National Federation of the Blind

Position Statement

Section 511 of Title V of the Workforce Investment Act

This paper sets forth the position of the National Federation of the Blind (NFB) with respect to the proposed addition to Title V of the Rehabilitation Act, known hereinafter as section 511, contained in the draft reauthorization of the Workforce Investment Act recently reported favorably by the Senate Committee on Health, Education, Labor and Pensions. Although we recognize the intent behind the proposed section 511, which is to reduce the number of youth with disabilities being tracked directly from school into subminimum wage employment in segregated work environments, we cannot in good conscience support section 511. First and foremost, we believe that the problem of subminimum wage employment must be addressed at its root by working to repeal section 14(c) of the Fair Labor Standards Act (FLSA), which authorized this unconscionable practice in 1938. Secondly, we believe that the Rehabilitation Act should not be linked in any way with section 14(c), since the purposes of the two statutes fundamentally conflict. The Rehabilitation Act is designed to prepare people with disabilities for competitive, integrated employment and to place them in such employment. Authorizing the rehabilitation system to place workers in subminimum wage, segregated employment, even with restrictions, undermines the overall purpose of the Rehabilitation Act and legitimizes subminimum-wage work environments as part of the rehabilitation system, even though the work-readiness training that these environments provide has been shown to be costly and ineffective. Finally, just as the Wage and Hour Division of the Department of Labor has been ineffective in preventing abuse of the exemption contained in section 14(c) of the FLSA, state vocational rehabilitation agencies will find enforcing the documentation and review requirements imposed by section 511 impossible. The provisions of section 511 will inevitably become a mere paperwork checklist for overworked rehabilitation counselors, resulting in the placement of more workers with disabilities in subminimum-wage situations. For all of these reasons, further elucidated below, and outlined in a detailed section-by-section Policy Analysis of section 511, we, along with other organizations of people with disabilities, cannot support section 511 and will actively oppose its incorporation into the Rehabilitation Act.

The National Federation of the Blind appreciates that section 511 is intended to reduce the number of youth with disabilities being tracked into subminimum wage employment environments. However, we respectfully feel that the language does nothing to eliminate the exploitation of workers with disabilities, and the passage of this legislation would make a deplorable situation even worse. We strongly feel that this problem must be dealt with at the root by repealing section 14(c) of the Fair Labor Standards Act (FLSA), which authorizes the payment of subminimum wages to people with disabilities.

In order to truly understand our position on this issue, it is important to look at the big picture. For more than seventy years, section 14(c) of the FLSA has excluded people with disabilities from the same workforce protection of a federal minimum wage enjoyed by all other Americans. Today, hundreds of thousands of Americans with disabilities are currently employed at wages less than the federal minimum wage. Some argue that this exemption is necessary, because people with disabilities cannot be competitive employees. The National Federation of the Blind, since its inception in 1940, has never agreed with this proposition. Even if, for the sake of argument, it was accepted as being necessary in the past, circumstances are substantially different now than in 1938. The overall nature of the job market has changed; the ability to use assistive technology has made it possible for people with disabilities to perform any number of competitive job tasks; and the profession of rehabilitation has developed new job training and placement strategies to competitively employ a person with even the most significant disability. Yet people with disabilities continue to be employed at subminimum wages. We agree with those who say that the status quo is unacceptable, but what is truly unacceptable is that it is legal to pay people with disabilities subminimum wages at all.

As a result of section 14(c) of the FLSA, over 400,000 workers with disabilities toil away in subminimum wage work environments performing tasks like sorting hangers, capping pens, or other tedious and mundane activities that do not assist the individual to acquire a marketable job skill. Many of them are paid pennies per hour, not even receiving the subminimum wages they are due under the flawed commensurate wage formula. Most, if not all, of these employees, with the proper training and supports, could be receiving competitive wages that would allow them to leave the rolls of social programs like welfare, food stamps, and Social Security, to become fully-participating, tax-paying citizens. However, rather than ending the discriminatory practice of paying subminimum wages to people with disabilities, we are asked to support ineffective language said to prevent youth with disabilities from being tracked into subminimum wage jobs. We cannot in good conscience support anything that does not effectively move toward the inevitable repeal of section 14(c) of the FLSA.

The language in section 511 links the Rehabilitation Act, which was established to assist people with disabilities in obtaining competitive integrated employment, with section 14(c) of the FLSA, which is based on the false premise that people with disabilities cannot be competitively employed and therefore can be paid subminimum wages. Referrals to subminimum wage employment environments have never before been endorsed as a service in the Rehabilitation Act, and authorizing them, even with supposed restrictions, is contrary to the purpose of the Act.

It is important to note that the language in section 511 does nothing to help the hundreds of thousands of individuals with disabilities, regardless of age, currently being harmed by discriminatory subminimum wage practices, supporting the status quo. Furthermore, individuals over the age of 24 are subject to being employed at subminimum wages, leaving them without any real remedy, and increasing their likelihood of being placed in a subminimum wage work environment. Moreover, the good intentions motivating the development of section 511 are likely to result in enormous negative consequences, especially the endorsement of subminimum wage employment environments as “job training” environments, and the potential validation of subminimum wage employment as a viable vocational outcome for people with disabilities.

Section 511 places a burden of responsibility on state VR programs that cannot be properly implemented or properly enforced. This parallels a fundamental problem with the lack of enforcement of section 14(c) of the FLSA. The section 511 documentation and review process, which is meant to provide safeguards against inappropriate use of subminimum wage employment, does not take into consideration the fact that state vocational rehabilitation programs do not have the resources to ensure effective compliance with the various documentation and review requirements, including the six-month review period in the proposed language. As a result, the documentation and review requirements will inevitably be reduced to a paperwork checklist that is routinely filled out by overworked rehabilitation counselors to justify lightening their caseloads by placing workers in subminimum-wage employment. Section 511 will therefore expand the abuse of section 14(c), and the abuse will now be inappropriately linked to legislation meant to build on the capacity of people with disabilities. The time and resources spent to attempt to enforce this discriminatory legislation would be better spent creating additional opportunities, positive incentives, and creative strategies for the competitive integrated employment of people with disabilities.

Only the representatives of the sheltered subminimum wage workshops have openly, without reservation, supported this language. It is understandable that the entities that have built a billion dollar industry, on the backs of people who they claim cannot be competitively employed, support this language. The language approves the use of employers holding Special (subminimum) Wage Certificates as training centers for people with disabilities, creating another revenue stream for these entities, and preparing the next generation of subminimum wage employees for a lifetime of low expectations. This is a windfall for the sheltered workshops and a significant step backwards for workers with disabilities.

It is very important to note that the majority, if not all, of the organizations of people with disabilities (as opposed to those organizations, like most of the sheltered workshops, that are not governed by people with disabilities) believe that section 14(c) of the FLSA should be repealed. Their support of the Workforce Investment Act reauthorization should not be interpreted as support of section 511. Removal of section 511 from the WIA language would not cause any of these organizations to retract their support of WIA. In fact, more organizations would support the WIA reauthorization if section 511 was removed from consideration.

We recognize the difficult political climate in which we have to operate. It is probably reminiscent of the political climate that led to the passage of the FLSA in 1938 without the guarantee of a fair minimum wage to American workers with disabilities. Today, the disability community is much more organized than in 1938, and our goal is for people with disabilities to share the same wage protections as every other American citizen. The National Federation of the Blind and our partners are determined to work until this goal is a reality, and we cannot and will not support anything that causes that goal to recede into the distance to be achieved later or not at all. It is long past time to dismantle the system of exploitation of workers with disabilities, not to tinker with it through ineffective, regressive measures like section 511.