

## THE AMERICANS WITH DISABILITIES ACT AMMENDMENT ACT OF 2008 AND THE PERSISTANT GAP IN UNEMPLOYMENT RATES

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### ABSTRACT

*In the United States, people with disabilities have disproportionately higher rates of unemployment than people without disabilities. In this paper, I examine the effects of the Americans with Disabilities Act Amendments Act (ADAAA) of 2008 on unemployment rates of people with disabilities. Survey data collected from the American Community Survey (ACS) is used to investigate the effects of the ADAAA on unemployment rates. The findings indicate that following the ADAAA's implementation, the gap in unemployment rates increased by approximately 2.3 percentage points compared to the year prior to the enactment of the ADAAA. However, the effects of the ADAAA and the Great Recession (2007-2012) are difficult, if not impossible, to parse out. It is clear that post-Great Recession, the unemployment gap has increased. Although the unemployment gap has decreased in recent years, as of 2017 this gap remains at a higher level than pre-Great Recession levels.*

### INTRODUCTION

Employment, for many, is more than a means to achieve material wellbeing. It often fosters a sense of community, a time for social interaction, a means for contributing to society, and a sense of identity and purpose. However, unemployment is far more pervasive for certain populations than others. A disproportionate number of people with disabilities are unable to find employment. According to 2016 American Community Survey estimates, while the non-disabled population experienced a national unemployment rate of 4.9 percent, America's disabled population experienced an unemployment rate of 12.4 percent. In prior years, especially during the Great Recession, this gap was even larger. In 2011, unemployment rates between the disabled and non-disabled population reached a peak difference of 10.5 percentage points, with national unemployment rates for the non-disabled population at 8.9 percent and the disabled population's unemployment rate at 19.4 percent. Simultaneously, between the years of 2008 and 2016, the disabled population increased by approximately 1.7 million according to American Community Survey estimates. While people with disabilities experience significant barriers to employment, explicit and implicit biases create additional barriers that drive even higher rates of unemployment, underemployment, and job loss (Honey et al., 2014).

Medical and technological advances have vastly improved the ability for people with

disabilities to participate in the workforce (Sevak et al., 2015). Such advances have improved living conditions for people with disabilities and have given organizations the tools to assist all of their employees maximize their productivity. Despite this however, a large employment gap persists between people with disabilities and those without (see Figure 1). At times, the unemployment rate of those with disabilities has more than doubled that of those without disabilities. These significant gaps in unemployment are recognized as being fueled in part by discriminatory hiring practices and employers' unwillingness to accommodate people with disabilities (Fogg et al, 2010).

### Americans with Disabilities Act (ADA) (1990) & Americans with Disabilities Act Amendments Act (ADAAA) (2008)

When Congress passed the Americans with Disabilities Act (ADA) in 1990, it became the "first comprehensive civil rights law addressing the needs of people with disabilities, prohibiting discrimination in employment, public services, public accommodations, and telecommunications" with a goal of "establish[ing] a clear and comprehensive prohibition of discrimination on the basis of disability" (Equal Employment Opportunity Commission [EEOC], 1990).

Despite the intentions of Congress, court rulings began limiting the ADA and its desired protections. Multiple Supreme Court rulings effectively "narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect" (EEOC, 2008). As a result, "lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities" (EEOC, 2008). In response, Congress enacted the Americans with Disabilities Act Amendments Act (ADAAA) of 2008. The ADAAA's primary purpose is to "carry out the ADA's objectives of providing 'a clear and comprehensive national mandate for the elimination of discrimination' and 'clear, strong, consistent, enforceable standards addressing discrimination' by reinstating a broad scope of protection to be available under the ADA" (EEOC, 2008).

The ADAAA expanded on the ADA by further clarifying, and thus broadening, its definition of the term disability.<sup>1</sup> The ADAAA expanded on ADA's definition, "a physical or mental impairment that substantially limits one or more major life activities" by expanding on the definitional language of "major life activity" (EEOC, 2008). In broadening the definition of a qualifying disability, the ADAAA made it easier for people to demonstrate to employers their qualification as a disabled person. The ADAAA affords people with disabilities the legal protection that the ADA was originally designed to provide. This paper seeks to explore if these legal changes to the ADA have significantly improved employment outcomes for disabled people in the United States.

### LITERATURE REVIEW

The term disability is applied to a number of people with a wide range of impairments, from relatively minor to very severe disabilities. It encompasses both physical and mental disabilities and covers people who have been disabled since birth as well as those who have become disabled with age. While generalizing disabilities for purposes of

<sup>1</sup> The full definition of a disability, under the ADA of 1990 and ADAAA of 2008 is: "with respect to an individual— (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.

legal protection is necessary, it is important to bear in mind that everyone experiences their disability differently. Additionally, there is a gradual but persistent change in the prevalence of some disabilities. While all categorized disabilities, except for hearing, have increased from 2008 to 2016, cognitive and independent living disabilities have increased the most (by 1.24 million and 0.88 million people, respectively). The most common disability recorded is an ambulatory disability,<sup>2</sup> affecting approximately 10.1 million people in 2016.

Unemployment rates also vary based on demographics. Sevak (et al., 2015) found that among working-age people with disabilities, Hispanics are more likely to be employed than non-Hispanics, Asians more likely than Whites, and Whites more likely than African Americans. Disabled women are more likely to be employed than men. The most striking difference in employment rates is associated with education, with “the gap between people with and without disabilities consistently declin[ing] with greater educational attainment” (Sevak et al., 2015, p. 86) While Sevak and his colleagues were unable to draw conclusions on causality, they speculated that differential access to vocational rehabilitation and employment supports may contribute to these differences. Likewise, Fogg et al. (2010) found that “[t]he young and less educated are markedly disenfranchised, and the vocational benefits of maturity and higher education offer fewer protections to [people with disabilities]” (p. 201). However, Sevak et al. (2015) also noted that higher levels of education may indicate: a later age at which they became disabled, a less severe disability, or access to many supports.

Livermore and Honeycutt (2015) examined the effects of the recession on unemployment rates among people with and without disabilities. They found that people with disabilities “were disproportionately affected by the loss of blue-collar and goods-producing jobs” during the recession (p. 76). While the Great Recession officially ended in 2009, its effects on unemployment among the disabled have had a lasting effect. Figure 1 indicates that the gap in unemployment continued to increase after the Great Recession and did not begin to decrease until 2012. Livermore and Honeycutt found that “statistics up to 3 years after the official end of the recession suggest people with disability experienced little improvement in their economic well-being relative to the calendar year immediately after the end of the recession” (p. 76).

Maestas et al. (2015) investigated the impact of the Great Recession on US Social Security Insurance (SSI) applicants. While SSI applicants increased by 28 percent between 2007 and 2010, they found that one quarter of this increase can be attributed to poor economic conditions. They also found that most new applicants were denied benefits, although they may later receive benefits upon reapplying. This finding suggests that in times of economic downturn, more people apply for disability benefits than would have otherwise. Furthermore, Autor and Dugan (2003) argue that an increased supply of Disability Insurance (DI) has resulted in low-skilled workers disproportionately exiting the labor force. As wages decrease, individuals have greater incentives to claim to be disabled.

However, O’Brien (2013) argues that as economic conditions become less stable, individuals are also more likely to self-identify as having a disability. He found this to be true both for individuals who are unemployed and for those who are employed and therefore are ineligible for some types of disability assistance. This indicates that individuals may not be claiming to have a disability to take advantage of a system, but because they truly identify as having a disability. O’Brien recognizes that an increase in individuals self-reporting as disabled at times of economic downturn could be a result of individuals preemptively

<sup>2</sup> The ACS defines individuals with ambulatory disabilities as those who responded “yes” when asked if they had “serious difficulty walking or climbing stairs.”

reporting because they have a pessimistic outlook on future employment. However, he responds to this claim with the finding that increased self-reporting as disabled is consistent across levels of education and are not specific to those who are more vulnerable to job loss.

When compared to the United States, Australia tends to be similar in development and demographics. Honey et al. (2014) found a large disparity between Australia’s disabled and non-disabled young adults. Using eight years of data from the survey of Household Income and Labour Dynamics in Australia, which surveys approximately 7,500 households a year, the authors found that of those surveyed with a disability, 47.1% were unemployed compared to only 26.8% of those without a disability. While part-time work was about equal (26.2% to 30.0%, respectively), only 26.1% of disabled young adults held a full-time job, compared to 43.1% of those without a disability. Additionally, they found large differences in transitions between jobs, with a much larger percent of disabled young adults remaining unemployed (70% compared to 55% for non-disabled), and a much higher percent of those who are disabled with jobs transitioning to unemployment.

## DATA

To understand national trends in unemployment rates among America’s disabled populations, I used data from the United States Census Bureau’s American Community Survey (ACS) county-level estimates. The ACS is a large national survey conducted throughout each year collecting demographic, economic, and housing data, including estimates on disability status and employment rates. The ACS collected data for 820 of the nation’s approximately 3,000 counties.<sup>3</sup> Each year, the ACS samples approximately 3.5 million addresses from the 50 states, the District of Columbia, and Puerto Rico.<sup>4</sup> Data is collected over the internet, phone, mail, and personal visits (U.S. Census Bureau, 2013).

In 2008, the ACS changed its survey questions to better identify individuals with disabilities (see Figures 2 and 3 for 2007 and 2008 ACS survey questions related to disability). This resulted in a sizable decrease in the number of individuals categorized by the U.S. Census Bureau as disabled. Figure 4 demonstrates that the total number of disabilities dropped from approximately 22.5 million in 2007 to 18.5 million in 2008. As Brault (2009) points out, this difference should not be understood as a large drop in the number of people with disabilities. Rather, it should be attributed to the change in ACS survey questions.

Figure 4 shows that although reporting measures changed, there is a steady increase in people with disabilities from 18.5 million in 2008 to 20.2 million in 2016. When this data is broken down by categories of disability, the disability types driving this increase become clear (see Figure 5). One cause of these increases may be the aging population in the United States. It may also be the result of an increase in the number of individuals who self-identify as having a disability as a result of an economic downturn.

Those individuals defined by the ACS as having a disability are not identical to those who are protected under the ADAAA. While both the ACS and ADAAA have, in part, a shared definition of disability as those who have a “physical or mental impairment that substantially limits one or more major life activities,” ACS responses do not determine ADAAA protection. Because of the expanded definition of disability under the ADAAA, which aims to “favor...broad coverage of individuals to the maximum extent permitted by the terms of the ADA,” some individuals who are not considered disabled according to ACS

<sup>3</sup> The ACS provides one-year estimates for geographic areas with populations of 65,000 or more. By excluding data from counties with smaller populations, selection bias is introduced

<sup>4</sup> Puerto Rico is not included in this study.

surveys are afforded the protection of the ADAAA. Additionally, when employers provide accommodations to employees with disabilities, medical documentation justifying the need for an accommodation is often required. For ACS survey respondents who self-identify as disabled, no such medical documentation is required. Thus, although this study measures disability using ACS data to understand changes in unemployment rates among disabled people, because those defined by the ACS may not be identical to those covered by the ADAAA, the ACS is not a perfect dataset for capturing the employment rates of people with disabilities. Furthermore, endogeneity between the implementation of the ADAAA and ACS respondents is likely minimal at most. Survey responses have no bearing on whether an individual is covered under the ADAAA.

**DESIGN**

To understand the relationship between the ADAAA and differences in unemployment rates among people with disabilities and people without disabilities, ACS estimates of county-level unemployment rates of disabled and non-disabled populations were used for each year from 2008 to 2016. A basic regression equation was initially used to understand the relationship between the ADAAA and unemployment rate disparities.

**Equation 1**

$$\text{Difference in Percent Unemployed}_i = \beta_0 + \beta_1\text{ADAAA}_i + \beta_2\text{Year}_i + \epsilon_i$$

Because the ADAAA is intended to protect those with disabilities, for each additional year after the ADAAA went into effect, a decrease in the difference in the percent unemployed between those with disabilities and those without would be expected. We would expect that as awareness and understanding of the ADAAA increases, conditions for people with disabilities in the workforce would improve and discriminatory hiring practices would decline.

To account for this variation across counties, an equation was used to account for unobservable county-level factors by using county-level fixed effects.

**Equation 2**

$$\text{Difference in Percent Unemployed}_{it} = \beta_0 + \beta_1\text{ADAAA}_{it} + \beta_2\text{County}_i + \dots + \beta_N\text{County}_i + \epsilon_{it}$$

Using fixed effects at the county level allows for county-level controls for both observable factors (i.e. level of education, household income, and overall unemployment rate), and for unobservable factors (such as attitudes toward hiring people with disabilities and understanding of and adherence to the ADAAA).

Finally, an equation was used to account for the Great Recession. Because of the large spike in unemployment, a dummy variable for the Great Recession is used for the years 2008 and 2009 to capture changes in the difference in unemployment rates between people with and without disabilities for these years.

**Equation 3**

$$\text{Difference in Percent Unemployed}_i = \beta_0 + \beta_1\text{ADAAA}_i + \beta_2\text{Year}_i + \beta_3\text{Recession}_i + \epsilon_i$$

By using each of these equations, we can better understand the effect of the ADAAA on the disabled labor force, relative to labor force participants without disabilities.

**RESULTS**

Based on the output of these three equations, the ADAAA has not shown significant improvements in employment outcomes among people with disabilities. Rather than decrease the gap in unemployment rates between people with and without disabilities, the unemployment gap was exacerbated between the years 2008 and 2016. Regardless of the regression used (see Table 1), it is found that after the implementation of the ADAAA in January 2009, there has been a statistically significant increase in the unemployment gap between people with and without disabilities.

Equation 2 is perhaps the most reliable measure due to its ability to control for county-level variation. This equation shows that after the ADAAA was implemented the gap in unemployment between people with disabilities and those without was 2.28 percentage points higher than in the year 2008, prior to the ADAAA's implementation. Whereas Equation 1 shows similar results, but with a higher percentage point gap in unemployment rates of 3.55, holding constant the variable for year. However, similar to Figure 1, this regression also shows that the gap in unemployment rates is decreasing from one year to the next by about 0.28 percentage points a year, holding constant the variable for ADAAA. Likewise, Equation 3 shows a statistically significant finding that the gap in unemployment is 2.03 percentage points higher after the implementation for the ADAAA, holding constant the variable for the Great Recession.

Table 1. Regression Results

VARIABLES	(1) Basic Regression	(2) Fixed Effects	(3) Great Recession
ADAAA	3.549*** (0.275)	2.282*** (0.235)	2.030*** (0.318)
Great Recession			-0.288 (0.262)
Year	-0.282*** (0.0357)		
Constant	572.1*** (71.75)	6.580*** (0.221)	6.867*** (0.330)
Observations	6,813	6,813	6,813
R-squared	0.022	0.015	0.013
Number of county1		757	

Robust standard errors in parentheses

\*\*\* p<0.01, \*\* p<0.05, \* p<0.1

**DISCUSSION**

The results show that rather than improve employment outcomes for people with disabilities, employment outcomes for people with disabilities worsened in the years following the implementation of the ADAAA. While the unemployment rate among people without disabilities has dropped to levels lower than what they were at in 2008, the difference in unemployment remained larger in 2016 than it was in 2008. These findings support the conclusion that the ADAAA has not effectively provided people with disabilities protections in obtaining and maintaining employment.

While the ADAAA may not have initiated drastic changes in employment for

people with disabilities, it may have resulted in a gradual reduction to the employment gap as shown in decreasing unemployment numbers following 2011. It appears that, especially when the nation is faced with financially difficult times such as the Great Recession, it becomes particularly difficult for people with disabilities to find and maintain employment, especially among those with lower levels of education (Livermore & Honeycutt, 2015).

Rather than write off this larger gap during the Great Recession as a side effect of the economic downturn, this demonstrates that there is an even greater need to address barriers to underemployment and unemployment of people with disabilities. When the economy is not faring well, those who are already the most vulnerable are most negatively impacted. Furthermore, the increase in the number of people self-identifying as having a disability must be explored further. Researchers should not only consider this phenomenon from a standpoint of its effect on U.S. social safety net programs. Future research should also consider the economic well-being and health outcomes related to the increasing disabled population.

**LIMITATIONS**

There are several limitations to this research design. While this study attempts to measure the effect of the ADAAA, the change in the ACS's questions regarding disability altered the estimates of the disabled population in the United States thus leaving only one year of data available prior to the ADAAA's implementation. Given this, a pre-treatment trend could not be established. Without a pre-treatment trend, it is impossible to compare the overall trends of unemployment before and after the ADAAA took effect. The ability to understand trends in unemployment gaps for previous recessions would paint a much fuller picture in understanding how the disabled workforce fared in the Great Recession compared to recessions past. It would also be important to understand the effect of the ADA in 1990 on employment rates among people with disabilities and compare outcomes. Another limitation to the dataset is that unemployment rates are measured at the county level and individual-level data are not used. This limits the ability to understand how variables such as disability type and demographic factors impact unemployment rates.

**CONCLUSION**

It may be that the ADAAA is not currently capable of significantly improving employment outcomes for people with disabilities on its own. It is worth asking if there are opportunities for stricter enforcement, broader awareness and understanding of the ADAAA across employers, and whether ADAAA compliance varies by geography. Questions also remain about individual-level or sector-wide employment levels among the disabled population to understand which groups benefit most from the ADAAA protections. There are also implications for additional training and job opportunities for people with disabilities and lower levels of education to improve job security in times of economic uncertainty.

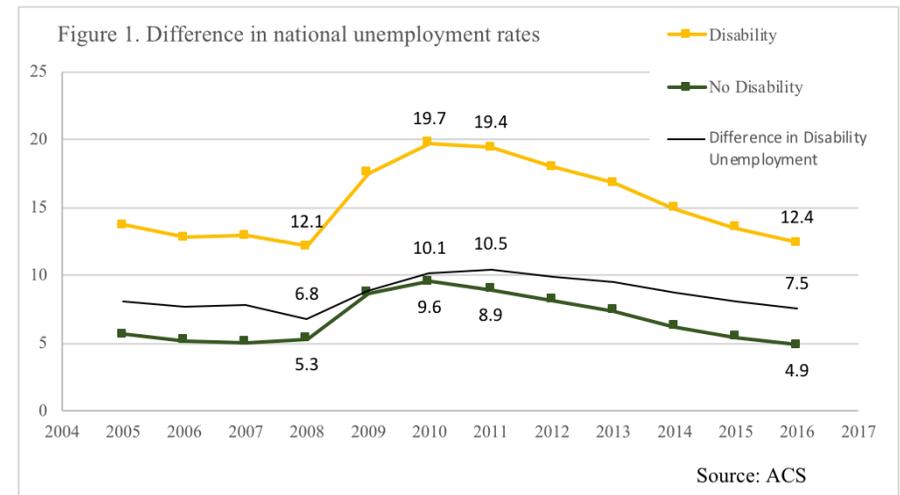


Figure 2: Disability questions from the 2007 ACS Questionnaire

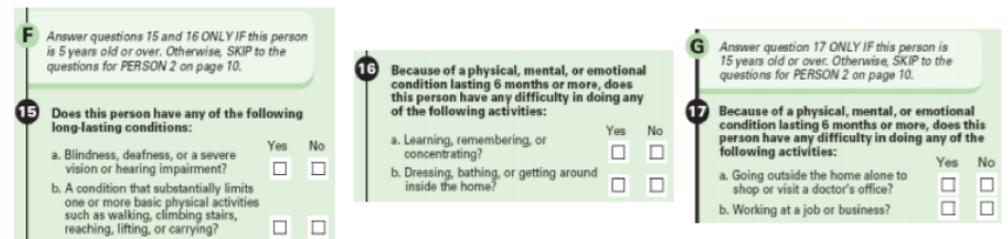


Figure 3: Disability questions from the 2003 ACS Questionnaire

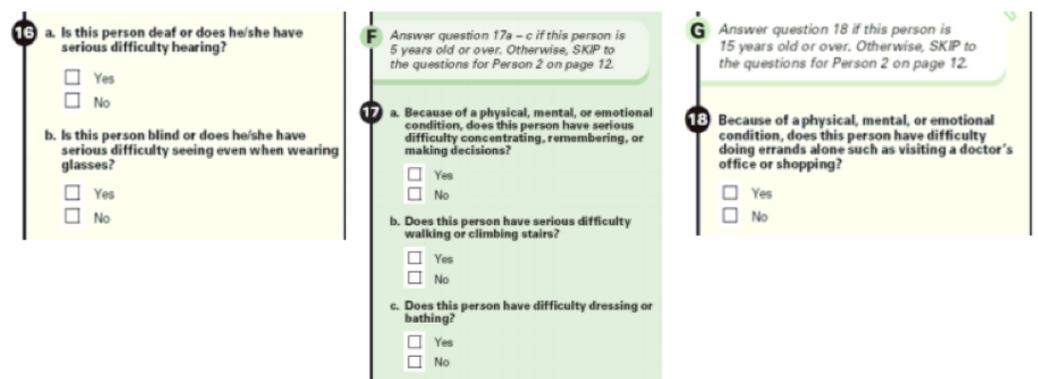
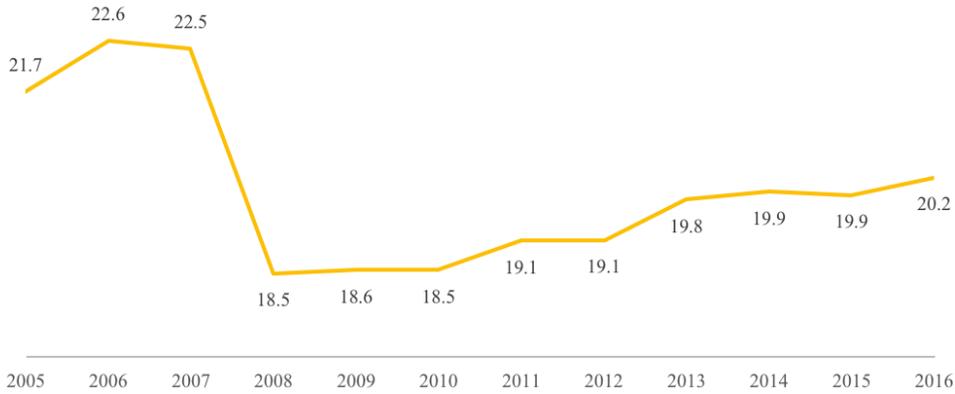
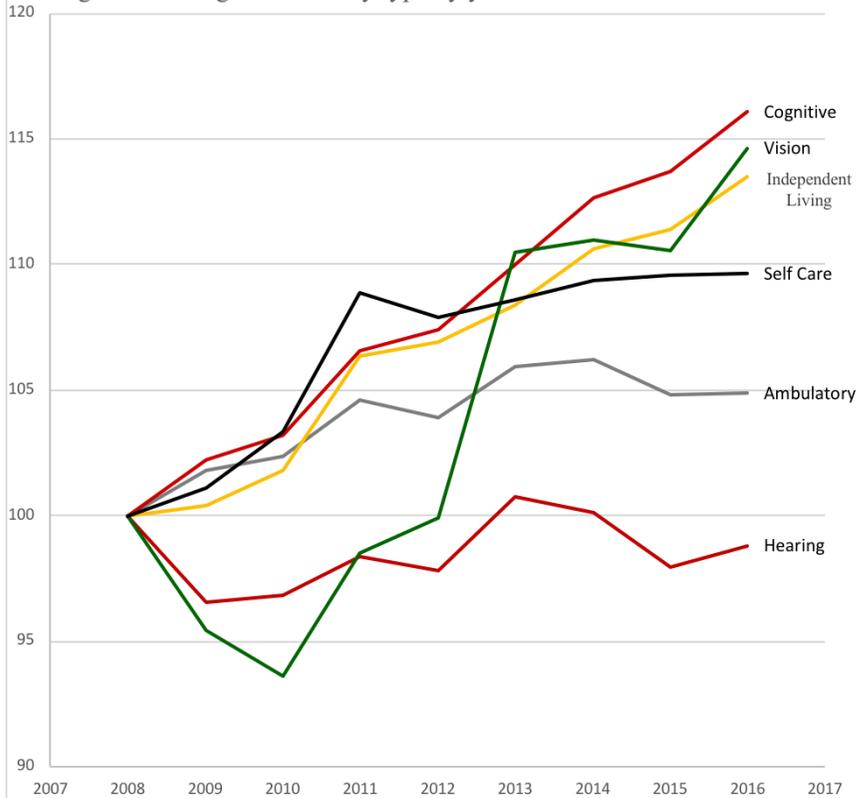


Figure 4. National Population Reporting a Disability (in millions)



Source: ACS

Figure 5. Change in disability type by year: 2008-2016



Source: ACS

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