

July 19, 2011

Via Regular Mail

U.S. Senator Tom Harkin
Chairman
HELP Committee
428 Dirksen Senate Office Building
Washington, DC 20510

U.S. Senator Mike Enzi
Ranking Member
HELP Committee
428 Dirksen Senate Office Building
Washington, DC 20510

U.S. Senator Patty Murray
Chairwoman
Subcommittee on Employment and Workplace Safety
428 Dirksen Senate Office Building
Washington, DC 20510

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

Dear Senators Harkin, Enzi, Murray, and Isakson:

I write to offer you my understanding of the effect of Section 511 of the proposed Workforce Investment Act. My comments and recommendations are based on substantial studies my colleagues and I at the Burton Blatt Institute and elsewhere have conducted on sheltered and subminimum wage work by people with disabilities.

Section 511 specifies the method to be pursued in paying individuals with disabilities subminimum wages. Section 511 says in part, "An entity . . . may not employ an individual with a significant disability at a 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. . . ". This language indicates that an employer meeting appropriate requirements is authorized to pay a subminimum wage to people with disabilities. Further language in section 511 indicates that individuals with disabilities currently employed at subminimum wages may continue to receive subminimum wages, and those who become employed may receive subminimum

wages if they are older than 24, or if they are 24 or younger and prescribed procedures are followed prior to the subminimum wage employment.

The original authorization for subminimum wage payments is contained in Section 14(c) of the Fair Labor Standards Act of 1938. The proposed section 511 of the Workforce Investment Act makes subminimum wage payments a part of the vocational rehabilitation process, thus emphasizing subminimum wage payments as an element of rehabilitation and reauthorizing payment of less than the federal minimum wage for vocational rehabilitation clients. The section incorporates substantial procedures that must be met by the rehabilitation agency before subminimum wage payments are authorized, but when these procedures have been met, the proposed Section 511 authorizes subminimum wage payments.

Prior to this proposal, sheltered work placements were not counted as successful case closures by vocational rehabilitation systems. The current proposal authorizes such placements as successful closures. In addition, prior to this proposal, the Rehabilitation Act had not referred to subminimum work. This proposal recognizes subminimum wage work for vocational rehabilitation placements, and, as such, is a step backwards in terms of modern rehabilitation policy.

Historically, many vocational rehabilitation personnel have used sheltered employment as a final placement for rehabilitation clients. Arguments have been made repeatedly to the effect that such placements are intended to provide training and upward mobility to the clients so placed. However, my research and that of others indicate that the goal of training and upward mobility has been (in many cases) unrealized (e.g., Blanck, Shartz, & Shartz, "Labor Force Participation and Income of Individuals with Disabilities in Sheltered and Competitive Employment: Cross-Sectional and Longitudinal Analyses of Seven States During the 1980s and 1990s," 44 *Wm. & Mary L. Rev.* 1029 (2003)).

Thus, the promise of upward economic mobility often is limited and the training directed primarily to maintaining the position of workers as employees in the workshop, often at subminimum wages. Moreover, we find that those individuals who move out of sheltered workshops often are no more job skilled than those who stay, indicating that something other than worker job ability is determining placement. Based on this and other research, my colleagues and I have made policy recommendations with respect to subminimum wage payments to people with disabilities (see, e.g., "Policy Report, April 2002, SECTION 14C OF THE FAIR LABOR STANDARDS ACT: FRAMING POLICY ISSUES").

Based on my understanding of relevant research, law and policy, overemphasis on subminimum wage work is contrary to the principles of the Americans with Disabilities Act (ADA) and counter to the developing emphasis of U.S. and international

disability rights laws on integration and equal economic opportunity. As a result of our research, we have recommended that subminimum wage authorizations be systematically reduced or eliminated, and that sheltered workshops be encouraged to transition to other job placement models. If they are to be continued, they should be time limited and assessed as to job placement outcomes, so as to further effective training and movement toward competitive placement for qualified individuals. One approach to further appropriate job placement is that no authorization remain in effect for more than 12 months and no individual work at subminimum wages for a cumulative period exceeding 36 months.

In sum, the incorporation of subminimum wage work in the Rehabilitation Act reinforces payment of subminimum wages, in contravention of this country's stated policies of integration and equal economic opportunity. This policy emphasis relies on outdated assumptions about the dependency and lack of job skills and abilities of people with disabilities, and it may exclude many qualified individuals from productively participating in the economic growth of our nation at a time when such participation by all is critical.

For these reasons, I respectfully recommend removing from the proposed section 511 of the Workforce Investment Act the provision that makes subminimum wage payments a part of the vocational rehabilitation process. I would be delighted to further amplify my comments should that be of assistance.

Sincerely,

Peter Blanck,
University Professor & Chairman

Attachments:

Blanck et al., 44 *Wm. & Mary L. Rev.* 1029 (2003).
Policy Report, April 2002, SECTION 14C OF THE FAIR LABOR STANDARDS
ACT: FRAMING POLICY ISSUES,
bbi.syr.edu/publications/morris/Policy_Report_042002.doc