



September 20, 2010

The Honorable Edolphus Towns, Chairman
Committee on Oversight and Government Reform
United States House of Representatives
Washington, DC 20515

The Honorable Brian Bilbray, Ranking Member
Subcommittee on Government Management, Organization, and Procurement
Committee on Oversight, and Government Reform
United States House of Representatives
Washington, DC 20515

Dear Chairman Towns and Ranking Member Bilbray:

We are writing to offer comments concerning H.R. 5983, the Javits-Wagner-O'Day (JWOD) Act of 2010. APSE is a growing national non-profit membership organization, founded in 1988 as the Association for Persons in Supported Employment, now known as APSE. APSE is the only national organization with an exclusive focus on integrated employment and career advancement opportunities for individuals with disabilities. To accomplish its mission, APSE: provides advocacy and education concerning the value of integrated employment; addresses issues to expand the growth and implementation of integrated employment services; improves employment practice so that individuals and communities experience quality employment services with meaningful outcomes; and promotes national, state, and local policy development which enhances the social and economic inclusion and empowerment of individuals with disabilities.

Guiding Principle: APSE believes that people with disabilities have the right to live, integrated, productive lives.

Integration: As presently constituted, the JWOD program perpetuates segregation. The Act requires that at least 75 percent of the direct labor hours under a JWOD contract must be performed by people with disabilities. There is no requirement or incentive to assist individuals with disabilities to transition into integrated work.

APSE believes that the buying power of the federal government must be directed to promote integration into the competitive labor force. Accordingly, we propose that the JWOD Act be amended to foster integration. This could be accomplished in a number of ways, such as adding a requirement limiting the time individuals are allowed to work under a JWOD contract to three to five years, with future contracts offered on the condition of the Qualified Nonprofit Agency's success in transitioning individuals with disabilities into integrated work. Another approach could be to require that a fixed percentage of individuals working under JWOD contracts be required to move to integrated employment each year. For this to work, contracts

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placed on the Federal Procurement List would need to be time-limited. Extension of a JWOD contract could then be linked to the Qualified Nonprofit Agency's success in meeting the requirement to transition individuals with disabilities into integrated work. Regardless of the specific mechanism employed, full integration must be the objective of the JWOD program.

Wages: Contracts are awarded on a noncompetitive basis to Qualified Nonprofit Agencies that employ individuals with disabilities. Under H.R. 5983, the current practice of allowing individuals with disabilities to be paid below the minimum wage is explicitly affirmed. This is poor public policy for a number of reasons. First, the determination of the individual's productivity is made by the same Qualified Nonprofit Agency that employs the individual with a disability. This creates a clear conflict of interest and encourages the artificial manipulation of the individual's wages. Second, subminimum wage compensation means that individuals with disabilities are kept in poverty, unable to attain self-support. As a result, the individual remains dependent on public cash and other benefits. APSE believes that there is no justification for subminimum wage compensation given that the Qualified Nonprofit Agency receives non competitive contracts at a rate generally ten percent higher than that paid to the private contractor previously holding the contract. Since the prior contractor managed to make a profit without the ability to suppress wages, and given that the Qualified Nonprofit Agency receives a premium paid by the federal agency contracting for the goods or services, no justification exists for paying people with disabilities subminimum wages.

Service Contracts Act Compensation: Many JWOD contracts are governed by the Service Contract Act. Accordingly, wages and benefits are specified by the federal agency. Nevertheless, Qualified Nonprofit Agencies have the ability to pay individuals with disabilities at a lower rate by making a determination that the individual is less productive than a nondisabled worker. If an individual is determined to be fifty percent productive, the individual may be compensated at half the rate specified in the contract. For this reason some individuals with disabilities are compensated above the minimum wage but still far below the wage required under the contract.

APSE believes that individuals with disabilities should receive the actual hourly compensation specified by the federal contract. As a condition of receiving a JWOD noncompetitive federal contract, the Qualified Nonprofit Agency should be required to agree to pay individuals with disabilities the compensation they deserve and not a contrived lesser amount.

Definition of Significant Disability: Another issue of concern is the way in which an individual is determined to have a significant disability. At present the Qualified Nonprofit Agency makes the determination with little or no oversight. Several years ago, in El Paso, Texas, a community rehabilitation program was found to be making determinations of disability based on poor English proficiency. While an isolated case, it raises the question of whether hundreds of millions of dollars in noncompetitive federal contracts should be given to Qualified Nonprofit Agencies with no assurance that the individuals hired to perform the majority of the direct labor hours are, indeed, people with disabilities. At a minimum it must be recognized that a clear conflict of interest exists. Responsible public policy should support the employment of



individuals with the most significant disabilities rather than tempting the Qualified Nonprofit Agency to apply the definition of disability in a liberal or erroneous way.

APSE believes that the determination of disability should be made by an outside, reputable, impartial entity. Specifically, we recommend that eligibility be based on a determination by the Social Security Administration that the individual meets the physical or mental definition of disability. In this way it would be ensured that the individuals working on JWOD contracts are in fact people with significant disabilities. This, together with the recommendations above concerning wages, would serve the public interest by providing gainful employment to individuals who would otherwise need to rely on government assistance for cash and medical benefits.

Transparency: As presently constituted, a major flaw in the structure of the JWOD program is its lack of basic accountability. Neither the Qualified Nonprofit Agencies nor the two Central Nonprofit Agencies are subject to the Freedom of Information Act. Accordingly, important data concerning the operation of the program is either not available at all or is incomplete. There is no justification for withholding information that would enable lawmakers and the public to know the degree to which the program is providing legitimate employment opportunities for people with disabilities. In recent years extravagant executive compensation has been exposed, heightening the necessity of having fully transparent and accountable program administration.

APSE recommends that the Central Nonprofit and the Qualified Nonprofit Agencies be required to provide the same information that would be expected from a federal agency. Such a requirement is reasonable given the fact that the JWOD program is supported solely by federal funds.

We thank you in advance for the consideration of our comments on H.R. 5983. If you have any questions, please feel free to contact us. Thank you!

Sincerely,

APSE Public Policy Committee

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