



November 15, 2011

The Honorable John Kline
Chairman, Education and the Workforce
Committee
United States House of Representatives
Washington, DC 20515

The Honorable George Miller
Ranking Member, Education and the Workforce
Committee
United States House of Representatives
Washington, DC 20515

The Honorable Tim Walberg
Chairman, Subcommittee on Workforce
Protections
United States House of Representatives
Washington, DC 20515

The Honorable Lynn Woolsey
Ranking Member, Subcommittee on
Workforce Protections
United States House of Representatives
Washington, DC 20515

Re: Opposition to H.R. 3086, the Fair Wages for Workers with Disabilities Act

Dear Representatives:

On behalf of the individuals with the most significant disabilities we serve and their families, we urge that you not co-sponsor H.R. 3086 and if the Committee schedules a mark-up, that you oppose the bill. H.R. 3086 would phase out and eventually repeal authority under Section 14(c) of the Fair Labor Standards Act to pay commensurate wages to persons with the most significant disabilities. ACCSES believes that individuals with the most significant disabilities must be provided the opportunity to work in a center-based or community-based employment at a wage that reflects their productivity. Eliminating, repealing, or restricting Section 14(c) will simply have the effect of denying the opportunity to work for significant numbers of individuals with the most significant disabilities who cannot meet the productivity standards.

Below is a more comprehensive description of what we believe, support, and oppose regarding public policy relating to the employment of persons with the most significant disabilities.

WHAT WE BELIEVE—OUR VALUES AND GUIDING PRINCIPLES

- ACCSES embraces the precept embedded in numerous disability-specific laws that disability is a natural part of the human experience that in no way diminishes the right of individuals with significant disabilities to achieve the four goals of disability policy articulated in the Americans with Disabilities Act (ADA): equality of opportunity, full participation (informed choice and self-determination); live independently, and enjoy economic self-sufficiency commensurate with one's interests, strengths, abilities and capabilities.
- ACCSES respects the inherent value of each person we serve. ACCSES and its members provide services tailored to the distinct needs and desires of each individual. These services allow for individual choice and participation, while affirming the uniqueness of every life. ACCSES fosters independence and community participation among individuals we serve, enhancing their quality of life. ACCSES and its members empower individuals through tools, resources and support they need for increased independence and inclusion in the community.
- ACCSES recognizes that work is a valued activity both for the individual and society. ACCSES believes that work provides both tangible and intangible benefits. Work helps people achieve independence and economic self-

sufficiency. Work also gives people purpose, dignity, self-esteem, and a sense of accomplishment and pride. Individuals, including individuals with disabilities, should enjoy every opportunity to pursue careers, participate in the workforce and engage actively in the economic marketplace.

- ACCSES members abhor worker exploitation; we support initiatives to protect individuals with disabilities and vulnerable populations from exploitation. ACCSES believes that we must draw a bright line in prohibiting and preventing employers from taking advantage of persons with significant disabilities.

INFORMED CHOICE AND SELF-DETERMINATION

- Consistent with the right of the individual with a significant disability to make an informed choice and the principle of self-determination, ACCSES supports the full continuum of community-based work opportunities available for persons with the most significant disabilities, including supported employment and customized employment opportunities provided in integrated settings, self-employment, and center-based employment opportunities. ACCSES also supports federal policy (Section 14(c) of the Fair Labor Standards Act) that facilitates employment options for all individuals, including those who do not meet productivity standards (without or without reasonable accommodations).
- More specifically, public policy should encourage and facilitate efforts to find competitive integrated employment opportunities (at or above the minimum or prevailing wage) for those who are qualified i.e., can meet standards and perform the essential functions of a job, with or without a reasonable accommodation. For those who have not been exposed to competitive integrated employment, public policy should also encourage and facilitate ongoing discovery and exposure to alternative career exploration in competitive integrated employment.
- At the same time, the right of an individual with a significant disability to make an informed choice should also include the right to work in a center-based program operated by a qualified nonprofit community rehabilitation program that provides individualized jobs, ongoing services and supports, job stability and security the individual needs and desires, provides intangible benefits, and the opportunity for promotion and advancement.
- This opportunity to work in a center-based program may be temporary until the individual develops necessary job skills and is able to secure the necessary services and supports to work for a private sector employer. For these individuals, CRPs should facilitate outplacement of current workers with significant disabilities interested in such jobs with private sector employers either directly or through support by, collaboration with, or referral to publicly-supported programs providing funding for necessary ongoing services and supports.
- For other individuals with significant disabilities, the opportunity to work in a center-based program may be long term given the individual's capacity, interests and desires, and ongoing needs for supports and services not traditionally provided in the private sector. This same right to informed choice and self-determination should extend to employment opportunities that include job crews and enclaves.
- ACCSES recognizes that some individuals with significant disabilities may not be able to meet standards and perform the essential functions of a job (with or without reasonable accommodations) that entitle them to be paid the federal minimum wage or prevailing wage.

WHAT WE OPPOSE AND WHAT WE SUPPORT

In order to enable such individuals to work and receive the benefits of working, Congress enacted Section 14(c) of the Fair Labor Standards Act (FLSA). In the language of the legislation, Section 14(c) is designed "to prevent the curtailment of opportunities for employment" of persons with significant disabilities by allowing the payment of special minimum wages commensurate with their level of productivity.

Without Section 14(c), these individuals would have limited opportunities to work, which might have the effect of forcing them to stay at home, enter day habilitation centers (if a space were available) or live in an institution. In short, eliminating or phasing out the special minimum wage would likely result in many individuals with significant disabilities receiving no pay whatsoever instead of a special minimum wage and denying them the tangible as well as the intangible benefits of work. In addition, such a policy would likely result in "creaming" or "cherry-picking" (i.e., excluding those with the most significant disabilities in favor of those with more moderate impairments). For the reasons described above, ACCSES opposes H.R. 3086.

There are many employment initiatives, however which ACCSES **supports**. We support initiatives to enhance meaningful choice for individuals with the most significant disabilities, including enhanced opportunities to work in competitive integrated employment (at or above the minimum or prevailing wage) and self-employment. More specifically:

- ACCSES supports systems change initiatives designed to expand the availability of supported and customized employment in competitive, integrated settings (at or above the minimum wage) and other vocational supports, particularly for youth, by creating additional incentives to operate such programs, including funding for long-term services and supports and ensuring seamless transitions between funding streams.
- ACCSES also supports the provision of technical assistance to community rehabilitation programs that want to expand and improve their supported employment and customized employment programs.
- In addition, ACCSES supports efforts to enhance compliance and enforcement of Section 14(c) through increased oversight and enhanced training and education.

If you have any questions, please contact me at 202.349.4258 or trfarmer@accses.org.

Sincerely,

A handwritten signature in black ink that reads "Terry R. Farmer". The signature is written in a cursive, flowing style.

Terry R. Farmer,
Chief Executive Officer