



National Council on Disability

An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

August 24, 2016

The Honorable Ian H. Gershengorn
Solicitor General
Office of the Solicitor General
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Dear Solicitor General Gershengorn:

Currently, before the U.S. District Court of the District of Columbia is a motion (in the case of *American Council of the Blind, et al. v. Jacob J. Lew, Secretary of the Treasury*, Civil Action No. 1:02CV00864-BAH) the decision for which will have a significant impact on the lives of tens of millions of Americans in need of accessible U.S. currency. The American Council of the Blind (ACB) seek a modification to establish more specific deadlines for the court's October 3, 2008, Injunctive Order that U.S. currency be made accessible for blind and other visually impaired individuals by the next currency redesign, per the Rehabilitation Act of 1973.¹ That currency redesign is delayed well beyond expected dates of integration. In the meantime, sufficient access to U.S. currency is not provided as is required by federal law and regulations. The National Council on Disability ("the Council") urges the Department of Justice to support, as a means of compliance with the federal law and regulations discussed below, ACBs' motion to modify the court's order requiring the Secretary of the Treasury ("the Secretary") (in conjunction with the Bureau of Engraving and Printing) to provide meaningful access to United States currency for blind and other visually impaired persons.

The Council is an independent federal agency comprised of Presidential and Congressional appointees. Pursuant to its statutory mandate, 29 U.S.C. § 781, the Council is charged with reviewing federal laws, regulations, programs, and policies affecting people with disabilities to assess the effectiveness of such laws, regulations, programs, and policies in meeting the needs of individuals with disabilities, and making recommendations to the President, the Congress, officials of federal agencies, and other federal entities, regarding ways to better promote equal opportunity, economic self-sufficiency, independent living, and inclusion and integration into all aspects of society for Americans with disabilities. With that mission in mind, the Council and four other federal agencies have actually already collaborated with the Bureau of Engraving and Printing to create a viable tactile feature as a means of making currency accessible.

¹ See the related Court of Appeals decision in *American Council of the Blind v. Paulson*, 525 F.3d 1256, 1262 (D.C. Cir. 2008).

Had the Secretary moved forward as originally intended, the \$20 banknote would have been redesigned between 2010-2013, the \$50 banknote would have been redesigned between 2011-2014, the \$10 banknote between 2013-2016, and the \$5 banknote between 2015-2018.² At present, however, the Secretary has provided the court a new projected date of 2026 to redesign the \$10 banknote (with some conflicting public statements) and has yet to supply estimated dates of redesign for the other denominations. Unfortunately, in the interim, meaningful access to U.S. currency for blind and other visually or intellectually disabled individuals is not sufficiently provided as is required under Section 504 of the Rehabilitation Act of 1973 and its accompanying federal regulations. *See generally Paulson, Jr., Secretary of the Treasury*, 463 F. Supp. 2d 51 (2006) (citing to 29 U.S.C. § 794).³ *See also* 28 C.F.R. § 41.51(2016). The alternative to currency that is designed to enable blind persons to denominate the currency through their own senses are external currency readers. These hand-held devices scan the currency and provide an audio signal to the user. The external currency readers currently on the market, including the reader supplied by the Secretary as a means of temporary accessibility ahead of the currency redesign, are a deficient means of providing access.

An external device cannot serve as an adequate substitute for a method of accessibility whereby visually impaired individuals can denominate currency through the use of their own senses. External mechanisms could easily be damaged, lost or stolen, or their batteries could fail, at which point the user is unable to denominate currency. Further, the use of an external device (including extracting the device, inserting and lining up the individual banknotes one at a time into the device *sans* any crumpled bills), both during payment and the receipt of change due, is a time consuming process that does not lend itself to the fast-paced movement required by consumers making transactions while other consumers await their turn to do the same (standing in a line at a grocery or a café for example).

The process of denominating a single bill using an external reader takes on average approximately 30 seconds, measured from the time the currency reader and the cash is held in hand until the time the denomination is known.⁴ This means that a monetary

² This point is premised on Defendant's September 15, 2008, court filing in this matter of proposed orders and an accompanying Memorandum of Points and Authorities stating that the Department of Treasury's goal has been to redesign each denomination every seven to ten years. The most recent redesigns occurred in 1996 (altering the \$5, \$10, \$20, \$50, and \$100 bills) and then again over the course of the following several years (altering the \$5, \$10, \$20, \$50, and \$100 bills). Though the Secretary is not technically in violation of making U.S. currency accessible by the next redesign, as the next redesign has not occurred yet, the Council submits that the current delay in issuing a redesign is excessive and serves as an ongoing violation of federal regulations as is detailed *infra*.

³ The court in this matter has stated that it may sometimes be found that meaningful access has been provided despite the fact that results might not be exactly equal but that the matter at hand is more akin to a binary state of affairs whereby blind or visually impaired people cannot make effective use of American currency without help (not unlike deaf students who can have real access to a lecture only with an interpreter or a real-time transcript). *See Paulson*, 463 F. Supp. at 59 (citing to *United States v. Board of Trustees for University of Alabama*, 908 F.2d 740 (11th Cir. 1990)).

⁴ ARINC Engineering Services, LLC, et al., Bureau of Engraving and Printing, United States Dept. of the Treasury, *Study to Address Options for Enabling the Blind and Visually Impaired Community to Denominate U.S. Currency*, 47 (July 2009).

payment that involves ten different bills would require five minutes simply to count the currency, in addition to the time required to again denominate and count any change received. This lengthy process in practice makes many commercial transactions impossible and cannot be deemed adequate accessibility.

Further, reliance on a device that is subject to technical malfunction exposes the user to potential fraud upon that user having to rely on the assistance of others to verify denominations, many of whom might very well cheat that user. As the court in this matter noted in its December 1, 2006, decision, blind and low vision individuals who are unable to identify the value of paper money without help from others “are always at risk of being cheated.” *Paulson* 463 F. Supp. 2d at 53. An example of this risk, as the court has also noted, is a store clerk handing a \$5 bill as change to a blind or low vision individual owed a \$20 bill instead. *Id.* at 54 n.2. Ultimately, such instances of deliberate fraud or accidental shortchanging may go unnoticed for some time or might never be discovered. Thus the frequency of such incidents is impossible to measure (*see id.* at 53-54), but the point remains that anything short of an individual’s ability to denominate currency through his or her own senses falls short of adequate accessibility and should also be considered a violation of federal regulations as discussed *infra*.

The primary motivation of the disability rights movement, which paved the way for such laws as the Rehabilitation Act and the Americans with Disabilities Act⁵ that followed, was a preference among disabled Americans to choose integration over such custodialism. As was noted in the scholarly work that helped articulate this point within the disability rights movement, integration emphasizes people with disabilities’ “potential for full participation as equals in the social and economic life of the community” and “maximize[s] similarity, normality, and equality.” Jacobus tenBroek & Floyd W. Matson, *The Disabled and the law of Welfare*, 54 CAL. L. REV. 809, 815-816 (1966); *see also* Jacobus tenBroek, *The Right to Live in the World: The Disabled and the Law of Torts*, 54 CAL. L. REV. 841, 842-843 (1966). Ultimately, Congress was quite clear in expressing that the purpose of the Rehabilitation Act of 1973 was to “empower individuals with disabilities to maximize employment, economic self-sufficiency, *independence*, and inclusion and *integration* into society.” 29 U.S.C. § 701(b)(1) (emphasis added).

The regulations implementing Section 504 of the Act, as with the act itself, *see generally id.*, also recognize that services of the government must be provided to the disabled in the “most integrated setting appropriate.” 28 C.F.R. § 41.51(d)(2016) (emphasis added); *see also Day v. District of Columbia*, 894 F. Supp. 2d 1, 22-23 (D.D.C. 2012) (wherein the court in this matter found that Plaintiffs raised a legitimate claim that Defendants violated the requirement of administering government services “in the most integrated setting appropriate to the needs of qualified individuals with disabilities,” per 28 C.F.R. § 41.51(d) administering Section 504 of the Rehabilitation Act, when Defendants unnecessarily confined Plaintiffs in nursing homes rather than facilitate their transition into the larger community); *see also Pa. Prot. & Advocacy, Inc. v. Pa. Dep’t of Pub. Welfare*, 402 F.3d 374, 379 (3d Cir. Pa. 2005). In consideration of the fact that sighted individuals denominate currency using the banknote itself, without the use of an external

⁵ 42 U.S.C.S. § 1201.

device or the assistance of strangers, it stands to reason that those without sight should have access to do the same through the use of their other senses as a means of full integration.

This is certainly the case with other countries as was noted by the Court of Appeals in this matter (*see Paulson*, 525 F.3d at 1262), and there is certainly a legal justification to do as much in the U.S. under the Rehabilitation Act. *See* 29 U.S.C. § 701(b)(1) as indicated *supra*. Similarly, providing access to currency for individuals with intellectual disabilities, or even for the growing aging population generally, through the use of their own sight, in a less confusing manner, by making different colored bills for different denominations of currency, is obviously also a much more integrated method of providing access than requiring those individuals to rely on an external device that would likely, and unnecessarily, complicate the denomination process.

Indeed, the federal regulations that relate to § 504 provide a plethora of additional legal directives that necessitate redesigning the actual U.S. currency as a means of complying with the Rehabilitation Act. Per 28 C.F.R. § 41.51(b)(1)(ii)(2016), “A recipient [that receives or benefits from federal financial assistance], in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of [disability]: afford a qualified [disabled] person an opportunity to participate in or benefit from the aid, benefit, or service that *is not equal* to that afforded others” (emphasis added). Surely, requiring disabled individuals to rely on an external device or the assistance of strangers, with all the potential pitfalls those approaches entail, as opposed to making the currency itself accessible, is not *equal* to the manner in which sighted or other non-disabled individuals denominate currency through their own senses.

Also, 28 C.F.R. § 41.51(b)(1)(iii)(2016) states that a recipient may not “Provide a qualified [disabled] person with an aid, benefit, or service that is not *as effective* in affording equal opportunity to obtain *the same result*, to gain *the same benefit*, or to reach *the same level of achievement* as that provided to others” (emphasis added). When a blind individual is standing at the front of a long line at a café and requires five to ten full minutes to exchange money with the cashier through the process of denominating currency with the use of an external device, is that individual obtaining *the same result* as a sighted individual in the same scenario who exchanges the money within 30 seconds? Is that same blind individual afforded *the same level of achievement* when the culmination of each delayed monetary exchange process they undergo in a given day diminishes his or her total productivity in that day? Is any disabled individual that requires access to currency afforded *the same benefit* as others when they must rely on the kindness of strangers to confirm that they are in fact given the correct amount of money owed them as opposed to being able to verify for themselves that they were not somehow cheated? Clearly, the answer to all three of these questions is no.

It is obvious that the use of external devices is not as effective in achieving accessibility as is the redesign of U.S. currency. Consequently, it is vital that the Secretary redesign the currency much sooner rather than later as a means of compliance with the Rehabilitation Act and its accompanying federal regulations. As is stated in 28 C.F.R. §

41.51(b)(1)(iv)(2016), “[A recipient may not] provide different or separate aid, benefits, or services to [disabled] persons or to any class of [disabled] persons than is provided to others unless such action is necessary to provide qualified [disabled] persons with aid, benefits, or services that are *as effective* as those provided others” (emphasis added). *See also Lovell v. Chandler*, 303 F.3d 1039, 1055 (9th Cir. Haw. 2002) (the U.S. Court of Appeals for the Ninth Circuit found that the State of Hawaii had violated Plaintiff’s rights under 28 C.F.R. § 41.51(b)(1)(iv) when it denied him program health insurance coverage in relation to another program). As is noted *supra*, reliance on an external device, or the kindness of strangers, is certainly not at all *as effective* as a redesign of U.S. currency would be.

Per the Supreme Court’s analysis in *Chevron, U.S.A., Inc. v. Nuclear Regulatory Defense Council, Inc.*, 467 U.S. 837, 844 (1984), the above-referenced regulations qualify for judicial deference and are to be given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute (which in this case they obviously are not). Further, as the court in this matter has previously noted, “the public interest lies in the proper enforcement of the orders of the court.” *See Petties v. D.C.*, 238 F. Supp. 2d 88, 99 (D.D.C. 2002). Here, the court has issued an Order that the Secretary is compelled to follow in a manner that is proper and achieves the original intent of the court absent any indefinite and unnecessary delay.

Currently, the Secretary of the Treasury’s target date to provide adequate access to the \$10 bill is 2026, as per the Secretary’s notice to the court for this matter. This date is 20 years past the court’s 2006 declaratory judgment finding that the design of U.S. currency violates Section 504 of the Rehabilitation Act. *See Paulson*, 463 F. Supp. 2d at 51. *See also* 29 U.S.C. § 794. This is despite the fact that on September 15, 2008, the Secretary filed with the court in this matter proposed orders and an accompanying Memorandum of Points and Authorities stating that the Department of Treasury’s goal is to redesign each denomination every seven to ten years. Redesigns occurred in 1996 (altering the \$5, \$10, \$20, \$50, and \$100 bills) and then again for each respective denomination over the course of the following several years.⁶

Thus, with a 7-10 year redesign schedule for each denomination, as noted *supra*, the \$20 bill would have been redesigned by 2010-2013, the \$50 bill by 2011-2014, the \$10 bill by 2013-2016, and the \$5 bill by 2015-2018. At present, the Secretary has informed Plaintiffs and the court of an additional ten-year delay (totaling a 20-year delay from the initial ruling by the court in this matter as also noted *supra*) in redesigning the \$10 bill (from what was to be a 2016 redesign as initially indicated to the Council by the Secretary) with no projected dates for redesigning the other denominations. This is despite the fact that external currency readers were contemplated as an interim measure only. In the meantime, without the ability to sufficiently discern the denomination of paper currency, people with disabilities are unable to determine whether their hard earned cash is being safely exchanged, and this inability surely constrains certain disabled individuals’ participation in several aspects of society including employment,

⁶ U.S. Currency: History of the BEP and U.S. Currency, <http://moneyfactory.gov/uscurrency/history.html> (last visited July 20, 2016).

transportation, education, and social interaction. As such, these excessive delays on the part of the Secretary come at an obvious cost and serve as a changed circumstance that has upset the intention of the court's order of October 3, 2008, thereby necessitating its modification.

If the Secretary is pointing to developments in counterfeiting technology as cause for delaying beyond the year 2020 a currency redesign inclusive of tactile features, the Council hereby notes that the Court of Appeals has stated that section 504 of the Rehabilitation Act is "no less of a statutory command than the one prompting the Secretary to expend large sums of money to combat counterfeiting." *Paulson*, 525 F.3d at 1272. Further, the October 3, 2008, injunctive order of this matter dictates that meaningful access for each denomination be provided no later than each respective denomination's next redesign. Without addressing the issue of redesigning U.S. currency for the sake of accessibility, the Secretary has stated publicly, actually, that he has ordered a currency redesign celebrating the civil rights and women's suffrage movements in the year 2020.⁷

The Council was both surprised and concerned that this recent announcement by the Secretary excluded any mention of inclusion of tactile features on any of the future bills. If said redesign was to occur, though, it stands to reason that adequate access to U.S. currency by redesign should also occur in 2020 accordingly (in compliance with the court's Order). If the Secretary is arguing that to do as much is unduly burdensome, the Council hereby notes that the Court of Appeals has held that, in light of the fact that other currency systems accommodate the needs of the visually impaired, "the Secretary's burden in demonstrating that implementing an accommodation would be unduly burdensome is particularly heavy." *Paulson*, 525 F.3d at 1272. Surely, at the very least, adding tactile features to a bill that might very well already be scheduled to have its imagery modified in the year 2020 would not qualify as an unduly burdensome accommodation. Should the Secretary have altered said schedule, a redesign by the year 2020 is still necessary as a matter of compliance for all the reasons outlined *supra*.

The order represents an opportunity to provide meaningful access for an estimated 20 million plus Americans with blindness, low vision, intellectual and developmental disabilities, and also the expanding aging population. Unfortunately, electronic currency readers do not serve as a sufficient accommodation and simply cannot compare to the sought after effect of inserting tactile and color variation features to U.S. banknotes. The indefinite delays in making U.S. currency adequately accessible for millions of people must not continue. The National Council on Disability believes it was and is good policy for individuals with certain disabilities, both nationally and internationally, and for the country as a whole, that U.S. currency be made accessible sooner rather than later in compliance with U.S. law and federal regulations. For the foregoing reasons, the Council submits that the Department of Justice should support the American Council of the Blind's position that the Secretary should provide adequate access to United States currency for blind and other visually or intellectually disabled persons no later than

⁷ An Open Letter from Secretary Lew (April 20, 2016), <https://www.treasury.gov/press-center/press-releases/Pages/jl0436.aspx> (last visited July 20, 2016).

December 2020 for the \$10 bill and December 2026 for the remaining denominations (excluding the \$1 bill).

In closing, we appreciate the opportunity to present our views to you on this important matter. If there are any questions you would like to discuss further, please contact Joan Durocher, General Counsel and Director of Policy, and Amged Soliman, Attorney-Advisor, by e-mail at asoliman@ncd.gov. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Clyde E. Terry". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Clyde E. Terry
Chairperson