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THE TRUMP ADMINISTRATION'S SOCIAL SECURITY
RULES WILL HARM INNOVATION IN THE ASSISTIVE
TECHNOLOGY INDUSTRY AND PEOPLE WITH
DISABILITIES

*Christopher Buccafusco[†] & Mariel Talmage**

The following essay was adapted from the authors' comment submitted in opposition to the Trump Administration's Proposed Rules Regarding the Frequency and Notice of Continuing Disability Reviews.

The Trump Administration recently proposed changes to the rules governing disability benefits administered by the Social Security Administration (SSA).¹ The proposed rules are projected to cause many current recipients of government benefits to lose an important source of income.² This essay draws attention to an enormous, but previously unrecognized, cost of the proposed rules. By diminishing payments to people with disabilities, the proposed rules threaten the growth of the

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¹ Rules Regarding the Frequency and Notice of Continuing Disability Reviews, 84 Fed. Reg. 63588 (proposed Nov. 18, 2019) (to be codified at 20 C.F.R. pts. 404, 416).

² See *id.* at 63596 (describing the expected loss of benefits and other costs to the public).

multi-billion dollar assistive technology industry.³ This industry, which represents thousands of patents worth of innovative activity, is predicted to reach *\$31 billion* by 2024 and to grow at 7.4% annually.⁴ But those numbers are put at risk if consumers are unable to purchase assistive technologies because they do not receive Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) benefits.

The Social Security Administration Act establishes several categories of government benefits based on the recipient's disability, including SSI⁵ and SSDI.⁶ A series of statutes and implementing regulations in the 1980s established a review process for the Social Security Administration to periodically assess whether people with disabilities receiving these payments still meet statutory eligibility criteria.⁷ The SSA determines the frequency of Continuing Disability Reviews (CDRs), either through a full medical review or a less-intensive mailer review, based on an assessment of the recipient's likelihood of medical improvement, categorized into three Medical Improvement Diaries.⁸ The Medical Improvement Expected category is for recipients whose conditions are likely to improve such that they can again engage in substantial gainful activity, and typically involves a CDR every six to eighteen months.⁹ The Medical Improvement Possible category is assigned to all other disabilities that might improve, and involves a CDR at least every three years.¹⁰ Finally, the Medical Improvement Not Expected category includes disabilities that are not likely to improve or are likely to progressively worsen, and involves a CDR every five to seven years.¹¹

The proposed amendments to the SSA's regulations add a new medical improvement diary: Medical Improvement Likely, which imposes a CDR every two years.¹² More than four million current recipients of SSDI or SSI will fall into this category should the rules be

³ *Assistive Technology Market Estimates: Rapid Growth Ahead*, BUREAU OF INTERNET ACCESSIBILITY (Aug. 8, 2019, 10:33 AM), <https://www.boia.org/blog/assistive-technology-market-estimates-rapid-growth-ahead> [<https://perma.cc/4L5J-PW4D>].

⁴ *Id.*

⁵ 42 U.S.C. §§ 1381–1385 (2018).

⁶ *Id.* §§ 401–434.

⁷ Rules Regarding the Frequency and Notice of Continuing Disability Reviews, 84 Fed. Reg. at 63588–89 (discussing amendments to the Social Security Act in 1980, 1983, and 1984, and the SSA's promulgation of regulations in 1986).

⁸ *Id.* at 63589–90; *see* 42 U.S.C. § 421(i); 20 C.F.R. §§ 404.1590, 416.990 (2019).

⁹ Rules Regarding the Frequency and Notice of Continuing Disability Reviews, 84 Fed. Reg. at 63589.

¹⁰ *Id.* at 63589–90.

¹¹ *Id.* at 63590.

¹² *Id.*

adopted.¹³ The SSA also proposed revisions to the existing diary categories to acknowledge advances in testing and treatment for different conditions.¹⁴ The SSA estimates that increasing the frequency of CDRs through these changes will result in a net reduction of \$2 billion in Old Age, Survivor's, and SSDI payments, and a reduction of \$0.6 billion in SSI payments between fiscal years 2020 and 2029.¹⁵

These proposed changes by the Social Security Administration will cause many people with disabilities to lose their SSI or SSDI benefits.¹⁶ The proposals are based on the assumption that an increased frequency of CDRs will reduce the SSA's expenditures and improve reemployment of those who lose their benefits sooner than they would under the current rules.¹⁷ This justification is tenuous at best—by the SSA's own admission, its past experience suggests that many of those who lose benefits do *not* return to the workforce at a Substantial Gainful Activity (SGA) level.¹⁸ Further, a causal link between a shorter duration of receiving benefits and improved work outcomes has not been established.¹⁹ Therefore, the more frequent and burdensome CDRs will leave many current beneficiaries without benefits despite their inability

¹³ See Sarah Kim, *Trump Administration's Proposed Disability Benefits Policy Change Will Hurt Thousands of Americans*, FORBES (Dec. 17, 2019, 1:28 PM), <https://www.forbes.com/sites/sarahkim/2019/12/17/trump-administrations-proposed-ssdi-policy-change/#4a22a66b4abe> [<https://perma.cc/X4DL-NR3Y>].

¹⁴ Rules Regarding the Frequency and Notice of Continuing Disability Reviews, 84 Fed. Reg. at 63592.

¹⁵ *Id.* at 63596.

¹⁶ *See id.*

¹⁷ *Id.* at 63590–91, 63596–97.

¹⁸ *See id.* at 63591. (“Overall, about 22 percent [of beneficiaries and recipients whose benefits terminated due to a 1997 statutory change] returned to work at an SGA level during the first three years . . . [I]n 2013, 35.5 percent of the 40-year-old adults who had been out of the work force for 1 year returned to work at an SGA level. The percentage of the 40-year-olds who returned to work at an SGA level dropped to 27.1 percent after 2 years out of the work force, 17 percent after 3 years, and to only 7.4 percent after 7 years. In the same year, 30.7 percent of the 50-year-old adults out of the work force for 1 year returned to work at an SGA level, 23.5 percent after 2 years, 14 percent after 3 years, and only 5.5 percent after 7 years out of the work force.”); *see also* Lowell Arye, *Trump Seeks to Bring Back Social Security Rule Changes, One of Reagan's Worst Ideas*, HILL (Jan. 27, 2020, 6:30 PM), <https://thehill.com/blogs/congress-blog/politics/480182-trump-seeks-to-bring-back-social-security-rule-changes-one-of> [<https://perma.cc/564K-SMGS>] (“SSA research shows that 22 percent of individuals returned to the workforce during the first three years following benefit termination. More significantly, it also shows that 78 percent of individuals did NOT return to the workforce during the first three years following termination from the rolls. Without their benefits, these individuals are left with no means of supporting themselves.”).

¹⁹ Rules Regarding the Frequency and Notice of Continuing Disability Reviews, 84 Fed. Reg. at 63591 (“Although the data shows a modest correlation between the length of time outside of the workforce and likelihood of reentering at an SGA level, the data does not provide evidence of causality between the two.”).

to work, with devastating impacts on individuals who rely on these benefits to cover food, medical care, and housing costs.²⁰

But there is another, less obvious impact of the proposed rule: the expected loss of benefits will threaten the progress of design innovation for accessible technologies, to the detriment of disabled and nondisabled people, as well as to the businesses and entrepreneurs who create and sell these technologies.

For over a century and a half, government-support payments to people with disabilities have been important drivers of innovation in accessible design.²¹ The needs and preferences of people with disabilities have spurred innovations in artificial limbs, wheelchairs, vehicles, software, electronics, and the built environment.²² But people with disabilities often lack the wealth to purchase new technologies. There is a long history of social welfare payments, which include the SSI and SSDI payments subject to the proposed rule, driving design innovation.²³ These types of benefits give people with disabilities who may be unable to work or unable to work full time the buying power to create demand for a wide variety of assistive technologies.²⁴ This demand incentivizes firms to develop and produce better products.²⁵ Moreover, these design innovations have wide benefits to people with and without disabilities.²⁶

An early example of social welfare payments driving design innovation is improvements to artificial limbs spurred by payments to

²⁰ See Arye, *supra* note 18 (comparing the proposed rules to similar Reagan Administration policies that left people with disabilities unable to provide for themselves and in some cases led to their deaths).

²¹ Christopher Buccafusco, *Disability and Design*, 95 N.Y.U. L. REV. (forthcoming 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3497902; see also BETH LINKER, *WAR'S WASTE: REHABILITATION IN WORLD WAR I AMERICA* 98–100 (2011).

²² Buccafusco, *supra* note 21.

²³ *Id.* (manuscript at 9–14, 47, 49–50).

²⁴ *Id.*; AIMI HAMRAIE, *BUILDING ACCESS: UNIVERSAL DESIGN AND THE POLITICS OF DISABILITY* 51 (2017) (“Following the Civil War, the U.S. federal government offered subsidies for the invention and manufacture of artificial limbs for soldiers, creating a marketplace for new innovations in prosthetics. As the new technologies proliferated, inventors advertised their products by claiming their authority to know and make these devices.”); see also BESS WILLIAMSON, *ACCESSIBLE AMERICA: A HISTORY OF DISABILITY AND DESIGN* 34 (2019) (describing the innovation-boosting effect of automobile subsidies to disabled World War II veterans).

²⁵ Buccafusco, *supra* note 21 (manuscript at 9–15, 47, 49–50).

²⁶ *Id.* (manuscript at 45) (“To the extent that many patented innovations for disabled access may be narrowly tailored to a specific need, they are likely to be most beneficial to disabled people themselves. It is possible, however, that nondisabled people may obtain various positive externalities either because the invention turns out to be useful for them as well, or because the invention unlocks a stream of research that produces other products that will be valuable for nondisabled users.”); see also Elizabeth F. Emens, *Integrating Accommodation*, 156 U. PA. L. REV. 839, 850–59 (2008) (describing the many positive externalities that nondisabled people receive from accommodations for people with disabilities).

veterans.²⁷ Prior to the Civil War, artificial limbs were expensive, custom-made wooden pieces made to order by artisans.²⁸ Following the Civil War, amputee veterans received “limb allowances,” and by the end of World War I the government had invested in artificial limb development itself.²⁹ Government pensions and allowances for Civil War and World War I veterans allowed more people to be able to afford these devices, and firms responded by investing in innovations to take artificial limb from a prohibitively expensive bespoke creation to a mass-produced and affordable technology.³⁰ Once able to access these devices, veterans were better equipped to re-enter the workforce, providing for their families and contributing to the economy.

Later, subsidies to World War II veterans to purchase cars modified to be driven by veterans who had lost one or both legs drove demand for accessible automobiles.³¹ Buick Motor Company responded with a version of its Reliant automobile that radically transformed mobility for veterans. These subsidies were instrumental to getting veterans who benefitted from them back into the workforce.³² However, these subsidies were short-lived, and once the subsidy program ended, the innovations all but disappeared.³³ The story of the post-war automobile subsidies starkly illustrates how important government benefits are in creating and sustaining demand for technological innovations.

These days, people with disabilities may use their SSI and SSDI benefits to purchase a broad range of assistive technologies that improve their lives immeasurably. These technologies, which often are not covered by insurance, include specialized wheelchairs for work and for leisure, artifacts for modifying their offices and their homes, and thousands of other products that improve users’ health, happiness, and

²⁷ HAMARAIE, *supra* note 24, at 51; LINKER, *supra* note 21, at 98 (“The boom years for US prosthetic manufacturing began during the Civil War, when the Union incentivized limb production by giving its 35,000 amputee-veterans a ‘limb allowance’ for the purchase of replacement limbs.”); Buccafusco, *supra* note 21 (manuscript at 9–13).

²⁸ Buccafusco, *supra* note 21 (manuscript at 9); *see also* Stephen Mihm, “A Limb Which Shall Be Presentable in Polite Society”: Prosthetic Technologies in the Nineteenth Century, in ARTIFICIAL PARTS, PRACTICAL LIVES: MODERN HISTORIES OF PROSTHETICS 282–83 (Katherine Ott et al., eds., 2002).

²⁹ LINKER, *supra* note 21, at 98–99; Buccafusco, *supra* note 21 (manuscript at 11).

³⁰ LINKER, *supra* note 21, at 98–99; Buccafusco, *supra* note 21 (manuscript at 12).

³¹ WILLIAMSON, *supra* note 24, at 33–35; Buccafusco, *supra* note 21 (manuscript at 13–14).

³² WILLIAMSON, *supra* note 24, at 33–35; Buccafusco, *supra* note 21 (manuscript at 13).

³³ Buccafusco, *supra* note 21 (manuscript at 14); Mary Tremblay et al., *When Elevators Were for Pianos: An Oral History Account of the Civilian Experience of Using Wheelchairs in Canadian Society. The First Twenty-Five Years: 1945-1970*, 20 DISABILITY & SOC’Y 103, 107 (2005) (“Hand-controls for automobiles were developed specifically for WW II veterans in 1945 by automobile companies. Production ceased once the veterans’ needs had been met. Civilians worked directly with mechanics to develop and install their own designs.”).

productivity.³⁴ Already, 3D printing and artificial intelligence are further expanding the range of assistive technologies for people with disabilities.

Social welfare payments that allow beneficiaries to use the funds as they choose, like the SSI and SSDI benefits subject to the proposed rulemaking, enable people with disabilities to purchase assistive technologies beyond mobility aids and medical equipment. This buying power creates innovation incentives that benefit not only people with disabilities, but also people without disabilities and businesses and entrepreneurs across a variety of industries. Many common products and technologies started as assistive technologies for people with disabilities.³⁵ For example, the speech-to-text and voice recognition capabilities now standard in smartphones got their starts as software to assist people with a variety of disabilities.³⁶ The Segway, now a common vehicle for police departments, security guards, and city tourists, started as a mobility aid (and is still popular as such, including among veterans who have lost one or both legs).³⁷ Eye-gaze-tracking technology that originated to facilitate communication by people with paralysis is now a central component of marketing analytics in e-commerce and has been used to develop new safety features in luxury automobiles.³⁸ Finally, OXO Good Grips kitchen utensils were originally designed to make cooking easier for people with disabilities such as arthritis, but are now enjoyed by a wide variety of consumers, with and without disabilities, who find the large grips improve the experience of cooking.³⁹

The SSA's analysis of the costs of implementing the proposed rule changes completely ignores the costs of losing the demand-side design incentives generated by SSI and SSDI payments, the resulting opportunity costs to disabled and nondisabled people who will be without technological innovations that make their lives easier, and the costs to businesses in losing a significant sector of their market.⁴⁰ Further, the proposed rules ignore the fact that SSI and SSDI payments give people with disabilities the financial means to purchase assistive technology necessary to facilitate their return to the workforce. Accordingly, the proposed rules undermine their own fundamental goals. Because the

³⁴ E.g., Charlotte Hilton Anderson, *21 of the Best-Selling Assistive Devices You can Buy on Amazon* (Nov. 20, 2018, 8:34 AM), <https://creakyjoints.org/living-with-arthritis/best-selling-assistive-devices> [<https://perma.cc/5G5P-SP5J>].

³⁵ Nicholas Steenhout, *The Evolution of Assistive Technology into Everyday Products*, PART OF A WHOLE, <https://incl.ca/the-evolution-of-assistive-technology-into-everyday-products> [<https://perma.cc/UWB6-X69A>].

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Buccafusco, *supra* note 21 (manuscript at 42).

⁴⁰ Rules Regarding the Frequency and Notice of Continuing Disability Reviews, 84 Fed. Reg. 63588, 63596 (proposed Nov. 18, 2019) (to be codified at 20 C.F.R. pts. 404, 406).

proposed rules will be bad for people with disabilities, bad for people without disabilities, and bad for the economy, we urge the SSA to not adopt the proposed amendments to the SSA rules.