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ASSET BUILDING by People with Disabilities

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Accessible Assets: Bringing Together the Disability and Asset-Building Communities

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> [T]he concentration on income distribution as the principal guide to distributional fairness prevents an understanding of the predicament of disability and its moral and political implications for social analysis.[1]

The unique needs of people with disabilities have not been sufficiently considered in asset-building policy. People with disabilities have lower employment levels, report lower levels of savings, and are more likely to experience poverty than those without disabilities. Although the connection between disability and poverty is inextricable, it is understudied and often exacerbated by misguided policy.

Giving people the ability to save and acquire assets often lifts them out of poverty permanently. One significant barrier to saving is the asset limits contained in many public benefit programs. These limits discourage people from saving since such savings are counted against them in public benefits eligibility determinations. Advocates across the country are implementing several types of asset-building programs with features particularly helpful to people with disabilities—programs to ensure that people with disabilities are taking advantage of the earned income tax credit (EITC), alternative financing programs, and individual development accounts (IDAs) that allow people to save for assistive technology and assistive technology services. Support for the reauthorization of the federal Assets for Independence Act is vital to maintaining and even expanding current asset-building programs.[2] Two bills, the Achieving a Better Life Experience Act of 2009 (ABLE Act) and the recently introduced SSI Savers Act of 2010, will, if enacted, add to current asset-building programs and, along with the Assets for Independence Act, increase financial stability for people with disabilities.[3] Asset building, with targeted outreach, funding, and advocacy, can become accessible to everyone.

[1]Amartya Sen, Lamont University Professor and Professor of Economics and Philosophy, Harvard University, Keynote Address at the World Bank Disability and Inclusive Development Conference 2004 (Nov. 30–Dec. 1, 2004), http://bit.ly/worldbank_disability.

[2]Assets for Independence Act (Title IV of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998) §§ 401–416, 42 U.S.C. § 604 note, as amended.

[3]Achieving a Better Life Experience Act of 2009, S. 493, 111th Cong. (2009); H.R. 1205, 111th Cong. (2009); SSI Savers Act of 2010, H.R. 4937, 111th Cong. (2010).

Disability and Economic Insecurity

There is a comparatively high rate of poverty and financial instability among people with disabilities. The poverty rate of working-age people with disabilities was 25 percent compared to 9 percent for those without disabilities.[4] Poverty among those with disabilities affects not only them but also their families. According to the Census Bureau, more than 41 million Americans—16 percent of the total population—report a sensory, physical, mental, or self-care disability.[5] A study of the working-age population found that the number of persons with disabilities varies widely with race: 6 percent of Asians, 12 percent of whites, 17 percent of blacks, and 22 percent of American Indians report a disability.[6]

People with disabilities have much lower levels of employment than the rest of the population. In 2009 about one-fifth of people with disabilities were in the labor force compared to more than two-thirds of people without a disability.[7] A higher proportion of people with disabilities actively look for employment but are unable to find work compared to those without disabilities. In November 2009 the unemployment rate was 14 percent for those with disabilities and 9 percent for those without.[8] This disparity continues within the labor force: workers with disabilities tend to earn much less than those with no disabilities. In 2007 the median income of households with any working-age people with disabilities was $38,400 compared with $61,000 for households without people with disabilities—a staggering difference of $22,600.[9]

People with disabilities report lower median incomes and lower rates of saving, investing, and using bank accounts. In a survey of taxpayers with disabilities, 30 percent reported no savings or investments at all, compared to 12 percent of taxpayers without disabilities.[10] Taxpayers with disabilities were less likely than taxpayers without disabilities to report owning an investment account (31 percent versus 52 percent), using a checking account (11 percent versus 52 percent), or receiving their tax refund via direct deposit (44 percent versus 59 percent).[11] Despite the federal government's efforts to encourage direct deposit of benefits, more than half of Supplemental Security Income (SSI) payments, the public assistance program primarily serving people with disabilities, were made by check principally because recipients did not have a bank account.[12]

[4]William Erickson & Camille Lee, Cornell University Rehabilitation Research and Training Center on Disability Demographics and Statistics, 2007 Disability Status Report: United States 34 (2008), http://bit.ly/erickson_lee_stats. The highest poverty rate was for people with a mental disability, at 32 percent, and lowest for those with a sensory disability, at 22 percent.

[5]Matthew Brault, U.S. Census Bureau, Economics and Statistics Administration, U.S. Department of Commerce, Disability Status and the Characteristics of People in Group Quarters: A Brief Analysis of Disability Prevalence Among the Civilian Noninstitutionalized and Total Populations in the American Community Survey 2 (2008), http://bit.ly/census_gov_disability.

[6]Erickson & Lee*, supra* note 4, at 3 (working age is defined as between 21 and 64).

[7]Bureau of Labor Statistics, U.S. Department of Labor, Labor Force Statistics from the Current Population Survey: Employment Status and Disability Status, November 2009—Table 1: Employment Status of the Civilian Noninstitutional Population by Sex, Age, and Disability Status, Not Seasonally Adjusted (last modified Dec. 1, 2009), http://bit.ly/employment_disability (21.5 percent of persons with disabilities and 70.4 percent of persons without disabilities were in the labor force). Conducted by the Census Bureau for the Bureau of Labor Statistics, the Current Population Survey is a monthly survey of households.

[8]*Id.*

[9]Erickson & Lee, *supra* note 4, at 32.

[10]Wage and Investment Research, Internal Revenue Service, Department of the Treasury, Pub. 4640 (prepared for Stakeholder Partnerships, Education & Communication (SPEC) Disability Initiative of the Internal Revenue Service), Characteristics of Disabled Taxpayers Ages 18 to 59: Study of Filing Patterns and Preferences for Receiving Tax Information and Services 29 (2007), http://bit.ly/irs_pub_4640.

[11]*Id.* at 29–30.

[12]U.S. General Accounting Office, Report No. GAO-02-913, Electronic Transfers: Use by Federal Payment Recipients Has Increased but Obstacles to Greater Participation Remain 3, 56 (2002), http://bit.ly/gao_02_913_report. Before Supplemental Security Income (SSI) was created, many states had one assistance program for low-income people who were blind and another for low-income people with other disabilities. SSI has maintained these distinctions, and there are still ways in which the rules for people with blindness differ from those for people with other disabilities (Eileen P. Sweeney & Shawn Fremstad, Center on Budget and Policy Priorities, Supplemental Security Income: Supporting People with Disabilities and the Elderly Poor 6 n.1 (2005), http://bit.ly/cbppssidisab). We refer to both categories as simply people with disabilities.

In fact, two-thirds of SSI recipients reported being unbanked.[13]

Such low levels of income and savings lead to high levels of poverty. And the daily life of people who have disabilities and live in poverty may be more difficult than the numbers suggest because they are more likely than persons without disabilities to experience material hardship.[14] This is in part because a person with a disability may need to utilize costly additional resources, such as assistive technology or attendant care, in order to meet the same basic needs as persons without disabilities. Taking these adjusted expenses into account, researchers calculated the level of income that a person with a disability would need to have the same rate of material hardship, such as food insecurity or forgoing needed medical care, as a person without a disability. They found that in 2005, for example, an individual with a long-term work disability would need an annual income of $29,000 to experience the same level of food insecurity as a person who had no disability and who had an annual income of $10,160, then the federal poverty threshold.[15]

Barriers to Saving

There is a clear and disturbing link between disability and unemployment, poverty, and material hardship. Asset-building programs, which give people the opportunity to escape poverty permanently, have gained momentum in the academic, public, and nonprofit sectors.[16] In general, however, these policies do not take into consideration, or give short shrift to, people with disabilities and the saving barriers unique to them.[17] The barriers to saving that people with disabilities face demand the implementation of policies and programs to increase inclusion and promote wealth creation and financial stability.

Some of the barriers that people face in using financial services are logistical. In 2006 individuals who had disabilities and were taxpayers reported "barriers to doing their everyday banking—from teller windows that are too tall for someone in a wheelchair, to practices such as reporting a bank balance on a piece of paper for someone who is visually impaired, to lack of available voice-activated ATMs."[18]

Harder to correct are barriers of policy that discourage and even prevent low-income people with disabilities from saving and building assets. Many benefit programs—Medicaid, SSI, the Supplemental Nutrition Assistance Program (SNAP) (formerly known as the Food Stamp Program), Temporary Assistance for Needy Families (TANF), child care subsidies, and others—are restricted to individuals whose assets are under a certain limit. Asset limits vary from program to program and state to state. An individual in one state may be subject to multiple asset limits of varying amounts, while an individual in another state is subject to very different asset limits.[19] Some state programs, such as the Texas program,

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[13]U.S. General Accounting Office, *supra* note 12, at 56 (67 percent).

[14]Shawn Fremstad, Center for Economic and Policy Research, Half in Ten: Why Taking Disability into Account Is Essential to Reducing Income Poverty and Expanding Economic Inclusion 2 (2009), http://bit.ly/ceps_half-in-ten.

[15]Peiyun She & Gina A. Livermore, Cornell University Institute for Policy Research, Material Hardship, Poverty, and Disability among Working-Age Adults 1–2 (2006), http://bit.ly/cornell_pov_disability.

[16]For more information about asset building, see Michael Sherraden, IDAs and Asset-Building Policy: Lessons and Directions (Center for Social Development, Washington University in St. Louis, Working Paper No. 08-12, 2008), http://bit.ly/sherraden_ida_assets; Reid Cramer, *Public Policy and Asset Building: Promising Account-Based Systems and the Rationale for Inclusion,* 40 Clearinghouse Review 136 (May–June 2006); Dory Rand, *Financial Education and Asset-Building Programs for Welfare Recipients and Low-Income Workers: The Illinois Experience,* 38 *id.* 49 (May–June 2004); Steve Wrone, *Financial Education and Asset-Building Opportunities for Low-Income Communities,* 37 *id.* 272 (July–Aug. 2003).

[17]See generally Fremstad, *supra* note 14.

[18]Johnette T. Hartnett et al., U.S. Department of Labor, Creating a Roadmap out of Poverty for Americans with Disabilities: the Relationship of the Employment and Training Administration's Workforce Development System and Local Asset-Building Coalitions 6 (2009), http://bit.ly/dolroadmap.

[19]Dory Rand, *Reforming State Rules on Asset Limits: How to Remove Barriers to Saving and Asset Accumulation in Public Benefit Programs*, 40 Clearinghouse Review 625 (March–April 2007).

have asset limits as low as $1,000.[20] These limits discourage families from utilizing mainstream financial institutions and setting up savings accounts.

The vast majority of SSI recipients—6.5 million of a total of 7.7 million recipients in January 2010—receive SSI disability payments.[21] In 2009 the average monthly payment was $500.50.[22] Although SSI payments can be vital for meeting expenses, the paltry benefits in conjunction with low asset limits leave many recipients well below the poverty line. When the SSI program began in 1974, the asset limits were $1,500 per individual and $2,250 per couple.[23] Asset limits were last revised over twenty years ago to $2,000 per individual and $3,000 per couple as specified in the law's schedule of increases.[24] That means that since 1989 no adjustments have been made for inflation or cost of living.[25] If the 1974 limits had been even moderately adjusted for inflation, the 2010 limits would be $6,592 and $9,889 respectively.[26] Instead the current assets limits are only $500 more for an individual and $750 more for a couple than they were in 1974.

State-administered assistance programs vary greatly and tend to be very restrictive. For example, in those states that set asset limits for Medicaid, the limits range radically from $1,000 to $30,000.[27] By contrast, most states' assets limits for TANF range from $2,000 to $3,000, and two states, Ohio and Virginia, have eliminated TANF asset limits entirely.[28] Promisingly, asset-limit reform has been more widespread for other state-administered benefit programs. For example, more than twenty states have no asset limits for SNAP.[29] Evidence shows that asset limits can be successfully eliminated without a substantial increase in program participants or political fallout. When Ohio and Virginia completely eliminated TANF asset limits, for example, caseloads remained at low levels.[30] Reforming asset limits is an essential first step toward eliminating barriers to saving.

Asset-Building Programs for People with Disabilities

EITC outreach, assistive technology financial loans, and IDA programs are a demonstrated way to increase assets. IDAs federally funded under the Assets

[20]Texas Health and Human Services Commission, Texas Works Handbook, Revision 10-1, Part A—Section 1220 (2010), http://bit.ly/texhandbk. See also Margaret Lombe et al., *Exploring Effects of Institutional Characteristics on Saving Outcome: The Case of the Cash and Counseling Program*, 7 Journal of Policy Practice 260, 262 (2008).

[21]U.S. Social Security Administration, U.S. Department of Health and Human Services, SSI Federally Administered Payments—Table 2: Recipients, by Eligibility Category and Age, February 2009–February 2010 (2010), http://bit.ly/ssifedpayments.

[22]U.S. Social Security Administration, U.S. Department of Health and Human Services, SSI Monthly Statistics, February 2010, SSI Federally Administered Payments—Table 1:Recipients (by Type of Payment), Total Payments, and Average Monthly Payment, February 2009–February 2010 (2010), http://bit.ly/ssifedpayments.

[23]SSI was established by the Social Security Amendments of 1972 (Title III, Supplemental Security Income for Aged, Blind, and Disabled), Pub. L. No. 92-603, 66 Stat. 1465, 42 U.S.C. § 1382(a)(3). The 1972 amendments provided that SSI would not become effective until 1974.

[24]*Id.*; Social Security Administration, Annual Report of the Supplemental Security Income Program, Social Security Advisory Board Statement on the Supplemental Security Income Program (2008), http://bit.ly/ssaannualrpt08 (asset limits were increased "gradually between 1985 and 1989 to $2,000 for an individual and $3,000 for a couple").

[25]Social Security Administration, *supra* note 24; Sweeney & Fremstad, *supra* note 12, at 5.

[26]These calculations were reached by using the Bureau of Labor Statistics' Consumer Price Index inflation calculator, http://bit.ly/bls_cpi_calculator. See also Social Security Administration, *supra* note 24 ("If the 1989 amounts had been adjusted for inflation, they would now be about $3,500 for an individual and $5,250 for a couple. If they had been adjusted by the average wage index, they would now be about $4,200 for an individual and $6,300 for a couple."). See also Sweeney & Fremstad, *supra* note 12, at 5.

[27]CFED (Corporation for Enterprise Development), 2009–2010 Assets and Opportunity Scorecard—Resource Guide: Lifting Asset Limits in Public Benefit Programs 1 (2009), http://bit.ly/cfedassetlimits.

[28]*Id.*

[29]*Id.*

[30]Rand, *supra* note 19, at 629–30.

for Independence Act are a powerful tool for low-income people with disabilities because IDA savings are excluded from all federal public benefit asset tests.[31] State and privately funded IDA or matched savings programs, which are structured to allow for assistive technology purchases and paired with financial education, are especially beneficial.

Earned Income Tax Credit. The EITC complements many asset-building policies and allows families to accumulate more resources for saving and building wealth. The EITC is a fully refundable tax credit for low-wage earners between the ages of 25 and 60. It has the potential to be a large proportion of a family's annual income. The American Recovery and Reinvestment Act temporarily increased the EITC to $5,657 for taxpayers with three or more qualifying children.[32]

States may have their own EITC, which is independent of the federal EITC. Both federal and state EITCs are calculated differently for purposes of public benefit income tests and asset tests.[33] No federal program counts the federal EITC as income. Thus Medicaid, SSI, SNAP, federally assisted housing, veterans benefits, and Head Start do not count the EITC as income. The treatment of the federal EITC in asset tests is more complicated. Some programs, such as SNAP and SSI, exclude the tax credit from their asset tests for a limited period: twelve months and nine months, respectively. In other benefit programs, each state has its own exclusion rule. The treatment of state EITCs in asset tests for benefit programs tends to be similar to that of the federal EITC.[34] If federal and state programs coordinated their treatment of EITCs, more people would be able to understand and take advantage of state and federal EITCs.

While the EITC provides a much needed benefit to working families, many people do not receive the tax credit because they are under no obligation to file a tax return. One study estimates that between 1.3 and 1.6 million employed people with disabilities do not file tax returns and "could be missing out on a number of refundable tax credits" for which they are eligible.[35]

In 2005 the National Disability Institute initiated the Real Economic Impact Tour to give income tax assistance and financial education to low-income taxpayers with disabilities. Organizations involved in the tour provide access to free tax assistance featuring education about eligibility for and the benefits of the EITC.[36] The organizations involved also encourage working individuals who have disabilities and receive public benefits to file a tax return even if they are not required to do so in order to take advantage of refundable credits.[37] In the 2009 filing season the tour involved the collaboration of 634 community-based partnerships in eighty-four cities.[38] That year the Real Economic Impact Tour prepared 181,152 tax returns for people with

[31]Assets for Independence Act § 415, 42 U.S.C. § 604 note.

[32]Internal Revenue Service, ARRA and the Earned Income Tax Credit (2009), http://bit.ly/irs_arra_eitc; President Obama's budget for the 2011 fiscal year states: "The Administration continues to support expanding refundability of the child tax credit by lowering the refundability threshold to $3,000, as well as the expansion of the earned income tax credit [EITC] for married couples by increasing the phase-out threshold by $5,000 compared to other filers" (Office of Management and Budget, Budget of the U.S. Government, Fiscal Year 2011, at 171 n.6 (2010)); American Recovery and Reinvestment Act, Pub. L. No. 111-5, 123 Stat. 115 (2009).

[33]Most states that offer the EITC set the benefit level as a percentage of the federal EITC, ranging from 3.5 percent to 40 percent (Erica Williams & Nicholas Johnson, Center on Budget and Policy Priorities, How Much Would a State Earned Income Tax Credit Cost In 2010? (2009), http://bit.ly/cbpp_eitc).

[34]Center on Budget and Policy Priorities, Questions and Answers About the EITC: Comparing the Eligibility Requirements for the EIC and the CTC (2009), http://bit.ly/cbpp_eitc_eligibility.

[35]Hartnett et al., *supra* note 18, at 4.

[36]*Id.* at 5–6.

[37]*Id.*

[38]National Disability Institute, Building a Better Economic Future for Americans with Disabilities: Real Economic Impact Tour Annual Progress Report 2008–2009, at 1, 4 (2009), http://bit.ly/reit2009.

disabilities.[39] Refunds from those tax returns, reflecting the EITC, totaled $176 million with an average refund of $950 per person.[40]

Assistive Technology Loan Programs. Research by the National Council on Disability shows that persons who have disabilities and use assistive technology reduce their dependence on family members, personal assistants, and school-related services.[41] This, in turn, helps people with disabilities remain in their homes and greatly improves their quality of life.[42] Assistive technology, besides their health and quality-of-life benefits, can improve an individual's financial stability. Almost one-third of all assistive technology users surveyed indicated that their family saved on average about $1,110 per month.[43]

Assistive technology can be prohibitively expensive for low- and moderate-income individuals partly because the relatively low income and employment rates of people with disabilities make obtaining credit difficult.[44] The Assistive Technology Act of 1998, as significantly amended by the Assistive Technology Act of 2004, built upon earlier acts in tackling the need for affordable credit for assistive technology.[45] States receive federal funding to establish assistive technology programs. State assistive technology programs may have two components: an assistive technology loan program and an alternative financing program, the latter encompassing assistive technology financial loans.[46] The first component, the assistive technology loan program, enables persons with disabilities to use assistive technology devices for short periods. The loan of the device itself allows the borrower to test the device and decide whether to buy the device.[47] By contrast, alternative financing programs allow individuals with disabilities and their families to purchase assistive technology devices and assistive technology services.[48]

The Assistive Technology Act was not funded until 2000, when Congress authorized $4 million for the alternative financing program.[49] Kansas, Maryland, Missouri, Pennsylvania, Utah, and Virginia received the first grants.[50] Now thirty-three states and territories offer loans through alternative financing programs, which are typically structured as a

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[39]*Id.* at 4.

[40]*Id.* at 5.

[41]Joseph F. Wallace, *A Policy Analysis of the Assistive Technology Alternative Financing Program in the United States*, 14 Journal of Disability Policy Studies 74, 75 (2003).

[42]*Id.*

[43]*Id.* at 75.

[44]Wallace, *supra* note 41, at 74.

[45]Assistive Technology Act of 1998, 29 U.S.C. §§ 3001 *et seq.*, as amended by the Assistive Technology Act of 2004, Pub. L. No. 108-364, 118 Stat. 1707. The 2004 Act reorganized and streamlined the 1998 Act and omitted Title III Alternative Financing Mechanisms but incorporated the concept into the 2004 Act's alternative financing programs. The 1998 Act in turn built upon, even as it repealed (in Section 401) the Technology-Related Assistance for Individuals with Disabilities Act of 1988, Pub. L. No. 100-407, 102 Stat. 1044 (repealed), and the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994, Pub. L. No. 103-218, 112 Stat. 3661 (repealed).

[46]29 U.S.C. § 3003(e)(2)(A).

[47]First created in the Technology-Related Assistance for Individuals with Disabilities Act of 1988, assistive technology loans differ from financing loan programs in that they loan the actual technology device to the individual with a disability to use for a short period. The assistive technology loan allows such individuals to borrow assistive technology devices on a short-term basis (1) for a trial use to determine whether they wish to purchase the device, (2) to fill in when equipment is in the shop for repairs, or (3) when waiting for delivery of ordered equipment. Some organizations offer both financing programs and device-loan programs.

[48]29 U.S.C. § 3003(e)(2)(A)(ii).

[49]Wallace, *supra* note 41, at 76; see Fiscal Year 2000 Appropriations Bill, Pub. L. No. 106-113, 113 Stat. 1501, 1501A-249.

[50]Wallace, *supra* note 41, at 76.

partnership between a community-based organization and a lender.[51] The federal government provides the funding, the nonprofit entity provides the administrative support, while the lender provides the credit review, loan distribution, and collection processes.[52] Between 2001 and 2008 these programs processed 13,644 applications, dispersed 8,130 loans, and lent over $92 million.[53]

Federal funding for alternative financing programs is not continuous; rather states usually receive onetime grants. The Assistive Technology Act of 2004 extended the alternative financing program to 2010.[54] The most recent infusion of cash was in 2005.[55] However, many alternative financing programs do receive periodic funding through state assistive technology programs sponsored by the U.S. Department of Education.[56]

Individual Development Accounts and Matched Savings Programs. Along with programs to increase use of the EITC and loans through alternative financing programs, IDA programs are a demonstrated way to increase assets. Federally funded Assets for Independence IDAs are a powerful tool for low-income people with disabilities because the savings are excluded from all federal public benefit asset tests.[57] State and privately funded IDA or matched savings programs are especially beneficial when they are structured to allow for assistive technology purchases and paired with financial education.

Assets for Independence IDAs. A centerpiece of asset-building policy is the IDA. An IDA is a matched savings account in which an eligible low-income participant can accumulate funds to use for certain permissible goals.[58] Of several different types of IDAs, here we discuss IDAs funded through the federal Assets for Independence program. Assets for Independence IDAs are typically structured to match every $1 saved by the participant with $2 from the funding source. Participants' contributions toward savings must come from earned income (i.e., amounts that participants have earned through work).[59]

Assets for Independence program IDAs may be used to save for a home or postsecondary education or to start or expand a small business.[60] Participants typically may deposit up to $2,000 which will then be matched for a total of $6,000 in savings. The IDA funds may be used only to

[51]Rehabilitation Engineering and Assistive Technology Society of North America, Alternative Financing Technical Assistance Project, State AT and Telework Financial Loan Programs (last updated April 7, 2010), http://bit.ly/state_afps; Telephone Interview with Hendrik Opstelten, National Assistive Technology Technical Assistance Partnership Project Associate, Rehabilitation Engineering and Assistive Technology Society of North America, in Arlington, Va. (Jan. 25, 2010). Besides the thirty-three states and territories offering loans under the alternative financing program, a number of loan programs operate independently of this funding source. Also under the umbrella of alternative financing programs are the underutilized Telework loans, which are specifically meant for the purchase of small-business equipment by people with disabilities (see Rehabilitation Engineering and Assistive Technology Society of North America, Alternative Financing Technical Assistance Project: Access to Telework Loan Programs (last updated Oct. 7, 2009), http://bit.ly/resna_telework.

[52]Wallace, *supra* note 41, at 76.

[53]National Assistive Technology Technical Assistance Partnership, AFP Chartbook 2000–2008: Data from the Alternative Financing Programs—Table 4: Loan Activity Summary of All Years (2009), http://bit.ly/nattap_afp_chart.

[54]Assistive Technology Act of 2004 § 8(a), 29 U.S.C. § 3007(a).

[55]Opstelten, *supra* note 51.

[56]*Id.*

[57]Assets for Independence IDAs were created by the Assets for Independence Demonstration Program of the Assets for Independence Act.

[58]Other than Assets for Independence IDAs, there are federal Individual Development Accounts (IDAs) under the Temporary Assistance for Needy Families program (Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 604(h)) and federal farm programs (Food, Conservation and Energy Act of 2008 § 5301, Pub. L. No. 110-246, 122 Stat. 1908).

[59]Section 410(a)(1) of the Assets for Independence Act (specifically incorporating the definition of earned income that appears in Section 911(d)(2) of the Internal Revenue Code, 26 U.S.C. § 911(d)(2) (2007)). IDAs under the Assets for Independence Act must be funded with earned income, but state or privately funded IDAs do not necessarily have this requirement.

[60]Assets for Independence Act § 404(8).

purchase eligible assets specified in the Act. As in assistive technology loan programs, Asset for Independence IDAs are administered by local nonprofit entities in partnership with banks or credit unions, with the nonprofit entities supplying an overall framework for administering the program while the financial institutions handle the accounts. The number of people who can participate in an IDA program is limited severely by the lack of suitable programs and the dismal level of grant funds. IDAs funded through the Assets for Independence program are an especially important tool for low-income people with disabilities because the savings in IDAs are excluded from countable income and countable assets under all federal benefit programs.[61]

State IDAs and Assistive Technology Purchases. Federally funded IDA programs, though extremely beneficial, are limited in that they do not permit the purchase of assistive technologies. A few state-funded IDA programs, such as those in Utah and Washington, allow people with disabilities to save for assistive technology and the three traditional categories of home, postsecondary education, and small-business capitalization. The Utah Individual Development Account Network, for example, permits any adult who is a resident of Utah, who has earned income below 200 percent of the federal poverty line, and who has no more than $10,000 in net assets excluding one car and one house to participate in the program. The program's matching dollars come from a variety of sources—government agencies, private companies, local charities, and individuals.[62] Since the Utah Individual Development Account Network's IDAs are not funded through a federal program, they may be used for assistive technology.

In the case of the Utah Individual Development Account Network and other non-federally funded IDAs, the match dollars are excluded from asset tests for benefit programs because they are structured as custodial accounts. Specifically the IDA program sponsor is the owner of the IDA account on behalf of the individual. Since the individual does not own the savings account it is not considered an asset and is not included in the asset tests of public benefit programs.[63]

The Washington Assistive Technology Foundation in collaboration with Washington State's Department of Community, Trade, and Economic Development and United Way of King County has an IDA program, but at present it is filled to capacity.[64] Participants may deposit up to $4,000 for assistive technology purchases and receive one-to-one matching funds for a maximum of $8,000 in savings. Assistive technology purchases that are permissible under the program are, among others, hearing aids, speech augmentation devices, modified vehicles, computers, and Braille devices. The Washington program stipulates that the assistive technology "must be used for work-related activities or education/training intended to lead to work-related activities."[65] Participants in this IDA pro-

[61]E.g., IDAs that are federally funded through the Assets for Independence Act are not counted as a resource in SSI or Medicaid. The Social Security Administration waived these IDAs in its Program Operations Manual System (E-mail from Abby Cooper, Asset Consultant, Kennedy Douglas Consulting, to Hannah Weinberger-Divack, VISTA-Asset-Building Specialist, Sargent Shriver National Center on Poverty Law (Jan. 25, 2010) (on file with Weinberger-Divack); see Social Security Administration's Program Operations Manual System, SI 00830.670 Individual Development Accounts (IDAs)—Demonstration Project (n.d.), http://bit.ly/ssa_poms).

[62]Utah Individual Development Account Network, Multiply Your Savings Efforts (n.d.) http://bit.ly/uidan_info.

[63]E-mail from Martha Wunderli, Utah Individual Development Account Network Statewide Director, AAA Fair Credit Foundation, to Hannah Weinberger-Divack (Jan. 25, 2010) (on file with Weinberger-Divack). Although a custodial account arrangement excludes the asset from consideration for benefit determinations, SSI treats federal and state IDA programs differently in terms of whether withdrawals from an IDA are considered earned income. Payment from a state IDA directly to a vendor is not considered earned income; however, in-kind support and maintenance, such as a home purchased or rented as a result of the withdrawal and vendor payment, would be calculated in the month's benefit determination. Thus, in contrast to the treatment of federally funded IDAs, the Social Security Administration is not allowed to deduct from earned income deposits to nonfederal IDAs (Cooper, *supra* note 61 (Jan. 25 and Feb. 10, 2010) (on file with Weinberger-Divack).

[64]Washington Access Fund, Matched Savings Account (or IDA Program) (n.d.), http://bit.ly/watf_ida.

[65]*Id.*

gram are also eligible to apply for low-interest assistive technology or business equipment loans. These loans may be combined with IDA funds to make assistive technology purchases.[66] Participants in the Washington IDA program are required to use their income to contribute to the savings, but income is defined to include SSI and Social Security Disability Insurance (SSDI) benefits. As in Utah, the IDA saving accounts are set up as custodial accounts and owned by the IDA program sponsor. Thus they are not considered an asset of the individual and are therefore not included in the asset tests of public benefit programs. This ensures that the IDAs do not affect eligibility for SSI or other monthly benefit payments.[67] However, participants who withdraw funds for a non-IDA purpose may lose their eligibility for or receive reduced benefits from SSI, Medicaid, or other government benefit programs.[68]

IDAs and Financial Education. People with disabilities are able to use IDAs effectively, although one study showed that their average savings was about $5.50 per month less than those without disabilities.[69] People with disabilities are less likely to seek financial education. This is unfortunate as there is a positive relationship between asset-specific financial education and savings (i.e., savings increase with financial education). Those advocating on behalf of people with disabilities should engage in outreach activities to encourage them to participate in financial education, which should result in higher savings in IDA programs.[70]

Allies Incorporated in New Jersey pioneered a financial literacy program specifically designed for people with developmental disabilities and other special needs. The program teaches people how to budget and save their earned income. In 2004 the New Jersey Council on Developmental Disabilities funded a matched savings program, called Success of Savings, administered by Allies.[71] The savings program gives participants dollar-for-dollar matching funds if they attend all the required financial literacy courses. The program is modeled after the Assets for Independence IDA program, with a difference: since it is a state and privately funded program, participants may save for smaller goals than those required under the federal program, and there are no restrictions on the use of the funds. This feature allows an individual who has never before saved to learn and experience saving without committing to a purchase as large as a mortgage. Allies' banking partners provide matching funds to supplement the state grant and participate as the financial education instructors. The savings accounts are opened jointly with Allies as the corporate fiduciary and the participant as the beneficiary. Allies uses the participant-deposited funds and the matching funds to pay vendors directly. Thus the funds are ineligible for consideration in determining social security or other federal benefit programs.

Advocacy Opportunities

Connecting clients with EITC filing assistance, IDAs, or assistive technology

[66]Washington Access Fund, Assistive Technology Individual Development Account: Frequently Asked Questions (n.d.), http://bit.ly/watf_loan.

[67]Unlike Utah's, Washington's law specifically excludes IDAs from asset-test determinations: "Funds held in an individual development account established under [Washington law] shall not be used in the determination of eligibility for, or the amount of, assistance in any state or federal means-tested program" (Wash. Rev. Code § 43.31.460(5) (2010)). Thus non–Assets for Independence Act IDAs in Washington do not have to be structured as custodial accounts to be excluded from asset tests; IDAs are exempt from all Washington State benefit programs and those federally funded programs that allow their exclusion.

[68]Because the IDAs are set up as custodial accounts, there is an opportunity to discuss benefits planning issues with clients before any money is withdrawn (E-mail from Frances Pennell, Executive Director, Washington Assistive Technology Fund, to Hannah Weinberger-Divack (February 10, 2010) (on file with Weinberger-Divack)).

[69]Margaret Lombe et al., Exploring Saving Performance in an IDA for People with Disabilities: Some Preliminary Findings 10 (Center for Social Development, Washington University in St. Louis, Working Paper No. 08-27, 2008), http://bit.ly/csd_wp08-27.

[70]*Id.* at 12.

[71]See Allies Inc., Financial Literacy: Success of Savings Program (2009), http://bit.ly/allied_fin_literacy.

financing can increase the financial stability of people with disabilities. Advocacy is also needed, however, in order to continue and expand the availability of asset-building programs in the disability community. In particular, advocates can encourage Congress to reauthorize funding for the Assets for Independence IDA program, support asset-limit reform in federal public benefit programs, and urge the enactment of the SSI Savers Act of 2010 and the Achieving a Better Life Experience Act of 2009.[72] These changes in legislation would greatly improve the opportunity for people with disabilities to increase financial security and avoid or escape poverty.

Federal Funding for the Assets for Independence Act. In order to continue providing IDAs, Congress must reauthorize the Assets for Independence Act.[73] The program is the largest source of grants for organizations that have IDA programs. Into IDAs funded by the Assets for Independence Act, 52,531 participants deposited earned income of about $45 million between 1999 and 2007.[74] More than 1,100 organizations provide matched savings to more than 60,000 Assets for Independence Act IDA savers across the country, and nearly every IDA program has a waiting a list.[75] Funding for the Assets for Independence IDA program has continued at a rate of $24 million per year even though funding authorization expired in 2003.[76] The proposed 2011 fiscal year federal budget would continue funding at the same level.[77] Advocates should push not only for continued funding but also for increased funding. The success of IDAs, indicated by pervasive waiting lists and the creation of over $45 million in savings, demonstrates the continued necessity and expansion of this program.

Federal Asset-Limit Reform. Asset limits are inefficient, counterproductive to economic security, and inequitable.[78] While there have been sporadic efforts to reform benefit programs controlled at the state level, asset limits for SSI, controlled by the federal government, remain firm. Recently, however, Congress began to consider asset-limit reform. On March 24 Rep. Niki Tsongas (D-Mass.) introduced the SSI Savers Act of 2010.[79] This proposed legislation would raise the asset limit for SSI beneficiaries to $5,000 per individual and $7,500 per couple and index the limits to inflation.[80] Furthermore, funds in a qualified tuition program, an education savings account, or an Assets for Independence IDA would be excluded in the SSI resource determination.[81] There is a movement at the federal level to exclude state-funded IDAs, such as those in Washington and Utah, from asset tests in federal benefit programs.[82] Advocates view the custodial account structure of state-funded IDAs

[72]SSI Savers Act of 2010; Achieving a Better Life Experience Act of 2009.

[73]42 U.S.C. § 604 note.

[74]Office of Community Services, Administration for Children and Families, U.S. Department of Health and Human Services, Report to Congress: Assets for Independence Program Status at the Conclusion of the Eighth Year vi (n.d.), http://bit.ly/hhs_afi_rpt.

[75]CFED, Support Individual Development Accounts: Reauthorize Assets for Independence 1 (n.d.), http://bit.ly/cfed_afi_reauth.

[76]*Id.*

[77]Office of Management and Budget, *supra* note 32, at 497, http://www.whitehouse.gov/omb/budget/fy2011/assets/hhs.pdf.

[78]Leslie Parrish, New America Foundation, To Save, Or Not to Save?: Reforming Asset Limits in Public Assistance Programs to Encourage Low-Income Americans to Save and Build Assets (2005), http://bit.ly/new_america_foundation_asset_limits.

[79]SSI Savers Act of 2010.

[80]*Id.* § 2 (would amend 42 U.S.C. 1382(a)(3)).

[81]*Id.* § 3 (would amend 42 U.S.C. 1382b) (regarding education funds, the bill states that "any funds in a qualified tuition program (as defined in section 529 of the Internal Revenue Code of 1986) or in a Coverdell education savings account (as defined in section 530 of such Code)" would be excluded from resource determinations under SSI)).

[82]Pennell, *supra* note 68.

as an imperfect solution and are seeking from the Social Security Administration an expanded waiver that will include all state-funded IDAs.[83]

A partial victory in federal asset reform came in 2008, when Congress passed the Food, Conservation, and Energy Act.[84] The bill reauthorized and renamed the Food Stamp Program as the Supplemental Nutrition Assistance Program. It also indexed the existing asset limit to inflation, rounded down to the nearest $250.[85] In effect, this means that asset limits will not be raised until inflation increases substantially. While indexing asset limits to inflation is a significant first step, it does not make up for the years in which asset limits remained stagnant. Advocates still need to push for legislation that will categorically exclude additional critical assets or eliminate asset limits entirely.

Achieving a Better Life Experience Act. New possibilities for overcoming the barriers to asset accumulation for people with disabilities are on the horizon. One such possibility is the Achieving a Better Life Experience Act of 2009. This bill would allow people with disabilities to set up a savings, or ABLE, account.

An ABLE account would be similar to a cross between an individual retirement account (IRA) and a special-needs trust. An IRA is a tax-advantaged savings plan designed to encourage saving for retirement. A special-needs trust, also called a supplemental-needs trust, is set up by an attorney for an individual with a disability so that the individual remains eligible for public benefits but also has the funds for supplementary needs. One of the main differences between an ABLE account and a special-needs trust is that an ABLE account allows the beneficiary to be the trustee and maintain control over the funds. This allows individuals with disabilities to retain their financial independence rather than having to turn their finances over to a trustee. Moreover, in an ABLE account beneficiaries may contribute their own funds to the account unlike in a special-needs trust. This is a marked improvement over the paternalistic assumption that an individual with a disability is unable to handle her own money.

Contributions to an ABLE account would be tax-deductible up to $2,000.[86] Contributions would not be considered earned income for purposes of determining SSI eligibility.[87] In fact, an individual may even contribute her SSI or SSDI payments to an ABLE account. Unlike special-needs trusts, an ABLE account may be used for such necessities as rent for housing.[88] Funds may be used, as in an Assets for Independence IDA, for education, homeownership, and business purposes.[89] ABLE account funds, however, may also be used for assistive technology purchases, respite care, home modifications, transportation purchases and modifications, and medical expenses.[90] In sum, ABLE accounts would allow individuals to maintain eligibility for crucial benefits but at the same time allow greater independence and permit wider uses of available funds.

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[83]In particular, advocates are concerned because some states have attempted to count state-funded IDAs as assets in the determination of eligibility for Medicare and Medicaid (Cooper, *supra* note 61 (Feb. 10, 2010) (on file with Weinberger-Divack)).

[84]Food, Conservation, and Energy Act, Pub. L. No. 110-234, 122 Stat. 923 (2008).

[85]*Id.* § 4104(a), amending 7 U.S.C. § 2014(g).

[86]Achieving a Better Life Experience Act of 2009 § 4(a).

[87]*Id.* § 3(a).

[88]Elder Law Answers, Disability Planning, Supplemental Needs Trusts and Planning for Disabled Children (n.d.), http://bit.ly/elder_law_ans (special-needs trusts are designed to pay for comforts beyond what is funded by public assistance; this means that "payments by the trust to the beneficiary for food, clothing, or housing are considered 'in kind' income and … the SSI benefit will be cut by one dollar for every dollar of value of such 'in kind' income.").

[89]Fund use for education, however, is not limited to postsecondary education.

[90]Achieving a Better Life Experience Act of 2009 § 3 (would add 26 U.S.C. § 530A(b)(2)).

Under the proposed legislation, one account would be allowed for every SSI beneficiary up to a maximum of $500,000.[91] The legislation is written to define an SSI beneficiary as anyone who is potentially eligible for SSI but is not receiving SSI benefits because of existing asset or income restrictions.[92] This would mean that an individual would not be forced into poverty in order to qualify for SSI. Instead the individual could set up an ABLE account and invest up to $500,000 while still remaining eligible for SSI.

Asset Accessibility for All

The incidence of poverty can be both a cause and consequence of disability; indeed almost two-thirds of adults experiencing long-term income poverty have a disability.[93] Low levels of employment and savings combined with the high cost of living with a disability make asset-building strategies especially crucial for the disability community. Yet barriers still hinder the disability community's access to asset-building opportunities.

Asset limits on public benefits such as Medicaid and SSI discourage saving, are convoluted, and costly to enforce. They can, and should, be eliminated without a substantial increase in caseloads, as a step toward eliminating institutional barriers to saving.

At the same time a number of asset-building programs that are available for people with disabilities should be continued and expanded in order to increase their impact. Advocates can increase the impact of asset-building programs by providing EITC outreach, connecting clients with Assistive Technology Financial Loan programs, and supporting the reauthorization of the Assets for Independence Act. Furthermore, passing the ABLE Act of 2009 would provide a comprehensive financial independence and stability program for individuals with disabilities.

People with disabilities and their allies are rightly concerned about the effect of increased savings on medical benefits and public assistance. A combination of education, program funding, and advocacy can make asset accumulation a reality for many of those who need it most.

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[91] *Id.* § 3 (would add 26 U.S.C. § 530A(b)(1)).

[92] *Id.* § 3 (would add 26 U.S.C. § 530A(b)(3)).

[93] Fremstad, *supra* note 14, at 1–2.

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