



Downstate New York ADAPT

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Image description:
"Downstate NY ADAPT" text over & under
image of PWD in wheelchair with arms
raised, breaking handcuffs' chain overhead,
under arching text "Free Our People"



November 22, 2021

National Institute of Standards and Technology
100 Bureau Drive,
Mail Stop 8970
Gaithersburg, MD 20899-8970
VIA ELECTRONIC SUBMISSION

Re: "Promoting Access To Voting" - NIST-2021-0003

Dear Sir/Madam:

The Greater New York Council of the Blind, Disabled In Action of Metropolitan New York Inc. and Downstate New York ADAPT submit these comments in response to the National Institute of Standards and Technology's ("NIST") request for public comments, dated October 21, 2021, on the draft *Promoting Access to Voting: Recommendations for Addressing Barriers to Private and Independent Voting for People with Disabilities* document and the draft recommendations contained in it regarding both the Federal Voter Registration Form as well as the barriers it has identified that prevent people with disabilities from exercising their fundamental rights and the ability to vote privately and independently. This

request was published as Docket Number 211013-0207 under the Department of Commerce in the Federal Register on October 21, 2021 at pages 58255 to 58256.

The Greater New York Council of the Blind ("GNYCB") is a chapter of the American Council of the Blind of New York State ("ACBNY") which is a nationwide member - driven advocacy organization that strives to increase the security, independence, economic opportunity, and quality of life for people who are blind and experiencing vision loss.

Disabled In Action of Metropolitan New York, Inc. ("DIA") is a fifty-one (51) year old, 501(c) (3), grassroots, civil rights organization run by and for people with disabilities. DIA's mission is to eliminate discrimination for people with all kinds of disabilities.

Downstate New York ADAPT ("DNY ADAPT") is a grass roots, non-hierarchical community of people with all types of disabilities advocating for the civil rights of people with disabilities, including, but not limited to, the right to live and fully participate in the larger community. Downstate New York ADAPT covers the five counties in New York City, the two counties on Long Island as well as Westchester, Dutchess, Orange, Rockland, Putnam, Ulster and Sullivan counties in New York State.

First, we adopt and incorporate herein the National Disability Rights Network's ("NDRN") comments submitted on November 19, 2021.

We reiterate the NDRN's belief that this draft report is a good start in addressing access to the vote for people with disabilities. Further, we agree that it is problematic that the draft available for public comment is incomplete. We agree with NDRN's recommended edits which extend to the definitions provided, and also support NDRN's position that at the very least, all definitions and the executive summary should have been made available for public comment. We also agree with NDRN's position that NIST should reconsider its frequent references in the report to election security concerns, since they fall outside the scope of this report as set forth by EO 14019. Second, although we believe that BMDs and voting machines should be as secure as the voting machines used by all other voters, we also believe that security should not be used as an excuse to thwart voters with disabilities from voting privately and independently. Additionally, as technology advances, BMDs and voting machines need to advance and be fully accessible to all voters with disabilities. Moreover, we support secure electronic ballot returns.

We also agree that the frequent references to assistive technology ("AT") should acknowledge the difference between personal AT belonging to individual voters and the accessible technologies required to be provided by election administrators to ensure elections are accessible. Recommendations that include AT must acknowledge that voters should not be held responsible for providing their own AT, as not every voter may have the resources and some common forms of AT are barred for use in many polling places, including smartphones often suggested for use of optical character recognition (OCR) software to verify ballots. Finally, this report must be careful not to overstate the accessibility of current voting systems or the effectiveness of VVSG 2.0 in ensuring accessibility. NDRN and many other disability rights organizations have cautioned that no voting system currently in widespread use is accessible to all voters and have submitted public comments opposing adoption of VVSG 2.0, as it falls far short of its intended purpose to establish guidelines to ensure accessible voting systems.

Third, we note that the term "ensure" is used throughout the draft report which concerns us since it does not seem as forceful as the term "require". We submit that it would be better to use the term require, especially since in the majority of places where ensure is used such is already required by law.

Fourth, we agree with many of the comments submitted by other organizations representing voters with disabilities. For instance, the comments of Disability Rights Texas such as (a) "[a]ccessibility must be of equal importance as cybersecurity"; (b) "voters should not be held responsible for providing their own AT, as not every voter has the resources, and some common forms of AT are barred from use in many polling places. Thus, election officials not voters should be held responsible to provide proper AT for voting; (c) refrain from using the term "Remote Accessible Vote by Mail" which is incorrect; (d) the report must specifically recognize the basic civil rights of voters with disabilities to equal access to voting privately and independently and should include the applicable statutes as well as the myriad court decisions, binding settlement agreements, and the like that provide a true explanation of what these laws mean and how they directly impact the legal rights of voters with disabilities to full access to voting; (e) the fact that the voting process is done in three parts, (i) marking, (ii) verifying and (iii) casting a ballot needs to be acknowledge in the report and the report needs to require that all three parts be made fully accessible; (f) the final report should make bold, concrete recommendations designed to make changes that will directly increase accessibility and not be merely process in nature; (g) include the disability community who are the voters that the findings and recommendations will directly impact; and (h) not overstate the impact of current technologies and the VVSG 2.0.

So too, we agree with the comments of Western New York Independent Living that (a) the lack of accessible public transportation is a major barrier to voting by voters with disabilities; (b) that poll workers need better disability etiquette and sensitivity training; (c) that BMDs and voting machines should be reviewed, critiqued and approved by voters with a variety of disabilities before they are even considered for certification by Boards of Elections and (d) that a Voting Accessibility Advisory Committee should be established in every state with voters with disabilities active participants.

Here are our additional comments and proposed changes.

On page 36, line number 1140, comment: we would like any such actions continue to protect the voters' privacy and that their identity is not jeopardized. Proposed change: "The holistic approach should consider technical, policy, legislative and statutory constraints[.] as well as protect voters' privacy, including, but not limited to, their identity." Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 36, line number 1154, comment: research is definitely needed, but also funding is needed for such research. Proposed change: "Sufficient funding for [R]research is needed to explore options to support electronic ballot return that is fully accessible and secure for all voters. Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 39, line number 1238 to 1240, comment: we are concerned with the way this statement is written since it does not make it clear that allowing the paper size or any part of the ballot used for a BMD to be different from the ballot that voters hand mark or mark on a voting machine is not only unacceptable, but a clear violation of voters with disabilities civil right to have their vote be private. Thus, this statement needs to be amended to recognize this fact. Proposed change: "[Because] Where the paper size for a BMD marked ballot [often] differs from hand-marked paper, these ballots [may be able to] can be identified [if only a few voters use the single machine,] and thus, will compromise[ing] ballot secrecy. Consequently, the paper size as well as the markings on the completed ballot used in BMDs must be the same as the ballot other voters mark by hand or through the use of an accessible voting machine." Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 40, line number 1272 to 1273, comment: the action described here of requiring someone other than the voter mark the ballot should not be advocated. Proposed change: at the end add "This action should not be promoted and needs to be eliminated since it violates a voter with disabilities legally enforceable civil right to vote independently, privately and securely." Words and characters underlined are new; words and characters in brackets [] are deleted.

Check On page 40, line number 1292 to 1297, comment: not all voters with disabilities wish to vote on an all-in-one voting machine; some voters with disabilities prefer to first use a BMD to mark their ballot then actually touch, handle and review their ballot outside of the BMD and then cast their ballot by placing it in a separate voting machine. Proposed change: omit the word "Encourage" and change to "[Encourage] I[t]he use of all-in-one voting stations. All-in-one voting technology that can support reading, marking, verifying, and scanning/returning the ballot benefits voters with manual dexterity and other disabilities. However, some voters with disabilities prefer to touch their ballot after marking it but before they scan/return the ballot." Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 40, line number 1298, comment: BMD ballots must be readable by scanners and tabulators otherwise they are not in compliance with the law. Proposed change: "[Ensure] BMD ballots [can] must be read by scanners and tabulators and [do] cannot need to be remade, the process by which election officials must copy cast votes onto a paper ballot since such violates voters with disabilities legally enforceable civil rights to be able to vote in an independent, private and secure manner." Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 40, line number 1303, comment: it should be made clear that any voting methods developed be not only accessible and secure but also allow voters with disabilities to vote independently and privately. Of course, accessibility should be the main focus of this report. Proposed change: "Develop accessible, private, independent and secure methods for voters with disabilities to mark and verify their ballots." Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 41, line number 1307 to 1309, comment: it should be made clear that any verification methods developed be not only accessible and secure but also allow voters with disabilities to verify their vote in an independent and private manner, proposed change. Proposed change: add the following: “Research and development of secure and accessible verification methods of ballots should be done for paper-based (e.g., BMDs) and paperless (e.g., end-to-end verifiable voting systems) systems and such methods must allow voters with disabilities the ability to verify the ballot in an independent and private manner.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 41, line number 1322-1325, comment: the sentence should make it clear that this should be required. Proposed change: “[Ensure BMD ballots can] Ballots marked by BMDs must be able to be read by AT. [Ensure that] I[t]he printed ballot [can] must be able to be accurately and understandably read to the voter through optical character recognition of the printed ballot. This process [can] must be able to read back the ballot in multiple channels, including audio or enhanced visual displays.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 43, line number 1360, comment: it should be stated that not only doorways not sufficiently wide, but many times the doors to enter polling places are difficult to open and do not have hardware that complies with the American With Disabilities Act’s Accessibility Guidelines. Proposed change: “Doorways are too narrow for wheelchairs and doors are too heavy for voters with disabilities to open or do not have proper hardware on them. Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 43, line number 1369, comment: typographical error is a word missing. Proposed change: add “for” between terms “especially” and “those” so the sentence reads: “Check-in requirements are cumbersome for many voters with disabilities especially for those who do not have a driver’s license.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 43, line number 1377, comment: should include both BMDs and accessible voting machines and should acknowledge the fact that both BMDs and accessible voting machines are not tested to see if they operate before voters with disabilities attempt to use them during early voting and on Election Day. Proposed change “Accessible voting machines and BMDs are not working or not set up and are not tested before voting begins.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 44, line number 1403, comment: In Recommendations it must be made clear that a sufficient number of accessible voting machines and BMDs must be available for voters with disabilities to use at every polling place and all polling places must be accessible. Proposed change: “[Ensure t] There must be [are] enough, up-to-date, and functioning Accessible Voting Machines and BMDs available at every polling place and all polling places must be accessible.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 44, line number 1419 to 1424, comment: Of course, the final goal should be that we have an election system that provides voters with disabilities the ability to vote without any assistance, in an independent, private and secure manner. However, until that goal is met, both voters with disabilities and the caregivers, family members and friends on whom voters with disabilities rely on to assist them in voting need to be able to have sufficient paid time off from their employment to be able to assist voters with disabilities vote in a manner that is as close as can be to voting in an independent, private and secure manner. Proposed change: “If employers permitted flexible leave options, and jurisdictions provided flexible days and hours for voting, voters with disabilities and their caregivers, family members and friends who assist them would be able to show up and cast their ballot without the stress or loss of pay from having to take off work for an extended period of time; and some voters may not be able to take off at all during the hours of operation of their assigned polling location. This situation of not being able to take off at all during the hours of operation of their assigned polling location needs to be changed so that all voters can exercise their right to vote without any penalty being imposed.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 44, line number 1425, comment: not all public transportation is accessible. Proposed change: “[Strive to have] P[p]olling locations or vote centers must be placed near accessible public transportation.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 44, line number 1426, comment: not all public transportation is accessible and making voters with disabilities have to travel on several modes of transportation can be very taxing, especially when it is cold, very warm, or it is raining, snowing, hailing or windy outside. Proposed change: “If this cannot be done, consider having a free accessible bus or set of accessible cars that can transport voters between the polling location and their homes [a public transportation hub or bus station].” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 44, line number 1429, comment: it would be better if there were more accessible polling places in voters with disabilities neighborhoods. Proposed change: add to the end: “It would be even better if there were more accessible polling places in voters with disabilities neighborhoods.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 45, line number 1430, comment: limiting this to a “van” may exclude certain voters with disabilities, such as voters with disabilities who use scooters or who cannot bend down to enter a “van”. Proposed change: “Another option is an accessible mobile vote center [van] vehicle, which brings voting to the voters’ locations.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 45, line number 1432, comment: since polling places are required to be accessible this fact should be stated in no uncertain term in this report. Proposed change: “[Ensure] The polling place [is] must be accessible [per] in compliance with ADA requirements.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 45, line number 1445, since polling places are required to be accessible this fact should be stated in no uncertain term in this report. Proposed change: “[Ensure that] The polling places [are] must be accessible, including paths from the parking lot to the building and inside the building to all the ballot marking devices and voting machines, as required by the ADA.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 45, line number 1447, comment: since as part of making a polling place accessible, proper signage is required this fact should also be stated in no uncertain term in this report. Proposed change: “[Ensure that there is] There must be adequate signage to direct voters throughout the polling location.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 45, line number 1455-1456, comment: since as part of making a polling place accessible, a sufficient number of proper operating BMDs and accessible voting machines is required this fact should also be stated in no uncertain term in this report. Proposed change: “[This will ensure that] A[a]ll equipment, including an adequate number of BMDs and accessible voting machines, must be [is] properly set up and functioning before they open their doors.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 45, line number 1456 to 1458, comment: the beginning of the sentence is insulting to voters with disabilities, especially since the reason a voter with disabilities may need more time is usually due to BMDs and accessible voting machines not being properly set up and operational, polling locations not being in compliance with the law and poll workers not being properly trained. Proposed change: “Voters with disabilities [may need more time to go through the voting process than other voters] should be able to expect to vote as quickly and smoothly without encountering obstacles as other voters, thus, [and] having all equipment set up and tested in advance reduces the amount of time they need to remain at the polling location.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 45, line number 1460 to 1466, comment: must remember that BMDs mark ballots but this is not voting; in some places a person marks the ballot on a BMD that is separate from the voting machine and in other polling places the BMD and voting machine are in one device. Proposed change: “Additional items to consider when setting up BMDs and accessible voting machines are: If all voters are not using the same BMDs and accessible voting machines, require [ensure] that the BMDs and accessible voting machines are not segregated from other voting machines. The BMDs and accessible voting machines are set up so any voter who uses those machines can do so privately. This includes proper spacing of privacy screens, table height, and appropriate distance between pathways and neighboring BMDs and voting machines.”

On page 46, line numbers 1509, comment: we need better training of poll workers concerning how to communicate and interact with voters with disabilities and how to use, troubleshoot and repair BMDs and accessible voting machines. Proposed change: “[Ensure] Require that there are enough, up-to-date, and functioning BMDs and voting machines that are accessible and that poll workers receive better training regarding how to communicate and interact with voters with disabilities and how to use, troubleshoot and repair BMDs and accessible voting machines.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 49, line number 1569, comment: typographical error. Proposed change: the word “shoulbe” needs to be changed to “should”.

On page 49, line number 1581, comment: self-explanatory is the proposed change. Proposed change: Add at the end the following sentence “Poll workers need to trained to know that any voter can use the BMD to mark their ballot and the accessible voting machines to vote; BMDs and accessible voting machines should be available for all voters to use and this fact needs to be publicized. It is only through more voters using BMDs and accessible voting machines that the voting public will be educated and voters with disabilities fully integrated into their communities.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 49, line number 1583, comment: All information provided to poll workers must be available in accessible formats since there are more and more poll workers with disabilities. Proposed change: add the following fourth bullet point “Require that all poll worker training materials be available in several accessible formats, including audio, large print, Braille and be screen readable, as well as be written clearly and in plain language.” Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 49, line number 1583-Recommendations, comment: in order to guarantee that voters with disabilities do not encounter unnecessary delays, poll workers should be required first thing in the morning of each day of early voting and first thing in the morning of Election Day to put a dummy ballot through all BMDs and accessible voting machines at the polling place before the doors are opened to allow voters into the polling place. Proposed change: add the following fifth bullet point “Before the doors are open to the voting public, each morning of early voting and the morning of Election Day, require that the poll workers perform an operational check of the BMDs and the accessible voting machines to make sure that the BMDs and accessible

voting machines are properly working. This could be performed through the use of a mock, void or test ballot. A procedure to correct problems and malfunctions quickly must be established and followed. Words and characters underlined are new; words and characters in brackets [] are deleted.

On page 50, line number 1622, comment: self-explanatory. Proposed change: add after "that was not covered in training" the following sentence "Such as establishing a hot line poll workers can call or a text number they can interact in real time with to speak with professionals that can help them provide better service to all voters." Words and characters underlined are new; words and characters in brackets [] are deleted.

As stated in our responses, dated July 16, 2021, the greatest concerns and barriers facing voters with disabilities are: 1- a lack of access to voting information, including, but not limited to, information on how to register to vote, how to find out about who is running for what office/position and how to mark a ballot and where to vote, that is, where is the voter's poll site, the accessible entrance, the place to sign in and where the BMD and voting machines are located, 2- a lack of access to accessible on demand transportation to the polling place and proper curb ramps on local streets where one could theoretically walk/wheel to a poll site, 3-laws that prohibit driving people to poll sites or not allowing someone else to drop off a completed ballot, 4-laws that require voters to have the exact same signature, 5-laws that require showing identification to vote, 6-a lack of greater access by voters with disabilities to be able to run for office without having to get petitions signed in person and 7- a failure to allow candidates with a disability to use campaign funds to cover campaign-related expenses incurred such as an assistant to take notes for a candidate with a manual dexterity disability, provide assistance getting to events, provide visual descriptions of places and people, ASL interpreters, etc. so that candidates with disabilities are placed on a level playing field with other candidates (See, campaign funds have been allowed to be used to cover campaign-related child care expenses on the federal level and in NYC, see Campaign Finance Board Handbook p. 28, link annexed http://www.nyccfb.info/PDF/candidate_services/Handbook_2021.pdf).

Thus, we again state that it is time that new standards, guidelines and regulations be established so that all Americans with disabilities are guaranteed the opportunity to fully participate in elections on the national, state and local level and the opportunity to equally exercise their right to vote privately, independently, securely and safely.

Thank you for the opportunity to comment on this important draft report. If you have any questions please contact Kathleen Collins at 732-955-7072 or email us at dnyadapt@gmail.com.

Very truly yours,

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