



April 8, 2021

Committee on Health, Education, Labor and Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

Dear Chair Murray and Ranking Member Burr,

Thank you for the opportunity to submit input on your plans to update and expand workforce training programs. As you look to examine our nation's workforce training system, we ask that you keep the needs of individuals with disabilities top of mind.

The Association of People Supporting Employment First (APSE) is the only national, non-profit membership organization dedicated to Employment First, a vision that all people with disabilities have a right to competitive employment in an inclusive workforce. As you work on any legislation, we ask that you intentionally consider the impact of every policy on employment opportunities for people with disabilities. This includes all parts of workforce innovation policies, not just disability specific policies. In addition, **we have specific feedback** based on your questions, **including how to enhance workforce needs in direct relation to the COVID-19 pandemic** by supporting Direct Support Professionals (DSPs) **and our strong opposition to reforms of programs authorized under the Workforce Innovation and Opportunity Act (WIOA)** and changes in the WIOA law and regulations.

Workforce Training / Needs due to COVID-19 Pandemic

The COVID-19 pandemic has eroded the stability of the disability employment support/service system. DSPs provide critical supports to essential and frontline workers with disabilities. These DSPs are essential to ensuring the success of people with disabilities who receive employment supports to access and maintain employment in the general workforce. Yet, the public workforce system provides minimal training to build the capacity and a pipeline for the DSP workforce.

We ask for additional support for DSPs, including job coaches and job developers (staff who provide employment assistance to individuals with significant disabilities). Prior to COVID-19, the DSP workforce was already in a long-term crisis in terms of workforce shortages, low pay, and lack of training. COVID-19 has only made this crisis worse. While APSE has endeavored to address these issues through its Certified Employment Support Professional (CESP) credentialing program and similar efforts, resolving this crisis requires a major infusion of resources to both increase wages and provide the necessary training and support for career pathways for employment support professionals and all other DSPs.

To date, the priority to invest in the development of this workforce is fragile and disjointed. There is great potential to address the health and human service DSP workforce crisis through the development of training with an eye on DSP career ladder certificate training and investment in apprenticeships for this growing industry. Workers who support people with disabilities are not only caregivers but educators. **DSPs, including job coaches and job developers, need to be included as a recognized category in the coding of Bureau of Labor Statistics Standard Occupational Classification (SOC) system.**

Employment in healthcare occupations is projected to grow 15 percent from 2019 to 2029, much faster than the average for all occupations, adding about 2.4 million new jobs. Supported workers may need assistance to fully understand universal precautions to COVID-19, to make adjustments to work tasks that are constantly changing because of the pandemic, and to ensure communications are understood. Additionally, there is need to provide assistance to mitigate anxiety and other emotional responses as best as possible, which have been heightened during the pandemic. As such, DSPs are providing critical help to support workers with disabilities and deserve hazard pay and other assistance to ensure that they can continue to successfully do their jobs

Workforce Innovation and Opportunity Act (WIOA)

We strongly oppose any changes at this time to WIOA and reforms of programs authorized under WIOA at this time. WIOA was passed by an overwhelmingly bipartisan majority in 2014 and was the first legislative reform in 16 years of the public workforce system. While WIOA is 7 years old, operationally it has only been in effect for approximately 5 years. As directed by Congress, the Departments of Labor and Education issued regulations implementing WIOA in August 2016. When Congress reauthorizes a piece of major legislation, significant time is put into the planning and building of infrastructure to support that implementation at the state and local level. The results of WIOA are promising, but very much a “work in progress.” Making any major shift via legislation at this time is problematic.

Under Title IV of WIOA, which specifies the law and regulations under which State Vocational Rehabilitation (VR) Services operate, WIOA expresses a clear policy in support of competitive integrated employment for individuals with disabilities, and this should not be changed. WIOA also prohibits the placement of students transitioning from school into subminimum wage employment without first having the opportunity to try competitive integrated employment; requires people in subminimum wage settings (such as sheltered workshops) to be offered competitive integrated employment; mandates pre-employment transition services to prepare students with disabilities for competitive integrated employment; and requires that vocational rehabilitation services support competitive integrated employment outcomes. These changes are positive and must be maintained.

Because of the way the system was set-up before WIOA, individuals with disabilities were often transitioned directly from schools to segregated, subminimum wage employment, and remained in these settings for many years, if not their entire working lives. The changes required under law and regulations by WIOA required massive, long-term cultural and infrastructure capacity changes, particularly in the VR system. Since WIOA's regulations were issued, states have quickly worked to build the infrastructure required to comply with the law and regulations. However, states need significant time to make the cultural changes required under WIOA, including competitive integrated employment as the expected VR outcome, creation of pre-employment transition services (which previously did not exist), and implementation of the new limitations on the use of subminimum wage.

Since these changes are relatively new, we do not have access to sufficient data on how they have been implemented and the long-term impact on individuals with disabilities in the workforce. No changes to regulations should be considered until sufficient data on implementation of changes under WIOA has been fully analyzed to ensure that changes to WIOA, if any, are made in the best interest of individuals with disabilities to succeed in competitive integrated employment.

While availability of sufficient data is still a work in progress, the anecdotal information we have heard from states outlines that there have been promising practices between schools and vocational rehabilitation services that did not exist before WIOA. The law has ensured that individuals with disabilities have pre-employment transition services and do not transition from schools into segregated, subminimum wage employment, or chronic unemployment, but have the opportunity to transition directly to competitive integrated employment. In addition, with the focus on competitive integrated employment, we are seeing, in general, more so than in the past, individuals with disabilities supported by VR in employment that pays a living wage and provides a real career path. We are very encouraged by these stories, and to make significant changes relatively early in the implementation of the law, possibly including changes to or ending of pre-employment transition services, and changes to the definition of competitive integrated employment, would be detrimental to the goals of WIOA.

We would like to also note that COVID-19 has been detrimental to the implementation of WIOA and the employment support system for individuals with disabilities. COVID-19 has caused many schools to go virtual, closed competitive integrated jobs down, and has forced states to focus on other essential priorities. All of these things have slowed the implementation of WIOA. In addition, throughout the pandemic, pre-employment transition services required by WIOA have often been the only support that students with significant disabilities receive.

Because of the cultural and infrastructure capacity changes required to implement WIOA, the lack of comprehensive data, the promising practices that WIOA has shown anecdotally thus far for individuals with disabilities, and the disruption of COVID-19, we strongly disapprove of any changes being made to WIOA.

Strategies and Innovation to support employers and individuals

We would also like to point out that any **future changes in workforce development policies and legislation need to be more inclusive of employment services and supports funded by CMS**. While public VR plays a major role as a targeted service to support employment of people with disabilities, there is often a lack of recognition within the workforce development context regarding the major funding via Medicaid used to provide employment assistance for individuals with intellectual and developmental disabilities, and mental health issues. We would urge great recognition of the level of resources spent by Medicaid in terms of employment services and supports in any future workforce system reforms, to ensure greater coordination and seamlessness among these various funding streams, to the benefit of greater workforce participation by people with disabilities.

Additionally, any **future changes in workforce development policies should ensure that VR clients are given all of their options**, including referral to agencies participating through the AbilityOne Program. Though there is an overall direct labor ratio requirement of 75%, individual employment settings at AbilityOne employment providers **can** be integrated. It is important to examine each available employment opportunity, regardless of whether an employer participates in AbilityOne or state use programs. The only way to present the full array of career options for VR clients is to examine opportunities within nonprofit agencies participating through the AbilityOne Program.

Finally, we would be remiss if we did not use this opportunity to **call for the complete phase out of the use of 14(c) certificates and sub-minimum wage for all individuals with disabilities**. While Section 511 has greatly contributed to a decline in the use of 14(c) certificates, challenges remain related to the investment necessary to transform business models to fully align with the CIE definition. However, there are several legislative efforts currently underway that would remedy this. The **Raise the Wage Act** ([HR603](#), [S53](#)) and the **Transformation to Competitive Integrated Employment Act** (TCIEA, [HR2373](#)) are bipartisan bills that call for an intentional, multi-year phase out of 14(c) certificates. Additionally, the **American Jobs Plan**, just released by the Biden Administration, similarly calls for the end to the 14(c) program with a similar investment in building up the infrastructure of vocational rehabilitation and Medicaid-funded services that promote and advance employment for people with disabilities.

While the sub-minimum wage may have historically been a valid and effective strategy for enhancing employment opportunities for people with disabilities, the evolution in disability rights law, modernization of the business marketplace, and advances in available community employment support, makes the 14(c) provision under the Fair Labor and Standards Act no longer necessary or acceptable. As you consider workforce issues broadly, we hope you prioritize a phasing-out of 14(c).



Thank you again for the opportunity to submit feedback to the Committee on workforce programs. Please do not hesitate to reach out should you have any questions. We look forward to working with you.

Sincerely,

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Association of People Supporting Employment First (APSE)