



WIA and Rehabilitation Act Reauthorization: Finally Done!

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After 10+ years of trying, reauthorization of the Workforce Investment Act and Rehabilitation Act is finally a done deal. The [Workforce Innovation and Opportunities Act \(WIOA\)](#), which reauthorizes the Workforce Investment of 1998 (WIA) including the Rehabilitation Act through the year 2020, was signed by President Obama on July 22nd. In his comments, the [President stated](#) that WIOA “will help workers, including workers with disabilities, access employment, education, job-driven training, and support services that give them the chance to advance their careers and secure the good jobs of the future.”

What does this 300-page legislation mean for APSE members and the advancement of Employment First?

- A much larger role for public Vocational Rehabilitation (VR) in transition from school to adult life.
- Efforts intended to limit the use of sub-minimum wage.
- Required agreements between state VR systems and state Medicaid systems, and state intellectual and developmental disability agencies.
- A definition of Customized Employment in federal statute, and an updated definition of Supported Employment that includes Customized Employment.
- A definition for “competitive integrated employment” as an optimal outcome.
- A number of disability agencies moving from the Department of Education (DOE) to Health and Human Services, including the Independent Living Program (RSA however, is staying within DOE).
- Enhanced roles and requirements for the general workforce system and One-Stop Career Centers in meeting the needs of people with disabilities.

The implications and impact of WIOA are still being examined, but in general, WIOA has the potential for significant advancement in employment for citizens with disabilities. At the same time, there were a number of items APSE advocated for that did not get included in WIOA, including a definition of Employment First and integration of the term Employment First within various provisions, as well as prohibiting the use of public Vocational Rehabilitation funds in segregated facility-based services for eligibility determinations and assessment. APSE will continue to advocate for these items via the regulatory process and future reauthorizations.

APSE is here to assist its members in understanding WIOA and the opportunities it presents. As APSE has the opportunity to take a closer look at WIOA and with the expected release of implementing regulations over the next year, APSE will provide its members more details on WIOA implementation, and how APSE members can benefit from WIOA as well as advocate for its proper implementation.

Here are details on some of the highlights from the final bill:



Increased VR Role in Transition: Each state’s public Vocational Rehabilitation system will now have a much larger role in transition from school to adult life. Under WIOA, 15% of each state’s public Vocational Rehabilitation Funds must now be used for transition services, and specifically pre-employment transition services as defined within WIOA. These services include job exploration counseling, work-based learning experiences, counseling on post-secondary opportunities, workplace readiness training, and training on self-advocacy. Other services are also allowed if funds are available. In addition, each local VR office must undertake pre-employment transition coordination activities, including working with schools and the local workforce development system to engage them in transition activities. While overall this appears to be a positive move, APSE is concerned that the some of the pre-employment transition service language could allow for services in segregated settings, or consist of stereotypical transition experiences (e.g., cleaning school cafeteria tables). It will be essential for APSE and like-minded advocates to ensure clarity on these areas in the implementing regulations.

Limitations on Use of Subminimum Wage: A new section has been added to the Rehabilitation Act, Section 511, which requires as of 2016, a series of steps before an individual under the age of 24 can be placed in a job paying less than minimum wage (almost all of which are positions with community rehabilitation providers either in sheltered workshops or enclaves). As you may recall, while APSE agreed with the intent of this provision, it opposed its inclusion for numerous reasons: a) it makes placement in a sub-minimum wage position an explicit option under the Rehabilitation Act; b) the screening for sub-minimum wage places an additional burden on the public VR system; c) there are concerns that it will potentially be implemented potentially via a “checklist” approach for admission of individuals to sub-minimum wage employment, with individuals with the most significant barriers still ending up in sheltered work environments. The scope and impact of Section 511 is not completely clear at this point, and APSE is still concerned about its inclusion in the final bill. However, since Section 511 will now be law, it is critically important for APSE and its members to ensure that Section 511 is implemented as intended, essentially making it very difficult for an individual to go from school to a sub-minimum wage position. A major development with 511, which was not part of earlier draft versions, is language that prohibits schools from contracting with sub-minimum wage providers. As a result, it appears schools will no longer be able to pay sheltered workshops for “transition services”. As implementing regulations are developed prior to Section 511 taking effect in 2016, it will be critically important that APSE and its members do everything possible to ensure that Section 511 results in strict limitations on sub-minimum wage, even for individuals with the most significant disabilities.

Requirement for Formal Cooperative Agreement Between VR and State Medicaid and IDD Agency: WIOA requires that state public vocational rehabilitation agencies now have formal cooperative agreements with the state agency responsible for administering the State Medicaid Plan and with state intellectual and developmental disability agencies, with respect to the delivery of vocational rehabilitation services, including extended services. This means that VR must have in place agreements with those agencies responsible for long-term supports for people with disabilities, impacting in particular individuals with intellectual and developmental disabilities (IDD), individuals with significant mental health issues, and those with other issues requiring long-term care funded by Medicaid. APSE would have preferred that state mental health agencies be specifically mentioned along with the state IDD agencies within this language,



and will advocate for that in the implementing regulations.

Movement of Federal Programs: Under a proposed version of WIOA, the Rehabilitation Services Administration - RSA (the parent agency of public Vocational Rehabilitation) - would have moved to the Office of Disability Employment Policy - ODEP, at the U.S. Department of Labor. While RSA will remain under the Department of Education (DOE), a number of other agencies will be moving from DOE to the Administration for Community Living (ACL) at the Department of Health and Human Services, where the Administration on Intellectual and Developmental Disabilities, and Center for Aging and Disability are currently based. These include the National Institute on Disability and Rehabilitation Research (NIDRR), operating under a new name (The National Institute on Disability, Independent Living, and Rehabilitation Research), and the Independent Living Program, which will be moving from RSA to ACL.

Competitive Integrated Employment Defined: The Rehabilitation Act previously used the term competitive employment extensively, but never defined it. There is now a definition of “competitive integrated employment”, meaning full or part-time work at minimum wage or higher, with wages and benefits similar to those without disabilities performing the same work, and fully integrated with co-workers without disabilities. This is considered the optimal outcome under WIOA, and the addition of “integrated” to this definition is a positive move. There is concern however, that this term will result in individuals with more significant disabilities being denied access to public VR and workforce development system services, due to a misperception regarding their ability to meet this optimal outcome. APSE will advocate for language in the implementing regulations to assure this does not occur.

Customized Employment Part of Rehabilitation Act: There is now a definition of Customized Employment in federal statute, defined as “competitive integrated employment, for an individual with a significant disability, that is based on an individualized determination of the strengths, needs, and interests of the individual with a significant disability”, “designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer,” and “carried out through flexible strategies.” As a result, customized employment is now among the available services from public Vocational Rehabilitation nationally.

Changes in Definition of Supported Employment: The definition for supported employment has been somewhat modified, to make it clear that supported employment is integrated competitive employment, or an individual working on a short-term basis in an integrated employment setting towards integrated competitive employment. In addition, customized employment is now included within the definition of supported employment. Finally, the standard post-employment support services under supported employment have been extended from 18 to 24 months. As noted earlier, there are concerns about misinterpretation of the term “competitive integrated employment” resulting in denial of supported employment services to individuals with more significant disabilities (even though that is who they are specifically intended for). APSE will advocate for implementing regulations to ensure this won’t occur.

Focus of Supported Employment State Grants on Youth: While supported employment (SE) can be funded by public VR through general VR funds (\$3 billion in 2014), under the Supported Employment State Grant program, funds are available to states to supplement supported employment services funded via the general VR funding (in 2014, the total supported employment state grant allocation was \$27 million). Under WIOA, half of the money that states



receive under the supported employment state grants will now have to be used to support youth with the most significant disabilities (up to age 24), and these youth may receive extended services (i.e., ongoing supports to maintain an individual in supported employment) for up to 4 years. The definition of “youth with the most significant disabilities” in the implementing regulations will be a key issue in how this will be implemented. (It is important to note that under draft versions of the bill, the SE state grant program was eliminated. Through the advocacy efforts of APSE and others, it has been preserved.)

Technical Assistance for Post-Secondary Allowed: The new law allows the RSA Commissioner to fund technical assistance to “better enable individuals with intellectual disabilities and other individuals with disabilities to participate in postsecondary educational experiences and to obtain and retain competitive integrated employment.”

Funding of One-Stop Infrastructure: In 1998, WIA established a national network of One-Stop Career Centers, where assistance with employment and training is available to any individual (including people with disabilities). There are currently 1,700 One-Stops across the United States. Public Vocational Rehabilitation is among the mandated One-Stop partners. One-Stops are overseen by a local workforce board, of which public VR is a member, and will continue to be a member under WIOA. A major issue under the current law (WIA) is payment of the cost of the One-Stop infrastructure by One-Stop partners, which WIA is unclear on. WIOA attempts to resolve this issue. Under WIOA, payment for One-Stop infrastructure and other costs will be determined at the local board level. However, if agreement cannot be reached, the Governor will develop the requirements for payment of One-Stop costs by One-Stop partners. Under WIOA, public VR can be initially required to use a maximum of 0.75% of its funds for One-Stop infrastructure, which will gradually increase to a maximum of 1.5% after five years. While there are some concerns over mandating the use of VR funds for these purposes, hopefully these new requirements will strengthen the VR and One-Stop partnership in a way that is of benefit to job seekers with disabilities needing employment and training assistance.

Role of VR in One-Stop System: Under WIA, all One-Stop partners had representation on the state and local workforce boards (the boards that oversee the general workforce development system that serves all job seekers, including people with disabilities). Under WIOA, all partners do not have seats on these boards. However, WIOA designates certain programs as “core programs” in the workforce development system. Public Vocational Rehabilitation is among those designated as a core program and as such will continue to be a mandatory member of state and local workforce boards. Other core programs are Adult, Dislocated Worker, and Youth workforce investment programs, the state Employment Service (Wagner-Peyser), and Adult Education and Literacy.

Increased Emphasis on Role of General Workforce Development System: There are a number of provisions in WIOA that emphasize and increase the requirements for the general workforce development system and One-Stop Career Centers to meet the needs of job seekers with disabilities. These include:

- WIOA explicitly states that state and local workforce development boards members may include community organizations that provide or support competitive integrated employment for individuals with disabilities. This provides an excellent opportunity for



APSE business members to become members of their state and local workforce development boards and provide oversight of the workforce system.

- Local Workforce Development Boards will have to ensure there are sufficient service providers in the local area with expertise in assisting individuals with disabilities with their career and training needs. This provides an enhanced opportunity for APSE business members to become vendors for their workforce development system.
- Employment Networks under the Social Security Administration’s Ticket to Work program are specified as optional One-Stop partners.
- Among the specified responsibilities of the State Workforce Development Board is developing strategies to support the use of career pathways for individuals with disabilities to enter and retain employment.
- WIOA states that Local Workforce Development Boards (LWDB) may have standing committees. Among the three standing committees specified in the legislation is one on the provision of services for individuals with disabilities. This committee could serve as an important forum to influence the ability of the workforce system to meet the needs of job seekers with significant disabilities. APSE members should advocate with their LWDB for such a committee, and inclusion of APSE members on it.
- Annual assessment of physical and programmatic access of One-Stop Centers for people with disabilities is now required by federal statute.
- Disability is to be a consideration in development of state performance requirements in use of workforce development funds (the funds used to assist all job seekers).
- The obligation of the general workforce system to serve youth with disabilities is emphasized within WIOA in multiple places.
- Under WIOA, Governors may reserve up to 15% of general workforce development funds for statewide employment and training activities (the remainder of funds go to local workforce development areas). Among the activities specified as allowable in the use of these statewide funds is improving coordination of employment and training activities with programs for individuals with disabilities. Programs under state intellectual and developmental disability agencies, State Independent Living Councils, and centers for independent living, are cited as specific entities this would apply to. WIOA also states that local workforce development funds, overseen by local workforce development boards, may be used for similar activities. In the implementing regulations, APSE will advocate for explicit inclusion of state mental health agencies in this provision as well.

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