



CONSORTIUM FOR CITIZENS
WITH DISABILITIES

June 17, 2011

The Honorable Tom Harkin
Chairman
Committee on Health, Education, Labor and Pensions
U. S. Senate
SD 428 Dirksen
Washington, DC 20510

The Honorable Mike Enzi
Ranking Member
Committee on Health, Education, Labor and Pensions
U. S. Senate
SD 428 Dirksen
Washington, DC 20510

The Honorable Patty Murray
Chair
Senate HELP Subcommittee on Employment and Workplace Safety
SD 428 Dirksen
Washington, DC 20510

U.S. Senator Johnny Isakson
Ranking Member
Senate HELP Subcommittee on Employment and Workplace Safety
SD 428 Dirksen
Washington, DC 20510

Dear Senators:

On behalf of the Consortium for Citizens with Disabilities (CCD) Employment and Training Task Force, we are responding to your request for comments on the recently released draft of legislative language for the reauthorization of the Workforce Investment Act.

We have worked and waited for many years for Congress to reauthorize the Workforce Investment Act, including the Rehabilitation Act. It was with great anticipation that we learned that the Senate HELP Committee would be addressing reauthorization of these critically important laws this session. However, the process being utilized seems

unduly hasty and we fear that the concerns we have will not be adequately taken into consideration under current deadlines. Just a cursory reading of the bill as drafted indicates many changes, large and small, which we need to carefully review before we can make meaningful suggestions and feedback.

We only received copies of the proposed staff drafts of the bill starting with the release of Title I last week on June 9. The other titles were distributed throughout this past week and the draft for Title V arrived yesterday, June 17. We were told that comments on Titles I-IV were due by close of business today, June 17, with comments on Title V being due Monday June 20. Given that this document is over 600 pages, we do not feel that this is an adequate time frame to provide meaningful feedback on legislation that is so vital to dealing with the extremely high unemployment for people with disabilities.

Yesterday, we were informed that there would be a one hour meeting on June 21st to give us an opportunity to discuss the bill with committee staff. Given that two major Congressional recesses will take place this summer we urge the HELP Committee to re-schedule the mark-up of the bill until after the August recess so there will be ample time for us, and others, to provide the input you need to make sure that the needed changes are made in these important acts.

That said, we submit the following comments and questions about Titles I through IV per your request because we do want to work in good faith with the Committee in developing as thorough and accurate a piece of legislation as possible. However, because of the truncated nature of the timeframe for response and the lack of any explanatory document accompanying the legislative language, many questions and concerns have arisen that might have been addressed with a more appropriate collaboration with stakeholders.

Alicia Epstein, NISH
Co-Chair

Susan Goodman, National Down Syndrome Congress
Co-Chair

Charlie Harles, International Association of Business Labor and Industry
Co-Chair

Susan Prokop, Paralyzed Veterans of America
Co-Chair

Paul Seifert, Council of State Administrators for Vocational Rehabilitation
Co-Chair

Stakeholder Comment Form

Senate discussion draft of the Workforce Investment Act of 2011

This form should accompany your organization's comment letter. Please send both documents (as attachments to a single email) to ews@help.senate.gov no later than Friday, June 17th at 8:00pm.

Organization: Consortium for Citizens with Disabilities Employment & Training Task Force

One contact person: Susan Prokop, Co-chair

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In order of priority, please provide a full description of each item highlighted in your organization's comment letter, including specific legislative references (e.g., Sec. 111(a)(1)(A)...) and proposed legislative language, if applicable. Use additional pages as necessary.

Please see following pages for the complete listing of our task force's questions and recommended changes for Titles I – IV of the Workforce Investment Act.

TITLE I – SYSTEM ALIGNMENT AND INNOVATION

Section 101 Definitions

1. References concerning Career Pathways in (6)(A) and their objectives (C) do not seem to account for the need for long term services and supports for people with disabilities to take advantage of provisions related to these defined services. This issue also arises in Section 112 – State Plans – in which reference is made in (b)(2)(B)(III) and (iv) to career pathways and education for people with disabilities. How will people with disabilities who need long term supports and services take advantage of these programs?
2. (13) *Customized Training* -- Are these provisions targeted to certain employers and, thus, require the specificity outlined?
3. (17) *Economic Self-Sufficiency* – the meaning of this term in the context of the referenced subsections of section 234 are unclear. What does this mean?
4. (23) *In Demand Industry Sector or Occupation – (A)(III)* – there appears to be no definition of the term “family-sustaining wages and benefits”. What does the committee intend?
5. (24) *Individual with a barrier to employment* – We are pleased to see that individuals with disabilities, including youth with disabilities, are part of this definition.
6. (25) *Individual with a disability* -- Is this definition used throughout the Act or just for purposes of Title I? The ADA definition of disability is broader than that used for the Rehabilitation Act.
7. (36) *Low Income Individual* – The draft definition fails to include individuals who receive VA pension for low income aged or disabled non-service-connected veterans and family members covered under 38 U.S.C. §§ 1501 - 1543.
 - a. (36) Subsection F refers to an individual with a disability ... “who is a member of a family” Although this terminology appears in current law, why is this terminology used versus “household?” Because of the marriage penalty in Title XVI, many people with disabilities are unable to live in traditional “families”.

In past communications with the Committee, our task force had suggested the addition of the following definitions under the Act:

Asset development is a strategy to help low-income workers and job seekers, including individuals with disabilities, move toward economic security and greater financial self-sufficiency through income preservation, effective money and credit management, the pursuit of post-secondary education, the purchase of a home, business startup and growth, and the setting aside of resources for longer term needs and retirement.

Asset Development Services are a blend of services and supports that help advance economic self-sufficiency for low-income jobseekers, including individuals with disabilities including financial education, tax filing assistance and access to beneficial

tax credits and other provisions, use of social security work incentives and individual development accounts (IDAs) and coordination with other savings programs including family self-sufficiency programs, college savings accounts, and home and small business ownership assistance.

Programmatic Access- The term means policies, practices, and procedures providing people with disabilities an equal opportunity to participate in or benefit from the provision of all workforce development services.

Universal Design for the Workforce Development System – The term means the design of environments, products and communication practices as well as the delivery of programs, services and activities to meet the needs of all customers of the workforce development system.

Subtitle A-Workforce Boards and Plans

Chapter 1-State Provisions

Section 111 – State Workforce Development Boards

1. *(b) Membership – The draft requires that 1/3 of the membership appointed by the Governor be representatives of business, 1/3 representatives of the workforce that “shall include” representatives of labor and “may” include representatives of organizations that support competitive integrated employment for individuals with disabilities. The final third is to be representatives of government including the lead state officials with responsibility for core programs.*

These provisions are not acceptable. The state board is the key policymaking body for the workforce system and people with disabilities must have their voices heard in this forum to ensure that the system addresses the needs of this population with the lowest rate of workforce participation in the country. Furthermore, the draft names the designated state agency for representation on the board rather than the head of the designated state unit most directly responsible for vocational rehabilitation programs.

We suggest the following changes to section 111(b)(1):

With regard to (C)(iii)(I) -- In the case of the Public Vocational Rehabilitation Program authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.), the Vocational Rehabilitation Director employed by the Designated State Unit or the Vocational Rehabilitation Directors in States that have a separate State entity that is responsible for the rehabilitation of individuals who are blind and visually impaired;

With regard to (C)(ii)(II) -- Shall include people with disabilities or their representative or community based organizations serving people with disabilities and may include representatives of other community based organizations with demonstrated experience

in addressing the employment training or education needs of other individuals with barriers to employment.

We suggest the following change in section 111 (d):

(d) Functions.—The State Board shall assist the Governor in—
increasing the availability of skills training, employment opportunities, and career advancement for people with disabilities.

Section 112 – Unified State Plan

(b) Contents [p. 48]– The draft calls for collaboration between programs serving youth and the vocational rehabilitation system; an explanation of how the career pathways and education programs made available under the Act will be made available to individuals with disabilities; how entities will provide “support services” through coordination of federal, state and local service providers to enhance participation in employment, education and training programs; how entities will ensure technology is accessible to people with disabilities; how outreach will be conducted to youth and adults with disabilities; how the state will implement priority of service for veterans; how the state one-stop system will comply with the newly re-designated Section 288, non-discrimination provisions; how the state will carry out programs under Title I (other than section 112 or Part C) of the Rehabilitation Act.

We believe that the language of section 112 (b) State Plan Contents could be strengthened by adding the following new provisions:

a description of the procedures that will be taken by the State to assure that individuals with disabilities have physical and programmatic access to the statewide workforce investment system;

a description of the strategies and approaches the State will use universal design when designing or implementing workforce development services.

Section 117 Local Workforce Boards

As with our comments concerning State Workforce Boards, we believe that the population with the lowest rate of workforce participation in the country needs to have representation on all workforce boards.

Thus we recommend changes to Section 117(b)(2)(B) by adding a new subsection --
Shall include people with disabilities or their representative or community based organizations serving people with disabilities and may include representatives of other community based organizations with demonstrated experience in addressing the employment training or education needs of other individuals with barriers to employment.

We also believe that local boards should annually certify that all One Stops are physically and programmatically accessible for people with disabilities.

Thus we recommend changes to section 117 (d) by adding a new requirement -- *One-Stop Certification*. – *The local board will annually assess and certify the physical and programmatic accessibility of all One-Stop operators and providers. The local boards may partner with independent entities familiar with disability accessibility and that have expertise in certifications and assessments.*

We appreciate the Committee’s inclusion of Consumer Choice Requirements under 117(d)(10)(E).

Section 118 – Local Plan

We applaud the Committee’s inclusion in *(b) Contents (6)(C)* the requirements that the local plan describe how the one stop delivery system will comply with the newly designated Section 288, nondiscrimination provisions; (9) the type and availability of youth workforce activities including activities for youth with disabilities; and a description of cooperative agreements between the local board and local entities described in various sections of the Rehab Act.

However, in line with our recommendations for the use of universal design concepts in the workforce system, we suggest amending Section 118 by adding new requirements to (b) -- *a description of how the local board will utilize a universal design approach in the delivery of workforce development services.*

Subtitle B – Workforce Development Performance Accountability System

Section 131. Performance Accountability System

We have a number of questions about this part of the draft bill. Questions arose concerning the definition of “program participants” [p. 131] because of concerns over provisions later in the document [p. 134] that seem to imply that those who cannot get a job or complete a training program within one year of exit from the program will not be counted in the performance measures. Will this create an unintended consequence whereby those who cannot match these benchmarks [likely many people with significant disabilities] will be ignored or otherwise go unserved by the workforce system? Does this type of measurement give the workforce system a pass for failing to help some people? Moreover – what is the reason for including credentialing in the outcomes? If the aim of a workforce development system is to get people into jobs, should employment be the sole or primary outcome?

(3) Content of measures – While the section [p. 157] does ask for number and percentage of individuals with disabilities served by both Rehab Act programs and “concurrently from other partners in the one-stop delivery system” – there is no definition of “served” in the draft bill.

Furthermore, there has been a considerable amount of interest expressed by policymakers on Capitol Hill in seeing that the workforce system better addresses the needs of veterans.

We thus recommend the addition to (2) Indicators of Performance and (3) Levels of Performance the following language -- *number and percentage of veterans with disabilities served and number and percentage of veterans served under priority of service.*

Subtitle C – Workforce Innovation and Replication Grants

Sec. 142 Workforce Innovation and Replication Grants

This section appears to be the authorization for the Workforce Innovation Fund contained in the 2011 Continuing Resolution. Given that the funding for WIF comes partly from funds taken from Vocational Rehabilitation Title 110 – funds that would be serving people with disabilities – then people with disabilities should be specifically highlighted in Section 142 as are youth with disabilities are under Section 143 (b)(2)(C).

We recommend adding to Section 142(b)(2) in line 20 – *including adults and youth with disabilities.*

TITLE II WORKFORCE INVESTMENT AND RELATED ACTIVITIES

Subtitle B-Workforce Investment Activities and Providers

Chapter 1-Workforce Investment Activities Providers

New Section 221

Establishment of One-Stop Delivery Systems

1. We are concerned about the use of the term “specialized centers to address special needs” on p.14, line 23. This is a description of the one stop delivery system and the use of this terminology could create a template for segregation of people with disabilities into “specialized centers”
2. On p. 25, (ii) Cap on Required Contributions – The Employment and Training Task Force has agreed to this formula in the past, however – on p. 30, subsection (4)(i) – Other Funds -- appears to carve out a loop hole to the capped contributions section that could transfer high cost services for One Stop clients with disabilities to the VR system even when new Section 288 requires One Stops to cover these services.
3. On p. 43, line 20, the draft seems to allow for unpaid work experience in on-the-job training programs but on p. 341, Sec. 281 (a)(1)Wages - the draft indicates that individuals in OJT must be paid minimum wage. This appears to be an inconsistency in the legislation.

We believe that only One Stops that are physically and programmatically accessible should be eligible to receive funds under the Act.

We recommend changing section 221(d)(2) by adding a new subparagraph (C) as follows:

(C) shall report annually to the local board that its facilities, technology, and services are physically and programmatically accessible to individuals with disabilities.

Section 222 Identification of Eligible Providers of Training Services

We believe that supported employment should be included among the types of training services identified in this section. Wherever customized training appears, we recommend adding “*supported employment*” to the section.

For example, we recommend changing section 222(h)(1) by adding (new language in italics) “providers of on-the-job training, *supported employment* or customized training” and amend (2) by adding “on-the-job training, *supported* and customized training” and inserting “*on-the-job training, supported employment services, and customized training.*”

Section 234 Use of Funds For Employment and Training Activities

Amend Section 234(a)(2) to specify that statewide employment and training activities shall include, among other things:

- disseminating information on physical and programmatic accessibility for individuals with disabilities and providing technical assistance and capacity building, which may include development and training of staff to provide opportunities for hard-to-serve populations to enter high-wage, high-skilled, and nontraditional occupations.*
- activities to improve coordination between employment and training assistance and programs carried out in the local area for individuals with disabilities, including programs carried out by State agencies relating to mental retardation and developmental disabilities, Statewide Independent Living Councils, and centers for independent living.*
- deployment of an effective and responsive statewide system of full-time dedicated expert staff to navigate a pathway to higher skilled and higher paying jobs and economic security for individuals with disabilities and others with multiple barriers to employment by:
 - a. improving meaningful and effective participation in and outside the One-Stop systems including physical, communication and programmatic access;*
 - b. improving coordination and collaboration among employment and training and asset development programs carried out at a state and local level;*
 - c. improving the leveraging of resources to provide effective integrated supports and services from multiple public systems (MH, VR, DD, Transportation, Education, Housing); and*
 - d. improving critical linkages to the business community**

Under Allowable Statewide Employment and Training Activities, amend section 234(a)(3)(A) by adding new provisions:

Implementing innovative programs serving individuals with disabilities consistent with section 288 including the use of supported employment for serving hard-to-serve populations;

Promoting universal design of services and expanding physical and programmatic access of the local one-stop centers and providers.

Amend section Required Local Employment and Training Activities 234(c)(1) new provisions as follows:

shall provide physical and programmatic access to individuals with disabilities.

Amend 234 (d) Permissible Local Employment and Training Activities where appropriate by inserting the following clause: *“and customer support to navigate multiple adult service delivery systems for special participant populations that face multiple barriers to employment, including individuals with disabilities.”*

As well as inserting at the appropriate place: *“supported employment services”* wherever customized or on-the-job training appears.

Section 269 Technical Assistance

Amend Section 269 (a)(1) by adding new language

(1) IN GENERAL The Secretary shall provide ,coordinate, and support the development of, appropriate training, technical assistance, staff development and other activities, including assistance in replicating programs of demonstrated effectiveness, *assistance in formulating State and local workforce development systems based on universal design concepts*, to States and localities, and....

Section 270 Demonstration, Pilot Research and Multistate Projects

On P. 248, the Energy Efficiency and Renewable Energy Worker Training Program includes veterans and past/present members of the Reserves among target populations to be given priority for training and other services. While we applaud this initiative that should assist many veterans with disabilities, we fail to understand why the broader population of individuals with disabilities was not included as well.

Section 288 Nondiscrimination

Amend section 288 (a) by adding a new requirement --

States that receives allotments under this Act shall ensure that its statewide workforce investment system shall comply with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).