



Washington Insider – Monthly Newsletter

Building a Better Economic Future for Americans with Disabilities

National Disability Institute (NDI) is a not-for-profit research and community development organization dedicated exclusively to promote work, saving, and asset building for persons with disabilities and their families nationwide. As the creator of the Real Economic Impact Tour NDI is creating a roadmap to financial stability and independence for people with disabilities and their families. From Capitol Hill to state capitols, from urban centers to rural communities across the country, NDI invites you to join with us to promote an economic empowerment agenda, with a focus on policy change and public-private collaboration. Help advance solutions to the challenges of poverty adversely impacting the independence and quality of life for millions of individuals with disabilities regardless of age, gender or race.

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FY 2010 FEDERAL BUDGET & APPROPRIATIONS UPDATE***Senate Appropriations Subcommittee on Financial Services & General Government Operations provides solid increase in Community VITA Matching Grant Assistance Program; NDI applauds Subcommittee for Supporting Parity in Program for People with Disabilities***

On July 8th, the Senate Appropriations Subcommittee on Financial Services & General Government Operations provided a \$4 million increase in funding for the **Community Volunteer Income Tax Assistance (VITA) Matching Grant Program**, thus bringing the total funding allotted for FY 2010 to \$12 million. The new allocation represents a \$4 million increase over FY 2009 level, and a \$3 million increase over the House Appropriations Subcommittee's allocation.

Additionally, after a briefing by NDI officials on the disparity in outreach efforts among VITA sites targeting individuals with disabilities, the Subcommittee included strong language in its committee report calling for a greater focus in the quantity and quality of efforts specifically targeting individuals with disabilities. The language reads as follows:

"In addition, the Committee notes that 1 in 5 adults living in the United States have a disability, and that over 22 million families nationwide have a member with a disability. Only 21 percent of taxpayers with disabilities have annual incomes over \$40,000, and working-age adults with disabilities are 3 times more likely than their nondisabled peers to live at or below the poverty line. Prior research has identified persons with disabilities as a major underserved market segment for receiving support from national low-income tax assistance programs, asset building coalitions, and the private sector financial services.

The Committee understands that only a small number of the grants awarded thus far within the VITA Community Matching Grant Assistance program have focused on reaching taxpayers with disabilities as the primary target subpopulation. The Committee strongly urges the IRS to make every effort to expand the quantity and funding level of VITA grants focused on serving persons with disabilities proportional to the growing disability population requiring tax assistance.

The Committee understands that entities that are currently increasing their outreach efforts to better serve the needs of the disability population have experienced difficulty in applying for Federal grant assistance due to a lack of resources at the local level needed to complete the application. The Committee urges the IRS to allow national coalitions responsible for the coordination of local community partnerships focused specifically on the expanded provision of tax services for individuals with disabilities to compete in future VITA community matching grant processes. [Back to Top](#)

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The full Appropriations Committees in both the House and Senate are expected to begin deliberations on the FY 2010 Appropriations Act for Financial Services & General Government Operations shortly after the August recess.

House Labor-HHS-Education Appropriations Subcommittee Zeros out Disability Navigator Initiative in FY 2010 Appropriations bill

Consistent with the President's budget recommendations, the House Labor-HHS-Education Appropriations Subcommittee eliminated funding for the U.S. Department of Labor's Disability Program Navigator (DPN) Initiative in its draft FY 2010 Appropriations bill. Advocates for the DPN Initiative are pushing Senator Harkin, Chairman of the Senate Labor-HHS-Education Appropriations Subcommittee, to reinstate the funding in its version of the bill, and to establish a reasonable balance between efforts at the Employment & Training Administration (ETA) and the Office of Disability Employment Policy (ODEP) to improve services and employment outcomes for persons with disabilities. Specifically, advocates are encouraging the addition of more prescriptive language in the Senate bill that directs ETA and ODEP to work more collaboratively to approve the accountability and responsiveness of the generic system to advance employment outcomes for job seekers with disabilities during the current difficult economic situation of unprecedented worker dislocation.

Among the options on the table, the Senate Appropriations subcommittee is considering a redirection of up to 5% of Wagner-Peyser funds allocated to each state to continue the DPN Initiative. The deployment of Wagner-Peyser funds would permanently formalize the initial demonstration grants aimed at establishing and maintaining 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. The DPN Initiative could be significantly expanded and enhanced to improve meaningful and effective participation in and outside the One-Stop systems including physical, communication and programmatic access; coordination and collaboration among employment and training and asset development programs carried out at a state and local level; the leveraging and integrating of resources across systems to expand needed employment-related services and supports; and critical linkages to the business community.

Such a system would adopt promising practices identified from prior work incentive grants and the Disability Program Navigator Initiative. The Senate Appropriations Subcommittee on Labor-HHS-Education is expected to mark-up its version of the bill before the end of July. [Back to Top](#)

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Legislative Update:

ABLE Act Update: Congressional Briefing rescheduled for July 21st

The ABLE Act continues to make progress through the legislative process, with over 125 cosponsors to date in the House and 10 cosponsors in the Senate. The core working group of national organizations advocating for the bill (including the National Disability Institute) are hosting a Congressional briefing on Tuesday, July 21st from 12:30-1:30 p.m. ET in Room B-340 of the Rayburn House Office Building. Individuals interested in attending should email Serena Lowe at the National Disability Institute at EwolAneres@gmail.com.

Additionally, House Democratic leadership have recently inquired with the champions of the ABLE Act about the legislation, and it is hopeful that the key Committees of Jurisdiction will take up the bill shortly after the August recess. NDI and other organizations continue to push for several revisions to the legislation, including replacing the \$2,000 tax deduction with a refundable tax credit so as to ensure better access to the ABLE accounts for low-income working adults with disabilities. [Back to Top](#)

Legislation expands resources for Native Americans, women and veterans but NOT people with disabilities

On the heels of last month's passage of the Job Creation through Entrepreneurship Act of 2009 (HR 2352) in the House of Representatives, the Senate introduced its own entrepreneurial development legislation, S. 1129, on June 10th. The introduction of S. 1129 has created an additional opportunity to attempt to solidify provisions specific to promoting entrepreneurship and small business development among individuals living with disabilities. NDI has provided a number of recommendations to the Senate Committee on Small Business & Entrepreneurship for expanding the bill's focus to include more targeted emphasis on individuals with disabilities. NDI's recommendations included the following specific objectives:

- Establish a Disability Business Center Program to provide entrepreneurial training and counseling to persons with disabilities, and appoint a Director of the Disability Business Center program who shall report directly to the Commissioner of the SBA. Then, Congress could designate entities such as Women Business Development Centers and Small Business Development Centers as well as others as Disability Business Centers and award grants to such centers. Activities of the Disability Business Centers would include:
 - Entrepreneurial development by individuals with disabilities including microenterprise development;

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- Counseling of small business through one-on-one instruction and classes; and
- Providing government procurement assistance to individuals with disabilities who own small businesses.
- Direct SBA to develop and implement, directly or by contract, an annual training program for the staff and personnel of designated Disability Business Centers to provide education, support and information on best practices with respect to advancement of entrepreneurial opportunities for individuals with disabilities in regards to government procurement, health care, green economic development, technology, and other growth industries. The training program will also focus on best practices regarding cross-agency collaboration with state Vocational Rehabilitation agencies, Departments of Labor, and rural economic development with the Departments of Agriculture and Commerce.
- Create an *Access to Capital* Grant Program by providing the new Director of SBA's Disability Business Center Program the authority to make grants for the following:
 - Developing specialized programs to assist small businesses owned by individuals with disabilities to secure capital and repair damaged credit.
 - Providing informational seminars on securing loans to small businesses owned by individuals with disabilities.
 - Providing one-on-one counseling to small businesses owned by individuals with disabilities to improve the financial presentations of such businesses to lenders.
 - Facilitating the access of small businesses owned by individuals with disabilities to both traditional and non-traditional financing sources.
 - Developing specialized programs to assist unemployed individuals with disabilities and SSI and SSDI beneficiaries to become entrepreneurs.
- Host an Entrepreneurial Development Summit for Persons with Disabilities every two years for the purpose of providing:
 - networking opportunities;
 - outreach, education and training and support to funded centers;
 - access to government procurement opportunities; and
 - collaboration opportunities across federal agencies that provide employment related services and support for persons with disabilities.
- Amend Section 8(A)(5) to include disability as a basis of social disadvantage.

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- Establish a National Technical Assistance Center to advance entrepreneurship opportunities for individuals with disabilities that
 - improves access and meaningful participation by individuals with disabilities in SBA funded SCORE, Women’s Business Centers, SBDCs and Veterans Business Centers;
 - improves integration and coordination with other federally funded entrepreneurial development and employment related services and supports for individuals with disabilities;
 - prepares small businesses owned by individuals with disabilities to be ready sub and prime contractors for contracts made available under the American Recovery and Reinvestment Act of 2009;
 - provides technical assistance regarding the federal procurement process; and
 - provides training and technical assistance regarding access to capital for microenterprise and small business development.

NDI will continue to work with the Senate Committee on Small Business & Entrepreneurship as well as additional key stakeholders representing the Small Business Development Centers and Women’s Business Development Centers to seek inclusion of the aforementioned policy recommendations into the final legislation. [Back to Top](#)

WIA Reauthorization Heating Up; Opportunities to Enhance One-Stop Career Centers and Promote Greater Focus on Job-Seekers with Disabilities

The Senate HELP Subcommittee on Employment & Workforce Safety is currently working on drafting legislative language to reauthorize the Workforce Investment Act of 1998. The Subcommittee hosted a hearing on July 16th entitled, “Modernizing the Workforce Investment Act (WIA) of 1998 to Help Workers and Employers Meet the Changing Demands of a Global Market,” and Dr. William Kiernan of the Institute of Community Inclusion testified on specific strategies for improving the One-Stop Career Centers to more effectively address the unique needs of job seekers living with disabilities.

NDI has been working with several entities, including the Collaboration to Promote Self-Determination, to develop a set of key recommendations for the Subcommittee to consider including in the WIA reauthorization bill. Recommendations range from the clarification of key definitions and concepts; enhancing performance measurement; strengthening the One Stop Career Centers and allowing for the blending and braiding of funds among public agencies via the One Stop Career Centers; improving cross-

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system collaboration and responsiveness to job seekers with disabilities; expanding universal access concept in WIA; improving transition systems to promote employment among youth with disabilities who are entering adulthood; and promoting the economic advancement of individuals with disabilities. [Back to Top](#)

SPECIAL IN-FOCUS: Policy Recommendations for Phasing out the use of Subminimum Wage in the Employment of Individuals Living with Disabilities

Individuals with intellectual, developmental and other significant disabilities in sheltered settings are often paid less than minimum wage. This practice is allowed under Section 14(c) of the Fair Labor Standards Act (FLSA). The FLSA authorizes public and private employers to obtain special certificates from the Department of Labor's Wage & Hour Division that allow them to compensate workers with significant disabilities at rates below the current federal minimum wage based on the individual's level of measured productivity. Criticisms range from charges of discriminatory wage setting to arguments that the measures of productivity are arbitrary and as such set standards for workers with disabilities that are not established for workers without disabilities.

In its work with the Collaboration to Promote Self-Determination (CPSD), the National Disability Institute has recently been engaged in a series of discussions on Capitol Hill pertaining to recent legislative efforts to re-evaluate the issuance of 14(c) wage certificates under the FLSA. The CPSD, in partnership with NDI, has created a balanced, two-prong approach to systems change designed to phase out and eventually eliminate FLSA subminimum wage provisions under Section 14(c) for all individuals (regardless of ability), while simultaneously building capacity to support individuals with significant disabilities in integrated employment paid at or above the prevailing minimum or industry wage rates.

The CPSD has recommended the implementation of a strategic plan for reforming the subminimum wage payment provisions under Section 14(c) by amending the FLSA to achieve the following:

- **Phase out the Issuance of the Subminimum Wage Certificates to Community Rehabilitation Providers.**
 1. Immediate elimination of the issuance of subminimum wage certificates for any new providers that have not previously applied for and received subminimum wage certificates, thus barring this practice by any entities considering the use of subminimum wage within their business model.
 2. Prior to the next renewal of any subminimum wage certificate from the U.S. Department of Labor's Wage & Hour Division of the Employment Standards

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- Administration, all applications should be required to report the number of employees who will be paid at subminimum wage for the next two years under the new subminimum wage certificate. This will serve as the maximum number of individuals allowed to be employed under subminimum wage by the certificate-holder, and used for the baseline in calculating a phased-in reduction in future years.
3. Implement a procedure that requires a 25% reduction in years 4-6-8-10 of the number of persons served in a baseline year as the maximum number of individuals that that could be in a program and paid on a subminimum wage certificate. Require that 75% of the total served in the base year would be eligible to remain paid at sub-minimum wage by the end of the fourth year after the “baseline” renewal period; 60% of the total baseline year by the end of the sixth year; 25% of the total baseline year by the end of the eighth year; and by the tenth year after the baseline was established, no individuals would be allowed to be paid at subminimum wage.
 4. In order to receive a renewal of the subminimum wage certificate at years 4, 6 and 8, employers must demonstrate that at least 50% of those individuals who were transitioned out of subminimum wage remained employed in a customized, supported or self-employment opportunity, and were elevated to minimum wage or higher.
 5. Allow CRPs to negotiate an alternative transition plan with DOL’s Office of Wage Enforcement to decrease a percentage of employees covered at each certificate renewal between now and defined end date of 14(c) program should they desire.
- **End the practice of placing youth under the age of 21 into subminimum wage employment environments immediately, and ensure appropriate individual transition plans that prepare youth with disabilities for meaningful employment opportunities through effective training, placement and ongoing supports.**
 1. Prohibit individuals under the age of 21 from entering subminimum wage jobs, and prohibit state and federal agencies focused on job placement for individuals with disabilities under the age of 21 from placing them in subminimum wage settings.
 2. Require U.S. Department of Education to extend current Vocational Rehab policy that excludes sheltered workshop from being counted as a category of “employment”, and establish consistent policy eliminating the use of sheltered employment (especially where subminimum wages are utilized) as an acceptable place in the transition planning process across all divisions of the U.S. Department of Education.

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3. Create a comprehensive approach to effective transition at the federal level through the incorporation of key systemic reforms.
- **Limit use of the Board, Lodging & “Other Facilities” Wage Credit Section 3(m) of the Fair Labor Standards Act) that allows employers to deduct room and board from wages for people with disabilities.**
 1. Reverse through legislative statute DOL’s final regulation issued on 12/18/2008 related to interpretation of recruitment expenses under 3(m) rule, thus prohibiting employers from deducting any expenses related to the recruitment of workers from employee wages, clarifying that such expenses are primarily for the benefit of the employer, not the employee.
 2. Prohibit employers from deducting from an employee’s cash wages an amount that is greater than the cost to the employer of the room or board that the employer furnishes to an employee.
 3. Strengthen penalties for exploitation of workers by employers who violate the 3(m) rule.
 - Direct DOL to seek back wages for all years where violations occurred (currently, DOL only seeks back wages for 2-3 years).
 - Seek liquidated damages and require employers to pay employees interest on any money withheld from employees that were in violation of the law.
 - Direct DOL to impose civil money penalties (up to \$1000 for each violation) against any person who repeatedly or willfully violates the minimum wage or overtime pay provisions of the FLSA.
 4. Increase the number of investigators and legal staff within the U.S. Department of Labor’s Wage & Hour Division.
 - The number of investigators has decreased from 1500 in 1975 to fewer than 750 in 2009.
 - The number of legal staff has decreased from 786 in 1992 to 590 in 2007.
 - **Mandate annual public reporting of data by all entities holding subminimum wage certificates to determine the following information:**
 1. Number of people moved into integrated employment over the certificate period;
 2. Number of people still employed at subminimum wage;
 3. Wages paid and status of productivity level for all employees under subminimum wage, stratified by number of years at facility, ethnicity, gender, and age;
 4. Require an annual report by DOL summarizing performance on a national, state and certificate-holder level.

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- **Require the establishment of an Upward Mobility Employment Plan for all individuals with disabilities employed under minimum wage by their employers as part of the subminimum wage certificate renewal process.**
 1. CRPs and other employers who obtain subminimum wage certificates would need to have a plan developed for each individual currently employed below minimum wage. This plan, along with an evaluation of each employee's productivity and current wage level, must be submitted as part of the subminimum wage renewal process.
 2. Renewal process for subminimum wage certificates would require confirmation that all employees working at subminimum wage had Upward Mobility Employment Plans and that an annual assessment process had been completed for each employee to evaluate progress made in completing upward mobility objectives over the course of the previous year.

In an effort to prepare a consensus package of proposed recommendations for Congressional leaders to consider, NDI is interested in receiving feedback from various participants in the service delivery system on the above-mentioned recommendations. Please email all feedback to Serena Lowe at EwolAneres@gmail.com. [Back to Top](#)

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DISCLAIMER

This monthly publication is intended primarily for the thousands of volunteers, community organizers, asset building coalition members, business and government leaders and individuals with disabilities and family members who join with the National Disability Institute (NDI) to promote and build a better economic future for youth and working age adults with disabilities nationwide. This publication will provide a general overview of the federal government process and key developments in the federal policy arena. The content is intended to provide factual information, and any interpretative statements are solely those of the editor.