisions on grassroots lobbying disclosure intended to restrict powerful lobbyists (like Jack Abramoff) and to give the public a better idea of who is paying for mass campaigns to influence Congress. An exemption to the gift rules for lobbyists working on behalf of state and local governments and public universities was also defeated.

**The significant provisions of H.R. 2316 are outlined below:**

**Lobbyist Registration** - Organizations that lobby on their own behalf must register with the Clerk of the House and the Secretary of the Senate if their lobbying expenses are more than \$10,000 in a quarter (current law is \$24,500 semiannually). Lobbying firms (entities that employ one or more lobbyists on behalf of a client) must register if their income related to lobbying activities exceeds \$2,500 per quarter per client (current law is \$6,000 semiannually).

**Lobbying Reports** - Lobbying reports must be filed electronically every quarter. (Currently reports are filed semi-annually).

All registered lobbying firms, organizations that lobby on their own behalf, and employees listed as lobbyists on lobbying reports must also file quarterly reports listing political contributions and gifts made by either the firm or organization, personally by the listed lobbyist, or a political committee established by the firm or organization including:

- Aggregate political contributions of \$200 to a federal candidate within a year;
- The date and amount of each political contribution made within the quarter;
- Any information reported to the FEC regarding contributions for which the lobbyist is an intermediary or conduit; and,
- Contributions for events to honor legislative or executive officials, for entities named for or established by such officials, or meetings or retreats held for such officials

Member organizations of a coalition or association would be reported separately if the contribution is more than \$500 in a quarter. This requirement does not apply to associations that are 501(c) organizations and does not affect individuals who are members of or donors to an organization). Lobbyists must disclose all past executive and congressional employment. (Currently, only service within the past two years is reported.)

The Secretary of the Senate and the Clerk of the House must maintain a publicly available searchable database of lobbying registration and reports, with direct links to FEC campaign donation reports. Electronically-filed quarterly reports must be available to the public within 48

hours of filing. Registration and report information must be retained for 6 years after being filed.

Quarterly lobbying reports must include a certification that the lobbying firm or organization and each employee listed as a lobbyist has not provided a gift or travel to a Member of Congress or staff in violation of House or Senate rules.

**Prohibition on Gifts and Travel** - Lobbyists and organizations that lobby may not make a gift or provide travel to a Member of Congress or staff with the knowledge that the gift or travel may not be accepted under House or Senate rules.

**Increased Penalties** - The penalty for knowing violations of the Lobbying Disclosure Act is raised to \$100,000 from \$50,000 per violation. A new criminal penalty is added of up to 5 years jail time for knowing and corrupt violations. (S.1 has penalties up to \$200,000 and jail time of 10 years.). The same penalties also apply for providing gifts or travel to Members of Congress or staff with knowledge that the gifts violate the rules of the House or Senate.

**House Travel and Financial Disclosure Website** - The Clerk of the House must post on a public website all travel authorizations and disclosures for Members and staff, as well as all financial disclosure reports.

**Earmarks** - The legislation requires lobbyists to reveal the earmarks for which they are lobbying.

**“Reverse Revolving Door”** - The House bill sets standards for staff members who move from the lobbying world to jobs on Capitol Hill, barring them from meeting with their former private-sector employers for one year.

**The significant provisions of H.R. 2317 are discussed below:**

**Private Sector Job Negotiations** - Under H.R. 2317, the companion legislation to H.R. 2316, Members of Congress would have to reveal negotiations for private sector jobs occurring while they are still serving in Congress and would have to recuse themselves from any legislation on which there could be a conflict of interest with potential employers. The negotiations, however, would be permitted to remain secret.

In The Lobbying Transparency Act of 2007, the House approved a requirement that Members of Congress and their staff also notify the Ethics Committee once they begin job negotiations with a private employer and recuse themselves from legislation involving a potential future employer.

**Disclosing “Bundled” Contributions** - Also in H.R. 2317, in order to close potential disclosure loopholes, are provisions for greater disclosure of bundled political contributions. Bundling, the widespread practice of collecting or arranging contributions for Members of Congress and other recipients, generally results in far more money being provided by a lobbyist to a Member than is the case when individual contributions are given directly by the lobbyist. The bundling provision has no effect on non profit organizations that are prohibited from endorsing or contributing to political candidates.

The measures will now go to a conference committee where differences between the House and Senate bills will be addressed. House leadership has suggested that the measure will be finished by the August recess. However, while the House and Senate bills are similar in many respects, there are some specific differences as well as questions about implementation and resources for

implementation that could cause delays. For example, many lobbyists have questioned how the reporting process will work and whether the Capitol Hill offices that administer the LDA have the resources to handle the new obligations.

In the meantime, nonprofit organizations that lobby Congress and/or retain or employ lobbyists continue under the current patchwork of laws and rules. The House ethics rules approved in January of 2007 are in effect, but those elements of the bill approved on May 24 that amend the House rules are not yet in force, except for a narrow provision addressing attendance at charitable events. The new ethics rules passed by the Senate in January have not yet taken effect – but many (though not all) Senate offices are abiding by the proposed rules already. Also, though none of the changes to the Lobbying Disclosure Act have been enacted, lobbying reports filed under the existing law are coming under greater scrutiny. The DPC will continue to monitor developments in this area and provide regular updates.

### WHAT KIND OF LOBBYING CAN BE DONE BY NON PROFITS ?

Notwithstanding legislation that may pass out of the current Congress, basic definitions and rules of behavior that apply to non profit lobbying efforts, as well as to other activities non profits can undertake (such as voting-related activities), will still be based on the Lobby Disclosure Act of 1995 and the Internal Revenue Service Tax Code. Here are some of the basic definitions and rules for non profit lobbying.

In general, 501(c)(3) nonprofit organizations may engage in lobbying and other advocacy activities, direct and/or grassroots, within certain limits. The Arc and United Cerebral Palsy (UCP) are 501(c)(3) organizations. The Internal Revenue's Tax Code provides that "no substantial part" of the activities of such organizations can involve "carrying on propaganda, or otherwise attempting, to influence legislation," and that such organizations cannot "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf (or in opposition to) any candidate for public office."

The IRS measures compliance with the "no substantial part" test on the basis of "all the pertinent facts and circumstances of each case," determined under a variety of factors such as the time devoted (by both paid and volunteer workers) and the expenditures devoted to the activity by the organization. It is a vague measure that courts have interpreted in a variety of ways.

Non profits may chose a 501(h) tax code designation which has more defined rules on lobbying expenses. Many have done so, including The Arc and UCP.

**Direct lobbying** is defined as stating a position on specific legislation to legislators or other government employees who participate in the formulation of legislation, or urging your members to do so.

**Grassroots lobbying** is defined as stating a position on specific legislation to the general public and asking the general public to contact legislators or other government employees who participate in the formulation of legislation.

The term **"lobbying"** does **not** include the following activities:

- Technical assistance or advice to legislative body or committee in response to a written request;
- Nonpartisan analysis, study or research;
- Examinations and discussions of broad, social, economic and similar problems;
- Communicating with a legislative body regarding matters which might affect the existence of the organization, its powers and duties, its tax-exempt status, or the deduction of contributions to the organization (the "self-defense" exception); and,
- Updating the members of your own organization on the status of legislation, without a call to action.

### **In what kind of election-related activities can nonprofits engage?**

There are also restrictions under the Tax Code on the amounts and types of election-related activities non profits can undertake. Under current law, 501(c)(3) or 501(h) organizations may:

- Conduct voter registration and nonpartisan get-out-the-vote efforts.
- Educate the public on issues and encourage participation in the political process.
- Educate all candidates and political parties on your issues.
- Conduct or participate in a nonpartisan candidate forum.
- Make presentations on your organization's issue to platform committees, campaign staff, candidates, media, and the general public.
- Work on behalf of a ballot measure.
- Continue normal lobbying on issues.
- Rent or sell mailing lists to candidates at fair market value, if made available to all candidates.

501(c)(3) and 501(h) organizations **may not**:

- Endorse or oppose a candidate—implicit or explicit.
- Coordinate activities with a candidate.
- Contribute money, time, or facilities to a candidate.
- Set up, fund, or manage a PAC.