



Proposed Additional Language to Senate Version of Title V of the Workforce Investment Act

The following are proposed additions and changes to Title V of the reauthorization of the Workforce Investment Act (the Rehabilitation Act), passed by the Senate Health, Education, Labor, and Pensions (HELP) Committee, on July 31, 2013. This proposed language clarifies and strengthens the focus on competitive integrated employment as the intent of the programs, services, and activities authorized under this bill, while also placing major limits on the use of segregated facility-based employment programs, to address Senator Tom Harkin's call for ending the current pipeline of young people from school to sheltered settings.

KEY:

Bold shaded text is newly proposed language/changes in the bill passed by the Senate HELP Committee on July 31, 2013.

SEC.2.FINDINGS; PURPOSE; POLICY.

(Proposed Change: Under Sec. 2 (c) Policy, add a sixth principle that reinforces the alignment of the Title V with the U.S. Supreme Court's Olmstead decision.)

(c) POLICY.—It is the policy of the United States that all programs, projects, and activities receiving assistance under this Act shall be carried out in a manner consistent with the principles of—

- (1) respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities;
- (2) respect for the privacy, rights, and equal access (including the use of accessible formats), of the individuals;
- (3) inclusion, integration, and full participation of the individuals;
- (4) support for the involvement of an individual's representative if an individual with a disability requests, desires, or needs such support; and
- (5) support for individual and systemic advocacy and community involvement; and
- (6) elimination of unnecessary segregation of persons with disabilities and ensuring that individuals with disabilities receive services in the most integrated setting, that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.**

SEC. 7. DEFINITIONS.

(Proposed Change: *Add a definition of Employment First, which will be utilized to reinforce the purpose of various components and services of the Act.)*

Employment first

The term “employment first” means—

(A) a delivery model of publicly financed supports for individuals with disabilities, including individuals with significant disabilities and individuals with the most significant disabilities, that effectuates on a systemic basis the presumption of competitive integrated employment as the intended employment outcome for such individuals; and

(B) includes policies, practices, and procedures promulgated through Federal and State governmental entities, including policies, practices, and procedures requiring that public systems have a statutory responsibility to provide services that align their priorities, funding and reimbursement practices, and policies and guidance to promote, encourage, incentivize, and prioritize services and supports that lead to competitive integrated employment outcomes

(Proposed Change: *Under “(2) ASSESSMENT FOR DETERMINING ELIGIBILITY AND VOCATIONAL REHABILITATION NEEDS.—”, modify proposed language under V, to prohibit use of federal public vocational rehabilitations funds for assessments in segregated facility-based programs for assessment activities, and additional language under D, requiring trial work periods in integrated community settings.)*

(2) ASSESSMENT FOR DETERMINING ELIGIBILITY AND VOCATIONAL REHABILITATION NEEDS.—The term “assessment for determining eligibility and vocational rehabilitation needs” means an assessment that presumes a goal of an employment outcome for all individuals with disabilities (including individuals with significant disabilities and individuals with the most significant disabilities) and that relies on —

(A)(i) a review of existing data—

(I) to determine whether an individual is eligible for vocational rehabilitation services; and

(II) to assign priority for an order of selection described in section 101(a)(5)(A) in the States that use an order of selection pursuant to section 101(a)(5)(A); and

(ii) to the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make such determination and assignment;

(B) to the extent additional data is necessary to make a determination of the employment outcomes, and the nature, and scope of vocational rehabilitation services, to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual, which comprehensive assessment—

(i) is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual;

(ii) uses, as a primary source of such information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements—

(I) existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in section 101(a)(5)(A) for the individual; and

(II) such information as can be provided by the individual and, where appropriate, by the family of the individual;

(iii) may include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual; ~~and~~

(iv) may include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment; and

(v) to the maximum extent possible, relies on information obtained from experiences in integrated employment settings in the community, and other integrated community settings, **and does not utilize assessments paid for by the designated state unit conducted in segregated facility-based programs including but not limited to sheltered workshops.**

(C) referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(D) an exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which shall be assessed periodically during trial work experiences

in integrated community settings, including experiences in which the individual is provided appropriate supports and training.

(Proposed Change: Under (4) Community Rehabilitation Program, delete “(L) Extended Employment” as an allowable activity. Extended Employment is defined as sheltered work in the Rehabilitation Act.)

(Proposed Change: Under (30) Pre-Employment Transition Services, strengthen proposed language prohibiting use of segregated settings for work-based learning experiences.)

(30) PRE-EMPLOYMENT TRANSITION SERVICES.-

(A) IN GENERAL.-The term ‘pre-employment transition services’ means a coordinated set of activities for a student with a disability who is eligible or potentially eligible for services under Title I, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment (including supported employment), adult education, adult services, independent living, or community participation, **with competitive integrated employment as the intended end goal and outcome of such activities.**

(B) SPECIFIC SERVICES.-The term ‘pre-employment transition services’ means a set of services, that is available to students with disabilities who are eligible or potentially eligible for services under title I, and that make available, at a minimum-

(i) job exploration counseling;

(ii) work-based learning experience, such as in-school or after school work experience, or work experience outside the traditional school setting (such as experience through job training or internships), that is provided in an integrated environment to the maximum extent possible, **and does not utilize segregated facility-based settings including but not limited to sheltered workshops;**

(iii) counseling on opportunities for enrollment in a comprehensive transition or postsecondary educational program at an institution of higher education;

(iv) school-based preparatory employment experiences such as role playing, social skills development, and independent living training, coordinated with any transition services provided by the local educational agency under the Individuals with Disabilities Education Act (20 U.S.C.

1400 et. seq.); and

(v) instruction in self-advocacy, individual rights, self-determination skills, and the informed consent process, as well as peer mentoring.

SEC. 100. DECLARATION OF POLICY; AUTHORIZATION OF APPROPRIATIONS

(Proposed Change: Under (a) (1) Findings, “**(D)** reasons for significant numbers of individuals with disabilities not working, or working at levels not commensurate with their abilities and capabilities, include—“ ***add the following reason:***)

(v) funding mechanisms and policies that do not place employment in integrated settings as the intended outcome for publicly funded services and supports for persons with disabilities;

(Proposed Change: Under (a) (1) (F), ***add language clarifying that the intent of services is competitive integrated employment.***)

(F) the provision of workforce investment activities and vocational rehabilitation services can enable individuals with disabilities, including individuals with the most significant disabilities, to pursue meaningful careers by securing gainful employment **in competitive integrated employment** commensurate with their abilities and capabilities; and

(Proposed Change: Under (a) (3) Policy “It is the policy of the United States that such a program shall be carried out in a manner consistent with the following principles:”, ***add the following principle.***)

(H) Individual competitive integrated employment is the intended outcome of publicly funded services for individuals with disabilities, including those with significant disabilities and individuals with the most significant disabilities.

SEC. 101. STATE PLANS

(Proposed Change: Under (a) Plan Requirements, “(11) Cooperation, Collaboration, and Coordination, (D) Coordination with Education Officials”, ***add language under (i) emphasizing competitive integrated employment as the intended outcome.)***

(i) consultation and technical assistance to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services, **with integrated employment as the intended end goal and outcome of such activities;**

(Proposed Change: Under (a) Plan Requirements, “(14) SEMIANNUAL REVIEW OF INDIVIDUALS IN EXTENDED EMPLOYMENT OR OTHER EMPLOYMENT UNDER SPECIAL CERTIFICATE PROVISIONS OF THE FAIR LABOR STANDARDS ACT OF 1938. .—The State plan shall provide for—“ ***add the following requirements regarding informing individuals of their rights.)***

(E) Procedures for ensuring that each individual with a disability served under this title who has achieved employment under section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)), is fully and completely aware of their rights under the laws and regulations governing the special certificate provisions of the Fair Labor Standards Act of 1938, that includes --

- (i) Steps that will be taken to inform them of their rights in addition to posting the “Notice to Workers with Disabilities/Special Minimum Wage Poster”**
 - (ii) Mechanisms for interactive communication with each individual and their parent or guardian as appropriate, in a way that ensures full comprehension and understanding of their rights, and fully accommodates the individual’s disability;**
 - (iii) a review of specific rights including, but not limited to:**
 - (I) the Employee’s right to petition under Section 214 (c) (5)**
 - (II) that while a person’s disability may impact a worker’s earnings or productive capacity for one type of work, the same disability may have no impact on his or her ability to perform another kind of work.**
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(Proposed Change: Under (a) Plan Requirements, “(17) USE OF FUNDS FOR CONSTRUCTION OF FACILITIES.—The State plan shall provide that if, under special circumstances, the State plan includes provisions for the construction of facilities for community rehabilitation programs—“ *add the following language.*)

(D) Funds will not be used for programs that segregate individuals with disabilities from the general workforce, including but not limited to sheltered workshops.

SEC. 102. ELIGIBILITY AND INDIVIDUALIZED PLAN FOR EMPLOYMENT.

(Proposed Change: Under (a) Eligibility, (2) PRESUMPTION OF BENEFIT, (B) RESPONSIBILITIES – *modify the proposed language as follows to emphasize that assessment for eligibility should not utilize segregated facility-based services.*)

(B) RESPONSIBILITIES.—, Prior to determining under this subsection that an applicant described in subparagraph (A) is unable to benefit due to the severity of the individual’s disability or that the individual is ineligible for vocational rehabilitation services, the designated State unit shall explore the individual’s abilities, capabilities, and capacity to perform in work situations, through the use of trial work experiences, as described in section 7(2)(D), with appropriate supports provided through the designated State unit. Such experiences shall be of sufficient variety and over a sufficient period of time to determine the eligibility of the individual. In providing the trial experiences, the designated State unit shall provide the individual with the opportunity to try different employment experiences, including supported employment, and the opportunity to become employed in competitive integrated employment. **Such experiences may not take place in segregated settings including but not limited to sheltered workshops.**

(Proposed Change: Under (b) Development of an Individualized Plan for Employment, (4) Mandatory Components of an Individualized Plan for Employment, add the following language stating the informed choice requirements must be in compliance with the Olmstead decision, and procedures for doing so must be documented.)

(B)(i) a description of the specific vocational rehabilitation services that are—

(I) needed to achieve the employment outcome, including, as appropriate—

(aa) the provision of assistive technology devices and assistive technology services (including referrals described in section 103(a)(3) to the device reutilization programs and demonstrations described in subparagraphs (B) and (D) of section 4(e)(2) of the Assistive Technology Act of 1998 (29 U.S.C. 3003(e)(2)) through agreements developed under section 101(a)(11)(H);

(bb) mentoring services; and

(cc) personal assistance services (including training in the management of such services);

(II) in the case of a plan for an eligible individual that is a student, the specific transition services and supports (including work experience, mentoring activities, and supported employment) needed to achieve the student’s employment outcome or projected postschool employment outcome; and

(III) provided in the most integrated setting that is appropriate for the service involved **that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible**, and is consistent with the informed choice of the eligible individual **in compliance with the American’s with Disabilities Act, and implementation requirements for the 1999 US Supreme Court Olmstead decision**; and

(ii) timelines for the achievement of the employment outcome and for the initiation of the services;

(I) Documentation of activities undertaken to ensure informed choice by the individual in compliance with the American’s with Disabilities Act, and 1999 US Supreme Court Olmstead decision;

(Proposed Change: Under “(d) Policies and Procedures.—Each designated State agency, in consultation with the State Rehabilitation Council, if the State has such a council, shall, consistent with section 100(a)(3)(C), develop and implement written policies and procedures that enable each individual who is an applicant for or eligible to receive vocational rehabilitation services under this title to exercise informed choice throughout the vocational rehabilitation process carried out under this title, including policies and procedures that require the designated State agency—“ *add the following language that specifies the procedures for informed choice and the most integrated setting mandate of the ADA and Olmstead.*)

(5) to ensure that the availability and scope of informed choice provided under this section is consistent with the obligations of the designated State agency under this title,

and the most integrated mandate setting of the American’s with Disabilities Act and the 1999 US Supreme Court Olmstead decision, through activities including but not limited to----

(A) providing information about the benefits of integrated settings;

(B) facilitating visits or other experiences in such settings;

(C) offering opportunities to meet with other individuals with disabilities who are working and receiving services in integrated settings, with their families, and with community providers; and

(D) making reasonable efforts to identify and addresses any concerns or objections raised by the individual or another relevant decision-maker.

SEC. 103. VOCATIONAL REHABILITATION SERVICES.

(Proposed Change: Under “(a) VOCATIONAL REHABILITATION SERVICES FOR INDIVIDUALS.“, *add the following language that specifies that assessments must take place in the most integrated settings, and may not take place in segregated facility-based programs.*)

(a) VOCATIONAL REHABILITATION SERVICES FOR INDIVIDUALS.—Vocational rehabilitation services provided under this title are any services described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual,

including—

(1) an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, **to be conducted in the most integrated setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible, and which does not occur in segregated facility-based settings, including but not limited to sheltered workshops;**

(Proposed Change: Under “(b) VOCATIONAL REHABILITATION SERVICES FOR GROUPS OF INDIVIDUALS.—“ (2)(A), add language that prohibits the use of funds for construction of sheltered workshops and similar facilities.)

Vocational rehabilitation services provided for the benefit of groups of individuals with disabilities may also include the following:

(1) In the case of any type of small business operated by individuals with significant disabilities the operation of which can be improved by management services and supervision provided by the designated State agency, the provision of such services and supervision, along or together with the acquisition by the designated State agency of vending facilities or other equipment and initial stocks and supplies.

(2)(A) The establishment, development, or improvement of community rehabilitation programs, including, under special circumstances, the construction of a facility, **which may not include a sheltered workshop or similar segregated facility-based program.** Such programs shall be used to provide services described in this section that promote integration into the community and that result in competitive integrated employment, including supported employment and customized employment, for applicants or eligible individuals with disabilities.

(Proposed Change: Under “(b) VOCATIONAL REHABILITATION SERVICES FOR GROUPS OF INDIVIDUALS.—“ change and add language that states competitive integrated employment as the intended outcome.)

(6) Consultation and technical assistance services to assist State educational agencies and local educational agencies in planning for the transition of students with disabilities from school to postsecondary life, **including employment with an intended outcome of integrated competitive employment.**

(Proposed Change: Delete newly proposed Sec. 511.)

~~SEC. 511 LIMITATIONS ON EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES AT A SUBMINIMUM WAGE.~~

~~(1) IN GENERAL. An entity, including a contractor or subcontractor of the entity, may not employ an individual with a disability at a wage (referred to in this section as a ‘subminimum wage’) that is less than the Federal minimum wage unless the entity has complied with the requirements of section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)), and any of the following additional conditions is met:~~

~~(1) The individual is currently employed, as of the effective date of this section, by an entity that holds a valid certificate pursuant to section 14(c) of the Fair Labor Standards Act of 1938 (referred to in this section as a ‘certificate holder’).~~

~~(2) The individual is older than age 24 on the date when the individual begins employment at a subminimum wage.~~

~~(3) The individual is age 24 or younger and, before beginning work at a subminimum wage, has completed, and produces documentation indicating completion of, each of the following 3 actions:~~

~~(A) The individual has received pre-employment transition services that are available to the individual under section 114, or transition services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et. seq.) such as transition services available to the individual under section 614(d) of that Act (20 U.S.C. 1414(d)).~~

~~(B) The individual has applied for vocational rehabilitation services under title I, with the result that-~~

~~(i) — the individual has been found ineligible for the services pursuant to that title; or~~

~~(ii)(I) the individual has been determined to be eligible for vocational rehabilitation services;~~

~~(II) the individual has an individualized plan for employment under section 102;~~

~~(III) the individual has been working toward an employment outcome specified in such individualized plan for employment, with appropriated supports and services, for a reasonable period of time without success; and~~

~~(IV) the individual's vocational rehabilitation case is closed after the individual's qualified vocational rehabilitation counselor and the individual both agree that continued efforts by the individual to work toward an employment outcome, as defined in section (7), at the present time will likely not be successful.~~

~~(C) The individual (with, in an appropriate case, the individual's parent or guardian)-~~

- ~~(i) has been provided career counseling, and information and referrals to Federal and State programs and other resources in the individuals' geographic area that offer employment-related services and supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment;~~
- ~~(ii) understands the conditions under which a subminimum wage may be paid; and~~
- ~~(iii) consents to work for the employer and be paid a subminimum wage.~~

~~(4) The individual, regardless of age, is receiving work readiness or job training services provided by a certificate holder, as part of the individual's preparation for competitive integrated employment, for-~~

~~(A) a period of not more than 6 months; or~~

~~(B) a longer period, if the individual wishes to continue to receive such services after an initial 6-month period and is reassessed by the agency referring the individual for such services, or an appropriate entity, not less often than every 6 months, to determine the individual's ability to transition to competitive integrated employment.~~

~~(b) CONSTRUCTION.—~~

~~—(1) SERVICES -- Nothing in subsection (a)(3)(B) shall be construed to prohibit a designated State unit from allowing an individual to receive work readiness or job training services provided by a certificate holder, for a period of not more than 6 months.~~

~~—(2) RULE -- Nothing in this section shall be construed as changing the purpose of this Act described in section 2(b)(1), to empower individuals with disabilities to maximize opportunities for competitive integrated employment.~~

~~(c) DURING EMPLOYMENT.—~~

~~—(1) IN GENERAL -- The entity described in subsection (a) may not continue to employ an individual at a subminimum wage unless, after the individual begins work at that wage, at the intervals described in paragraph (2), the individual (with, in an appropriate case, the individual's parent or guardian)--~~

~~(A) is provided career counseling, and information and referrals described in subsection (a)(3)(C)(i), delivered in a manner that facilitates independent decisionmaking and informed choice, as the individual makes decisions regarding employment and career advancement; and~~

~~(B) is informed by the employer of self-advocacy, self-determination, and peer mentoring training opportunities available in the individual's geographic area, provided by an entity that does not have a financial interest in the individual's employment outcome, under applicable Federal and State programs or other sources.~~

~~(2) TIMING—The actions required under subparagraphs (A) and (B) of paragraph (1) shall be carried out once every 6 months for the first year of the individual's employment at a subminimum wage, and annually thereafter for the duration of such employment.~~

~~(3) SMALL BUSINESS EXCEPTION—In the event that the entity described in subsection (a) is a business with fewer than 15 employees, such entity can satisfy the requirements of subparagraphs (A) and (B) of paragraph (1) by referring the individual, at the intervals described in paragraph (2), to the designated State unit for the counseling, information, and referrals described in subparagraph (A) and the information described in subparagraph (B).~~

~~(d) DOCUMENTATION.—~~

~~(1) IN GENERAL.—The designated State unit, in consultation with the State educational agency, shall develop a new process or utilize an existing process, consistent with guidelines developed by the Secretary, to document the completion of the actions described in subparagraphs (A), (B), and (C) of subsection (a)(3) by a youth with a disability who is an individual with a disability.~~

~~(2) DOCUMENTATION PROCESS—Such process shall require that—~~

~~(A) in the case of a student with a disability, for documentation of actions described in subsection (a)(3)(A)—~~

- ~~(i) —if such a student with a disability receives and completes each category described in clauses (i) through (v) of section 7(30)(B) of available pre-employment transition services, such completion of services shall be documented by the designated State unit in a manner consistent with this section;~~
- ~~(ii) —if such a student with a disability receives and completes any transition services available for students with disabilities under the Individuals with Disabilities Education Act, including those provided under section 614(d)(1)(A)(i)(VIII) (20 U.S.C. 1414(d)(1)(A)(i)(VIII)), such completion of services shall be documented by the appropriate school official responsible for the provisions of such transition services for students with disabilities in the school or school district, in a manner~~

~~consistent with this section; and~~

~~(iii) — a Local Pre-Employment Transition Coordinator shall provide the final documentation, in a form and manner consistent with this section, of the completion of pre-employment transition services as described in clause (i), or transition services under the Individuals with Disabilities Education Act as described in clause (ii), to the student with a disability within a reasonable period of time following the completion; and~~

~~(B) when an individual has completed the actions described in subsection (a)(3)(C), following the completion of the actions described in subparagraphs (A) and (B) of subsection (a)(3), the designated State unit shall provide the individual a document indicating such completion, in a manner consistent with this section, within a reasonable time period following the completion of the actions described in this subparagraph.~~

~~(e) VERIFICATION.~~

~~(1) BEFORE EMPLOYMENT. Before an individual covered by subsection (a)(3) begins work for an employer at a subminimum wage, the employer shall review the documentation received by the individual under subsection (d), and provided by the individual to the employer, that indicates that the individual has completed the actions described in subparagraphs (A), (B), and (C) of subsection (a)(3) and the employer shall maintain copies of the documentation.~~

~~(2) DURING EMPLOYMENT. In order to continue to employ an individual at a subminimum wage, the employer shall verify completion of the requirements of subsection (e), including reviewing any relevant documents provided by the individual, and shall maintain copies of the documentation.~~

~~(f) FEDERAL MINIMUM WAGE. In this section, the term ‘Federal minimum wage’² means the rate applicable under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).~~

~~(b) EFFECTIVE DATE. This section takes effect 2 years after the date of enactment of the Workforce Investment Act of 2013.~~