



September 25, 2013

The Honorable Tom Harkin
Chairman
Committee on Health, Education, Labor and Pensions
United States Senate
Washington, DC 20510

The Honorable Lamar Alexander
Ranking Member
Committee on Health, Education, Labor and Pensions
United States Senate
Washington, DC 20510

Dear Chairman Harkin and Ranking Member Alexander:

On behalf of the Association of People Supporting Employment First (APSE), the only national non-profit organization with an *exclusive focus* on integrated employment and career advancement opportunities for individuals with disabilities, we would like to offer APSE's views on Section 511 of the proposed Workforce Investment Act (WIA).

APSE would like to applaud Senator Harkin and Senator Alexander for your efforts to increase the workforce participation of people with disabilities in the proposed reauthorization of the Rehabilitation Act (Title V of the Workforce Investment Act). Within this bill are many provisions that strengthen opportunities for citizens with disabilities to become successfully employed, working side-by-side with their fellow citizens, and advancing economically.

APSE strongly believes, however, that the proposed addition of Section 511 to the Rehabilitation Act will not achieve the well-intended goal of restricting the use of sub-minimum wage but will in fact have the opposite effect of increasing the use of sub-minimum wage. The stated intent of Section 511, entitled "Limitations on Employment of Individuals with Disabilities at a Subminimum Wage," is to end the current pipeline of young people from school to sheltered settings. APSE applauds this intent. However, in APSE's view, Section 511 will have the opposite impact, placing new responsibilities on the Public Vocational Rehabilitation system to screen individuals for segregated sheltered settings through a check-list type of approach. APSE is calling for the removal of Section 511. APSE's objections to Section 511 include the following:

- It legislatively strengthens, as a legitimate option, the placement of individuals with disabilities in a segregated setting and payment of sub-minimum wage. This is at odds with federal policy under the Americans with Disabilities Act, the U.S. Supreme Court's

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1999 Olmstead decision, and the current guidance and actions of the U.S. Department of Justice in terms of enforcement of the ADA and Olmstead. In addition, the recent public media attention on the payment of subminimum wage to workers with disabilities, while service-provider executives are making salaries well into six figures, makes it even more disingenuous that federal legislation would be put forth that strengthens the legitimacy of paying sub-minimum wage.

- While the publicly stated intent of Section 511 is to reduce the use of segregated settings, the focus of 511, including the title, is exclusively on payment of subminimum wage. While payment of subminimum wage is a related issue, Section 511 does not directly address the placement of individuals in segregated sheltered settings.

In APSE's view, while there is a significant role for public Vocational Rehabilitation in reducing the pipeline of young people from school to sheltered settings, its role is not all encompassing, and Title V of the Workforce Investment Act is not the correct vehicle, as a primary mechanism, for addressing this issue. In APSE's view, this issue is best addressed through the following mechanisms:

- Modifications to the Individuals with Disabilities Education Act (IDEA), including strengthening employment in the general workforce as a core expectation of transition, prohibiting the placement of individuals in sheltered and segregated settings as part of transition prior to students leaving school, and placing strong restrictions on transitioning individuals from school to a segregated sheltered setting.
- Regulatory action by CMS, to eliminate the use of Medicaid funding for prevocational services delivered in sheltered segregated settings for individuals coming out of school.
- Amendment to the Fair Wages for Workers with Disabilities Act, which would phase out the use of sub-minimum wage.

While APSE feels that Title V of WIA is not the vehicle for comprehensively addressing the need to end the current pipeline of individuals with disabilities going directly from school to segregated sheltered settings, APSE does feel that language that would assist in addressing this issue could be inserted into Title V, as an alternative to Section 511. This includes:

- Strengthening language within Title V of the Workforce Investment Act to ensure that employment in the general workforce is the first and primary intent of vocational rehabilitation services, in the spirit of Employment First.
- Strengthening the requirements for review of individuals in "Extended Employment" (sheltered work settings).
- Ensuring that within the assessment process, procedures are followed for "informed choice" in line with the statement of the Department of Justice statement on enforcement of the integration mandate of Title II with the ADA and Olmstead.

Attached is suggested language for addressing these issues, developed by the APSE Public Policy Committee.



We strongly agree with your recent Memorandum to HELP Committee Members, stating: “[a]s young people with disabilities prepare for life after school, it is critical they have the opportunities to experience internships, part-time employment, and summer work just like their peers without disabilities.” Although there are many provisions within WIA that work to promote equality of opportunity for people with disabilities, Section 511 is at odds with your Memorandum and the strengths of the proposed WIA reauthorization. Our strong network of service provider organizations, individuals with disabilities, and family members are opposed to Section 511, as it contradicts all of the great, grass-roots policies and practices that we have worked so hard to implement.

We respectfully oppose the inclusion of Section 511 in the WIA reauthorization and offer our recommendations on suggested language to achieve your goal to close the labor force participation gap and to achieve higher expectations for the next generations of young adults with disabilities to work in integrated, community-based employment.

Respectfully,

A handwritten signature in black ink, appearing to read 'Laura Owens', is positioned to the left of the typed name.

Laura Owens, Executive Director
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A handwritten signature in black ink, appearing to read 'Ryley Newport', is positioned to the right of the typed name.

Ryley Newport, Public Policy Associate
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Association of **People Supporting EmploymentFirst (APSE)**

Cc:

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Christopher S. Murphy (CT)
Elizabeth Warren (MA)
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