



# 2020 Progress Report on National Disability Policy

Increasing Disability  
Employment



National Council on Disability

July 24, 2020

National Council on Disability (NCD)  
1331 F Street NW, Suite 850  
Washington, DC 20004

***2020 Progress Report on National Disability Policy: Increasing Disability Employment***

National Council on Disability, July 24, 2020  
Celebrating 36 years as an independent federal agency

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[ncd@ncd.gov](mailto:ncd@ncd.gov) Email

202-272-2004 Voice

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## National Council on Disability

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An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

### Letter of Transmittal

July 24, 2020

The President  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Mr. President:

Each year, the National Council on Disability (NCD) submits a statutorily mandated report to the President and Congress assessing the status of the nation in achieving policies that guarantee equal opportunity for all people with disabilities and that empower them to achieve economic self-sufficiency. On behalf of NCD, I am pleased to submit the *2020 Progress Report on National Disability Policy*, titled *Increasing Disability Employment*.

In 1986, four years before the enactment of the Americans with Disabilities Act (the ADA), the Harris Poll examined the experiences of people with disabilities, encapsulating its findings about employment as follows:

Not working is perhaps the truest definition of what it means to be disabled. Two-thirds of all disabled Americans between the ages of 16 and 64 are not working . . . unemployment among persons with disabilities as a group is a bigger problem than among any other demographic group of working-age Americans.<sup>1</sup>

Thirty-three years later, the ADA has dramatically changed the landscape of the nation for people with disabilities. It has increased inclusion on a broad scale, and its prohibition on employment discrimination and requirements for reasonable accommodations have opened the door to employment for millions of people with disabilities. Notwithstanding the ADA's positive impact, people with disabilities continue to struggle to obtain and retain employment. Barriers continue to exist that contribute to people with disabilities remaining largely outside of the nation's workforce. This is true despite subsequent federal legislation and billions spent annually on federal programs directed at assisting people with disabilities to enter the workforce and has resulted in continued poverty and a lack of adequate housing, transportation, and health care for millions of working-age people with disabilities.

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<sup>1</sup> Louis Harris, *The ICD Survey of Disabled Americans: Bringing Disabled Americans into the Mainstream* (New York: L. Harris and Associates, 1986), 46.

U.S. Bureau of Labor Statistics illustrate the persistence of this issue. Between 2008 and 2016, people with disabilities were employed at an average of only 18 percent, while people without disabilities were employed at an average of 65 percent. Between 2017 and 2019, we have seen incremental progress: in 2017, 18.7 percent of people with disabilities were employed, compared to 65.7 percent of people without disabilities; in 2018, 19.1 percent of people with disabilities were employed, compared to 68.4 percent of their nondisabled peers, and in 2019, 19.3 percent of people with disabilities were employed, in contrast to 66.3 percent of people without disabilities. It is imperative that we take steps to continue to increase these percentages.

From its establishment in 1984, NCD has reported on several federal disincentives to employment for people with disabilities and the conflicts that exist in federal programs that are barriers to obtaining competitive employment. NCD has made recommendations to several Administrations, Congress, and federal agencies on how these barriers could be dismantled, and while some have been acted on or remedied, other barriers remain.

This report, issued on the 30th anniversary of the ADA, was informed by NCD reports on employment, the input of national experts on employment of people with disabilities, data from five federal agencies, and interviews of stakeholders and Federal Government representatives. It focuses on four areas that are critical to increasing the ability of people with disabilities to enter the American workforce:

- **Services for Transitioning Youth:** The need for increased skills training, coordination between systems, and employment-related services and supports available to transition-age youth
- **Public Benefits:** The need to dismantle disincentives to work present in the Social Security Act and the Medicaid Act
- **Federal Employment and Support of Entrepreneurship:** Continued challenges to recruiting and hiring people with targeted disabilities and exclusion from entrepreneurship support
- **Employer Engagement:** Its role in opening government and private sector employment opportunities and highlights of federal and private initiatives to engage private sector employers

While we started to see an uptick in the employment of people with disabilities during the past 3 years, this report was published in the midst of the COVID-19 pandemic that unleashed widespread economic havoc, with millions of Americans losing jobs. People with disabilities have been particularly hard hit: many, due to their preexisting medical conditions, had to leave jobs due to their high susceptibility to the virus; many of those who need the assistance of direct health care workers lost that support because of the danger of infection from personal contact. Without such support, it is impossible for certain people with disabilities to meet their needs and get to their jobs. These are just two examples of the pandemic's impact on employment. Although we do not know how long the pandemic will continue to impact the nation's employment, we do know from previous recessions that when the economy improves and employment rates begin to rise, people with disabilities lag behind their nondisabled peers in obtaining employment. We urge Congress and federal agencies to act quickly to implement the recommendations in this report so that as the nation recovers from this pandemic and regains its robust economy, all people with disabilities who can work and who want to work will be able to fully benefit from that recovery.

America is a better place when all our people have the opportunity to work. NCD stands ready to work with your Administration, Congress, and federal agencies to improve our nation's disability policy so that people with disabilities may achieve increased employment, financial independence, and full inclusion in the economic growth of the nation.

Respectfully,

A handwritten signature in black ink that reads "Neil Romano". The signature is written in a cursive style with a large, stylized "N" and "R".

Neil Romano  
Chairman

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(The same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate and the Speaker of the U.S. House of Representatives.)



## National Council on Disability Members and Staff

*(Listing accurate as of date of vote to approve the report)*

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## Acknowledgments

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This report was developed under a cooperative agreement with Inclusivity Consulting. We thank Regina Kline for her work on this report and thank each member of the advisory group for their valuable input. We also thank the many individuals who were interviewed and who shared written information and data.

## Executive Summary

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This year, 2020, marks the 30th anniversary of the Americans with Disabilities Act (ADA), historic legislation that fundamentally changed the way Americans with disabilities live, work, and participate in the broader community. The ADA sought to end discriminatory practices, and among other things, it guaranteed equal opportunity and nondiscrimination in employment, public services, and places of public accommodation. As an incomparable legislative achievement, the law served as an example to the world that institutional isolation, exclusion, and discrimination that had been perpetuated against people with disabilities for centuries had no place in America or its future. Indeed, among the important achievements of civil and human rights of the twentieth century, the ADA was a sea change for nearly every aspect of American society and paved the road to the economic inclusion of Americans with disabilities. The ADA advanced a vision for people with disabilities that included among its core principles economic self-sufficiency and full participation in the mainstream economy. Following the ADA's

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*[T]he law served as an example to the world that institutional isolation, exclusion, and discrimination that had been perpetuated against people with disabilities for centuries had no place in America or its future.*

enactment, more Americans with disabilities than ever before came of age with the expectation that they would live at home and in their communities, go to school, and ultimately, join the workforce in a job or career of their choosing. And more, in fact, did. Research demonstrates that after the ADA, there was a significant improvement in employment for those with severe functional and daily activity limitations of a nature that did not prevent work.<sup>1</sup> In other words, the population of people deemed “qualified individuals with disabilities” by the ADA increasingly became employed.<sup>2</sup> A good many people with disabilities who had never previously been employed found that the ADA's nondiscrimination protections helped open the doors to employment.

These changes were the product of a dramatic shift brought about by the ADA in how employers were required to evaluate the capabilities of people with disabilities. In the pre-ADA world, workers with disabilities were adjudged based on productivity as compared to peers without disabilities, but without any right for those workplace barriers that may have

needlessly curtailed productivity to be removed. The disparity in productive performance that resulted from the lack of accommodations and barrier removal created collateral consequences detrimental to people with disabilities in obtaining work. These consequences included stigma and a lack of additional investment in education, on-the-job training, and vocational experiences, as such investments were presumed futile. As a result, in the pre-ADA period, deeply rooted societal presumptions of unemployability were damaging and widespread and perpetuated further unemployment and economic disenfranchisement. These presumptions about future unemployability deeply impacted the lives of children with disabilities who often spent years experiencing the low expectations of parents, educators, counselors, and peers. But the post-ADA world is one primed by law to break through this destructive cycle, to break stereotypic assumptions and mythologies about the capabilities of people with disabilities, to afford a fair chance for such people to be educated, to receive appropriate training, and to compete fairly and on equal terms for employment. The ADA continues to catalyze these important changes, finding traction over the past 30 years in reversing centuries of low expectations and stigmatization.

Unquestionably, in the past 30 years, more progress has been made in opening the doors to employment to people with disabilities than most, if not all, of the history that preceded it. In the past three decades, there has been a revolution in understanding that disability is a natural part of life and not a signpost for unemployability or exclusion. Moreover, in the same period, there was development of a significant body of research into the

accommodations, services, and supports that would allow individuals with even the most significant support needs to compete and succeed in a wide range of employment settings.<sup>3</sup> Our society has learned that when people with disabilities work, it not only gives rise to economic self-sufficiency and leads to a corresponding reduction in government expenditures, but it is vital to the lifeblood of the community and to the diversity and strength of workplaces, and is in fact a social determinant of health.<sup>4</sup> Moreover, as the ADA has come of age, our collective expectations and understanding about the capabilities of people with disabilities have elevated. Now most youth with disabilities “definitely expect to work” following completion of their education.<sup>5</sup> Likewise, many large companies see disability employment as a vital component of diversity, inclusion, and strategic recruitment to improve their bottom line.<sup>6</sup> And a fair percentage of people with disabilities currently receiving means-tested public benefits want to work, if given the right supports to enter or return to the workplace.<sup>7</sup> In addition, over the past half century, the public workforce system has grown substantially in size to support people with disabilities to find, obtain, and retain employment.

Yet, even as many people with disabilities have been ushered into employment as a result of these significant post-ADA changes and important systems, many other people with disabilities—in economic good times and bad—have remained persistently locked out of employment. Many nonworking people with disabilities participate in social safety net programs like the Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) that have strong, systemic disincentives

to work. These disincentives contribute to the overall number of people with disabilities excluded from the labor force participation rate each year. These disincentives have been raised repeatedly as a barrier to the competitive employment of people with disabilities, but the system has resisted change.

While the ADA fundamentally changed the workforce participation of people with disabilities and their access to the economy, in reality, the chasm between *people with and without disabilities* who participate in employment has remained significant and somewhat steady since the enactment of the

ADA. Americans with disabilities comprise the largest minority group in the United States, estimated to include between 40 and 57 million people.<sup>8</sup> One in five families has a family member with a disability.<sup>9</sup> And for years, the labor force

participation rate has consistently demonstrated a large difference in employment between people with and without disabilities. To illustrate this, statistics from the Census Bureau show that between 2008 and 2017, people with disabilities were employed at an average of only 18 percent, while people without disabilities were employed at an average of 65 percent.<sup>10</sup> In 2019, 19.3 percent of people with disabilities were employed; in contrast, the employment-population ratio for people without disabilities was 66.3 percent.<sup>11</sup>

Certainly, “[p]eople with disabilities have endured, in good times as well as bad,

unemployment rates that would be considered a national crisis if experienced by other groups.”<sup>12</sup>

The heart of this problem is perhaps threefold. First, there are a great many people who have been “counted out” of work on the basis of disability who should not have been—those who are qualified to work, given rapid advancements in accommodations, technology, and newfound workplace flexibilities, but who now require support and access to these innovations that are necessary to enter the competitive marketplace. Second, strong disincentives to work that have been built into the important public safety net have kept many others from entering or

reentering work, even though they are qualified to work. Finally, efforts to engage employers in recruiting and hiring people with disabilities have yet to be scaled as aggressively as is required to offset the employment disparity created by having left

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*[S]tatistics from the Census Bureau show that between 2008 and 2017, people with disabilities were employed at an average of only 18 percent, while people without disabilities were employed at an average of 65 percent.*

so many people that can and want to work out. This means that the public workforce system’s employer engagement efforts must become more sophisticated and robust and include a wider array and diversity of employers to be effective. These three points, among others, are discussed at length in this 30th Anniversary Progress Report.

Of significant note are incredible broadscale changes—perhaps unfathomable in 1990 when the ADA was enacted—that have taken place in the overall economy and impacted the nature of work in succeeding years. Macroeconomic trends have dictated that over time many

jobs and job requirements have dramatically shifted in ways that demand new and different experiences, skills, and training for workers with disabilities to compete. The importance of information, knowledge-based, and technological skills training has far eclipsed any preparation for work that preceded it. Yet, formative portions of the public workforce system were conceived of during the manufacturing-based economy of the early twentieth century, and new updates to the system brought about through recent changes to the legislative landscape have yet to show significant traction in meeting the demands of the new global economy. While an uptick in Federal Government hiring of people with disabilities gives grounds for optimism, substantially more work is needed to sustain this progress and to address the barriers

that keep people with disabilities severely underrepresented in private sector positions. Significant infrastructure development, through public and private investment, may well be required to lay the appropriate predicate for the upward mobility of workers with disabilities. For example, without additional access to new and advanced skills training and credentialing, personal computing devices, broadband Internet, new business development tools, and reliable forms of transportation, manual skills training will not produce substantial increases in employment in the twenty-first century and may well contribute to ever-widening inequality. Targeted public and private investments are needed for the infrastructure, education, and skills training required for the jobs of the new century to fall within reach of many people with disabilities.

## Acronym Glossary

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ABLE	Achieving a Better Life Experience Act of 2014
ACL	Administration on Community Living
ADA	Americans with Disabilities Act of 1990
AJC	American Job Center
ANPRM	Advanced Notice of Proposed Rulemaking
AT	assistive technology
CAF	centralized accommodation fund
CAP	Computer/Electronic Accommodations Program
CMS	Centers for Medicare and Medicaid Services
CRP	community rehabilitation provider
CSAVR	Council of State Administrators of Vocational Rehabilitation
DEI	Disability Employment Initiative
DOL	Department of Labor
EARN	Employer Assistance and Resource Network
ED	Department of Education
EEOC	Equal Employment Opportunity Commission
EN	employment network
ETA	Employment and Training Administration
GAO	Government Accountability Office
HEOA	Higher Education Opportunity Act
HHS	Department of Health and Human Services
I/DD	intellectual and developmental disabilities
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
IPE	Individual Plan for Employment
iTOPSS	Internet Ticket Operations and Provider Support System
LEA	local education agency
MSG	measurable skills gain
NDEAM	National Disability Employment Awareness Month
NDI	National Disability Institute
NEON	National Expansion of Employment Opportunities Network
NET	National Employment Team

NIDILRR	National Institute on Disability, Independent Living and Rehabilitation Research
NLTS	National Longitudinal Transition Study
NPO	National Provider Organization
ODEP	Office of Disability Employment Policy
OFCCP	Office of Federal Contract Compliance Programs
OMB	Office of Management and Budget
OPM	Office of Personnel Management
OSERS	Office of Special Education and Rehabilitative Services
PAS	personal assistance service
PASS	Plan to Achieve Self-Support
PCI	Pathways to Careers Initiative
PWTDs	people with targeted disabilities
PY	program year
RSA	Rehabilitation Services Administration
SBA	Small Business Administration
SCORE	SBA's Service Corps of Retired Executives
SEIE	student earned income exclusion
SGA	substantial gainful activity
SOC	Standard Occupational Code
SPPC	Selective Placement Program Coordinator
SSDI	Social Security Disability Insurance
SSI	Supplemental Security Income
STEM	science, technology, engineering, and mathematics
TAP	Talent Acquisition Portal
TEN	Training and Employment Notice
TPSID	Transition and Postsecondary Programs for Students with Intellectual Disabilities
TTW	Ticket to Work
VEVRAA	Vietnam Era Veterans' Readjustment Assistance Act
VR	Vocational Rehabilitation Services
WIOA	Workforce Innovation and Opportunity Act
WRP	Workforce Recruitment Program



In the final analysis, what people with disabilities want and need are services and supports that enable them to work—not benefits and services at the expense of work.

# Introduction

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The National Council on Disability (NCD) is congressionally mandated to advise the President, Congress, and other policymakers on disability policies and practices that enhance equal opportunity for people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society. NCD's 2020 Progress Report fulfills the congressional mandate by advising policymakers on policies and practices that act as barriers to employment and making recommendations for removing these obstacles so that Americans with disabilities can achieve equal opportunity and economic self-sufficiency, and in turn, can achieve and sustain access to independent living, inclusion, and integration in the community.

This Progress Report, issued on the 30th anniversary of the Americans with Disabilities Act (the ADA), focuses on the continuing issues that prevent people with disabilities from obtaining and retaining employment and provides specific, practical recommendations on how to dismantle them. Informed by NCD reports and recommendations on employment and poverty from 1997 to the present, the input of an Advisory Group of six national experts on disability employment, data from five federal agencies, and 23 interviews of stakeholders and Federal Government

representatives, it describes the most significant barriers to employment for people with disabilities since passage of the ADA, reviews federal actions taken to improve opportunities for private sector and federal employment, and focuses attention on three areas where federal law, policies, and practices continue to impede or prevent people with disabilities from obtaining and retaining competitive employment. These areas are as follows:

- *Services for transitioning youth:* The need for increased effective coordination, skills training, and employment-related services and supports available to transition-age youth
- *Public benefits:* Long-standing disincentives to work tied to essential health care and other benefits in the Social Security Act and the Medicaid Act

## Report Areas of Focus

- Services for transitioning youth
- Public benefits
- Federal employment and support of entrepreneurship
- Employer engagement

- *Federal employment and support of entrepreneurship*: Continued challenges to recruiting and hiring people with targeted disabilities and exclusion from entrepreneurship support

The report also focuses on the topic of *Employer Engagement*. Describing the critical role it plays in increasing employment opportunities for people with disabilities with private sector employers—from the thousands of small businesses across the nation, to major corporations.

As the nation celebrates the 30th anniversary of the enactment of the ADA, the majority of Americans with disabilities are not participants in the nation’s workforce—this report provides some of the reasons why and is a call for action. The barriers described can and must be addressed so that people with disabilities who can work, and want to work, can enter or reenter the workforce and achieve financial independence and full inclusion in the economic growth of the nation.

# Chapter 1: Employment of People with Disabilities

## Since Passage of the ADA: A Retrospective of Good and Bad News

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The achievement of equal opportunity in employment remains vital to the full inclusion of people with disabilities in the United States nearly 30 years after the enactment of the ADA. Even though the United States has been the leader in the world in advancing the civil and human rights of people with disabilities for the past half century, today Americans with disabilities remain disproportionately poor and unemployed, and they face significant barriers to joining and remaining in the American middle class.

The ADA is indeed an antidiscrimination law, among other things, specifically aimed at ending discrimination in employment.<sup>13</sup>

Consequently, it was designed to interrupt the stigma, prejudice, and lack of understanding that accompanied the long history of exclusion of people with disabilities from the American workplace. Yet, even though the ADA was constructed to prevent discriminatory practices, its statutory purpose also conveyed an affirmative vision for employment in America, one of optimism, expansion, and economic freedom. In fact, the statute clearly articulates its purpose

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*[The ADA's] statutory purpose also conveyed an affirmative vision for employment in America, one of optimism, expansion, and economic freedom.*

“to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities . . . the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and *economic self-sufficiency* for such individuals” (emphasis added).<sup>14</sup>

When President George H. W. Bush signed the ADA on the South Lawn of the White House, the following words were among his remarks:

I also want to say a special word to our friends in the business community. You have in your hands the key to the success of this act, for you can unlock a splendid

resource of untapped human potential that, when freed, will enrich us all. . . . This act does something important for American business, though—and remember this: You’ve called for new sources of workers. Well, many of our fellow citizens with disabilities are unemployed. They want to work, and they can work, and this is a tremendous pool of people. And

remember, this is a tremendous pool of people who will bring to jobs diversity, loyalty, proven low turnover rate, and only one request: the chance to prove themselves. And when you add together Federal, State, local, and private funds, it costs almost \$200 billion annually to support Americans with disabilities—in effect, to keep them dependent. Well, when given the opportunity to be independent, they will move proudly into the economic mainstream of American life, and that’s what this legislation is all about.<sup>15</sup> (emphasis added)

That was 30 years ago. This is now. What happened to that “splendid resource of untapped human potential” in the interim? Across all age groups, education, and experience levels, people with disabilities today remain much less likely than workers without disabilities to be employed, or if employed, are more likely to work part-time and in occupations that demand lower wages, offer fewer opportunities for advancement, and lack employer-paid health care and other benefits.<sup>16</sup> This has resulted in additional economic consequences that cascade through the American economy. Among them, people with disabilities have been excluded from savings, asset accumulation, and consumer spending, while the costs of Federal Government programs continue to increase.

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*Across all age groups, education, and experience levels, people with disabilities today remain much less likely . . . to be employed, or if employed, are more likely to work part-time and in occupations that demand lower wages, offer fewer opportunities for advancement, and lack employer-paid health care and other benefits.*

Placed in its proper context, the ADA was a Bill of Rights for Americans with disabilities, one designed to declare an independence that was, in part, *economic*, where economic self-sufficiency was placed on par with equality of opportunity, full participation, and independent living. In this regard, it was one of the explicit purposes of the ADA to address the long history of economic apartheid experienced by people with disabilities, a constituency that had spent the better part of our Nation’s history isolated, institutionalized, and removed from what President Bush referred to as “the economic

mainstream of American life.” It was the ADA that dismantled the long-held assumption, imbued by a medical model of disability, that unemployment and government dependence is an inevitable and irreversible consequence of mental or physical disabilities. Instead, the ADA required an understanding that

disability, itself, does not impose a lack of qualification for employment upon people, it is stigma, societal low expectations, and specific environmental barriers in the workplace that so often do. As the World Health Organization has since recognized, “disability exists only in the gap between the person’s abilities and capacities and the demands of the environment.”<sup>17</sup> In this regard, the ADA codified into law a dramatic shift in societal expectation that a great many people with disabilities can and want to work, and the statute posited

that they ought to be given an equal chance to compete when they do so. Even though the ADA has established the right to be free from discrimination in employment, people with disabilities are still vastly underrepresented in workplaces across America, so thus far, we have failed to fulfill the ADA's vision of economic inclusion.

In 2007, at a considerable inflection point for innovation and technological change in the United States,<sup>18</sup> NCD commented on the “good news” and the “bad news” about disability employment: “The bad news is that people with disabilities are currently under-represented in the occupations projected to grow the fastest between 2004 and 2014—they are currently more likely to be in slower-growing service and blue-collar occupations.”<sup>19</sup> But the report continued with what was considered then to be grounds for optimism, “The good news is a) growth in computers and new information technologies that help compensate for many types of disabilities and increase the possibilities for productive employment; b) growth in telecommuting and flexible work arrangements, which are appropriate for many people with disabilities; and c) increased attention to issues of diversity in U.S. companies, in which disability is often included as a dimension of diversity.” However, despite the occurrence of many of these critical changes to the way work was done over the past 13 years, the changes appear to have done

little to disrupt the persistence of the bad news. It raises the important question of why people with disabilities were not included in many of the broadscale changes that the world of work and the U.S. economy experienced over the last several decades.

Indeed, despite both the enactment of the ADA and the rapid pace of innovation infusing disruptive changes into the American workplace—including greater flexibilities, technology, and diversity—the overall picture for Americans with disabilities has remained largely unchanged over the past three decades.

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*[D]espite both the enactment of the ADA and the rapid pace of innovation infusing disruptive changes into the American workplace—including greater flexibilities, technology, and diversity—the overall picture for Americans with disabilities has remained largely unchanged over the past three decades.*

The bird's-eye view of participation of people with disabilities in the labor market is still mostly marked by entrenched poverty and economic exclusion. In 1997, just seven years after the enactment of the ADA, NCD stated, “America’s citizens with disabilities want very much to contribute to

their country’s continued preeminence in the world of nations. They have the talents and the capabilities to do so; and if the proposals presented in this report are enacted, they undoubtedly will.”<sup>20</sup> In 2001, 11 years after the enactment of the ADA, NCD lamented the failure to meet the expectations of people with disabilities who can and want to work, stating, “in perhaps no area of public policy has the expectations gap so stubbornly resisted our efforts to achieve equality. Whatever set of statistics one chooses from among the varying estimates of employment rates of

Americans with disabilities, the rate and level of employment for this population remain far too low.”<sup>21</sup> In July 2007, 17 years after the enactment of the ADA, NCD observed that people with disabilities were nearly three times as likely as people without disabilities to live in poverty—the same ratio as before the passage of the ADA in 1990.<sup>22</sup>

In October 2007, NCD reflected with great optimism upon significant labor shortages caused by the retirement of the Baby Boomer generation, invoking hope that utilizing the untapped resource of workers with disabilities to fill that labor shortage would reverse the disability unemployment trendline.<sup>23</sup> But by the very next fall, the Great Recession took hold, and analysts feared that employers were less likely to take risks on employees with additional support needs, demonstrating concern that bias and discrimination in hiring would take precedence when times were tough. In a 2009 report, NCD remarked:

Today, however, with the ranks of the unemployed growing by hundreds of thousands per month, some may say that unemployment among people with disabilities cannot be a major issue in an environment in which jobs are becoming scarcer for everyone. Such expressions reinforce many of the very stereotypes that explain why, even in periods of rapid economic growth, people with disabilities have not shared in the fruits of the economy.<sup>24</sup>

As predicted, even after the market experienced considerable recovery from the 2008 recession and the nationwide unemployment rate fell dramatically, the employment population ratio for people with disabilities continued at approximately the same level as it had for years.<sup>25</sup>

In 2013, NCD reported, “[e]mployment numbers for Americans with disabilities have not changed much since passage of the ADA, which was intended to increase civil rights protections for millions of Americans with disabilities and to guarantee their equal opportunity in employment. The 40 percent chasm between the employment rates for Americans with and without disabilities is inarguably disparate and unacceptable.”<sup>26</sup> The report continued by saying, “[i]t should come as no surprise that the number one topic on the minds of those that NCD interviewed for the 2013 Progress Report was employment and workforce participation.”

In 2015, 25 years after the enactment of the ADA and years into the recovery from the Great Recession, the unemployment rate was twice the national average as for people without disabilities, and even when employed, there was a pay gap accounting for average lower wages for workers with disabilities than those without disabilities.<sup>27</sup>

In 2020, now 30 years after the enactment of the ADA, workers with disabilities contend with rising inequality in a job market that is at or near full employment, with a national unemployment rate in February 2020 as low as 3.5 percent.<sup>28</sup> Yet, there remain 22 million working-age Americans with disabilities, with nearly two-thirds of such people left out of the labor market altogether,<sup>29</sup> and for those who are actively looking for work, such people still experience an unemployment rate that is twice that of workers without disabilities.<sup>30</sup> According to the Bureau of Labor Statistics, on average, only approximately 19 percent of people with disabilities were employed during the nine-year period between 2009 and 2018 as compared

to approximately more than 65 percent of people without disabilities. See Figures 1 and 2. Significantly, the nearly 40 percentage point gap between the employment population ratio and labor force participation of people with and without disabilities remained steady across the very decade that, as economists have observed, experienced among the greatest disruptions to the way people work and live since the industrial revolution; the same decade that experienced a historic march from recession to recovery to the lowest unemployment rate in decades.<sup>31</sup> The data shows that the technological and social changes that NCD predicted in 2007, and that

materialized to allow people with disabilities to enter the workforce, had little effect on the overall labor force participation of people with disabilities.

As noted by NCD in its 2018 report, *From the New Deal to the Real Deal*, the nation's

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*According to the Bureau of Labor Statistics, on average, only approximately 19 percent of people with disabilities were employed during the nine-year period between 2009 and 2018 as compared to approximately more than 65 percent of people without disabilities.*

economy is increasingly a digital and information-based one, and the physical world is steadily being reimagined and realigned to keep pace with new technologies.<sup>32</sup> Yet, many people with disabilities, in large part, are locked out of these changes and have lacked access to the very kinds

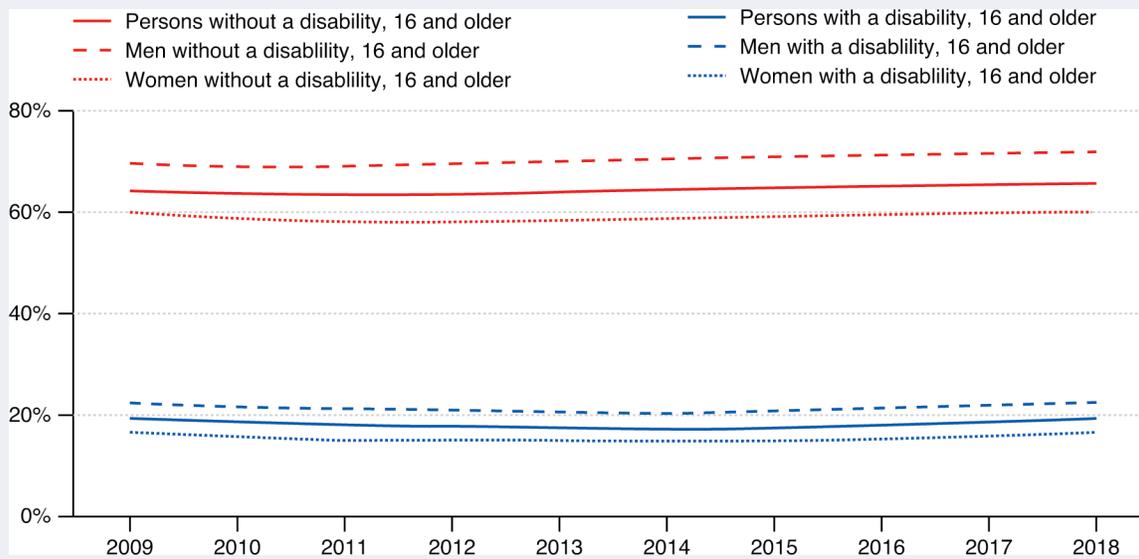
of training needed to fill the new demands of the global economy.<sup>33</sup> Secondary school youth transition programs, and the workforce development system, including the Vocational Rehabilitation (VR) program, historically have connected people with disabilities to retail and manual skills training that has become in considerably far less demand than other emerging information, knowledge, and technology-based industries. As a group, people with disabilities continue to be more likely than those without disabilities to work in jobs in the very industries that are most subject to displacement by new technologies.<sup>34</sup>

This is not a new phenomenon, as it has been a persistent theme across time—and since the enactment of the ADA—that people with disabilities are vastly underrepresented in the fastest-growing occupations in the economy and overrepresented in the occupations with

### **Pre-COVID-19 February 2020 national employment**

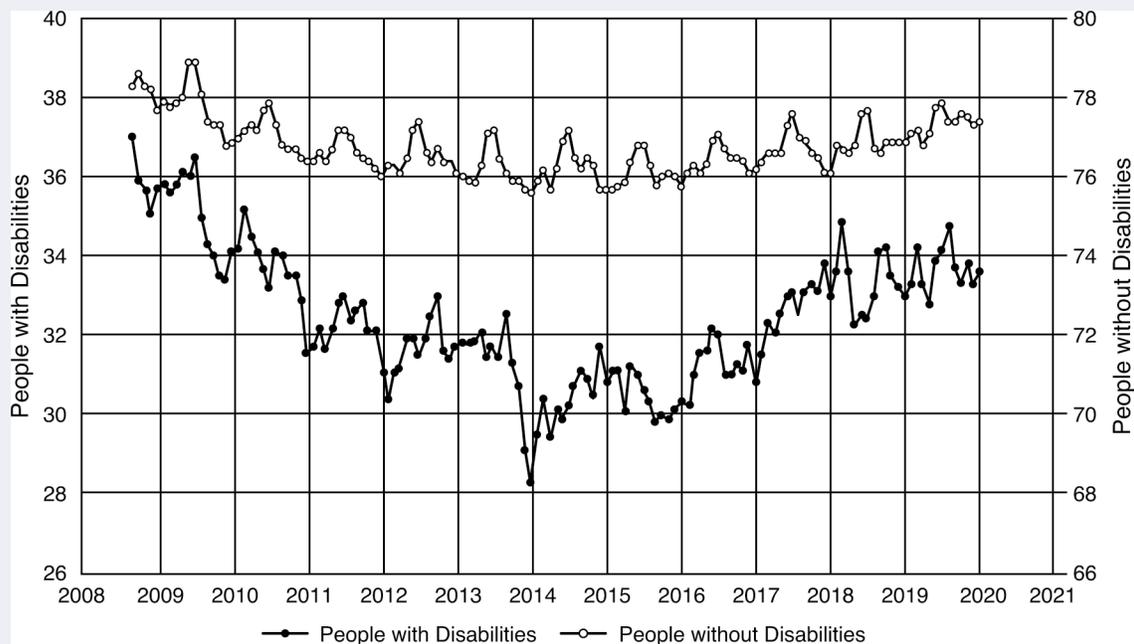
- Job market at or near full employment
- National unemployment rate in February 2020 as low as 3.5 percent.
- Nearly two-thirds of 22 million working-age Americans with disabilities left out of the labor market altogether
- For those people with disabilities actively looking for work, such people still experience an unemployment rate that is twice that of workers without disabilities.

**Figure 1. Bureau of Labor Statistics Data Employment-Population Ratios 2009–2018**



Source: U.S. Bureau of Labor Statistics.

**Figure 2. Labor Force Participation Rate of Civilian Population Ages 16–64 Years**



Source: National Trends in Disability and Employment (nTIDE) Report, University of New Hampshire and Kessler Foundation.

the fastest rate of decline. In fact, people with disabilities are most likely to work in jobs that place an unnecessary emphasis on workers' physical limitations, even though new technologies, services, and supports otherwise exist to assist them to enter jobs in a range of new and emerging industries. For example, the sectors projected to experience the fastest annual employment growth from 2018 to 2028 are health care and social assistance, private educational services, computer and mathematical occupations, and construction (including infrastructure projects and renewable energy).<sup>35</sup> The health care and social assistance, private educational assistance, and construction sectors alone are

projected to create 4.6 million jobs by 2028.<sup>36</sup> During the same period, the sectors expected to experience the greatest decline in jobs, among others, are manufacturing,

sales and retail trade, wholesale trade, utilities, and administrative office support.<sup>37</sup> Given the aging of the Baby Boomer population, demographics dictate that health and caregiving trades will expand dramatically over the next decade, whereas retail jobs are predicted to be disrupted significantly by the continued rise of e-commerce, with manufacturing weakened by the confluence of outsourcing and automation.

Yet, current Bureau of Labor Statistics data demonstrates that in 2018, people with disabilities were more concentrated in service occupations than people without disabilities (19 percent, compared with 17.2 percent).<sup>38</sup> Moreover, workers with disabilities were also

more likely than those without disabilities to work in production, transportation, and material moving occupations (13.9 percent, compared with 11.8 percent) and were less likely to work in management, professional, and related occupations than those without disabilities (33.7 percent, compared with 40.3 percent).

In the new global economy, abstract reasoning, social skills, and problem-solving have positive economic returns, while "routine tasks and manual tasks are both negative."<sup>39</sup> A 2013 study found that the tasks that remain resistant to automation are creativity and ideation, tasks related to social and emotional intelligence, and tasks related to perception and manipulation.<sup>40</sup>

As one study observed, the fact that people with disabilities are more likely to perform routine or manual tasks may account for the widening wage gap between people with and without disabilities, as demand

for social and problem-solving skills command higher wages.<sup>41</sup> Even more concerning is the risk of displacement of people with disabilities who are already employed or underemployed, given the threat posed by the burgeoning automation of traditional manufacturing and manual skills tasks.

Given these trends, the "good news" of 2020 is much like that of 2007, in that—with the market's continued acceleration away from physical job skills toward greater flexibilities, new technology, and demand for abstract, social, and emotional reasoning—the global economy remains ripe for the full inclusion of people with disabilities. The coming

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*[P]eople with disabilities are vastly underrepresented in the fastest-growing occupations in the economy and overrepresented in the occupations with the fastest rate of decline.*

decades should give rise to an economy where accommodation is increasingly viewed as an intrinsic part of innovation, rather than something contrary to it. Indeed, we only need to reflect backward in time to understand the dynamism of the present moment and how far we have come. Throughout the 1990s and 2000s, NCD and other commentators focused many of their recommendations about disability employment on the inflexibility of employers in allowing telecommuting and flextime, the cost associated with setting up home offices, and the resistance of large bureaucratic organizations in providing reasonable accommodations; they also criticized the lack of personalized consideration for employees' technology needs.<sup>42</sup>

Today, while there remains more to be accomplished on these fronts, at the very least, workplace flexibility, telecommuting, technology, and workplace modifications have entered the mainstream of successful businesses in the United States. Certainly, workplace policies have become more universally designed for employees with and without disabilities. This makes sense in a market where people can work from anywhere, are connected at all times through smartphones, tablets, and other Internet-connected devices, and enjoy broadband Internet access and cloud computing in the same way that they do other public utilities. Moreover, because of the widespread and common use of technology, the cost of modifications to employers has fallen, making access to accommodation, telecommuting, self-employment, and technology far easier.

More good news is that, over the past 30 years, a new generation of Americans with disabilities has come of age with the ADA well in

place, shifting and raising societal expectations and creating demand for meaningful education, job preparation, and experiences in mainstream employment. As the Senate Health, Education, Labor, and Pensions Committee observed in 2012, "we now have a new generation of young adults with disabilities, the 'ADA generation,' who have high expectations for themselves and who are ready, willing and able to pursue a good career in high-growth sectors of our Nation's economy that will allow them to become and stay part of the middle class."<sup>43</sup> Moreover, the desire of not only youth but adults with disabilities to work and achieve economic self-sufficiency and to engage in mainstream employment has been well documented in the years since the passage of the ADA and remains strong.<sup>44</sup>

Additionally, unfounded fears about the high costs of reasonable accommodations have diminished dramatically since the enactment of the ADA, as employers have become accustomed to providing reasonable accommodations at very little cost. In fact, the average accommodations have proven to be less expensive and yield significantly higher returns than critics of the law initially estimated. Survey results from the U.S. Department of Labor's Job Accommodation Network show that, "the benefits employers receive from making workplace accommodations [are documented to] far outweigh the associated costs."<sup>45</sup> Employers reported providing accommodations that resulted in such benefits as "retaining valuable employees, improving productivity and morale, reducing workers' compensation and training costs, and improving company diversity."<sup>46</sup> Employers also reported that "a high percentage

(58 percent) of accommodations cost absolutely nothing to make (\$0), while the rest of the accommodations made had a typical cost of only \$500.”<sup>47</sup>

In addition, companies are engaged in “cutting-edge disability recruitment, hiring, and on-boarding strategies, not as charity or marketing, but because it serves their bottom line.”<sup>48</sup> As the executive director of the Marriott Foundation’s Bridges from School to Work program told NCD, “there’s now a war for talent,” and workers with disabilities bring strategic advantage to any employer’s position in that war, including by increasing job retention, introducing new efficiencies, and increasing and widening diversity.<sup>49</sup> Companies are increasingly awakening to the economic value and new efficiencies created by hiring people with disabilities.

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*[C]ompanies are engaged in “cutting-edge disability recruitment, hiring, and on-boarding strategies, not as charity or marketing, but because it serves their bottom line.”*

In this war for talent, employers now routinely recruit job-ready candidates with disabilities for competitive integrated employment to enhance their bottom line, deeply enrich the skills available within companies, and promote diversity. For example, in 2012, the Federal Home Loan Mortgage Corporation (Freddie Mac) partnered with the Autistic Self Advocacy Network to create an Autism Internship Program to match the needs of its company with the capabilities of autistic people who had college degrees

in the fields of computer science, mathematics, and finance.<sup>51</sup> Likewise, companies like JP Morgan, SAP, DXC Technology (formerly Hewlett Packard

Enterprise), and Microsoft also have autism hiring programs, built on the idea that such employees have unique skills traits that are especially useful in science, technology, engineering, and mathematics (STEM) industries and that removing barriers to entry for them will allow such companies to access an untapped labor pool. In 2019, JP Morgan Chase reported that employees in its Autism at Work program were 48 percent more accurate and as much as 92 percent more productive than peers in comparable positions.<sup>52</sup>

That was the good news. Unfortunately, there continues to be much bad news. Given the market’s strong acceleration toward greater technology, flexibility, and modification, the more people with disabilities are excluded from these important innovations and opportunities,

### **A business case for hiring people with disabilities**

A 2018 report issued by the consulting giant Accenture that looked at 45 companies that specialized in building disability inclusive policies and practices revealed that those companies achieved, on average, 28 percent higher revenue, double the net income, and 30 percent higher economic profit margins over the four-year period analyzed, compared to other companies in the sample.<sup>50</sup>

the harder the economic consequences will fall on them, including widening inequality and economic marginalization. It is incumbent upon the public and private sectors to clear the runway for people with disabilities to launch their talents into the twenty-first century global economy, including the necessary education, accessible

technology, equipment, advanced skills training, and transportation infrastructure required to compete in it. Even the greatest optimists among us will recognize that the mere presence of technology and training

cannot entirely rectify or remove underlying stigma, inattention to the accommodation and accessibility needs of employees, and discriminatory attitudes and stereotypes perpetuated by some employers about the capabilities of employees with disabilities.

Consistent work is necessary to build awareness about the good news about disability employment and, most importantly, to convert that knowledge into actual hiring in the coming decades.

Technology and other such disruptive changes at once carry the possibility for transformative inclusion *and* near categorical exclusion of people with disabilities from employment, for instance, “in the past, working as a cashier required a person to have some math skills and the capacity to work a cash register,” eliminating some people

with intellectual and other disabilities from consideration for the job.<sup>53</sup> “Now, of course, a person just has to scan the bar codes for each product and provide change indicated by the ‘point of sale computer’ that has replaced cash registers.”<sup>54</sup> Alternatively, the authors soberly observed the harsh economic consequences

when technology unjustifiably excludes people with disabilities, “if one wants to apply for many jobs in today’s employment context, that process begins with filling out a form that is online. If the web

browser or computer lacks accessibility, then one cannot complete the form.”<sup>55</sup> Certainly the latter scenario applies not just to people who are blind or with intellectual or developmental disabilities, but also to people with disabilities who lack access to a computer or broadband Internet

access altogether.

Research has documented the expanding digital divide, as people with disabilities are less likely than those without disabilities to receive computer training or use computers at work or elsewhere, in

large part because of resource constraints.<sup>56</sup> At the start of the new millennium, in 2002, the U.S. Department of Commerce documented that people with multiple disabilities aged 25–60 years were almost *half as likely* to have access to the Internet as people without disabilities.<sup>57</sup> However, in the years since, few, if any, government

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interventions have directly addressed the underlying access to technology issue, let alone as *an employment issue*—including access to basic infrastructure like broadband Internet or mainstream digital computing devices that most businesses now depend on. A 2017 Pew Research survey revealed that the digital divide had expanded exponentially from where it was reported in 2002 to people with disabilities being *three times* as likely not to access the Internet as people without disabilities 15 years later.<sup>58</sup> Instead of directly tackling this digital divide, government systems, in large part, have marshaled resources toward assistive technology (AT), carrying on the narrow mandate to reimburse technology

that is definitionally tied to improving deficits caused by disability whether to “increase, maintain, or improve functional capabilities,” as defined by the Individuals with Disabilities Education Act (IDEA) and other federal laws.<sup>59</sup> While

AT is important, the expansive vision of the ADA toward full economic inclusion is one broader than merely offsetting perceived deficits. It calls for attention to technology as a means to compete and succeed in the open market, not simply to offset deficits to functional capacity.

A study of blind transition-age youth found those with a “high self-perceived level of computer competence” were significantly more likely to have paid jobs than those with “low self-perceived computer competence,” when

gender, severity of vision loss, and multiple disability status were held constant.<sup>60</sup> The study examined data on 200 in-school youths and 190 out-of-school youths with a primary disability of visual impairment. The data indicated that while the current job market requires computer skills as a threshold matter for most job seekers, computer technologies can also help overcome certain employment barriers specific to visual impairments and blindness. As has been documented by previous studies for years, among other things, technology can overcome access barriers to transportation and mobility, reading print, the lack of job-related information, and difficulties with job applications including accessing and filling out application forms.<sup>61</sup>

Students with intellectual and developmental disabilities (I/DD) often emerge from secondary schools having been trained by special education transition programs in “work readiness” or “prevocational” skills training, a form of vocational training entirely devoid

of technology in most instances.<sup>62</sup> In such programs, students perform manual, often menial, tasks and rote processes in preparation for their transition to postsecondary employment. These programs commonly model and prepare students with I/DD for segregated adult employment programs, including subminimum wage employment in sheltered workshops, rather than competitive integrated employment.<sup>63</sup> The skills training offered in these programs most often consists of such manual tasks, without

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the use of machines or equipment, as sorting, shredding, folding, recycling, serving food, cleaning, maintaining flower beds, doing laundry, and handling trash.<sup>64</sup> In other words, these programs provide skills training in the industries that will be most subject to decline in the future. Even though computers and personal digital assistants have been documented to improve the performance of people with I/DD in “vocational, transition, and employment skills,” most people with I/DD receive skills training that lacks such technology.<sup>65</sup>

Twenty-first century technology is commonplace in employment, and possessing knowledge of information and electronic technology platforms is a requirement for most jobs including those in high-growth industries. Yet many people with disabilities, aside from not receiving training in technology, lack the means to purchase computing devices that fall outside of the narrow definition of AT, or alternatively, for those with the purchasing power, the market has not created technologies universally designed so that they can access and use them. Consequently, the market for job-related and business development technology tailored to people with disabilities has been substantially constrained by the outdated “deficits-based” view of disability. As a result, more research and development pertaining to technology that is individually tailored to people with disabilities’ on-the-job needs, and accompanying systematic instruction techniques, is urgently needed.

Likewise, people with disabilities have long faced significant obstacles to employment because they cannot find an accessible or affordable means of transportation to get to work. Some disruptive new technologies

are rewriting the rules for transportation. For example, the dawn of ride-sharing apps in 2013 was nearly instantly transformative for some Americans with disabilities who needed a reliable way to get to work. As is the case with new technology, for other people with disabilities, it led to claims of discrimination and exclusion from such services, such as wheelchair users and those travelling with service animals.<sup>66</sup> Nevertheless, the apps were an advancement made possible by a confluence of other technological innovations, including the prevalence of smartphones, effective GPS navigation systems, and cellular networks. The creation of real-time ride-sharing significantly reduced transportation barriers, for instance, for people who are blind; for some, it revolutionized the flexibility of their schedules to work more hours or at alternative times. Likewise, it increased the possibility that other people with disabilities who drive and own vehicles could find work in the gig economy that was flexible and available with low barriers to entry. However, to avail themselves of the new technology, such people still need disposable income to purchase the transportation service, or alternatively own a car to provide the service, and must live somewhat near an urban center where such apps have been mostly deployed. Not to mention that they need smartphones and a cellular connection to even hail their first ride.<sup>67</sup> This explains why only 7 percent of adults with a disability say they have ever used a ride-hailing app, compared with 18 percent of adults who do not have a disability.<sup>68</sup> Similar resource constraints and access issues must be taken into account as governments and the private sector negotiate the future of autonomous vehicles.

In addition, for people with disabilities, perhaps even more so than for people without disabilities, where one lives certainly has direct effects on the likelihood that one will work. According to the 2010 Census, 19 percent of the U.S. population lives in rural areas, but only 6 percent of federal transit funds are allocated to serve rural communities. Moreover, according to the 2014–2018 American Community Survey 5-year estimates, an estimated 9,122,197 noninstitutionalized people with disabilities live in a rural community.<sup>69</sup> This equates to people with disabilities comprising 15.1 percent of people living in rural areas, higher than the national average (12.6 percent).<sup>70</sup> “[T]his means that there is minimal or nonexistent transportation services in many rural areas,”<sup>71</sup> with many Americans with disabilities in rural areas facing limitations in finding any *reliable means of transportation to get to work*. This is partly the result of legal limitations on where paratransit must be provided. By law, paratransit service is only provided within a three-quarter-mile radius of a fixed-route bus stop, to be comparable to existing fixed-route transit (as required by Department of Transportation regulations implementing the ADA’s requirements). Moreover, existing paratransit systems often have drawn arbitrary lines between rural jurisdictions, causing interruptions in service between where people live and where they work. Accordingly, the most

effective transportation solutions afforded to city-dwellers of the new millennium—including public transportation systems and ride-sharing solutions—may well continue to elude those with disabilities in rural areas or even outer exurbs that lack basic infrastructure, without additional reforms in place.

Thus, across various domains—including access to skills training, personal computing devices, business development tools, the Internet and broadband, or transportation—technology and innovation now carry in nearly equal proportion the dramatic potential (1)

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to include people with disabilities in employment that formerly lacked the kind of supports and accommodations that exist now or (2) to resolutely exclude people with disabilities from employment if the means to access these innovations lies out of reach. These two distinct and diametrically

opposed possibilities reflect that the future of disability employment balances on a razor’s edge. In 2020, it is not an overstatement to suggest that innovations exist that have the potential to fundamentally transform the way people with disabilities work, where they work, how they work, and the impact such work has on the overall economy, but people with disabilities risk not accessing them, sitting curbside as those with low barriers to entry to twenty-first century employment parade by as participants of the new

global, information-based, and digital economy. That is only the case, however, if persistent structural barriers to employment and powerful misaligned incentives remain unaddressed. The government has the power to advance new interventions, in partnership with the private sector, that can reverse this course, making the

coming decade the beginning of the new century of employment for people with disabilities. In this next decade, the deficits-based view of disability employment can be permanently filed away in the annals of history, and accommodation can become synonymous with innovation and economic potential.

## Chapter 2: The Role of Government-Funded Employment Services and Supports

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The persistence of the disability unemployment crisis, and the 40 percentage point gap in labor force participation between people with and without disabilities, as reflected in Figure 2, is even more vexing when viewed through the lens of the government resources and programs committed toward ending barriers to the employment of people with disabilities. While federal responses to disability unemployment can hardly be characterized as lackadaisical—there are more than 45 government programs devoted to such efforts spanning numerous government agencies—the government has been largely ineffective at interrupting the low labor force participation of people with disabilities, and its services often are overlapping, ill-coordinated, and lacking a focus on upward mobility.<sup>72</sup> Some might observe that this is the result of the design of many government interventions that are largely analgesic rather than curative, muting the pain of poverty and the consequences of protracted unemployment, and are not measured

by success in eliminating root causes or success in assisting such people to enter the mainstream market and achieve economic self-sufficiency.

The gap in the labor force participation of people with and without disabilities is well documented, but only a small fraction (1.2 percent) of the estimated \$429 billion the Federal Government and the states expended on

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people with disabilities in FY 2008 was used to improve prospects for employment and economic independence. More than 95 percent of federal-state disability expenditures paid for health care expenses and income maintenance benefits, with more than half the total (55 percent) devoted to health care spending (primarily

Medicare and Medicaid payments) and most of the remainder (41 percent) to Social Security, SSI, and other government benefit payments.<sup>73</sup> NCD's 2013 Progress Report referenced a recent analysis that found that the existing "complex, many program model devotes far more spending on a safety net than on programs to directly advance the goals of 'equality of opportunity, full

## Federal Government's and states' expenditures on people with disabilities, FY 2008

### \$429 billion total

- 1.2 percent used to improve prospects for employment and economic independence
- 95+ percent used for health care expenses and income maintenance
  - 55 percent health care spending
  - 41 percent Social Security, SSI, other government benefit payments

participation, independent living, and economic self-sufficiency for people with disabilities as articulated in the 1990 Americans with Disabilities Act.”<sup>74</sup>

The safety net is, in part, the product of Great Society programs that sought to eliminate poverty in the United States. Few would doubt the vital importance of the safety net in ensuring that people with disabilities who live in poverty can access food, housing, and health care, and maintain access to essential long-term services and supports. Certainly, a lack of health care coverage, and these other vital benefits, places participation in employment far out of reach for many people with disabilities. Moreover, the long history of exclusion, discrimination, and institutional isolation of people with disabilities gave rise to the need for these services; certainly, depriving people with disabilities of them when they need them would only serve to further solidify their economic disenfranchisement. Others might observe that it is precisely this important safety net, including

Social Security and Medicaid, that has caught so many people with disabilities who can and want to work in a “poverty trap,” where they agonize over the choice between maintaining the health care that they need to live and work, or a job that they are qualified for and desire, given the asset limitations imposed by means-tested programs that are attached to health care.<sup>75</sup> Social Security and Medicaid are only part of the larger story of disability unemployment and the programs devoted to assisting people with disabilities to obtain meaningful employment.

Millions of Americans with disabilities depend on school transition programs, including special education services set forth under the IDEA, the VR and the programs in the workforce development system (set forth under the Rehabilitation Act of 1973 as revised by the Workforce Innovation and Opportunity Act [WIOA]), and/or their state developmental disability service or mental health service systems (governed, in part, by provisions of the Medicaid Act) for assistance in finding, obtaining, and retaining a job. These valuable programs shepherd billions of dollars in training and services each year to Americans with disabilities to assist them to leave school, enter the workforce, and maintain economic self-sufficiency. Such programs play a crucial role in assisting people with disabilities to obtain career development counseling, work-based learning experiences, supported employment, AT, and other services and supports. Although these programs are authorized under different statutes, to be most helpful, they need to be coordinated and seamless as participants transition from one set of services to another. Moreover, the success of such federal and state employment systems depends, in large

part, on ensuring that the private sector is a fully engaged partner in recruiting, hiring, and retaining job-ready candidates who emerge from secondary schools and adult service programs. A persistent identified barrier to the employment of people with disabilities has been service gaps presented by the transition from the entitlement-based set of IDEA services to the eligibility-based adult employment system, and the lack of meaningful engagement of the private sector by public systems at most critical points along the way.

### **IDEA and Youth Transition Services**

Each year, 400,000 students with disabilities exit the nation's schools, and as one study approximated, more than 66,000 of them require transition services to bridge the gap between school and work.<sup>76</sup> Under the IDEA entitlement system of services, students with disabilities participate in the transition planning process through the Individualized Education Plan (IEP) beginning "not later than the first IEP to be in effect when the child turns 16" or younger if deemed appropriate by an IEP team.<sup>77</sup> The IEP must include appropriate postsecondary goals, among other things, related to education and employment.<sup>78</sup> Further, the IEP must include transition services needed to assist the child in reaching these goals, including as they relate to the employment objectives and the provision of a functional vocational evaluation.<sup>79</sup>

In 1975, Congress promised to cover 40 percent of the average cost to educate a child with disability under IDEA. But Congress later amended the law to say that the Federal Government would pay a "maximum" of 40 percent of per-pupil costs. Today, the Federal Government pays less than half of what it originally promised in 1975 or roughly 18 percent of the total.<sup>80</sup> In addition to other systemic barriers contributing to the problem, the failure to fully fund IDEA has had lasting adverse consequences for the

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*A persistent identified barrier to the employment of people with disabilities has been service gaps presented by the transition from the entitlement-based set of IDEA services to the eligibility-based adult employment system, and the lack of meaningful engagement of the private sector by public systems at most critical points along the way.*

full implementation of IEP plans and services, including students' postsecondary employment goals. Schools have pointed to reduced staff and significant budgetary restrictions to suggest that connecting students with disabilities with effective employment-related transition services to

bridge the gap from school to work requires additional staffing, training, and investment to be successful.

Despite the requirements of the IDEA to focus on postsecondary education and employment outcomes, students with disabilities have historically yielded poorer outcomes than their peers without disabilities on both measures. Young adults with disabilities are more likely to not have attained a high school diploma (including GED or alternative certificate) when compared to young people without disabilities. In 2018, 16.7 percent of

young adults with disabilities had not attained a high school diploma, compared to 7.7 percent of their peers without disabilities.<sup>81</sup> This is unacceptable. “The vast majority of special education students (80-85 percent) can meet the same achievement standards as other students if they are given specially designed instruction, appropriate access, supports, and accommodations, as required by IDEA.”<sup>82</sup> and “[u]nnecessary placement into an alternative diploma track has a lasting impact on future economic self-sufficiency for students with disabilities.”<sup>83</sup> An alternate diploma lacks the same currency with employers, and like having no diploma, has proven negative effects on wages and upward mobility. Certainly, not having a high school diploma or a regular diploma is a barrier to most jobs, and economists have consistently found approximately a 10 percent increase in wages/salary with each additional year of education.<sup>84</sup> Young people with disabilities are also less likely to have attained a bachelor’s degree when compared to young people without disabilities; in 2018, 15.6 percent of people with disabilities had a bachelor’s degree or more versus 38.4 percent of people without disabilities.<sup>85</sup>

While the lack of educational attainment has negative effects on employment and wages, for those without plans for higher education, it also makes employment even more important following exit from high school. The National Longitudinal Transition Study (NLTS [2005]) documented that 95 percent of transition-age youth with disabilities definitely expect that they will get a paid job after exiting school.<sup>86</sup> Yet, according to the National Longitudinal Transition Survey 2 (NLTS 2 [2011]), outcomes for transition-age youth demonstrate that only

### **By the numbers: Students with disabilities**

- 400,000 students with disabilities exit schools a year
  - 66,000 require transition services between school and work
- 16.7 percent young adults with disabilities had not attained a high school diploma (compared to 7.7 percent of peers without disabilities)
- 15.6 percent of people with disabilities have a bachelor’s degree (compared to 38.4 percent of peers without disabilities)
- 95 percent of transition-age youth with disabilities expect to have a paid job after school
- Only 17 percent of youth with I/DD and 12 percent of youth with multiple disabilities are employed one year out of school

17 percent of youth with I/DD and 12 percent of youth with multiple disabilities were employed one year out of school.<sup>87</sup> The 2011 study revealed that 86 percent of youth with I/DD stated that they wanted to be employed following graduation, but a 2018 study found that the same population was less likely to have competitive employment goals written into their IEPs and more likely to have sheltered employment goals and outcomes compared with students with other disabilities.<sup>88</sup> Additionally, among the young adults with disabilities surveyed who were employed after school exit, more than half (55 percent) reported finding work on their

own,<sup>89</sup> not through the assistance of school or the adult employment system. The lack of effective coordination between schools and the adult system (including VR and Medicaid-funded services, skills training, and employment-related services and supports) is well documented and has remained a consistent barrier to postsecondary employment for decades.

### **The Service System for People with Disabilities**

The eligibility-based service system is largely governed by the VR program, Medicaid, and the public workforce system.

### **Vocational Rehabilitation Services**

Approximately 1.2 million youth and adults are served by the 100-year-old VR program each year, a system designed to assist people with disabilities, including those with the most significant disabilities, who have visual, auditory, physical, intellectual and learning disabilities, and psychosocial or psychological disabilities, to achieve and maintain employment. Eligible people must require VR services to achieve employment, and vocational goals must be consistent with each person’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

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*86 percent of youth with I/DD stated that they wanted to be employed following graduation, but a 2018 study found that the same population was less likely to have competitive employment goals written into their IEPs and more likely to have sheltered employment goals and outcomes . . .*

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*Approximately 7 percent of all individuals receiving VR services under an Individual Plan for Employment (IPE) obtained employment outcomes from 2010 through 2019.*

In FY 2020, the Rehabilitation Services Administration requested an annual budgetary amount of \$3.6 billion for the VR program, an increase over the \$3.5 billion authorized in FY 2019.<sup>90</sup> An examination of VR program

performance data from the last decade—FYs 2010 through 2019—reveals that each year, there were approximately one million people with disabilities receiving VR services under an Individual Plan for Employment (Table 1), and that an average of 169,000 individuals exited VR with

competitive integrated employment outcomes each of those years.<sup>91</sup> Approximately 7 percent of all individuals receiving VR services under an Individual Plan for Employment (IPE) obtained employment outcomes from 2010 through 2019 (Table 1).<sup>92</sup> Also, during this period, VR program services yielded an average employment rate

of almost 53 percent, when those exiting with employment outcomes were averaged against those exiting the program without employment (Table 2).<sup>93</sup> The rehabilitation or employment rate fell

below 50 percent in each of the last three years (49.5 percent in 2017, 47.23 percent in 2018, and 45.5 percent in 2019).

VR program data also depicts the median hourly wages and median hours worked per

**Table 1: Vocational Rehabilitation (VR) Program Data Number of Applicants, Eligible Individuals, and Eligible Individuals Receiving VR Services under Individual Plan for Employment (IPE) (FFY 2010–2019)**

FFY	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019*
<b>Applicants</b>	701,779	673,578	652,756	619,265	590,820	583,246	602,400	569,530	528,386	446,919
<b>Eligible individuals</b>	693,628	653,314	638,959	601,327	578,490	578,997	582,788	536,483	484,674	399,587
<b>Eligible individuals receiving services under IPE</b>	1,011,395	1,011,602	1,011,671	1,001,814	944,593	954,024	972,155	975,359	932,119	1,236,663

Source: *Cumulative Quarterly Case Report* (RSA-113) (OMB control number 1820-0013).

\* Rehabilitation Services Administration (RSA) discontinued collecting RSA-113 data from state VR agencies at the end of FFY 2018; therefore, the source of data for FFY 2019 is the *Case Service Report* (RSA-911) (OMB control number 1820-0508).

**Table 2: Vocational Rehabilitation Employment Outcomes at Exit and Employment Rate (FFY 2010–2019)**

FFY	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
<b>Individuals exiting with employment outcome</b>	164,674	171,490	173,975	176,788	176,065	178,110	179,476	175,458	153,293	142,523
<b>Individuals exiting without employment outcome</b>	152,587	146,277	138,116	152,956	134,345	135,798	136,207	179,003	171,205	170,521
<b>Employment rate</b>	51.9%	54.0%	55.7%	53.6%	56.7%	56.7%	56.9%	49.5%	47.23%	45.5%

Source: *Case Service Report* (RSA-911) (OMB control number 1820-0508).

week for individuals exiting the VR program with employment outcomes, as reflected in Table 3. This data shows that individuals achieved employment with wages that were slightly above the federal minimum wage, and for less than full-time hours.<sup>94</sup> In 2010, those who exited VR with employment earned median hourly wages of \$8.25 and median hours worked of 34 hours per week. A decade later, in 2019, those who exited with employment earned median wages

of \$11.25 per hour and median hours worked of 30 hours per week.

The enactment of WIOA in 2014 significantly emphasized services to youth and expanded the role of the VR program in assisting students with disabilities to transition from school to a competitive integrated employment. However, this expansion occurred without additional funds appropriated to the VR program, adding to the challenge of implementation. Among

**Table 3: Median Hourly Wages and Median Hours Worked per Week of Individuals Exiting with Employment Outcome at Exit**

FFY	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
<b>Median hourly wages</b>	\$8.25	\$8.28	\$8.45	\$8.50	\$8.50	\$9.00	\$9.00	\$10.00	\$11.00	\$11.25
<b>Median hours worked per week</b>	34	34	32	32	30	30	30	30	30	30

Source: Case Service Report (RSA-911) (OMB control number 1820-0508).

other things, WIOA requires (1) VR agencies to reserve 15 percent of their federal VR grant funds to provide pre-employment transition services for students with disabilities<sup>95</sup> who are potentially eligible for the VR program (e.g., have not applied) and those who are eligible; (2) interagency collaboration between VR, local education agencies (LEAs) and schools, and workforce development systems to facilitate students with disabilities' transition from school to competitive integrated employment; and (3) under Section 511 of the Rehabilitation Act, that a series of steps must be taken before a student with a disability can enter or continue working in subminimum wage employment.<sup>96</sup> The role of the VR program in implementing WIOA bears great potential for improving employment outcomes for youth with disabilities as is discussed more fully in this report.

As this report was in the final editing stage, the Department of Education released a report<sup>97</sup> that outlines some of the factors that may contribute to recent performance trends in the

VR program, including requirements related to serving students and youth with disabilities, Section 511, and the relatively new common performance measures in section 116 of WIOA.

### **Medicaid**

The Medicaid Home and Community-Based Waiver program provides ongoing employment services to people with disabilities and is the

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*A decade later, in 2019, those who exited with employment earned median wages of \$11.25 per hour and median hours worked of 30 hours per week.*

largest federal source of funds for day and employment services provided to people with I/DD. Nationwide, between 5,000 and 6,000 community rehabilitation providers (CRPs) provide vocational services (most typically federal-state Medicaid services) to people

with disabilities in employment service systems in every state, and the majority (70 percent) of those served by CRPs are people with I/DD.<sup>98</sup> According to the Institute for Community Inclusion, in 2017, total funding for Medicaid reimbursable day and employment services was just over \$9 billion, with only approximately \$1 billion appropriated to employment services

provided in typical job settings in the community (i.e., competitive integrated employment).<sup>99</sup>

NCD reported in 2018 that there were approximately 321,131 workers with disabilities employed by segregated sheltered workshops that were authorized to pay subminimum wages to workers

with disabilities under Section 14(c) of the Fair Labor Standards Act.<sup>100</sup>

The report stated that “[p]erhaps no segment of the disability population experiences . . . negative effects and barriers to

financial self-sufficiency more than people who continue to earn subminimum wages in exchange for their labor.”<sup>101</sup> In 2020, the vast majority of Medicaid-funded employment services continue to be provided in segregated settings, where people with disabilities typically perform rote, repetitive manual tasks with only other people with disabilities under the supervision of paid support staff (i.e., sheltered workshops), rather than in competitive integrated employment.

And the consequences of this public investment are significant. Not only does this place many states at risk of violating Title II of the ADA and the Supreme Court’s decision in *Olmstead v. L.C.*, but it

has imposed significant limitations on the overall number of people with I/DD who are employed in competitive employment.<sup>102</sup> The service provider capacity to serve individuals with higher support needs, including those with I/DD, on the job in competitive employment has often

been insufficient to meet the need, and as a consequence, people are relegated to segregated sheltered workshops that exist outside of the open market. Likewise, many youth are referred to sheltered workshops directly from school, given state systems’ overreliance on them

and exceedingly low expectations. And, as mentioned earlier, youth with I/DD are often made to participate in school transition programs that resemble adult sheltered workshops where they are cultivated and trained

to perform manual tasks, placing them at serious risk of referral to adult sheltered workshops after leaving school.<sup>103</sup> People with disabilities often remain in sheltered workshops for decades at a time and are deprived of the opportunity to earn competitive wages and to become taxpayers.<sup>104</sup>

### ***Title I of WIOA/American Job Centers***

In addition to schools, VR, and Medicaid, the public workforce system also provides

employment services to people with disabilities, albeit to a smaller share of self-identified people with disabilities, through American Job Centers (AJCs).

Under Title I of WIOA, individuals with “barriers to employment,” including adults and youth with disabilities, are eligible for a range of services provided by AJCs, including assistance to job seekers; hard and soft skill guidance, career planning, and job placement

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***“Perhaps no segment of the disability population experiences . . . negative effects and barriers to financial self-sufficiency more than people who continue to earn subminimum wages in exchange for their labor.”***

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***[M]any youth are referred to sheltered workshops directly from school, given state systems’ overreliance on them and exceedingly low expectations.***



services; labor market demand and occupational information; job-driven training options; and work-based training opportunities.<sup>105</sup> More specifically, the AJC network may provide people with disabilities with apprenticeship opportunities, on-the-job training, and incumbent worker training.

Data from July 2016 through December 2018, required to be collected under WIOA, demonstrates that the public workforce/AJC system served 2.8 million individuals during that two-year period, of which just 6.7 percent (or 187,600 people) disclosed that they had a disability.<sup>106</sup>

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*Data from July 2016 through December 2018 . . . demonstrates that the public workforce/AJC system served 2.8 million individuals during that two-year period, of which just 6.7 percent (or 187,600 people) disclosed that they had a disability.*

Of those exiting WIOA services during the two-year period, 69.1 percent of people with disabilities were employed at some time in the four quarters following program exit versus

84.2 percent of those without a disability.<sup>107</sup>

For the same group, total earnings over the four quarters following program exit were just \$11,400 versus \$20,800 for those without a disability.<sup>108</sup> Historically, AJCs have been

found to be physically and programmatically inaccessible to people with disabilities and not well coordinated with the other parts of the adult employment system,<sup>109</sup> although several

identified steps are being taken to remedy these barriers, as discussed later.

### **AbilityOne**

In addition, the U.S. AbilityOne Program, one of the largest employment programs for people with disabilities in the United States, provides approximately 50,000 employment opportunities for people who are blind or have significant disabilities. These opportunities are in the manufacture and delivery of products and services to the Federal Government. AbilityOne

supplies approximately \$3.6 billion per year of federal set-aside contracts.<sup>110</sup> Many AbilityOne employers participate in the payment of subminimum wages under Section 14(c) of FLSA and/or run manufacturing facilities where people with disabilities are congregated together under the supervision of paid staff, unlike competitive integrated employment. NCD conducted a separate review of the AbilityOne program in its February 2019 report, *A cursory look at AbilityOne*,<sup>111</sup> and has an additional forthcoming 2020 report on the program.

## Chapter 3: Employment Barriers for Transitioning Youth and Employment Disincentives Tied to Means-Tested Benefits

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### Barriers to Transition-Age Youth Finding, Obtaining, and Retaining Employment

Since the passage of the ADA, NCD has consistently identified the importance of preparing youth with disabilities to obtain the education, credentials, training, and experience to transition from school directly into competitive integrated employment. In doing so, it has raised concerns about the continued high prevalence of alternative certificates rather than high school diplomas, the low educational attainment rate, the lack of interagency collaboration, and the need for meaningful work-based learning experiences prior to school exit to be stubborn barriers to the economic self-sufficiency of young adults with disabilities. These barriers must be addressed to correct the low disability labor force participation rate and persistently high unemployment of people with disabilities.

A major contributing factor to transition-age students lacking viable access to postsecondary employment and careers is ineffective transition planning:

In practice, transition planning for students with disabilities is often inadequate.

Preparing students without disabilities for skills development and economic independence often includes early opportunities such as job shadowing, internships, part-time jobs, and volunteer work. However, students with disabilities are less likely to have these opportunities, which sets them further behind their peers when they enter the competitive job market and postsecondary application process.<sup>112</sup>

Since the ADA was enacted, students with disabilities exiting school have often lacked timely, adequate, or effective access to transition services including work-based learning experiences and have consequently been underrepresented in the mainstream workforce as compared to their peers without disabilities. For example, 43.9 percent of young people with disabilities ages 20–24 years were employed in 2014, as compared to 71.9 percent of their peers without disabilities.<sup>113</sup> In 2014, with the bi-partisan enactment of the WIOA, Congress passed one of the most substantial pieces of legislation since the enactment of the ADA, designed, in part, to directly address the pattern of low labor force participation and high disability unemployment of young people with disabilities.

WIOA, a bi-partisan piece of legislation, was conceived during a time of relative economic growth, a tight labor market, *and* persistently high disability unemployment. Prior to his vote on WIOA, Senator Rob Portman (R-OH) stated,

These millions of unfilled jobs are an indictment of the [workforce investment] program[s]. In other words, we should be doing a better job of getting the skills we need to fill these jobs if we are spending \$15 to \$18 billion of hard-earned taxpayer money on it.<sup>114</sup>

Senator Portman's frustration with existing systems reflected concern for the growing skills gap and the number of economic opportunities that people with disabilities were excluded from, despite federal systems that were in place and a growing economy. Likewise, Senator Tom Harkin (D-IA) described the purpose of the WIOA amendments to the Rehabilitation Act of 1973 ("Rehab Act"):

This bill makes major steps to correct the injustice. It will help a new generation of young people with disabilities to prepare for, obtain, and succeed in competitive integrated employment, not substandard subminimum wage dead-end jobs but in jobs in which people with disabilities can learn and grow to their maximum potential.<sup>115</sup>

Among other things, WIOA sought to address the growing skills gap, to divert students and

youth with disabilities away from segregated subminimum wage jobs (or in Senator Harkin's words "dead-end jobs"), and to tackle the persistent underemployment and unemployment of people with disabilities.

To this end, WIOA requires that VR agencies reserve 15 percent of their federal award specifically to provide Pre-Employment Transition Services to students with disabilities, even when those students are not VR clients. WIOA established five pre-employment transition services that VR agencies must provide to transition-age students with disabilities: (1) job exploration counseling, (2) work-based learning experiences, (3) counseling on opportunities for enrollment

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***43.9 percent of young people with disabilities ages 20–24 years were employed in 2014, as compared to 71.9 percent of their peers without disabilities.***

in comprehensive transition or postsecondary educational programs, (4) workplace readiness training, and (5) instruction in self-advocacy.<sup>116</sup> These five

re-employment transition services provide a range of employment-related services to students with disabilities:

- *Job exploration counseling* includes such things as information and counseling on in-demand industry sectors and occupations, labor market composition, vocational interest inventories, and identification of career pathways of interest to students.
- *Work-based learning experiences* are work experiences such as job shadowing, or mentoring opportunities provided in an integrated environment in the community to the maximum extent possible.

- *Counseling on opportunities for enrollment* includes counseling on comprehensive transition or postsecondary educational programs at institutions of higher education.
- *Workplace readiness training* includes services to develop social skills and soft skills training and independent living, including effective communication and interpersonal skills and understanding employer expectations.
- *Instruction in self-advocacy* can include peer mentoring and person-centered planning where students can learn their rights, responsibilities, and how to request accommodations and services.<sup>117</sup>

Pre-employment transition services carry the promise of interrupting the youth disability unemployment cycle, where students leave school with high expectations and a willingness to work but have a correspondingly low employment rate as compared to their peers without disabilities.

In 2017, 4 years after enactment of WIOA, NCD issued a report examining the success of early efforts to implement pre-employment transition services.<sup>118</sup> NCD found that the Rehabilitation Services Administration (RSA) had provided very little substantive direction to agencies on how to track and measure pre-employment transition services and costs; that RSA had significantly delayed much needed

guidance on pre-employment transition services implementation to agencies (only issuing formal technical assistance 13 months after WIOA's enactment on actions VR agencies were actually required to take a year prior); and that significant challenges remained in agencies' understanding of data sharing, data collection, and consent for the release of records between schools and VR.

NCD recognized that while pre-employment transition services brought the promise of expanded transition services for students with disabilities, they also imposed a new fiscal burden on VR without a corresponding budgetary increase to account for those new

responsibilities. WIOA requires that VR provide pre-employment transition services not only to all transition-age students with disabilities who are VR clients, but also to *all potentially eligible* transition-age students with disabilities. This requirement was intended to ensure that all students with

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***Pre-employment transition services carry the promise of interrupting the youth disability unemployment cycle, where students leave school with high expectations and a willingness to work but have a correspondingly low employment rate as compared to their peers without disabilities.***

disabilities, not just students who are VR clients, have immediate access to transition services without having to go through the process of applying for VR services—a process that can be quite lengthy and delay service provision for a significant time or even indefinitely. Thus, re-employment transition services' requirements help ensure that potentially eligible students do not fall into a service gap after completing high school, a gap with significant adverse consequences for obtaining postsecondary employment.

The effect of the expansion of VR services is evident when you take a close look at the VR program’s more recent performance data. In 2017, NCD documented that the VR program served 1 million people with disabilities through its state VR agencies, approximately 35 percent of whom were transition-age youth with disabilities aged 14–24 years.<sup>119</sup> We now know that in program year (PY) 2017, 49 percent of VR participants were age 24 years and under, and in PY 2018, 51 percent fell into that same demographic. This means that by PY 2018, four years after implementation of WIOA, more than half of all of those served by VR were younger than 25 years old. VR also reported that in PY 2017 it provided 179,716 students with pre-employment transition services (94,471 students who applied for VR services, and 85,245 students who were potentially eligible for VR), and in PY 2018, VR served 248,320 students with pre-employment transition services (100,556 students who were

eligible for VR services, and 137,780 students who were potentially eligible for VR services). This data, as reflected in Table 4, demonstrates that overall provision of pre-employment transition services has expanded—by PY 2018, slightly more students who were potentially eligible for VR services received pre-employment transition services than those who had already enrolled in the VR program.

Stakeholders of the VR system, including the Council of State Administrators of Vocational Rehabilitation (CSAVR), have suggested that the additional requirements imposed on VR agencies by WIOA, without an accompanying budget increase, have caused VR agencies to make hard decisions about resource allocation and have slowed its progress with WIOA implementation. For example, interview respondents suggested that the 15 percent required reserve for pre-employment transition services has had to come out of other key services, reducing VR’s

**Table 4: Provision of Pre-Employment Transition Services to Students with Disabilities (PYs 2017 and 2018)**

Students with Disabilities	PY 17 Number/Percent of Students	PY 18 Number/Percent of Students
Number of students with disabilities reported	525,958	638,601
Number of students with disabilities who received a pre-employment transition service	179,716	248,320
Percent of students with disabilities reported who received a pre-employment transition service	34.2%	38.9%
Number of potentially eligible students with disabilities who received a pre-employment transition service	85,245	137,780
Number of students with disabilities who applied for Vocational Rehabilitation services and received a pre-employment transition service	94,471	110,556

Source: *RSA Case Service Report* (RSA-911) (OMB control number 1820-0508).

ability to serve adults with significant disabilities. In FY 2016, the State Plans of 37 out of 80 VR agencies documented that the agency had established an Order of Selection, meaning there were not enough resources to serve everyone who was eligible for VR services.<sup>120</sup> As of October 2019, 41 out of 78 VR agencies had established an Order of Selection, 31 of which had one or more

priority categories closed to prioritize serving people with the most significant disabilities first, as they were not able to serve everyone due to the loss of funding created by the pre-employment transition services set aside and other factors.<sup>121</sup> Currently, there are eight VR agencies that have closed *all* categories within Orders of Selection<sup>122</sup>—this is a cause for concern. According to CSAVR, in addition to the impact of the 15 percent reserve, until the IDEA is reauthorized and includes

statutory language that mirrors statutory language in WIOA on the provision of pre-employment transition services and requires cooperation between

LEAs and State VR Agencies in the delivery of these services, some states will continue to encounter challenges.

WIOA imposes collaboration between the VR program and other core programs in the workforce development systems to facilitate the transition of students with disabilities from school

to competitive integrated employment. One potential solution to the resource issue is for VR agencies to become more adept at leveraging the programs and services of their federal partners in this system, including the AJCs funded by the U.S. Department of Labor’s Employment and Training Administration. The nearly 2,400 AJCs

located throughout the nation provide free support to job seekers for career and employment-related needs. There are two types of AJCs: comprehensive and affiliate. Comprehensive AJCs provide a full array of employment- and training-related

services for workers, youth, and businesses. These locations include the mandatory WIOA partners on-site (this includes VR). Affiliate AJCs provide limited employment- and training-related services. AJCs also have experienced career counselors on staff who work with job seekers

to identify their interests, assess their skills and abilities, and advise them on in-demand jobs and potential training opportunities.

Many AJCs also offer recruiting events, workshops on resume writing, interviewing skills, and job search activities.<sup>123</sup>

To be a truly valuable partner to VR agencies, AJCs must be physically and programmatically accessible, but AJCs’ accessibility received mixed reviews in a 2017 report.<sup>124</sup> Recent efforts have aimed to ensure that access. For example, the

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*[I]nterview respondents suggested that the 15 percent required reserve for pre-employment transition services has had to come out of other key services, reducing VR’s ability to serve adults with significant disabilities.*

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*As of October 2019, 41 out of 78 VR agencies had established an Order of Selection, 31 of which had one or more priority categories closed . . .*

Department of Labor (DOL) Office of Disability Employment Policy (ODEP) and the Employment and Training Administration (ETA) jointly funded the Disability Employment Initiative (DEI) from 2010 through 2017 (projects funded in 2017 actually end in 2020) to improve how workforce development systems serve people with disabilities. ETA awarded grants to 55 projects in 30 states totaling about \$139 million in investment to help states implement best practices and policies from DEI evaluations including evaluations of AJCs.<sup>125</sup> ETA also hosted a Workforce Innovation Cohort on Disability and Employment during FY 2019, where WIOA program partners across 18 states participated in a 6-month peer exchange. State and local teams were composed of a cross section of WIOA core program partners and other stakeholders that focused on accessibility, customer service, and employer engagement of the public workforce system. The teams came up with solutions and innovations to support AJCs to improve these core areas.<sup>126</sup> NCD has not been able to ascertain whether the efforts of the DEI and the Cohort have improved the accessibility issue identified in the 2017 report, but these efforts to address them are an important part of ensuring that the AJCs can be the most effective partners possible in supporting the efforts of people with disabilities who are seeking employment and training opportunities.

NCD requested data from the ETA on the AJCs. In response, ETA provided raw data on the Wagner Peyser Program. ETA has no established way of pulling unduplicated counts for the total number of people with disabilities served by

AJCs. However, the nearest approximation is data available from its Wagner Peyser Employment Services Program. In PY 2016, the number of Wagner Peyser (WP) participants with disabilities was 268,702 out of the 5.4 million people served that year; in PY 2017 the number of WP participants with disabilities decreased to 208,911 out of the 4.3 million people served that year; and in PY 2018 the number of WP participants with disabilities decreased to 192,865 out of a total of 3.8 million people served that year. Based on this raw data, although the number of people with disabilities served by WIOA title I programs has decreased, not increased, in recent years along with decreasing participation by all categories of job seekers, the percentage of

people with disabilities served increased slightly from PY 2017 to PY 2018. There is some evidence that people with disabilities have made progress in expanding

access to the public workforce system during this period.

Other interview respondents expressed the view that the provision of pre-employment transition services and implementation of the amendments to the Rehabilitation Act made by WIOA are not a resource issue but a matter of prioritization of resources. WIOA puts added requirements on the vocational rehabilitation system to marshal its resources toward early intervention for students with disabilities to introduce the world of work and raise expectations for meaningful employment as adults. Pre-employment transition services are viewed as the first step on a continuum of services available to students with disabilities

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*Currently, there are eight VR agencies that have closed all categories within Orders of Selection—this is a cause for concern.*



who can also apply for the VR programs where they can receive the specialized services and training to pursue and maximize meaningful employment outcomes and careers. Early engagement with students with disabilities can assist in career exploration leading to greater success in achieving competitive integrated employment and expanding opportunities beyond employment in nonintegrated work settings at subminimum wages. Additionally, early engagement of students with disabilities may lessen the likelihood of school dropout or dislocation. The theory behind this strategy is that spending more resources—the 15 percent reserve of federal grant funds—on students with disabilities, including those who are potentially eligible for VR services, for the provision of pre-employment transition services, will be

cost-effective in the long run and yield better employment outcomes. While VR data supports the view that WIOA has imposed additional financial stressors on the VR system, there is also substantial research that confirms that serving youth as early as age 14 years as they transition from school to work is more cost efficient and effective in the long run than serving them as adults who are unemployed or underemployed.<sup>127</sup>

NCD's 2017 pre-employment transition services report<sup>128</sup> found several restrictions on what VR agencies could permissibly pay for out of their set-aside 15 percent reserve when it came to potentially eligible students with disabilities. For example, agencies could not pay for clothing, transportation, and AT out of the 15 percent reserve for these students, even when one or more of these items were needed to participate

in pre-employment transition services like work-based learning experiences, internships, and apprenticeships. The only way to get these was to apply to become a VR participant, which takes time, and sometimes, a long time. If the pre-employment transition service was work related, timing was important. If a student was offered an internship but did not have the resources to buy a uniform or to pay for transport, he or she could miss out on that important opportunity. In that report, NCD recommended that RSA allow VR agencies to pay for these services out of the 15 percent reserve or, alternatively, provide them as reasonable accommodations. Six years after the enactment of WIOA, these funding restrictions remain in place.

On February 28, 2020, RSA issued a “Policy Interpretation” published in the *Federal Register* that clarified the agency’s interpretation of Section 113(b) of the Rehabilitation Act (as revised by WIOA) and its implementing regulations to mean that VR funds from the 15 percent reserve could be used for pre-employment transition services and “auxiliary aids and services” for potentially eligible students who have sensory and communication disorders to access or participate in pre-employment transition services.<sup>129</sup> Such auxiliary aids and services could include, for example, “interpreter services or video-based telecommunication products.”<sup>130</sup> RSA previously provided this policy interpretation to VR agencies through an email issued to VR agency directors and posted on its website on December 28, 2016. In that policy interpretation, RSA explained that other VR services like maintenance services to purchase clothing for a work-based learning experience, transportation to enable the student to travel to and from a work-based learning experience

or work readiness training, or rehabilitation technology including personal devices and services (like prescription eyeglasses and hearing aids), and coaching during work-based learning experiences, may be provided to students with disabilities who have been determined eligible under an IPE with the funds reserved for pre-employment transition services. Nonetheless, RSA confirmed in the 2020 policy interpretation that these same VR services could not be provided to potentially eligible students with disabilities using the reserved funds.

RSA’s rationale is that pre-employment transition services fall within a continuum of services and that they “should be provided to the broadest population of students with disabilities to ensure that as many students with disabilities as possible are able to receive the services that they need to prepare for postschool activities, including postsecondary education and employment.”<sup>131</sup> Yet, the interpretation limits who can access additional services, that in NCD’s view are necessary to succeed in pre-employment transition services, to only those youth who have been found eligible for VR services who have an IPE. The agency states, “the Department has observed through monitoring that these IPEs for students with disabilities are underutilized.”<sup>132</sup> Yet, in its interpretation, it points to no plan for how the agency will expand the number of students with disabilities who are found eligible, enrolled, and placed on IPEs. And the performance data, as discussed earlier, reveals that there are increasingly more students who are potentially eligible for pre-employment transition services, who are served by the VR system, than those who apply and are determined eligible. It remains the position of NCD that VR agencies should be

able to use the 15 percent reserve to purchase certain items that are necessary to allow potentially eligible students with disabilities to participate in pre-employment transition services.

An important question is how many students with disabilities are receiving each of the five pre-employment transition services? Newly available VR performance data, displayed in Table 5, sheds significant light on this.

In 2017, there were 179,716 students with disabilities who received a pre-employment transition service. The next year, in 2018, this number grew to 248,320 students. VR program performance data (as reflected in Table 5) indicates that in PY 2017, the largest percentage of pre-employment transition services was provided in job exploration

counseling (26.7 percent) and workplace readiness training (25.9 percent), with relatively fewer services provided in work-based learning experiences (17 percent), instruction in self-advocacy (15.1 percent), and counseling on enrollment in postsecondary education

programs (15.2 percent). The following year in PY 2018, these trends continued for the most part. But while these percentages account for some of the pre-employment transition services provided, it is also worth looking at

the total growth of all such services between 2017 and 2018. In PY 2017, for example, the VR program provided a total of 747,837 pre-employment transition services, whereas the following year in PY 2018, the total pre-employment transition services provided

*It remains the position of NCD that VR agencies should be able to use the 15 percent reserve to purchase certain items that are necessary to allow potentially eligible students with disabilities to participate in pre-employment transition services.*

**Table 5: Provision of Pre-Employment Transition Services**

Pre-Employment Transition Services	PY 17 Number Provided	PY 17 Percentage of Total Pre-Employment Transition Services Provided	PY 18 Number Provided	PY 18 Percentage of Total Pre-Employment Transition Services Provided
Total pre-employment transition services provided	747,837	–	1,227,841	–
Job exploration counseling	199,562	26.7%	314,245	25.6%
Work-based learning experiences	127,067	17.0%	218,415	17.8%
Counseling on enrollment opportunities	114,045	15.2%	198,040	16.1%
Workplace readiness training	193,874	25.9%	292,807	23.8%
Instruction in self-advocacy	113,289	15.1%	204,334	16.6%

Source: Case Service Report (RSA-911) (OMB control number 1820-0508).

was 1,227,841. While work-based learning experiences comprise just approximately 17 percent of all pre-employment transition services, between 2017 and 2018, the number of work-based learning experiences provided nearly doubled (from 127,067 to 218,415), showing some progress and traction in WIOA implementation.

In regard to seeing the impact of pre-employment transition services on student employment outcomes: RSA cannot track employment outcomes for potentially eligible students. However, for those students

who become VR participants, RSA tracks their employment status when they exit the VR program and will track post-exit employment status for a year and a half (six quarters) as required by the WIOA. RSA currently has 2 full years of data available

on VR participants who received pre-employment transition services but explained to NCD that it is too soon to understand how receiving these services may or may not impact employment. For some students

who become VR participants, it may be years until they exit the VR program. For example, in some states, a student can start receiving pre-employment transition services at 14 years of age and may be allowed to continue until the

age of 24 years. That student could then enter a VR program and receive further services before achieving an employment outcome and exiting the VR program. It would be another year and a half before RSA had the full picture.

The types of pre-employment transition services that are the most likely to increase employment outcomes is a topic worth examining. Individuals interviewed for this report questioned the efficacy of some pre-employment transition services. They questioned the effect of providing more overall pre-employment

transition services (or in PY 2018 1,227,841 services provided to 248,320 students) when perhaps only one service, work-based learning experiences, has substantial research to support that it leads to postsecondary employment

outcomes.<sup>133</sup> While the number of work-based learning experiences increased during the past two years of record-keeping, that service is a relatively small proportion of all the pre-employment transition services delivered in

2018 (17 percent in 2018 of all pre-employment transition services provided). Yet, considerable research establishes that no single factor is more determinative in increasing the likelihood of postsecondary employment outcomes

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*While work-based learning experiences comprise just approximately 17 percent of all pre-employment transition services, between 2017 and 2018, the number of work-based learning experiences provided nearly doubled (from 127,067 to 218,415), showing some progress and traction in WIOA implementation.*

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*[C]onsiderable research establishes that no single factor is more determinative in increasing the likelihood of postsecondary employment outcomes than work experience in typical employment settings while in secondary school.*

than work experience in typical employment settings while in secondary school.<sup>134</sup> The lack of evidence that workplace readiness training or job exploration counseling have substantial relation to postsecondary employment outcomes concerns advocates and stakeholders; however, workplace readiness training and job exploration counseling comprised the largest piece of the pre-employment transition services pie in 2018.

As a result, experts in school transition fear that work readiness training and job exploration counseling may be provided inside school or segregated employment settings without real context for or meaningful information about competitive integrated employment. Many states have incorrectly interpreted the WIOA requirements to allow

work-based learning experiences on school campuses or in adult sheltered workshops if subminimum wages are not paid to the student.<sup>135</sup> Yet, WIOA's

regulations are explicit that work-based learning experiences must be "provided in an integrated environment to the maximum extent possible."<sup>136</sup> States must be supported to model and implement truly integrated work-based learning experiences. These programs should incorporate new technologies and workplace and business development tools, wherever possible.

Only time will tell if such services, when provided in segregated settings, in school classrooms, or generally in isolation of a real work experience, in fact, lead to employment outcomes. If they do not, federal programs will have channeled federal investment toward services that perpetually prepare people for

employment but never place them in it. This would be a significant step backward and repeat the design flaws of the sheltered workshop model, where, on average, only approximately 5 percent of people ever leave for competitive integrated employment.<sup>137</sup>

Prior research "strongly substantiates the value of paid employment above and beyond all other types of work-based learning activities."<sup>138</sup> New research has yielded data that indicates that applying VR service funds well before school exit—when braided with school and other community resources—around the defining experience of work-based learning, will actually reduce VR service costs, create new cost efficiencies, and increase the overall

return on investment of those public service dollars.<sup>139</sup> The legislative history and purpose of Title IV of WIOA stress the importance of job experience, and as such, it is NCD's view

that work-based learning experiences are a critical pre-employment transition service for students with disabilities, and that maximum efforts should be made to provide experiences in competitive integrated employment. Job exploration counseling and any training around soft skills development conducted as part of job readiness training should wrap-around the core job experience in competitive integrated employment settings.

## **Filling the Youth Skills Gap and Gaining Access to Higher Education**

Over the past three decades, NCD has documented the widening skills gap between

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*WIOA's regulations are explicit that work-based learning experiences must be "provided in an integrated environment to the maximum extent possible."*

students with and without disabilities, noting the kinds of rote and manual training tasks that students with disabilities are most likely to engage in both while in school and following school. Given the disparity in wages and upward mobility between manual skills jobs and jobs that require training in STEM backgrounds, in 2009 NCD called upon Congress to fund a series of antistigma demonstration projects targeted to transition-age youth with disabilities, designed to encourage them to consider careers in STEM, “and to expose such youth to the careers and opportunities these and other high-growth, high-income disciplines entail.”<sup>140</sup> NCD’s predictions about the importance of

STEM were confirmed by the dramatic growth in the technology and innovation sectors during the past decade; however, a coordinated effort toward STEM career development

for students with disabilities has not been undertaken. The default skills training for students with disabilities in America has been and remains job skills training targeted toward the very industries with the steadiest rate of decline, and that carry the highest propensity to depend on physical or manual processes. Consequently, students with disabilities lack exposure to the skills training most pertinent to the fastest-growing industries and sectors in our economy, including skilled labor sectors and information and communication technology. This is sobering, considering that “by 2030, it is estimated that the demand for skilled workers will outstrip supply, resulting in a global talent

shortage of more than 85.2 million people.”<sup>141</sup> And no one should give short shrift to the scale of this problem. The *Disability Status Report* for 2015 indicates that the overall percentage of young people (ages 16–20 years) with a disability in the United States is 5.9 percent or almost 1.3 million youth, over one-third of whom do not achieve a high school diploma compared to 25 percent of youth without a disability.<sup>142</sup> Opportunities in the economy of the future will abound but will require new training and upskilling for this population, and continuous listening and learning from employers about the skills that best meet industry’s changing needs.

In addition, some states have recognized that the skills gap is not solely the product of the gap in access to postsecondary education, but also results from a failure to obtain concrete postsecondary vocational

skills credentials. For example, featured prominently on the Virginia VR agency website is the following statistic: “Of the 1.5 million job vacancies expected in the next decade in Virginia, more than half will require more than a high school diploma but less than a bachelor’s degree. Instead, businesses will seek job applicants who hold an associate’s degree and/or industry-recognized certifications.”<sup>143</sup> Yet, for people with disabilities, access to industry-recognized certifications through traditional avenues including the public workforce system has been lacking.

WIOA’s new performance standards require VR agencies to report on the measurable skills

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*The default skills training for students with disabilities in America has been and remains job skills training targeted toward the very industries with the steadiest rate of decline.*

gains (MSGs) achieved by service recipients during the reporting period. MSG is defined as:

The percentage of program participants who, during the program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skills gains, defined as documented academic, technical, occupational, or other forms of progress, towards such a credential or employment.<sup>144</sup>

VR reported just 21.1 percent of participants achieving an MSG in PY 2017 and 23.1 percent of participants in PY 2018. This means less than one-third of VR program participants are achieving documented academic, technical, or occupational credentials.

The mismatch between how youth and adults with disabilities are being prepared for employment and the fastest-growing industries in the economy is well documented, including through current RSA data on job placements during its recent VR program years. For example, the VR system serves people with a wide range of physical and/or mental disabilities and educational levels, including people with high school, postsecondary, and graduate degrees. Nevertheless, in PY 2018, the top five Standard Occupational Codes (SOCs) for VR job outcomes were (1) stock clerks or order fillers; (2) customer service representatives; (3) janitors and cleaners (except maids and housekeeping cleaners); (4) laborers and freight, stock, and material movers; and (5) retail salespeople.<sup>145</sup> As previously mentioned, these five job categories are among those with the fastest expected rate of decline in the coming decade. This may explain why in

2019, those who exited VR with employment earned median wages of \$11.25 per hour and median hours worked of 30 hours per week. The economy is showing signs of considerably less demand for these tasks, suppressing wages and opportunities. Meanwhile, these wages and hours are not sufficient to sustain a household income above the poverty line.

While no comprehensive efforts by the Federal Government to fund and pilot STEM training programs for students with disabilities have been deployed, several piecemeal federal and private efforts have shown real promise and are worthy of consideration. For example, in Texas, the state VR agency entered a statewide Pathways to Careers Initiative (PCI), to expand WIOA required pre-employment transition services to include, among other things, a component to assist Texas students with disabilities to explore career pathways in STEM. In 2018, 228 students with disabilities

### **Top 5 Standard Occupational Codes (SOCs) for VR outcomes, PY 2018**

1. Stock clerks or order fillers
2. Customer service representatives
3. Janitors and cleaners (except maids and housekeeping cleaners)
4. Laborers and freight, stock, and material movers
5. Retail salespeople.

*These job categories are among those with the highest rate of decline in the next decade.*

participated in Explore STEM!, a Texas Workforce Commission (TWC) initiative, where TWC partnered with 10 universities, colleges, and technical schools statewide to serve as hosts for Explore STEM! summer camps for the students, aged 14–22 years.<sup>146</sup> Each camp was five to seven days with hands-on, interactive instruction on topics that included computational engineering, cybersecurity, biotechnology, manufacturing, forensic science, archeology, astronomy, plant biology, and robotics.<sup>147</sup>

While a relatively modest-sized program, and designed for a summertime camp and not ongoing training, one could see the potential for larger pilots of STEM-related pre-employment transition services

constructed as a talent pipeline to committed private sector employers.

Such programs could afford employers a reliable source of job-ready candidates and a platform through which to provide input

to committed partners about the skills gaps experienced in a given industry. Moreover, employers could partner, along with committed service providers, with institutions of higher learning to individually tailor university, college, and technical skills curriculum and customize training to fill their talent needs. Ultimately, the success of any such program would be measured, at least in part, by the number of work-based learning experiences and employment outcomes created in these new and emerging industries.

Interviews with both RSA and CSAVR confirmed that STEM training is viewed as an

objectively appropriate priority for students with disabilities, but that resource constraints have limited VR programs from rolling out any kind of coordinated effort in this regard. For example, the previous example in Texas is the only STEM-related program in the nation that CSAVR could easily identify.

Similarly, in December 2016, the U.S. Department of Labor’s Employment and Training Administration published a final rule, setting forth regulations requiring a national utilization goal of 7 percent for people with disabilities participating in apprenticeship programs (mirroring that established by the Office of Federal Contract Compliance Programs [OFCCP]

under Section 503 of the Rehab Act for federal contractors).

The preamble to the 2016 final rule contained a projection by advocacy organizations that the 7 percent utilization goal for ETA apprenticeships could create 26,000

additional job training opportunities for people with disabilities, thus providing a significant opportunity for people with disabilities entering or reentering the workforce to engage in apprenticeships across all economic sectors, specifically for new and emerging industries and labor market sectors that are expanding.<sup>148</sup> However, there is no requirement that ETA focus the 7 percent utilization goal toward any particular industry sectors. The 7 percent utilization goal, while a significant positive development, would be best focused on apprenticeships in the industries most likely to lead to job growth in the overall economy.

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*While no comprehensive efforts by the Federal Government to fund and pilot STEM training programs for students with disabilities have been deployed, several piecemeal federal and private efforts have shown real promise.*

Likewise, ODEP's Inclusive Apprenticeship Initiative for Youth and Adults with Disabilities was established in 2018 for the purpose of exposing people with disabilities to high-demand, well-paying careers in information technology, health care, and advanced manufacturing. To date, it has placed 150 youth in apprenticeships in information technology, health care, and advanced manufacturing, but only 10 percent are people with disclosed disabilities versus 51 percent veterans, and 14 percent other youth and young adults.<sup>149</sup> Additional resources are necessary to scale such endeavors specifically to students with disabilities, including those with higher support needs and who are or will be eligible for adult service systems.

Some universities have begun to offer skills development programs for youth with disabilities who may not have earned a college degree. Inclusive postsecondary education programs are growing on college campuses and have been made possible through federal funds. Students with I/DD experienced improved access to higher education following the passage of the Higher Education Opportunity Act in 2008 (HEOA),<sup>150</sup> which created comprehensive Transition and Postsecondary Programs for Students with Intellectual Disabilities (TPSID) to allow students with I/DD to continue their academic, career and technical, and independent living instruction at an institution of higher education to prepare for gainful employment.<sup>151</sup> The HEOA authorized the support for program development and expansion of model demonstration projects. In 2010, the

Office of Postsecondary Education at the U.S. Department of Education awarded grants to 27 institutes of higher education to fund model demonstration projects now known as TPSID.<sup>152</sup> The HEOA was explicit that these postsecondary education programs include a focus on gainful employment, and that the programs accomplish this through person-centered planning to identify career goals, work-based learning plans, access to job coaches and job developers, job shadowing, paid and unpaid work experiences, internships, and apprenticeships throughout a student's course of study.

TPSID programs in Hawaii, California, and Washington work closely with state VR agencies, in strong partnerships, to achieve the goal of competitive integrated employment prior to exit from the program. But proposed budget cuts threaten the integrity of the HEOA-related postsecondary disability programs. NCD sees these programs as essential to the economic self-sufficiency of transitioning students with disabilities, and rather than cut them, these vital programs should be expanded to include more students and more possibilities for skill development and credentialing.

### **Strong Disincentives to Employment Tied to Means-Tested Public Benefits**

Perhaps no barrier to employment is more consistently identified as imposing unnecessary limitations on the access of people with disabilities to economic self-sufficiency than

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*The 7 percent utilization goal, while a significant positive development, would be best focused on apprenticeships in the industries most likely to lead to job growth in the overall economy.*

the disincentives tied to means-tested public benefits. Every expert interviewed for this report, and nearly all stakeholders, agreed. For decades, NCD has documented the problem that government programs that provide necessary health care and supports to people with disabilities, jeopardize the ability of recipients, who can and want to, to fully engage in work without risking losing important health care and valuable supports.

The Social Security Administration (SSA) administers two programs, Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI), that provide essential cash supports for more than 13 million Americans with disabilities and their families.<sup>153</sup>

SSI and SSDI provide financial support to cover living expenses and other costs for those individuals who are “unable to work due to severe physical and/or mental limitations.”

The cash supports provided through SSDI and SSI are targeted toward people who cannot engage in “substantial gainful activity” (SGA) because of one or more severe physical or mental impairments that are expected to last at least a year or result in death. In 2020, SGA is defined as \$2,110 for blind people and \$1,260 for people with disabilities who are not blind.<sup>154</sup> While some might view this as a modest sum, the program plays a crucial role in keeping many Americans with disabilities out of poverty. Approximately 80 percent of beneficiaries get at least half of their income from the SSDI program, while 36 percent of beneficiaries rely on SSDI benefits as their sole source of

income, and estimates have projected that SSDI alone has pulled 2.7 million households out of poverty in 2015.<sup>155</sup>

Yet, this vitally important safety net, while successful in pulling people slightly above the federal poverty line, has also worked to create barriers to upward mobility for many of those same people because of the perverse economic disincentives built into the program. For example, in order to be eligible for disability insurance benefits through SSDI, people with disabilities must demonstrate to the SSA *that they cannot work*. This requirement is built upon the exceedingly low expectations of people with disabilities that existed at the time of the development and enactment of the

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*[I]n order to be eligible for disability insurance benefits through SSDI, people with disabilities must demonstrate to the SSA that they cannot work.*

Social Security Act: the requirements for SSDI and SSI were first discussed in the late 1930s, the SSDI program was passed into law in 1956, and the SSI program, as

we now know it, was enacted in 1972. The Eisenhower, Kennedy, Johnson, and Nixon administrations operated under presumptions informed by a medical model of disability that government had to “take care” of people with significant disabilities without regard for the possibility that such people could work with the right accommodations, supports, and health care in place. In 2020, the presumption in SSA programs that people with disabilities cannot work disregards the interests of a significant segment of the current disability population—including those who have come of age and live in a post-ADA America—who can and want to work. The presumption of unemployability also

disregards the seismic technological changes that have occurred since such programs were conceived, changes that have transformed the nature of work, and effectively modified the work environment, making it more possible than ever before for people with significant physical and mental disabilities to be employed. Commentators have noted that the ADA combined with these significant technological changes have in fact declaratively “denigrated the medical model of disability among disability rights advocates.”<sup>156</sup>

Significantly, SSA programs remain tied to critical access to health care. SSDI beneficiaries qualify for Medicare after 24 months of enrollment in the program. Those people with disabilities with limited income and assets who qualify for SSI are, in turn, qualified for the Medicaid program. Medicaid Home and Community Based Services waivers (set forth under Section 1915[c] of the Social Security Act) provide people with disabilities access to a range of vital services in addition to health care, like personal care services, case management, and respite. Paradoxically, Social Security Act 1915(c) services also provide millions of people with disabilities with day habilitation, pre-vocational training (e.g., sheltered workshop), and supported employment services, to assist them *to work* even though they have qualified for the program based on their *inability to work*. But much like SSA eligibility, some of these day services, like day habilitation and sheltered employment, are based on a deficits-based view of disability and have resulted in unnecessary segregation and downwardly

adjusted wages, whereas supported employment services are often necessary, among other things, to support a person to work the maximum hours that they can at competitive wages. Nevertheless, many people with disabilities who receive supported employment services, and who are participants of the SSDI or SSI program, remain restricted in the number of hours they can work in competitive employment without fear of losing access to public benefits and health care if their incomes exceed the SGA amount.

The disability determination process for SSDI and SSI eligibility is also quite often protracted, and perhaps unnecessarily complicated, taking months or sometimes even years. Participants must continuously prove their inability to work throughout the process, discouraging such people from working competitively even as they wait to achieve eligibility. And when individuals do choose to work, they often find themselves in low-paying jobs, for fewer hours than full-time, and lacking in employer-paid health care and other necessary benefits.

The frequent need for beneficiaries to pay back benefits when their earnings fluctuate creates additional barriers to employment. SSI benefits are predicated and adjusted based on earnings, but the adjustments of benefit levels are often delayed by several months as they are adjusted retroactively. If SSA determines that a person received an overpayment, beneficiaries are obliged to remit the overpaid amount back to SSA. Often the determination of adjustments can take years before an overpayment is even identified by the agency. Thus, this need to remit

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*The presumption of unemployability also disregards the seismic technological changes that have occurred since such programs were conceived . . .*

payment back to SSA can catch participants off guard and lead to even further financial instability and further dissuade people from continuing to try to increase their earnings.

Thus, beneficiaries of these programs are members of the “precariat”—lodged in an employment precariousness—unable to advance upward, in part, based on fears that the opportunities available to them in competitive employment will not offset the benefits available through public services, yet unable to sink below the floor afforded by

means-tested public benefits, that is, if they can keep such benefits. For example, SSDI recipients face a “cash cliff” where earnings that exceed SGA will result in loss of the full amount of the cash benefit, where often the cash benefit may in fact be greater than their earnings. Other people with disabilities may find that while they can attain competitive employment, and an income that well exceeds

the cash benefit amount, such employment is plainly out of reach without the health care and supports available to them through public services. For example, people with disabilities often need personal care services, AT, and other long-term services and supports to work, but face losing them if their earnings exceed SGA. And despite their dependency on public benefits, research has documented that nearly 40 percent of beneficiaries do want to, and intend to,

work,<sup>157</sup> if only these considerable barriers were removed. This is indisputably a poverty trap, one if not corrected with more decisive action will continue to thwart any positive change to the labor force participation of people with disabilities in the United States.

The Federal Government has long recognized this dilemma and has instituted policy reforms that were intended to counteract this specific set of barriers, but the results from such reforms have been decidedly mixed. Over the

past 40 years, there has only been a 3.1 percent increase in the percentage of “blind and disabled SSI recipients” who are receiving benefits *and* working.<sup>158</sup> In 2009, NCD noted in its Progress Report:

Strategies to reduce these disincentives have included: creating new types of specialized, sheltered accounts; raising applicable limits and thresholds; and

attempting to make benefit reductions gradual. These strategies have only resulted in further complexity. Only through the elimination of disincentives can people who want to work do so without jeopardizing needed supports. In the final analysis, what people with disabilities want and need are services and supports that enable them to work—not benefits and services at the expense of work.<sup>159</sup>

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*[B]eneficiaries of these programs are members of the “precariat”— . . . unable to advance upward, in part, based on fears that the opportunities available to them in competitive employment will not offset the benefits available through public services . . . This is indisputably a poverty trap, one if not corrected . . . will continue to thwart any positive change to the labor force participation of people with disabilities . . .*

One of the strategies introduced was the Ticket to Work and Work Incentives Improvement Act of 1999<sup>160</sup> (TTW) and another was the Medicaid Buy-in Program.

## **Ticket to Work**

TTW was designed to eliminate unnecessary dependence on Social Security cash benefits by, among other things: (1) expanding options for employment preparation and placement services to beneficiaries in the program with the express goal of reducing dependence on cash benefits; and (2) allowing beneficiaries to maintain access to health care even if they no longer qualify for SSI or SSDI because their incomes exceed SGA. With regard to the latter, TTW expanded access to health care by encouraging states to allow people with disabilities to purchase the Medicaid coverage necessary to maintain employment and by giving people on SSDI the option of maintaining Medicare coverage while working. Section 1619(b) of the Social Security Act allows individuals to continue to receive Medicaid benefits if their earnings disqualify them for SSI cash payments, but it is determined that they still cannot afford private health insurance. In addition, TTW allowed for expedited reinstatement of benefits for those who try to work and fail, deferral of the medical continuing disability review for individuals using a ticket, and access to benefit planning and counseling to make informed choices about the impact of work on benefits (through the Benefit, Planning, Assistance, and Outreach Program).

TTW is an outcome-based employment program, where eligible SSI and SSDI beneficiaries with disabilities and those who are blind receive a “ticket” that they may use to obtain vocational rehabilitation, employment, or other support services from an approved “employment network” (EN). State VR agencies or other qualifying providers can serve as ENs. Beneficiaries may choose the ENs to receive services from, and ENs voluntarily participate in the program. Social Security provides payments to ENs only when the ticket holder attains certain milestone outcomes toward employment.

The number of recipients nationally that have taken advantage of the TTW program, however, has been small. In 2019, there were

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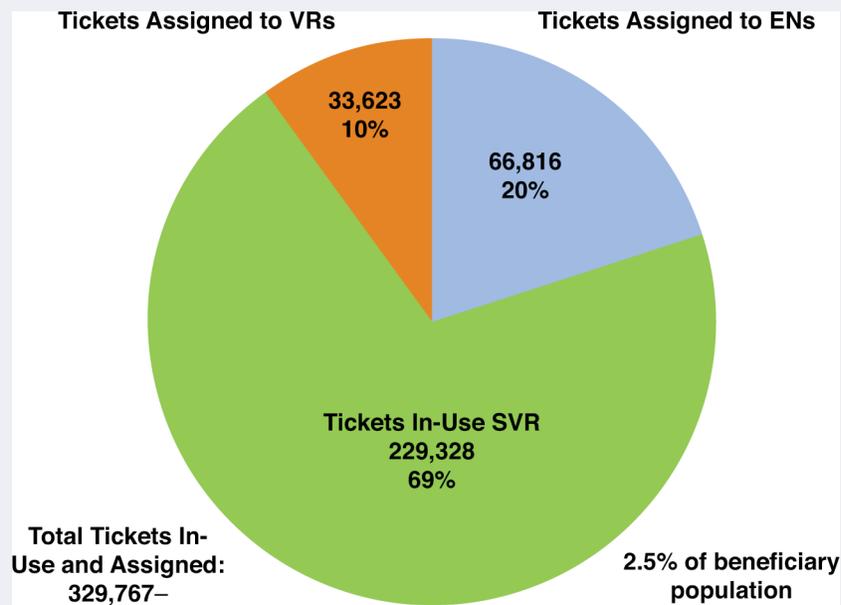
*In 2019, there were approximately 330,000 tickets in use and assigned, . . . 2.5 percent of the beneficiary population.*

approximately 330,000 tickets in use and assigned, as reflected in Figure 3—2.5 percent of the beneficiary population. It is notable that about 80 percent

of tickets are assigned through VR (combined Tickets In-Use SVR and Tickets Assigned to VRs), while just 20 percent of tickets have been assigned through other ENs, even though the program offers beneficiaries the choice to participate even if they are not VR clients.

SSA commented that comparing program participation to the entire beneficiary population is misleading because the SSA has a stringent definition of disability (any medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months). Therefore, the majority of potential TTW candidates are likely unable to return to work.<sup>161</sup> But if that is the case, it

Figure 3. Snapshot of Ticket Assignments, August 2019



Source: SSA 2020.

means these numbers will never rise unless the definition changes. It is equally likely that beneficiaries who discover that TTW's goal is to help them gain employment that will increase their income enough to make them ineligible for benefits will lose interest in the program. Certainly, some who redeem their tickets, obtain training, and find employment will face the same SSDI earnings cliff and sharp reductions in SSI benefits as they did before participating in TTW.

These trends are confirmed by data reflecting a 10-year period. As reflected in Table 6, most tickets from 2008 to 2018 were assigned to VR agencies and not to other ENs. And, while the total number of TTW participants grew across the decade, by 2019, the total tickets assigned remained a small percentage of all participants in the program: slightly less than one-third (28 percent).

Historically, one of the primary criticisms of the TTW program has been that the SSA's delay in processing EN payment requests, combined with the program's complex administrative requirements, made it challenging for ENs to get paid early enough in the return to work process for it to remain financially feasible for them to provide services. In fact, as a result, many ENs are nonprofits receiving funding from other funding streams. To address this, in 2008, SSA revised the regulations in order to make participation more attractive to service providers, but the revisions also reduced provider incentives to help beneficiaries give up their benefits for work. A 2015 study found that provider and beneficiary participation increased substantially after the regulations changed, but the percentage of participants forgoing benefits for work declined. The extent to which that

**Table 6: Cumulative 10-Year Ticket Data, Ticket to Work Program (TTW) 2008–2019**

Fiscal Year	Tickets in Use with a VR Under CR Option	Tickets Assigned to a VREN	Tickets Assigned to an EN	Total Assigned Tickets	Total TTW Participants
2008	236,110	6,985	18,231	25,216	261,326
2009	248,648	9,717	27,803	37,520	286,168
2010	266,097	12,597	37,698	50,295	316,392
2011	280,554	16,783	48,882	65,665	346,219
2012	379,697	21,434	48,029	69,463	449,160
2013	326,196	26,032	52,520	78,552	404,748
2014	331,016	29,383	55,458	84,841	415,857
2015	345,200	31,784	59,629	91,413	436,613
2016	350,661	35,643	65,990	101,633	452,294
2017	354,914	31,956	75,943	107,899	462,813
2018	340,702	36,556	85,254	121,810	462,512
2019	326,216	39,543	91,168	130,711	456,927

Source: SSA 2020.\*

\* The data provided in this table is cumulative (not point-in-time) for each category. For example, if a ticket were assigned in 2008 and remained assigned through 2010, then that ticket would be counted in 2008, 2009, and 2010.

\*\* A tickets assigned “In Use with a VR under CR Option” means that the ticket was in use with a Vocational Rehabilitation (VR) agency under the Cost Reimbursement Program (the traditional payment system for VR).

\*\*\* Ticket assigned to “VREN” means that the ticket was assigned to the VR agency; however, the VR agency chose to receive payment under the EN Milestone/Outcome system.

decline reflected the effects of the recession versus an increase in TTW program use by those with a relatively low chance of forgoing benefits for work could not be determined.<sup>162</sup>

SSA has taken several more recent actions to improve the TTW program, including the following:

- *iTOPSS*: In 2015, SSA launched the Internet Ticket Operations and Provider Support System (*iTOPSS*) to automate TTW business processes and enable ENs to conduct essential business transactions on behalf of beneficiaries in real time

(i.e., ticket assignment, request for payment, etc.). *iTOPSS* as of 2017 has been expanded to include VR agencies’ business transactions. SSA reports that *iTOPSS*’ automation has expedited the ability of ENs and VR service providers to conduct business transactions.

- *Advanced Notice of Proposed Rulemaking (ANPRM)*: On February 10, 2016, the SSA issued an ANPRM to solicit public input on whether and how it might revise the current TTW program rules to improve the program to help beneficiaries and the providers that serve them.

- *ePAY*: In 2016, SSA launched ePAY to allow ENs to receive a payment from SSA for services provided without having to obtain paystubs from their clients if the earnings are already in SSA's system. SSA already has verified earnings for payments, so ENs do not need to send in duplicate information for reimbursement purposes (avoiding further grounds for delay in processing). Through this program, SSA creates a data file showing beneficiary earnings and ticket assignment, and it can be used to generate payments to the ENs on a quarterly basis. SSA reports that ePAY led to an initial increase in the amount of payments to service providers and has ensured payment is made to service providers for services rendered.
- *EN Marketing Pilot*: Also, in 2016, SSA began a marketing pilot to expand the outreach of ENs to beneficiaries to inform them about TTW and the employment services offered by ENs. The pilot tested the secure transmission of limited beneficiary

contact information to ENs who then contacted beneficiaries to market their services. SSA reports that the marketing pilot led to the assignment of 11,000 tickets as of November 2019.

- *DOL Training and Employment Notice (TEN)*: In March 2019, to support SSA's goals for the TTW program, DOL issued guidance to its public workforce system to help expand the capacity of the AJC network and other public workforce entities to serve ticket holders through new administrative processes intended to expand individuals' access to AJCs that serve as ENs.<sup>163</sup>
- Additionally, SSA has recently taken active steps to engage poor performing or inactive ENs to engage in the program or to terminate services.

These efforts show the intent to improve the TTW program and are commendable. While some progress has been made and other solutions are within reach, more must be done to understand

**Table 7: TTW Program Performance FY 2017–2019**

	08/31/17	08/31/18	8/31/19	Two-Year change
Number of tickets assigned to Employment networks (# of beneficiaries served by ENs)	65,499	70,785	66,816	+1%
Number of tickets in use under Vocational Rehabilitation Cost Reimbursement	250,365	239,104	229,328	-8%
Number of beneficiaries whose earnings generated payments to ENs	62,856	74,688	84,101	+34%
Number of beneficiaries with EN support which benefits were not paid due to earnings	21,783	26,773	31,262	+42%

Source: SSA 2020.

why the program remains underutilized and resolve those barriers, determine how to simplify the program’s complexities, and take quick action to do so.

Important innovations have been born from the need to expand the reach of the TTW program and increase participation. SSA reports that there are multiple ENs that have found ways to administer the program effectively and grow their organization’s ticket services—providing benefits counseling and other important employment support services. Several national ENs have grown significantly, including

- Employ Reward Solutions from 5,000 tickets assigned in September 2018 to 8,000 tickets assigned in March 2020
- Allsup from 1,400 tickets assigned to 7,205 (same timeframe)
- Disability Service of America from 727 tickets assigned to 1,160 (same timeframe)

*Case study of an effective EN: the American Dream Employment Network (ADEN)*—a division of the National Disability Institute (NDI)—functions as a national umbrella EN, providing employment services to ticket holders through its large network of qualified providers (approximately 70 agencies) that span the country under the technical guidance of ADEN national subject matter experts.<sup>164</sup>

ADEN has minimized inefficiencies in the TTW process for its members while scaling its reach across the country and into the business community through employer engagement strategies. ADEN also provides expertise to its member agencies to ensure that they develop a stable revenue stream and the full benefits

of the program by quickly assigning tickets and achieving employment outcomes. ADEN has assigned approximately 800 tickets through its member agencies and reports a better than 50 percent outcome status for those leaving means-tested public benefits as a result of its services.<sup>165</sup> ADEN’s model has shown that reducing the administrative burdens associated with ticket reimbursement is critical to the overall success of the TTW program.

ADEN and its host organization, NDI, also have been at the leading edge of demonstrating that beneficiaries’ choice of whether to work—given the impact of work on public benefits—is one that necessitates meaningful access to concrete financial literacy and planning information. While the country has experienced a shortage of certified benefits counselors who possess the training and qualification necessary to decipher the rules and regulations that govern means-tested public benefits and asset limitations, ADEN requires that all of its ENs have a sufficient number of certified Community Work Incentives Coordinators (CWICs) that are trained in these requirements and, more broadly, in financial literacy counseling. Among other things, counselors throughout the ADEN network advise beneficiaries on the use of tax-advantaged savings and investment accounts like those authorized under the Achieving a Better Life Experience Act of 2014 (ABLE accounts). ABLE accounts allow people with disabilities to save (up to \$14,000 for each individual contributor) for qualified disability expenses related to transportation, health care, housing, education, retirement, and more, without those savings counting against SSA asset limits.<sup>166</sup> ADEN assures that beneficiaries,

themselves, are supplied with objective information to make meaningful choices about the impact of income on benefits and financial counseling. NCD agrees that the nation needs significant additional resources and staff for this exact purpose.

In addition, NDI in conjunction with the bank CITI has conducted research on the benefits of embedding financial literacy, empowerment, and planning programs into the provision of employment services, especially at critical financial decision points like when an individual is deciding whether to leave public benefits and return to work.<sup>167</sup>

According to this model, discussion of the impact of work on public benefits is not divorced from discussion of a person's overall financial goals and the need for employment services and supports, rather it is a core component of the process. NDI and CITI highlight research that demonstrates that when clients actively establish financial goals as part of employment planning and services—and then strategize about the various ways those financial goals can be met—it leads to better overall employment outcomes.<sup>168</sup>

Many of those interviewed for this report, however, acknowledged that the most successful interventions often hinge on the timing of the financial counseling and employment services provided to people with disabilities. For decades, advocates and stakeholders have proposed an

early intervention strategy with regard to benefits counseling, designed around advancing the referral of those who are potentially eligible for SSA cash benefits *away from those programs* at the critical moment when individuals are waiting for a determination of eligibility. This strategy would instead redirect such people toward employment with the right supports from the VR and state employment service systems while they are waiting for the determination of eligibility.

Along these lines, CSAVR has long endorsed a proposal that would construct an Employment

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First program, through a partnership between VR and SSA, for those seeking eligibility for SSA programs, which would feature the following:

- The program would be voluntary and extend to those in the SSA disability benefit application process.
- Participants would be granted immediate access to temporary cash assistance (for up to 12 months at an equal amount to SSI or SSDI), along with access to health care coverage.
- Individuals would be linked as soon as possible with VR services to assist them to find, obtain, and retain employment with the right supports.
- Once employment above SGA was found, suspension of the SSA disability application process would occur.

- If the employment effort fails, the work effort would not be considered evidence of an inability to engage in SGA.<sup>169</sup>

The key to CSAVR's proposal is that it would allow individuals applying for SSA benefits (1) to choose the long-term disability program or short-term supports that would include access to both cash and medical benefits, (2) alongside VR employment supports, (3) to allow individuals to pursue returning to work, without actually compromising their application for long-term benefits, should employment not prove successful. Such a joint VR/SSA program has never been formally adopted but has the potential to yield positive outcomes.

Others have focused their advocacy efforts toward seeking to raise SSA's exceptionally modest SGA limits to allow individuals to earn relatively higher income before either losing their public benefits or having them offset by the earnings amount. Recent proposed congressional legislation, H.R. 4280, for example, seeks to simplify the process for claiming SSI benefits, raise income limits, and eliminate reductions in benefits for more people with disabilities to enter employment. The bill seeks to increase the asset limit for people who are blind to \$20,000 and for people with other disabilities to \$10,000, under Section 1617(d) of the Social Security Act.

No matter how you look at the problem, it is clear that the Social Security Act still makes far too many Americans choose between their health care and vitally important supports *or* a job—a

choice that NCD finds unacceptable, contrary to the ADA, and long overdue for revision. NCD maintains that the focus of government programs needs to shift to supporting people with disabilities to be healthy *and* productive, not healthy *or* productive, and this policy shift cannot happen soon enough.

## Medicaid Buy-In

People with disabilities, especially those with higher support needs, tend to have different, at times more extensive, or more long-term, health care needs than people without disabilities.

Traditional employee-sponsored health care typically serves employees who do not have these extensive, long-term, or specialized needs. In addition, many employers do not offer

health care benefits to part-time employees or contractors, yet longitudinal data demonstrates that people with disabilities are more likely to work part-time. As a result, many potential employees with disabilities do not benefit from employer-sponsored health care but can and want to work. Private market individual insurance policies will not cover their long-term specialized needs.

Medicaid was created to cover the specialized long-term disability-related services needs of people with disabilities, however, and the Medicaid Buy-In program allows people with disabilities to pay part of their Medicaid premiums and continue to work in competitive employment. Nevertheless, Medicaid imposes caps on income at which a

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*NCD maintains that the focus of government programs needs to shift to supporting people with disabilities to be healthy and productive, not healthy or productive.*

person is not eligible for the Buy-In program. Federal law caps the program at monthly income of \$2,512.50 and asset limits of \$2,000 (a relatively meager amount) but allows states to impose lower limits.<sup>170</sup> Because of the cap, people with disabilities cannot accept jobs that result in earnings over the limit because they

lose their Medicaid benefits. This continues to thwart many people with disabilities from entering the workforce, giving up cash assistance, and becoming taxpayers. The low Buy-In limits are counterproductive and in need of reform.

## Chapter 4: Federal Employment and Support of Entrepreneurship

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The previous chapters of this report detail obstacles and weaknesses in federal statutes, regulations, and policies that act as obstacles to the entry and reentry into the nation’s workforce. This section takes a different direction and looks at current obstacles and weaknesses that negatively impact people seeking federal employment and federal support for growing a small business. Certainly, the majority of Americans work in private sector employment, but the Federal Government is the nation’s largest employer with a workforce of approximately 2.1 million<sup>171</sup> public servants located in every state. As such, barriers to federal employment and barriers to participation in federal programs that assist small business owners are important to dismantle to increase the workforce participation of people with disabilities.

The Federal Government holds a unique and important position in relation to the employment of people with disabilities. Seventeen years prior to the passage of the ADA, with the goal of eliminating underrepresentation of people

with disabilities in the federal workforce, Congress established a mandate for federal disability inclusion in Section 501 of the Rehabilitation Act.<sup>172</sup> Section 501 prohibits federal agencies from discriminating on the basis of disability in hiring, advancement or discharge, compensation, job training, or other terms, conditions, and privileges of employment.<sup>173</sup> Section 501 imposes far greater obligations on federal agencies than the ADA

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*Section 501 . . . requires the Federal Government to be a “model employer” of people with disabilities by taking affirmative actions to promote the recruitment, hiring, and advancement of people with disabilities.*

imposes on private industry employers: It requires the Federal Government to be a “model employer” of people with disabilities by taking affirmative actions to promote the recruitment, hiring, and advancement of people with disabilities.<sup>174</sup> It also

requires each agency to adopt and implement an affirmative action plan that provides assurances, procedures, and a commitment to hire and provide advancement opportunities for people with disabilities.<sup>175</sup>

As the model employer for people with disabilities, the Federal Government leads the way and sets the national example for private sector employers on best practices

in recruiting, hiring, and retaining people with disabilities. In the years since the 501 regulations were issued, the Federal Government has taken numerous steps to increase the representation of people with disabilities in its nationwide workforce through various management directives and executive orders.<sup>176</sup> Additionally, Federal Government agencies have issued numerous reports over the years identifying barriers and making recommendations to dismantle them and increase the hiring of people with disabilities (including NCD, Government Accountability Office [GAO], Office of Personnel Management [OPM], DOL, and Equal Employment Opportunity Commission [EEOC]). No entity has more information and resources devoted to hiring people with disabilities and best practices on recruiting, hiring, accommodating, and retaining employees with disabilities than the Federal Government—all of which can assist private sector employers in creating and sustaining their disability inclusion efforts.

Currently, people with disabilities comprise more of the federal workforce than at any other time in history as a result of a steady increase in hiring spurred by Executive Order 13548 (EO 13548), “Increasing Federal Employment of Individuals with Disabilities,” that mandated specific, coordinated actions by federal agencies and a numerical hiring goal of 100,000 to be met within five years.<sup>177</sup> Recognizing the fact that Americans with disabilities currently represented

just over 5 percent of the nearly 2.5 million people in the federal workforce and that people with targeted disabilities represented less than 1 percent of the federal workforce, EO 13548 commanded executive branch agencies to improve their efforts to employ people with disabilities through increased recruitment, hiring, and retention, and called for agencies to increase the number of people with disabilities in the federal workforce by 100,000 over the next five years.

EO 13548 required, among other things, that

- Within 2 months, OPM, with DOL, EEOC, and Office of Management and Budget (OMB), design model recruitment and hiring strategies for agencies and develop mandatory training programs for both human resources personnel and hiring managers on the employment of people with disabilities.
- Within 120 days, each agency develops a plan for promoting employment opportunities for people with disabilities and includes performance, target, and numerical goals for hiring people with disabilities and subgoals for those with targeted disabilities.
- Each agency increases its use of Schedule A and increases participation of people with disabilities in internships, fellowships, training, and mentoring programs.

As reflected in Table 8, the interagency coordination and individual agency actions

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***Currently, people with disabilities comprise more of the federal workforce than at any other time in history as a result of a steady increase in hiring spurred by Executive Order 13548 (EO 13548).***

**Table 8: New Hires of Federal Employees with Disabilities from 2010 to 2018  
(Excludes Transfers)**

	2010	2011	2012	2013	2014	2015	2016	2017	2018
New hires	138,783	108,464	89,907	76,932	92,298	122,792	129,124	109,392	126,952
Targeted disability	1,102	972	1,051	1,079	1,356	1,672	1,762	2,020	2,964
Percentage targeted disability	0.79%	0.90%	1.17%	1.40%	1.47%	1.36%	1.36%	1.85%	2.33%
Other disability	7,666	7,643	7,694	7,806	9,442	11,447	11,341	12,868	25,875
Percentage other disability	5.52%	7.05%	8.56%	10.15%	10.23%	9.32%	8.78%	11.76%	20.38%
All disability including 30 percent or more veterans with disabilities	17,147	15,833	14,679	14,078	18,183	23,405	24,540	23,615	37,438
Percentage all disability including 30 percent or more veterans with disabilities	12.36%	14.60%	16.33%	18.30%	19.70%	19.06%	19.00%	21.59%	29.49%

Source: OPM 2020.

combined was an effective formula to increase hiring at a level never previously achieved.

The notable progress made during the last 10 years in federal hiring shows what can be done when a goal is set and actions are taken to accomplish it.

### ***Remaining Challenges and Obstacles***

This section describes four issues that continue to hinder the federal employment of people with

disabilities and their ability to access support for growing a small business on par with others:

- There is a lack of understanding among agency human resources (HR) staff on how to use the Schedule A Hiring Authority (Schedule A) for people with targeted disabilities (PWTD).
- Business owners with disabilities continue to be ineligible to participate in

the Small Business Administration (SBA) 8(a) Business Development Program (8[a]), which assists small businesses in competing for government contracts.

- Federal contractors still lag in hiring qualified people with disabilities as the Section 503 regulation only sets aspirational goals.
- EEOC regulations provide an indefinite time period for federal agencies to meet disability hiring goals.

Each of these barriers are solvable—we need only the federal will to do so.

## The Schedule A Hiring Authority

As Table 8 reveals, people with “targeted disabilities” (the term that the Federal

Government uses to refer

to severe disabilities) have been staggeringly underrepresented in federal hires, even as other people with disabilities have largely benefitted by recent gains in hiring. This is most apparent when comparing the yearly

hires of people with targeted disabilities with the yearly hires of people with “other disabilities” in Table 8, and when realizing that of the 29.49 percent of all people with disabilities hired in 2018, for example, hires with targeted disabilities comprised only 2.33 percent. This is not new—it is a persistent issue.

In its 2008 report, *Improving the Participation Rate of People with Targeted Disabilities in the Federal Work Force*, the EEOC used federal hiring statistics for a 20-year period to detail

the glaring numerical disparity between the federal workforce participation of people with targeted disabilities (PWTDs) and people without disabilities.<sup>178</sup> The EEOC found that despite the initiatives of multiple administrations and the efforts of various agencies charged with administering programs for the employment of PWTDs, the percentage of federal employees with targeted disabilities had declined each year since a peak of 1.24 percent in fiscal years (FY) 1993 and 1994, and that in FY 2006, the participation rate of PWTDs was 0.94 percent of the Federal Government’s total work force, the lowest participation rate in 20 years.<sup>179</sup> EEOC also found that despite medical and technological advancements that afford greater opportunities for PWTDs to work, the participation rate of

PWTDs had declined even as the federal workforce had grown: From FY 1997 to FY 2006, the total federal workforce increased by 135,732 employees, a net change of 5.48 percent, but the number of PWTDs decreased from 28,671

in FY 1997 to 24,442 in FY 2006, a net change of –14.75 percent.<sup>180</sup>

Schedule A is an immensely important tool for hiring qualified PWTDs. People with disabilities may compete for any federal job for which they are eligible and meet the qualifications, but only PWTDs may also use the Schedule A hiring authority. The Federal Government recognized that PWTDs face significant barriers to employment, above and beyond the barriers faced by people

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*[P]eople with “targeted disabilities” (the term that the Federal Government uses to refer to severe disabilities) have been staggeringly underrepresented in federal hires, even as other people with disabilities have largely benefitted by recent gains in hiring.*

with the broader range of disabilities—barriers often due to myths, fears, and stereotypes about such disabilities.<sup>181</sup> Targeted disabilities include developmental disabilities, deafness, blindness, missing extremities, paralysis, epilepsy, intellectual disabilities, and dwarfism.<sup>182</sup> Schedule A was created to increase employment opportunities for PWTDS by streamlining the federal hiring process and making hiring qualified employees less costly and time consuming. It allows federal agencies to appoint qualified PWTDS noncompetitively and allows for conversion to competitive service after two years of satisfactory service.<sup>183</sup> Although it is a hiring tool that agencies may use to help achieve their affirmative action goals and the model employer mandate, it has been underutilized and remains underutilized by agencies. Schedule A hires

*Although [Schedule A] is a hiring tool that agencies may use to help achieve their affirmative action goals and the model employer mandate, it has been underutilized and remains underutilized by agencies.*

have historically made up, and to date make up a miniscule portion of the federal workforce. Table 9 shows that the use of Schedule A remains low compared to the use of other hiring authorities.

### ***New Hires (Excludes Transfers)***

The EEOC and NCD have previously expressed concerns about Schedule A. In 2008, the EEOC raised concerns about the underutilization of Schedule A due to agency managers and officials, including DPMs and SPPCs, not fully understanding the regulations.<sup>184</sup> It found that many agencies did not have procedures in place for receiving and disbursing unsolicited applications from PWTDS, and as a result, these applicants may not be considered for employment opportunities. EEOC recommended that, at a

**Table 9: Hiring Authorities for All Disability Including 30 Percent or More Veterans with Disabilities**

FY	2012	2013	2014	2015	2016	2017	2018
Schedule A	1,461	1,318	1,659	2,080	2,414	2,126	2,742
Schedule A %	9.95%	9.36%	9.12%	8.89%	9.84%	8.96%	7.32%
VRA	2,182	1,919	3,042	3,516	3,454	3,250	4,552
VRA %	14.86%	13.63%	16.73%	15.02%	14.07%	13.70%	12.16%
VEOA	3,037	2,922	3,201	4,872	5,340	4,927	7,865
VEOA %	20.69%	20.76%	17.60%	20.82%	21.76%	20.77%	21.01%
All other hiring avenues	7,999	7,919	10,282	12,937	13,332	13,420	22,279
All other hiring avenues %	54.49%	56.25%	56.55%	55.27%	54.33%	56.57%	59.51%

Source: OPM 2020.

minimum, DPMs and SPPCs should possess the (1) knowledge of laws and regulations related to the Rehabilitation Act; (2) knowledge of agency reasonable accommodation policies and procedures; (3) knowledge and ability to recruit and place PWTDs, with and without the use of special hiring authorities; (4) ability to work with advocacy groups in the disability community; and (5) ability to develop strategic plans for the recruitment, hiring, and advancement of PWTDs. In 2009, NCD made similar findings on underutilization and the low rate of PWTDs in the federal workforce and recommended

Schedule A training for all federal agencies.<sup>185</sup>

Eight years later, a 2016 GAO study found that federal agencies relied on 20 hiring authorities for 91 percent of the 196,226<sup>186</sup> new appointments made that year, and that Schedule A was ranked 16<sup>th</sup> of the 20 hiring authorities used—only 2,204 PWTDs were hired through Schedule A.<sup>187</sup> Notably, Veterans Recruitment Appointment, another way to hire people with disabilities into the federal workforce, was ranked ninth, and used to hire 7,733 people in 2016.

### ***Issues with Selective Placement Program Coordinators***

What should be an important role in Schedule A hiring, the Selective Placement Program Coordinator (SPPC), has been and remains

largely a missed opportunity for agencies to use Schedule A to hire PWTDs, a cause for frustration for job seekers seeking Schedule A appointments. There are several reasons for this, all of which, if addressed, would help more PWTDs gain employment and help agencies meet their 2 percent hiring goal under the 2017 EEOC regulation.

SPPCs are promoted by OPM as people who can help PWTDs get their resumes in front of hiring managers and who have expertise in reasonable accommodations and architectural barrier identification. The SPPC description on the

OPM website makes it appear that the SPPC is the agency's Schedule A expert.

Contrary to popular belief, federal agencies are not required to use Schedule A. Those that do—most federal agencies—have SPPCs who have many responsibilities, including the following:

- Advising managers about candidates available for placement in jobs under special hiring authorities, as well as providing managers with information on reasonable accommodation and needs assessments for applicants and employees.
- Helping managers determine the essential duties of the position, identify architectural barriers and possible modifications that allow people with disabilities to perform essential duties.

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***What should be an important role in Schedule A hiring, the Selective Placement Program Coordinator (SPPC), has been and remains largely a missed opportunity for agencies to use Schedule A to hire PWTDs, a cause for frustration for job seekers seeking Schedule A appointments.***

- Helping people with disabilities get information about current job opportunities, types of jobs in the agency and how these jobs are filled, and reasonable accommodation.
- Working with public and private organizations involved in the placement of applicants with disabilities to provide information about their agency program and job opportunities and to facilitate the placement of applicants with disabilities in their agency.
- Monitoring and evaluating selective placement program efforts and activities for people with disabilities to determine their effectiveness and making changes as needed to improve program effectiveness.<sup>188</sup>

The description provides a basis for people with disabilities to believe that the SPPC is there to help

them through the process. However, other important facts about SPPCs are not included in this description. An SPPC is not a classified position, rather, it is a title and a role given to an HR employee as an addition to his or her regular duties.<sup>189</sup> No training is required on Schedule A for SPPCs or anyone in federal HR departments by the Schedule A regulation.<sup>190</sup>

NCD has learned anecdotally from people with disabilities that they have not been successful in using Schedule A to enter the federal workforce: that they get conflicting information from agencies about SPPCs; that they are not able to contact the SPPC because the position is vacant; that they do not receive

return calls or emails; that the SPPC does not know how to use Schedule A; that the SPPC does not show resumes to hiring managers prior to a competitive announcement; and that each agency has different processes and requirements that make the process confusing.<sup>191</sup>

One person interviewed for this report with significant experience in Schedule A reported that federal HR employees lack understanding and knowledge about how to proactively use Schedule A, regional/field offices frequently do not use Schedule A because they do not know how it works, and they do not think it can be used for promotions. OPM reported the importance of increased use of Schedule A and consistent communication across each agency

on how to proactively implement the policy. OPM has made resources on Schedule A hiring available, encouraging increased emphasis on its use

and communication to regional/field offices on department/agency policy and procedures for Schedule A.<sup>192</sup>

For agencies to consistently implement and correctly use Schedule A, OPM should take the lead by, among other things, ensuring mandatory training is available online and in person. There should also be a manner by which OPM can track compliance with the training, encouraging each agency utilizing Schedule A to have an SPPC who has expertise in Schedule A. As previously stated, the use of Schedule A is optional, and agencies are not required to have SPPCs; however, both are encouraged as part of a strategy to increase the employment of people with disabilities.

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***No training is required on Schedule A for SPPCs or anyone in federal HR departments by the Schedule A regulation.***

## OPM Removal of Schedule A Training: A Step Back from Progress Under EO 13548

EO 13548 required OPM to develop mandatory training on Schedule A for federal agencies in 2010. OPM's FY 2014 report to the President reported completing development of the mandatory training, *A Roadmap to Success: Hiring, Retaining and Including People with Disabilities*.<sup>193</sup> During the development of this report, NCD learned that the training was posted on OPM's website in 2013, but that it was removed from OPM's "Federally Mandated Training" page in March 2018.<sup>194</sup> Additionally, a check of the OPM website in February 2020, during the development of this report, revealed that links to training videos "that provide an overview of the process of hiring people with disabilities using Schedule A," were broken.<sup>195</sup> No other area of OPM's website contained Schedule A training or tool kits despite the critical need for this information.

### The SBA 8(a) Business Development Program

The 8(a) Business Development Program (8[a] BD program) offers a broad scope of assistance to firms that are owned and controlled at least 51 percent by socially and economically disadvantaged individuals and is an essential instrument for helping disadvantaged entrepreneurs gain access to the economic mainstream of American society.<sup>196</sup> The program helps thousands of aspiring entrepreneurs to gain a foothold in government contracting.

To be eligible for the 8(a) BD program, a small business must be unconditionally owned and controlled by at least one "socially and economically disadvantaged" individual of good character, who is a U.S. citizen residing in the United States, and who demonstrates potential for success.<sup>197</sup> To be categorized as socially disadvantaged, an individual needs to be

subjected to racial or ethnic prejudice or cultural bias because of his or her identity as a member of a group and without regard to his or her individual qualities, and the social disadvantage must come from circumstances beyond the individual's control. SBA regulations establish specific groups that are presumed to be socially disadvantaged,<sup>198</sup> but thus far, people with disabilities are not included in this presumptively eligible group although they clearly meet the criteria. Individuals who are not included in the presumptively eligible group must prove that they have experienced individual social disadvantage to SBA in order to participate in the 8(a) BD program—detailed evidence is required, and SBA will only approve if the proof submitted shows disadvantage by a "preponderance of the evidence."<sup>199</sup>

People with disabilities, particularly, visible disabilities and "severe" disabilities, clearly meet the standards for inclusion in the presumptively

## SBA's 8(a) BD program eligibility

Small business must be:

- unconditionally owned and controlled by at least one “socially and economically disadvantaged” individual of good character
- who is a U.S. citizen residing in the United States
- who demonstrates potential for success.

SBA regulations establish specific groups that are presumed to be socially disadvantaged, but thus far, people with disabilities are not included in this presumptively eligible group although they clearly meet the criteria.

eligible group for the 8(a) BD program. As a group, they have been subjected to well-documented cultural bias due to their disabilities throughout the history of the United States, and much of that bias continues today. This bias has long resulted in employment discrimination, denial of educational opportunities, social marginalization, and the denial of human and civil rights. This bias resulted in discrimination and poverty so prevalent and damaging that Congress passed the Rehabilitation Act of 1973 to prohibit discrimination against people with disabilities in federal programs and to create programs to train and employ them. In 1990, due to the persistent social and economic disadvantages faced by people with disabilities (e.g., employment discrimination), and the inability to access public and private accommodations, technology/communications, and transportation,

Congress passed the ADA—landmark civil rights legislation aiming to open long-closed doors to societal inclusion and economic opportunity. The prejudice and deeply rooted stereotypes held by employers, and society, toward people with disabilities—resulting in ostracization and continued discrimination—are “circumstances beyond the control” of people with disabilities. This report highlights the fact that people with disabilities continue to struggle to get a foothold in the economy through competitive work. There is, therefore, no doubt that people with disabilities meet the criteria and should be included in the presumptively eligible groups for the 8(a) BD program.

SBA regulations allow representatives of an identifiable group whose members believe that the group has suffered chronic racial or ethnic prejudice or cultural bias to petition SBA to be included as a presumptively socially disadvantaged group under the 8(a) BD regulations.<sup>200</sup> According to the regulations, once SBA is presented with substantial evidence that members of the group have been subjected to cultural bias because of their identity as a group and without regard to their individual qualities, SBA will publish a notice in the *Federal Register* that it has received and is considering such a request, and that it will consider public comments.<sup>201</sup> NCD has corresponded with SBA providing information and requesting SBA action.<sup>202</sup> NCD also met with SBA officials on this subject in 2015 and 2018, but the SBA declined to take any action. Consequently, people with disabilities are excluded from one of the premier resources for entrepreneurs trying to grow small businesses. The SBA should take action as required under its regulation.

## Federal Contractor Hiring of People with Disabilities Under Section 503 and OFCCP Oversight

In addition to federal affirmative action obligations under Section 501 of the Rehabilitation Act of 1973, Section 503 of the Rehabilitation Act (“Section 503”) prohibits federal contractors and subcontractors from discriminating in employment on the basis of disability and also requires these employers to take affirmative action to recruit, hire, promote, and retain qualified people with disabilities.

On September 24, 2013, DOLs OFCCP<sup>203</sup> published a Final Rule revising the regulations implementing Section 503. The regulations, which became effective on March 24, 2014,<sup>204</sup> aim to strengthen the affirmative action provisions for federal contractors in recruiting and hiring qualified people with disabilities by, for the first time, establishing a “7 percent utilization goal” for employing qualified people with disabilities. Under the revised rule, federal contractors must apply this goal to each of their job groups, or they may apply it to their entire workforce if they have 100 or fewer employees.<sup>205</sup> Section 503 is applicable to any nonexempt entity that has a federal contract or subcontract of more than \$15,000, but the threshold to create a written affirmative action program under Section 503 regulations applies to contractors with 50 or more employees and at least one single federal contract or subcontract of \$50,000 or more.<sup>206</sup> Contractors must conduct an annual analysis of their utilization of people with disabilities, and if it is below the 7 percent utilization goal, they must identify problem areas and establish specific action-oriented programs to correct the problem areas. All personnel involved in the recruitment,

screening, selection, promotion, disciplinary, and related processes must be trained to ensure that the commitments in the contractor's affirmative action program are implemented.<sup>207</sup>

The regulations require contractors to invite people with disabilities to self-identify at both the pre- and post-employment stages, and to invite employees to self-identify once every five years with one additional reminder within five years.<sup>208</sup> The regulations also require that contractors document and update annually their quantitative data about the number of people with disabilities who apply for jobs and the number of such people they hire, and such data must be maintained for three years.

Contractors can work toward achieving the 7 percent utilization goal in various ways, including through recruitment and hiring of people with disabilities and/or increasing the level of self-identification among both applicants and employees with disabilities.<sup>209</sup> If contractors retain and advance employees with disabilities already in the workplace, it further supports the 7 percent utilization goal.<sup>210</sup>

OFCCP has explained that the 7 percent utilization goal is “aspirational” and a goal created to be a “yardstick against which [contractors] can measure the success of their efforts in outreach to and recruitment of people with disabilities.”<sup>211</sup> The agency has stated clearly that “the goal is not a quota.”<sup>212</sup> That the 7 percent is not a requirement, but only an aspirational goal, raises the question of whether the revised Section 503 regulations have the power to materially increase the amount of applicants with disabilities hiring by federal contractors.

Nevertheless, a 2018 survey of 274 federal contractors yielded data demonstrating numerous positive changes in recruitment—including

posting on disability job boards and partnerships with community organizations—building disability-inclusive cultures, and changing on-boarding and self-identification processes, as a result of the revised Section 503 regulations.<sup>213</sup> In fact, 88 percent of these contractors reported that they explicitly changed their affirmative action goals and targets as a direct result of Section 503.<sup>214</sup> Yet, when those same contractors were surveyed about whether the Section 503 regulations would lead to increased employment of people with disabilities in their organization or unit, only 6.3 percent strongly agreed, and only 23.4 percent agreed somewhat.<sup>215</sup>

### **Contractor Hiring and OFCCP Compliance Efforts**

In 2016, the GAO estimated that approximately 200,000 contractor establishments are subject to OFCCP’s jurisdiction every year.<sup>216</sup>

In 2020, NCD requested information and data from OFCCP about contractors’ progress in attaining the 7 percent utilization goal to inform this report. OFCCP provided NCD with data, not validated by OFCCP, showing that over the past five years, contractors reported 10,103 hires of people with disabilities, approximately 2,000 hires per year, across all federal contractors under OFCCP jurisdiction.

OFCCP first started tracking this data in its compliance management system in the fourth

quarter of FY 2018. Table 10 shows data from the OFCCP system on the number of people with disabilities hired by 1,383 contractors during the past three and a half years.<sup>217</sup>

OFCCP’s number is slightly higher than the contractors’ self-reported data—about 5,200 a year during the three-and-a-half-year period, across all such federal contractors. The data shows that the total number of reported hires of people with disabilities by the approximately 200,000 federal contractors under OFCCP jurisdiction is exceedingly small.

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*88 percent of these contractors reported that they explicitly changed their affirmative action goals and targets as a direct result of Section 503. Yet, when . . . surveyed about whether the Section 503 regulations would lead to increased employment of people with disabilities in their organization or unit, only 6.3 percent strongly agreed, and only 23.4 percent agreed somewhat.*

### **Focused Reviews**

On August 10, 2018, OFCCP issued Directive 2018-04, stating that “OFCCP staff is directed to work towards ensuring that a portion of future scheduling lists, starting in Fiscal Year 2019, include focused reviews.”<sup>218</sup> Such focused reviews were to be selected from the same neutral selection system

used to identify and create OFCCP’s supply and service scheduling list.<sup>219</sup> OFCCP staff was

**Table 10: Number of People with Disabilities Hired by Federal Contractors FY17–FY20 (Q1–Q2)**

FY 2020 (Q1–Q2)	FY 2019	FY 2018	FY 2017	Total
2,661	9,708	3,218	62	15,649

Source: OFCCP 2020.

further directed to develop a standard protocol for conducting the focused reviews anticipated by the Directive and to make this information publicly available.<sup>220</sup> That protocol is now prominently featured on an OFCCP “Section 503 focused reviews” website,<sup>221</sup> and OFCCP believes the effort put forth on focused reviews is an excellent way to achieve compliance and to encourage compliance by contractors.

The Section 503 focused review protocol includes OFCCP’s review of a contractor’s disability “self-identification process” to verify whether an employee was reminded that he or she can change the disability status or received an invitation to self-identify every five years, pursuant to the Section 503 regulations.<sup>222</sup> OFCCP has made technical assistance materials readily available to contractors on the process of self-identification and self-identification forms.<sup>223</sup> In addition, the review protocol includes a review of a contractor’s written affirmative action plans, application, outreach, and recruitment strategies and processes.<sup>224</sup> In its FY 2020 Budget Justification, OFCCP stated that one of its “top priorities in FY 2019 was the advancement of employment opportunities for people with disabilities [t]hrough focused reviews, contractor recognition programs, sharing of best practices, and stakeholder engagement.”<sup>225</sup>

According to OFCCP, as opposed to its standard compliance reviews, focused reviews are restricted to one or more components of a contractor’s organization or aspects of a contractor’s personnel practices and are an efficient use of agency resources. Focused reviews allow the agency to target its resources on areas that may otherwise not receive dedicated focus and bring attention to best practices to ensure compliance. They include

interviews with managers responsible for equal employment opportunity and Section 503 compliance (such as the ADA coordinator) as well as employees affected by those policies. OFCCP also evaluates hiring and compensation data, as well as the handling of accommodation requests, to ensure that people with disabilities are not being discriminated against in employment.

In FY 2019, OFCCP implemented an initiative that sought to ensure compliance with the equal employment opportunity and affirmative action obligations of Section 503 and its implementing regulations. To this end, it scheduled 500 corporate headquarters establishments for focused reviews regarding their compliance with disability nondiscrimination and affirmative action obligations under Section 503. The first onsite investigations for Section 503 focused reviews began in December 2019.<sup>226</sup> As of March 15, 2020, OFCCP had opened 155 focused reviews, and of those reviews, 46 had closed with no findings and 109 were in the review process.<sup>227</sup>

OFCCP reports that it is going to prepare a Section 503 report after FY 2020 to highlight its focused review efforts, including successes, and challenges, lessons learned, additional best practices, and resources.

### ***Complaints Received and Investigated***

OFCCP data shows that OFCCP retained 2,574 complaints between FY15 and the second quarter of 2020 (after referring some filed to the EEOC). Almost half (1,059) were Section 503 complaints against federal contractors. OFCCP complaint investigations are conducted upon receipt of a complaint by an individual, group, or third party.<sup>228</sup> As reflected in Table 11, during this five-and-a-half-year period, OFCCP investigated a total of 627

**Table 11: Complaints Filed with OFCCP FY15–FY20 (Q1–Q2)**

	FY 2020 (Q1–Q2)	FY 2019	FY 2018	FY 2017	FY 2016	FY 2015
Number of complaints filed	837	1,475	1,418	686	588	670
Number of complaints referred to EEOC	420	764	786	401	328	401
Number of complaints retained by OFCCP	417	711	632	285	260	269
Number of 503 complaints	187	265	265	115	104	123
Number of complaints investigated	59	89	114	104	147	114

Source: OFCCP 2020.

of the 2,574 complaints filed against federal contractors—only about one-quarter.<sup>229</sup>

Compliance activities, including compliance reviews, off-site records reviews, compliance checks, and focused reviews, provide necessary and critical oversight to Section 503. Given that OFCCP only reviews contractor written affirmative action plans and voluntary self-identification procedures during compliance evaluations, and conducts a very limited number of complaint investigations—only investigating one-quarter

of the complaints filed in the last five and a half years—oversight of the Section 503 program should be

increased. Further, given the low numbers of hires with disabilities pursuant to Section 503, a greater number of compliance reviews, focused reviews, and technical assistance efforts are needed.

OFCCP data pertaining to the number of supply and service compliance reviews—not focused reviews—conducted over the past five years, as reflected in Table 12, demonstrate that, despite OFCCP’s more recent efforts, the

number of OFCCP compliance reviews has declined significantly over the past five fiscal years: OFCCP completed 2,036 compliance reviews in FY 2015 but only 1,366 in FY 2019. Data collected for a 2018 NCD report demonstrates that in FY 2014, OFCCP completed more than both of those years combined, a total of 3,839 compliance reviews. In that 2018 report, NCD expressed concern for this downward slide in the number of compliance reviews.<sup>230</sup> Using the GAO report estimate of 200,000 contractor

establishments under OFCCP jurisdiction, NCD calculated that the number of compliance reviews in FY 2017 represented only about

0.6 percent of the total number of contractor establishments.<sup>231</sup> In evaluating the data provided for this report, the number of compliance reviews in FY 2019 remained approximately 0.6 percent of the total number of contractor establishments. This remains cause for concern and leaves open the question of whether contractors have proper incentives and awareness of federal Section 503 requirements to help them achieve the 7 percent utilization goal.

*[T]he number of OFCCP compliance reviews has declined significantly over the past five fiscal years.*

**Table 12: Supply and Service Compliance Reviews**

	FY 2020 (Q1-Q2)	FY 2019	FY 2018	FY 2017	FY 2016	FY 2015
Scheduled <sup>232</sup>	564	1,042	785	735	1,048	2,036
Completed	572	1,331	713	1,036	1,522	2,345
Conciliation agreement or consent decree	59 10.3%	173 13%	115 16.1%	202 19.5%	275 18.1%	343 14.6%
EO 11246 violation	140 24.5%	184 13.8%	127 17.8%	195 18.8%	258 17.0%	297 12.7%
Section 503 violation	81 14.2%	58 4.4%	36 5.5%	71 6.9%	99 6.5%	173 7.4%
Section 4212 violation	61 10.7%	67 5.0%	45 6.3%	96 9.3%	140 9.2%	236 10.1%
Discrimination violation	14 2.4%	84 6.3%	47 6.6%	40 3.9%	38 2.5%	32 1.4%
Number of workers in facilities reviewed	21,962	1,284,436	850,443	732,235	1,038,542	1,163,072

Source: OFCCP 2020. OFCCP reports that the numbers do not add up to the completed total and the percentages do not add to 100 percent because cases with no violations are not summarized, and the completion types are not mutually exclusive. Does not include administrative closures.

### ***Training, Technical Assistance, and Awards***

Federal contractors need an abundance of assistance in meeting the 7 percent utilization goal according to OFCCP data in Table 13, which shows that of the approximate 200,000 contractors under OFCCP jurisdiction, only 356 have met or exceeded the goal.

OFCCP seeks to help contractors meet the requirements of Section 503, and achieve the 7 percent utilization goal, through training and technical assistance. For example, as part of the Section 503 focused reviews, OFCCP provides contractors with suggestions for voluntary best practices that may assist with their recruitment, hiring, and other equal employment opportunity obligations.

OFCCP also hosts a number of resources for contractors and workers on its website to promote compliance with Section 503. In 2019, OFCCP launched the Section 503 Focused Review landing page.<sup>233</sup> The landing page provides compliance assistance resources and best practices to assist contractors with the recruitment, hiring, and retention of qualified people with disabilities, and highlights the successful disability and inclusion programs of several federal contractors. OFCCP’s website has a sample affirmative action program, resources for encouraging self-identification of disability, and resources to assist in outreach and recruitment efforts to people with disabilities. To assist workers, OFCCP has posted *Frequently Asked Questions* and

**Table 13: Number of Contractors Under OFCCP Jurisdiction Meeting or Exceeding the 7 Percent Utilization Goal**

Supply and Service							
	FY 2020 Q2	FY 2020 Q1	FY 2019 Q4	FY 2019 Q3	FY 2019 Q2	FY 2019 Q1	FY 2018 Q4
Contractors Met or Exceed 503 7% Goal	356	257	204	193	161	118	85

Source: OFCCP 2020.

a *Disability Rights Fact Sheet*. The Fact Sheet is available in eight languages. Additionally, OFCCP has its Requesting Reasonable Accommodation pocket card, which explains in plain language how to request a reasonable accommodation.

In addition to its technical assistance materials, OFCCP provides incentives for federal contractors to promote disability employment through its awards. For example, OFCCP partnered with ODEP to create the Excellence in Disability Inclusion

Award. The award seeks to recognize federal contractors that display excellence in disability inclusion and exceed the basic

regulatory requirements by displaying innovative approaches to employing and advancing in employment qualified people with disabilities.

To qualify for the award, contractors must meet several criteria, including that the contractor establishment applying for the award has current affirmative action programs under Executive Order 11246, Section 503 of the Rehabilitation Act (Section 503), and the Vietnam Era Veterans’ Readjustment Assistance

Act (VEVRAA); and that the nomination package includes a description of the equal employment opportunity initiative that the contractor establishment implemented for people with disabilities under Section 503.

During National Disability Employment Awareness Month (NDEAM), in October 2019, OFCCP, in partnership with ODEP, opened the application period for the Excellence in Disability Inclusion Award. OFCCP created the award to recognize best practices among federal

contractors.<sup>234</sup> The Excellence in Disability Inclusion Award rewards winning contractors with a three-year moratorium on OFCCP compliance evaluations to “provide

an incentive for contractors to improve practices while encouraging goodwill between OFCCP and the Federal contractor community.”<sup>235</sup>

NCD applauds awarding excellence in disability inclusion but rejects the notion that a moratorium on compliance evaluations of affirmative action obligations regarding hiring people with disabilities is a proper incentive toward the advancement of employment of people with disabilities. It is disappointing that a federal

*[Of the approximate 200,000 contractors under OFCCP jurisdiction, only 356 have met or exceeded the 7% goal.]*

enforcement agency would view a moratorium on compliance evaluations as an incentive. It is time for OFCCP to view increasing disability employment as part of the essential “goodwill between OFCCP and Federal contractors.” But under no condition should OFCCP see its role as protecting federal contractors from having to comply with Section 503 and its implementing regulations for purposes of that goodwill.

On March 26, 2020, the Director of OFCCP issued a memorandum granting a limited

exemption and waiver from the affirmative action requirements under Section 503, for “contracts entered into specifically to provide Coronavirus relief for three months”<sup>236</sup> It states in part, “OFCCP regulations authorize me to exempt contracts from requiring the

inclusion of any part of the equal opportunity clause in any specific contract when I deem that special circumstances in the national interest so require, when it is impracticable to act upon requests for exemptions individually, and where such waiver will contribute to convenience in the administration of the authorities enforced by OFCCP.”<sup>237</sup> The March 2020 OFCCP memo provides specific language that federal contractors can use in their contracts releasing them from affirmative action obligations.

For example:

As a preamble to the insertion of 52.222-36: Notice: The following terms of this

clause are waived for this contract: in subparagraph (a), the phrase “and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities”; additionally, in subparagraph (a), the phrase “requirements of the equal opportunity clause at 41 CFR 60-741.5(a)” shall be interpreted to exclude in full paragraphs 4-5 and 7 of 41 CFR 60-741.5(a), and the phrase “take affirmative

action to employ and advance in employment individuals with disabilities, and to” from paragraph 1 of 41 CFR 60-741.5(a).<sup>238</sup>

One of the primary mechanisms that OFCCP has for ensuring equal employment

opportunity is through Section 503’s affirmative action obligations, and OFCCP relies on proactive compliance evaluations to do so. As discussed herein, OFCCP also relies on data from federal contractors about their affirmative action programs as part of a preliminary assessment of their civil rights compliance, so even a temporary suspension of these obligations will impact OFCCP’s ability to fulfill its legal obligations to ensure nondiscrimination. This suspension hinders equal employment opportunities for a population that remains largely underrepresented in the federal workforce and among federal contractors.

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*NCD applauds awarding excellence in disability inclusion but rejects the notion that a moratorium on compliance evaluations of affirmative action obligations . . . is a proper incentive toward the advancement of employment of people with disabilities.*

## The 2017 EEOC Rule on Affirmative Action for People with Disabilities in Federal Employment

In a step toward continuing the progress made in federal hiring and retention of federal employees with disabilities spurred by EO 13548, EEOC issued a final rule effective 2018 amending regulations that require federal agencies to engage in affirmative action for people with disabilities.<sup>239</sup> The rule stemmed from the EEOC's determination that its prior regulations and subregulatory guidance were not doing enough to advance the employment of qualified people with disabilities.<sup>240</sup> It clarifies the affirmative action obligations imposed by Section 501 of the Rehabilitation Act<sup>241</sup> and codifies a variety of long-standing obligations placed on federal agencies by management directives and executive orders issued over the years. The new EEOC regulation adds numerical goals for the hiring of people with disabilities: agencies must take specific steps to gradually increase the representation of people with disabilities to 12 percent of their workforce and increase the representation of people with targeted abilities to 2 percent.<sup>242</sup> It also requires agencies to provide personal assistance services (PASs) to employees who, because of targeted disabilities, require PASs to be at work or to participate in work-related travel—an important accommodation that helps retain employees with disabilities.

Similar to the Section 503 Rule previously discussed, while the establishment of numerical goals for hiring people with disabilities is progress, unfortunately, the rule does not establish a deadline for achieving them, making them aspirational rather than required.<sup>243</sup> This means that a big issue the EEOC was trying to address still has no resolution—agencies can plan and take steps to increase hiring, but with no set deadline, decades may pass before these aspirational goals are met. The EEOC's explanation for this decision is that some agencies might need more time than others to meet the goals due to budgetary

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*Similar to the Section 503 Rule previously discussed, while the [EEOC's] establishment of numerical goals for hiring people with disabilities is progress, unfortunately, the rule does not establish a deadline for achieving them, making them aspirational rather than required.*

constraints (including hiring freezes), the number of additional PWTDs who would have to be hired, and the nature of certain jobs within an agency's workforce that could include valid physical requirements that people with certain disabilities may not be able to meet.<sup>244</sup>

The rule does, however, require each agency's Affirmative Action Plan to identify specific steps that are "reasonably designed" to gradually increase the number of people with disabilities or targeted disabilities employed at the agency until it meets the 12 percent and 2 percent goals,<sup>245</sup> and provides six steps as *examples*: (1) increased use of hiring authorities that take disability into account and hire or promote people with targeted disabilities, (2) consideration of disability or targeted disability status is a positive factor in hiring promotion or assignment decisions to the

extent permitted by law, (3) disability-related training and education campaigns for employees, (4) additional outreach or recruitment efforts, (5) increased efforts to hire or keep employees who require supported employment (and whoever retained the services of a job coach at their own expense or the expense of a third party may be given permission to use the job coach during work hours as a reasonable accommodation), and (6) adoption of training mentoring or internship programs for people with disabilities.<sup>246</sup> Unfortunately, while each of these are important, without a date certain for meeting the numerical goals, there is nothing pushing agencies to meet the goals in any haste.

### **Centralized Accommodation Funds**

Last, but not least, is the issue of workplace accommodations and the ability of federal

agencies to provide them and provide them in a timely manner. A delay in receiving or an inability to receive a reasonable accommodation prevents employees with disabilities from being able to function at their fullest on the job and, in many cases, retain employment. There, however, continues to be a lack of agency-specific centralized accommodation funds (CAFs) and inadequate funding for the existing Computer/Electronic Accommodations Program (CAP), both of which hinder the ability of agencies to retain or even hire talented people with disabilities who need accommodations, such as screen readers or other communication technology, to work. NCD has engaged a working group on this topic and made recommendations to Congress and the CAP to resolve the issue.<sup>247</sup> Thus far, no action has been taken on those recommendations, although the solution is quite easy to achieve.

## Chapter 5: Need for Increased Effective Employer Engagement

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Increasing effective strategies for engagement with private sector employers is crucial to increasing employment opportunities and advancement for people with disabilities.

Private sector employers understand that they have nondiscrimination obligations under Title I of the ADA, and employers that contract with the Federal Government know they have responsibilities under federal law to affirmatively recruit and hire qualified people with disabilities, but hiring will only

increase when more employers are exposed to high-quality, easily accessible information on the benefits of a disability inclusive workforce. They also need information on recruitment strategies and accommodations.

Employers, like anyone else not exposed to people with disabilities, may see a disability as a barrier to productivity, rather than see the person with skills and talents first. Effective engagement has the power to change such biases and stereotypes, creating opportunities for people with disabilities—whatever the disability—to obtain employment. Effective engagement helps employers view employees with disabilities as a natural part of a diverse, thriving workforce.

In the robust labor market of recent years, private industry has had an abundance of jobs to fill and has sought talented people to fill them, yet talented people with disabilities have largely not benefitted by the increased job openings. While we have discussed several barriers created by federal law, regulations, and programs that act as barriers or impediments to entering or reentering the workforce, a persistent and equally important barrier is employer attitudes

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*In the robust labor market of recent years, private industry has had an abundance of jobs to fill and has sought talented people to fill them, yet talented people with disabilities have largely not benefitted by the increased job openings.*

about disability and misunderstandings and bias about employing people with disabilities.

One in five people have a disability; it is a natural part of human existence, not a ban on the ability to work or to be successful and

productive on the job. Disability inclusion creates sustainable, long-term performance value—the challenge is to continue sharing this message with employers and reduce such biases and stereotypes so that employment opportunities expand. People with disabilities are a talent pool that has often been overlooked, but employers can benefit by engagement with federal agencies, VR agencies, and nongovernmental organizations that have expertise and abundant resources on

disability inclusion. Such engagement raises awareness about the immense talent pool with disabilities and increases information sharing. At their best, these connections will help build pipelines between job seekers with disabilities and employers, help form partnerships with employers to create internships and job opportunities, and increase opportunities for easy access to technical assistance to employers on legal and regulatory topics—all helping increase the workforce participation of people with disabilities.

The most effective strategies for employer engagement on hiring employees with disabilities are those built on positive messaging about skills and talents, which helps counter stereotypes and bias about people with disabilities, and those highlighting the fact that disability inclusion contributes to a company's bottom line.<sup>248</sup> Employer engagement efforts, including campaigns and networking through disability inclusion-related conferences, are an important part of the picture because they help dismantle stereotypes about employees with disabilities, helping to open doors to inclusion in the nation's workforce.

This section highlights some, but not all, of the initiatives and efforts by federal and nongovernmental entities to engage employers on the topic of employing and retaining employees with disabilities and highlights the important role that the U.S. SBA could play to dramatically change employment opportunities for people with disabilities nationwide.

## **Notable Federal Initiatives and Efforts Engage Employers in Disability Inclusion**

### ***DOL/ODEP***

In April 2020, DOL/ODEP selected five National Provider Organizations (NPOs) to participate in its

National Expansion of Employment Opportunities Network (NEON) initiative to increase competitive integrated employment for people with disabilities.<sup>249</sup> According to DOL, "Partnership with provider networks is essential to promoting positive change . . . this initiative will help us better understand the barriers and, most importantly, solutions to increasing competitive integrated employment for individuals with significant disabilities." Administered by ODEP, the initiative has selected the following five NPOs: ACCSES, a Washington, DC-based network of more than 1,200 organizations serving people with disabilities across the United States; American Network of Community Options and Resources (ANCOR), a national, nonprofit trade association in Alexandria, Virginia, representing more than 1,600 private community providers of services to people with disabilities; Association of People Supporting Employment First (APSE), a national, nonprofit membership organization in Rockville, Maryland, dedicated to Employment First, a vision that all people with disabilities have a right to competitive employment in an inclusive workforce; SourceAmerica, a Vienna, Virginia-based network of more than 750 community-based nonprofits that creates employment opportunities for a skilled and dedicated workforce of people with disabilities; and the Arc of the United States based in Washington, DC, the nation's largest community-based organization of and for people with intellectual and developmental disabilities.

Each of the NPOs will receive intensive policy consulting, technical support, and peer mentoring to strengthen their service provider network's capacity to help workers with disabilities prepare for and obtain competitive integrated employment.

## **Council of State Administrators of Vocational Rehabilitation—The NET**

The National Employment Team (NET) is a network of VR business specialists that connect across all 78 VR agencies for the purpose of working with business, and engaging employers, via a single vision and strategy. It enables VR to work with businesses that have multiple locations, provide consultative services, and help build a talent pipeline that includes candidates with disabilities from any state, territory, or the District of Columbia. The NET is a function of CSAVR, a 501(c)(3) nonprofit, and resourced by CSAVR’s membership dues from VR agencies.

CSAVR has an annual budget of approximately \$1.8 million.

The NET runs the Talent Acquisition Portal (TAP) in partnership with disABLEDpersons. TAP is an online portal that provides employers and businesses the

opportunity to access a centralized talent pool of people with disabilities. Through TAP, employers can post jobs that can be accessed by all 78 VR agencies across 50 States, Territories, and DC to connect qualified job seekers with employers. And employers can access a large pool of qualified job applicants who have self-identified as having disabilities. There is also a Virtual Hiring Event function available.

TAP currently demonstrates great success in attracting job candidates and employers. TAP is host to approximately 22,000 job applicants, over 6,000 staff members through VR, and

over 100 employers and 600 recruiters. TAP is supported through business-based fees to cover the cost of the operation between the two nonprofits, CSAVR and the nonprofit that manages the platform, disABLEDpersons. While TAP seems like it would be an ideal talent pipeline for federal agencies that currently participate in Schedule A and other hiring efforts, CSAVR reports that currently no federal agencies participate on the platform, although there has been participation in the past. Unfortunately, the current data available to determine how effective the TAP platform is limited. The system can track contacts and applications but can only track candidates with

disabilities who have achieved employment if the candidate, VR, or the business reports that to TAP. According to CSAVR, to do that would require additional resources to respond to each employer’s unique tracking system.

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*While TAP seems like it would be an ideal talent pipeline for federal agencies that currently participate in Schedule A and other hiring efforts, CSAVR reports that currently no federal agencies participate on the platform.*

## **DOL/ODEP: The Employer Assistance and Resource Network on Disability Inclusion (EARN)**

Funded by DOL’s Office of Disability Employment Policy (ODEP) under a cooperative agreement with Cornell University, EARN is a resource for employers seeking to recruit, hire, retain, and advance qualified employees with disabilities. EARN has a tremendous amount of information and technical assistance for employers and is a strong example and model for how federal agencies can engage with employers to increase employment

opportunities for people with disabilities.<sup>250</sup> In addition to an eye-catching website that is easy to navigate, EARN's resources for employers are extensive. Some examples include the following:

- Information on disability hiring initiatives, connecting with local disability service providers, and integrating disability into an organization's diversity plan
- Links to state and local community-based agencies and veterans' organizations
- Link to the Dinah Cohen Training Center for Disability Employment and Inclusion to access training and webinars on a range of topics related to advancing inclusion of people with disabilities in the workplace
- Information on how employees with disabilities add value across all aspects of a business
- Information on gaining confidence on communicating with and about people with disabilities in the workplace
- Effective management policies and practices that can benefit a business

### **DOL ODEP**

The "Working Works" Campaign, launched in October 2018, is a public service announcement

told through stories that emphasize the importance of working together on effective stay-at-work and return-to-work strategies.<sup>251</sup>

### **EEOC, OPM, and DOL: Inclusion@Work: A Framework for Building a Disability-Inclusive Organization**

The Framework is a collaborative effort to help federal agencies make their workplaces inclusive and welcoming of people with disabilities. It reflects a combination of legal/regulatory requirements, strategies, and practices used by public sector employers, including actions identified in the Section 501 rule, EEOC

Management Directive 715 (MD-715), and other guidance provided by EEOC.<sup>252</sup> It consists of six strategies and practices that agencies may include in their Affirmative Action plans to be inclusive of people with disabilities and their workforces, such as Lead the Way: Model Employer of Individuals with Disabilities; Build the Pipeline: Outreach

and Recruitment; Hire (Advance and Keep) the Best: Personnel Processes; Ensure Productivity: Reasonable Accommodation and Personal Assistance Services Policies and Procedures; Be Tech Savvy: Accessible Information and Communication Technology; and Grow Success: Continuous Assessment and Improvement and Accountability. Each strategy is described in detail to support employers in their implementation.

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*EARN has a tremendous amount of information and technical assistance for employers and is a strong example and model for how federal agencies can engage with employers to increase employment opportunities for people with disabilities. In addition to an eye-catching website that is easy to navigate, EARN's resources for employers are extensive.*

## **ODEP/DOL Workforce Recruitment Program (WRP)**

The WRP is a resource for federal employers to identify qualified temporary and permanent employees from a variety of fields of study—a pipeline of talent from which they can tap to fill temporary or permanent positions. The WRP has provided employment opportunities for more than 8,000 college students and recent college graduates students since 1995. In 2019, 260 recruiters from 56 federal agencies conducted phone and remote interviews with students and recent graduates from more than 325 colleges and universities, resulting in a database containing application information on more than 1,850 students with disabilities.

ODEP evaluated the WRP program in 2017 and found that it needed an accurate way of knowing how many students and recent graduates had obtained jobs or internships—as having to rely on the students or federal supervisors to inform OPEP if they had hired from the database was unreliable. ODEP recently invested substantial resources in upgrading the WRP website and has a much better platform for federal recruiters and students while it also encourages the voluntary reporting of hires. ODEP is also exploring ways to make the database available to the private sector to increase the chances that the participants get jobs and meet the demand of employers. ODEP hopes to pilot the database with the private sector in 2020, if it can find a way to address privacy issues. The use of volunteer federal

recruiters to interview candidates also limits the number of students in the database, so ODEP is exploring options to address that issue.

## **Employment Challenge: An Inclusive Talent Pipeline for American Businesses—HHS Administration for Community Living (ACL)**

In 2019, ACL created a competition for private businesses to compete for cash prizes by creating and submitting plans designed to help employers nationwide reach a wider talent pool and create more employment opportunities for

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*In 2019, ACL created a competition for private businesses to compete for cash prizes by creating and submitting plans designed to help employers nationwide reach a wider talent pool and create more employment opportunities for people with I/DD.*

people with I/DD. The competition is notable because of its creative manner in engaging private sector employers in the employment of people with disabilities and its novel use of the America Competes Act to develop models of competitive employment.

The competition has three stages: proposal submissions, piloting of programs, and last, showcasing what participants learned, the success of the employees, and the overall results before a panel of judges. Finalists will make presentations to ACL in October 2020 during NDEAM. The winner will be awarded \$100,000.

## **Multi-Agency Task Force on Increasing Employment Opportunities for People with Disabilities**

In April 2018, a Multi-Agency Task Force was convened with a mission to share information on agency programs and initiatives pertaining

to employment of people with disabilities, identifying agency barriers to increased employment that could be removed without legislative change, and sharing plans of action that describe what each agency is committed to in order to increase employment of people with disabilities through agency guidance. The voluntary Task Force includes representatives from federal executive agencies, including the Departments of Education, Health and Human Services (HHS), Labor, Transportation, and Veterans Affairs, SBA, SSA, OPM, and NCD. The task force has created opportunities for agency collaboration, enhanced communications between participating agencies on disability employment issues and solutions, and brought together federal agencies and nongovernmental organizations concerned with disability employment.

### **Notable Examples of Nongovernmental Efforts to Engage Employers in Disability Inclusion**

#### ***The Valuable 500***

The first thing you see when visiting the Valuable 500's website is this statement: "If disability is not on your board agenda, neither is diversity" (nor is innovation, productivity, brand experience, talent, risk, reputation . . .).<sup>253</sup> Founded in 2019, the Valuable 500 enlists companies and leaders who commit to putting disability inclusion on their business leadership agenda. It has a very active and visible presence on social media, posting inclusivity-themed messages every day on, for example, LinkedIn, and the head of the organization has brought the topic of disability inclusion to a new level of awareness across the globe. Valuable 500 member companies

commit to disability inclusion and number in the hundreds.

The model of engaging through popular social media sites and consistent televised interviews has helped raise awareness of the number of people with disabilities, the immense talent in this population, and the need for increased employment.

#### ***Disability:IN***

Disability:IN, formerly the U.S. Business Leadership Network (USBLN), is a nonprofit that is a resource for business disability inclusion with a network of over 185 corporations that works to expand opportunities for people with disabilities. The Disability Equality Index, a joint initiative with AAPD, allows America's leading corporations to self-report their disability policies and practices focusing on all aspects of disability inclusion, such as culture and leadership, accessibility across the enterprise, a wide range of employment practices, and community engagement. This evolving index objectively scores each corporation on a scale from 0 to 100—100 representing the most inclusive.

#### ***The Rockefeller Foundation***

The Rockefeller Foundation created #Solvable with mini-films and podcasts on innovative, effective, and scalable solutions to help meet the UN Sustainable Development Goals by removing the barriers that limit people's lives or prospects. One of these films is exclusively focused on solving the problem of the low workforce participation of people with disabilities.<sup>254</sup> This short but powerful film effectively and efficiently highlights the issue of untapped talent and opportunity for positive change. Films and

public engagement strategies of this kind are an excellent model to increase the awareness of both federal and private employers about hiring people with disabilities.

These federal and nonfederal efforts to engage employers in hiring people with disabilities are a crucial component to moving the needle on employment for people with disabilities. It will take continued sustained and creative efforts such as these to make hiring people with disabilities part of corporate diversity efforts and a natural part of the way they recruit and hire.

### **A Federal Agency with the Potential to Impact Broadscale Improvement in Private Sector Disability Inclusion Through Employer Engagement: The SBA**

The SBA is positioned to play a powerful role in increasing employment opportunities for people with disabilities through its engagement with thousands of businesses across the nation. According to the SBA, 97 percent of American businesses are “small,” making small businesses a major source of the jobs in the United States and a critical audience for engagement on the benefits of hiring employees with disabilities. SBA’s development of campaigns, employer resources, job fairs, and programs that educate and interest small businesses in hiring people with disabilities could assist a nation of small businesses to diversify their workforces, find skilled workers, and aid in breaking down

stereotypes that create barriers to employment of people with disabilities.

The SBA, by legal mandate, has a robust program aimed at the small business hiring of veterans with disabilities, but to date, does not have a formal program or broad-scale initiatives on hiring talent with disabilities,

nor does it conduct targeted outreach to entrepreneurs with disabilities who are not veterans.

In 2019, SBA made a start on engaging small businesses on hiring people with disabilities. As a result

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*According to the SBA, 97 percent of American businesses are “small,” making small businesses a major source of the jobs in the United States and a critical audience for engagement on the benefits of hiring employees with disabilities.*

of its participation in the Multi-Agency Task Force on Increasing Employment Opportunities for People with Disabilities, the SBA developed a new resource for small businesses, titled “Hiring Employees with Disabilities.”<sup>255</sup> This resource provides information on identifying job seekers and understanding accommodations, and highlights the main tax credits available to businesses hiring people with disabilities. The SBA also held a first-of-its-kind event in 2019 in Washington, DC, styled as an information and networking fair to educate local small businesses about resources for finding and hiring people with disabilities. The SBA office in Connecticut recently held a similarly styled event. According to SBA officials, they are interested in holding more of these events and in working with disability organizations around the nation in developing them; however, SBA will require additional resources in order to host and promote similar events on a consistent basis.

NCD recognized that SBA programs can provide significant support to engage people with disabilities in self-employment. In 2007, NCD reported that individuals who accessed SBA's Service Corps of Retired Executives (SCORE) counselors and services had greater success in finding approval from VR for self-employment business plans.<sup>256</sup> Unfortunately, while Social Security programs under the Plan to Achieve Self-Support (PASS)—a program designed to discount or set aside resources or income dedicated to starting a business from Social Security income—generally instruct staff to refer beneficiaries interested in self-employment PASS plans to SCORE, there is no formal partnership between

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*[W]hile Social Security programs under the Plan to Achieve Self-Support (PASS)—a program designed to discount or set aside resources or income dedicated to starting a business from Social Security income—generally instruct staff to refer beneficiaries interested in self-employment PASS plans to SCORE, there is no formal partnership between the SSA and the SBA or SCORE that allows tracking of such referrals.*

the SSA and the SBA or SCORE that allows tracking of such referrals.<sup>257</sup> SSA reports that there are only 17 PASS specialists, or Social Security employees with special knowledge

of work incentives and business plan development, in the entire country.<sup>258</sup> In an interview for this report, the acting chief executive officer of SCORE noted that the program pays particular attention to remaining ADA compliant, but for it to affirmatively outreach to people with disabilities, it would need additional dedicated program resources and staff for this purpose. SCORE did,

however, welcome the chance to partner with other agencies and organizations that conduct outreach to people with disabilities.

## Conclusion

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The Federal Government and the private sector must be able to attract and retain a top-quality workforce that can ensure our nation's continued growth. Equal opportunity to obtain employment for people with disabilities is more than a matter of social justice—it is a national economic imperative. The barriers raised in this report harm people with disabilities by preventing or impeding them in reaching goals of self-sufficiency, independence, and full inclusion in American society. They must be addressed. They cost the American economy millions of dollars each year.

The Federal Government must tackle the barriers that continue to impede the ability of youth with disabilities to successfully transition from school to the world of competitive employment. It must dismantle, once and for all, the long-standing financial disincentives that make people with disabilities choose between health care and work—a cruel choice not befitting of a great nation.

Federal agencies have made significant strides in coordination and increased hiring of people with disabilities throughout the past decade. NCD encourages federal agencies to sustain their coordinated and individual efforts that have helped achieve these gains, and to pursue even greater gains in employment for people with

disabilities in the future. Barriers to federal hiring continue to exist, however, and addressing them is imperative. The Federal Government has the knowledge, tools, initiatives, and programs in place—it is truly a matter of its will to tackle the barriers presented in this report.

But the Federal Government workforce is only a fraction of the nation's workforce. Private sector employers—small businesses to major corporations—are a rich source of employment and are crucial to increasing the workforce participation of people with disabilities. Federal agencies like DOL, for example, have developed strong employer engagement tools, and the SBA has the potential to engage with thousands of small businesses through scaled-up engagement efforts. Private organizations have become actively involved in engaging private sector employers on the benefits of disability diversity and raising the visibility of the vast and talented population of people with disabilities who are ready and able to work. Connecting federal efforts with these private efforts may further leverage resources and start moving the needle toward greater employment opportunities for people with disabilities in the private sector.

At this time in our history, 30 years post-ADA, we should be reporting that youth and adults with disabilities are working in far greater

numbers, in competitive positions. That the majority of people with disabilities are no longer living in poverty, but are using their talents and skills. That the persistent barriers that existed and led up to enactment of the ADA are a relic of the past. We have made some progress, but we have more to do to resolve the persistent barriers to employment.

NCD urges the nation's policymakers to address the barriers to employment described in this report, and employers to work with federal partners to open doors to far greater employment opportunities. Allow the large population of talented youth and adults with disabilities to join the nation's workforce and achieve the vision and purpose of the ADA.

# Recommendations

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## Youth in Transition

The following recommendations address the lack of effective coordination, skills training, and employment-related services and supports available to transition-age youth.

### Federal Agencies

- RSA and ED (OSEP) should implement joint data sharing across data collection platforms to ensure that LEAs and state VR agencies can share information sufficient to demonstrate, of the students that receive pre-employment transition services, how many such students obtain competitive integrated employment after leaving school. RSA and ED should provide guidance about this “cross walk” of education and vocational rehabilitation data, and provide nationwide training on how to accurately record, share, and report such data across data collection platforms and as a single performance metric.
- RSA should allow VR agencies to pay for transportation, AT, and clothing using funds from the WIOA 15 percent reserve, when these services are necessary for potentially eligible students with disabilities to participate in pre-employment transition services. Alternatively, RSA should promptly issue clear and concise guidance that transportation, AT, and clothing are considered reasonable accommodations for potentially eligible students with disabilities that may be paid for with the 15 percent reserve funds when they are necessary for such students to participate in pre-employment transition services.
- RSA should provide clear and consistent guidance to VR agencies that the cornerstone of pre-employment transition services is the work-based learning experience in a competitive integrated employment setting, and that all pre-employment transition services must be provided in the least restrictive environment, as is required by WIOA, for the purpose of increasing the number of students who participate in competitive integrated employment settings prior to leaving school and, in turn, increasing postsecondary employment outcomes.

*(continued)*

## Youth in Transition: *continued*

The guidance should explain that

- VR agencies must implement truly integrated work-based learning experiences. These experiences should incorporate AT, other new technologies, and workplace and business development tools, wherever possible.
- VR agencies, in partnership with schools, must collect and report information about where pre-employment transition services are provided, in what setting, and for what duration.
- VR agencies should increase engagement and partnerships with local businesses, AJCs, and with public, private, and nonprofit organizations to create greater opportunities for work-based learning experiences.
- ED should fund a comprehensive pilot program targeted toward recipients of pre-employment transition services to provide resources for state and LEAs and VR agencies to identify AT devices, business development tools, and technology used in modern manufacturing, logistics, and information technology, and to proliferate such technology and equipment to students with disabilities in work-based learning experiences specifically in high-growth industries.
- A portion of the systems change grants of Office of Special Education and Rehabilitative Services (OSERS) should be expanded to include the piloting of training and systematic instruction around the use of technologies during transition, including the use of smart devices and business application tools, where appropriate, and in high-growth industries.
- VR agencies should increase counseling and information about postsecondary educational opportunities, and partnerships with postsecondary institutions for skills training, certification, and postsecondary vocational credentialing.
- RSA should create concrete incentives for VR agencies to connect students and youth with disabilities with marketable skills credentials in high-growth industries, including STEM, advanced manufacturing, caregiving, information technology credentials, and other new and emerging industries.
- ED, including its Office of Postsecondary Education, should identify partnerships or programs to incubate and/or expand access to community college programs and other institutions of higher learning for professional development, certifications, and skills advancement, as students with disabilities are leaving school and entering the mainstream workforce.

*(continued)*

## **Youth in Transition: *continued***

- ED, DOL, and HHS should jointly collaborate on further research and demonstration projects that showcase evidence-based practices such as internships, work-based learning experiences, mentoring, and family engagement in ensuring more effective education, transition, and employment outcomes for youth with disabilities. Part of this research should be designed specifically to encourage transition-age youth to consider careers in STEM, caregiving, and health care, and to expose such youth to the careers and opportunities these and other high-growth, high-income disciplines entail.
- ED/RSA and DOL/ETA should issue a nationwide strategic plan for including and advancing the access of people with disabilities to career pathways in new and emerging industries and skilled twenty-first century jobs.
- DOL/ETA should mandate that within the Title I WIOA public workforce system, a percentage of the local Adult and Dislocated Worker and Vocational Rehabilitation Program funds set aside to support apprenticeships for people with disabilities will be dedicated to apprenticeships in new and emerging industries and higher-skilled twenty-first century jobs.

## **Employer Engagement and Capacity Building**

The following recommendations address the need to support and scale effective employer engagement strategies by public employment systems.

### **Congress**

- Congress should increase federal funding to RSA for VR offices to commit additional dedicated VR staff specifically to employer engagement, business outreach, and the incubation of small businesses and self-employment for people with disabilities. Funding should include the requirement that RSA ensure at least one dedicated staff person in every VR office for employer engagement, small business development, self-employment, and entrepreneurship and to work in collaboration with other workforce partners. The funding should include the requirement that dedicated VR staff participate in professional development activities to forge employer connections.

*(continued)*

## **Employer Engagement and Capacity Building: *continued***

- Congress should increase federal funding to SSA to allow it to significantly increase the number of dedicated PASS specialists nationwide, ensuring that at least one such dedicated position exists in every state.

### **Federal Agencies**

- ODEP, OSERS, and National Institute on Disability, Independent Living and Rehabilitation Research (NIDILRR) should conduct comprehensive scientifically based research to determine the efficacy of various employer engagement practices by public workforce systems. This research should include study of CSAVR and the NET's Talent Acquisition Portal and ODEP's Workforce Recruitment Program, and other private online job platforms, to determine the efficacy of such tools and platforms, and how they may be best designed to increase employment outcomes and to scale such outcomes.
- NIDILRR should
  - Evaluate efforts to outreach to private businesses like those advanced by nonprofit organizations to determine what employer engagement strategies in particular are most likely to lead to (are causally linked to) competitive integrated employment outcomes.
  - Study the impact, if any, of public awareness and media campaigns on employer attitudes and hiring practices.
  - Examine what the most effective performance metric is by which to measure employer engagement, whether retention with the same employer, repeat business customers, employer penetration rate, or still other metrics.
  - Study and document the economic impact to employers when employer engagement efforts are effective at allowing employers to on-board qualified people with disabilities. This research will substantially contribute to moving employer engagement from an art to a science in the coming decades.
- RSA and ETA should issue guidance to all AJC and VR staff to deploy robust "business engagement strategies" within regional job markets on behalf of people with disabilities, as is required under Title I of WIOA.<sup>259</sup>
- ETA, ODEP, RSA, and SSA should
  - Jointly fund a pilot partnership with SBA and SCORE, for purposes of expanding the nationwide access of people with disabilities to small business resources, and small

*(continued)*

## **Employer Engagement and Capacity Building: *continued***

business plan development. Through such a pilot, SCORE should be supported to scale and expand the access of people with disabilities to its services nationwide and should partner with SSA to assist individuals who seek to qualify for the PASS program to formulate business plans.

- SBA should conduct nationwide outreach to small businesses on hiring employees with disabilities through significantly increased career fairs and other outreach events.
- SBA should conduct nationwide outreach to people with disabilities to introduce them to SBA services and the opportunities available through small business ownership.
- The U.S. Chamber of Commerce and SBA should conduct a nationwide employer outreach campaign to “middle market indexed companies” and large and small businesses. The campaign should link employers to qualified candidates with disabilities through, for example, outreach events, job fairs, and digital and social media online platforms. As part of this effort, the Chamber should partner with CSAVR’s the NET to link employers with the approximately 20,000 job candidates in its online portal who have self-identified and seek employment in a range of industries. The success of the campaign should be measured by job outcomes.

## **Disincentives Tied to Public Benefits**

The following recommendations address long-standing disincentives to employment tied to health care and other benefits in the Social Security Act and the Medicaid Act.

### **Congress**

- Congress should exclude retirement savings in qualified retirement accounts from assets considered in determining eligibility for Social Security and Medicaid for people with disabilities.
- Congress should significantly increase the earned income exclusions in Section 1612(b)(2)(A) and 1612(b)(4) of the Social Security Act to allow Medicaid coverage to be retained up to higher income thresholds.

*(continued)*

## **Disincentives Tied to Public Benefits: *continued***

- Congress should significantly increase the resource limit (or Substantial Gainful Employment limit) for Social Security beneficiaries who have disabilities or who are blind, revising Section 1612(b)(4) of the Social Security Act. In doing so, Congress should also ensure that SSI benefits are based on individual earnings and income and that beneficiaries are not penalized for being married or for being adult children of beneficiaries who are retired, deceased, or have disabilities.
- Congress should ease or modify the current “cash cliff” for SSDI beneficiaries by providing a gradual reduction in disability insurance cash benefits based on increases in earned income as the SSI program already does.
- Congress should direct Centers for Medicare and Medicaid Services (CMS) to ensure that people with significant disabilities are eligible for Medicaid long-term disability-related services (not necessarily full Medicaid) regardless of income and eligibility or employer-sponsored health benefits.
- Congress should direct SSA to develop a strategic plan for encouraging beneficiaries to establish small businesses and microenterprises through full use of the current student earned income exclusion (SEIE) and the Plan to Achieve Self-Support (PASS).
- Congress should authorize additional funding for training, assessment, and credentialing of benefits counselors or Certified Work Incentives Counselors, and for online counselor training for individuals in rural areas.

### **Federal Agencies**

- SSA should work collaboratively with other federal agencies to expand benefits counseling services to include the full range of financial education and advisement services, and information about ABLE accounts and other trust accounts, banking, credit, and access to other important financial literacy information.
- CMS, RSA, and SSA should
  - Encourage states to update Medicaid waiver service definitions to include financial literacy counseling into Medicaid reimbursable benefits counseling services provided under Medicaid Home and Community-Based waivers
  - Collaborate to educate service providers about the importance of embedding financial literacy counseling, benefits counseling, and employment service provision together in the same set of services

*(continued)*

## **Disincentives Tied to Public Benefits: *continued***

- SSA and RSA should jointly conduct an Early Intervention Demonstration program to test whether the provision of employment services, financial literacy counseling, and benefits counseling—to support specially selected applicants for SSI/SSDI—can improve such persons’ return to work. The demonstration should
  - Be directed to those people who meet SSA’s criteria for eligibility for SSI or SSDI and who have commenced an application for benefits, would immediately redirect such people to services offered through VR.
  - Direct applicants to a Social Security Vocational Rehabilitation Counselor equipped to provide access to financial counseling *and* vocational services to find work.
  - Afford immediate access to temporary cash assistance and health care coverage during the job search process, and the SSDI application would be suspended if employment above SGA was found.
  - Require data collection to measure the success of the demonstration.
- SSA, CMS, and RSA should support state agencies and service providers to offer benefits counseling through remote methods for people who live in remote areas or who have difficulty traveling, to better serve rural areas.
- Medicaid Buy-In program should be
  - Expanded in every state for working people with disabilities who are not eligible for employer-provided health benefits without limitation on monthly income or assets
  - Redesigned to raise income and asset limits significantly to account for increased out-of-pocket disability-related expenses, such as transportation, personal care, assistive technology, and other disability-related employment expenses

## **Federal Employment and Support of Entrepreneurship**

### **The President**

The President should issue an Executive Order requiring federal agencies to, by a certain date, achieve a workforce that includes 12 percent of people with disabilities, and 2 percent of those with targeted disabilities.

*(continued)*

## **Federal Employment and Support of Entrepreneurship: *continued***

The Executive Order should include

- A requirement that agency HR staff receive training on the Schedule A hiring authority, increase utilization of Schedule A in hiring, and ensure all job postings encourage applicants with disabilities and include information on how to apply using Schedule A, for those with targeted disabilities
- A requirement that agencies leverage existing recruitment tools, such as DOL's Workforce Recruitment Program (WRP); CSAVR's The Net, Vocational Rehabilitation agencies, and create or strengthen connections with, for example, career offices in institutes of higher education and vocational training programs
- A requirement that OPM and the EEOC publish annual reports on the progress of employment of people with disabilities in the executive branch

### **Congress**

Should enact legislation

- Requiring all federal agencies to use the Schedule A hiring authority to hire people with disabilities. This will ensure consistency across all federal agencies and help job seekers with targeted disabilities avoid varying requirements by agency when applying for federal employment.
- Requiring annual Schedule A training for federal HR managers and staff, including SPPCs and Disability Program Managers and report to OPM annually on (1) how many staff participated and (2) their positions in the agency's HR office. This will help ensure that information is not lost when HR staff leave or change positions.

### **Office of Personnel Management (OPM)**

To continue the progress made in educating federal agencies on the use of Schedule A hiring under EO 13548, OPM should

- Maintain online training on how to use Schedule A on its federally mandated training page
- Highlight successful use of Schedule A by federal agencies that use it most frequently

*(continued)*

## Federal Employment and Support of Entrepreneurship: *continued*

### Small Business Administration (SBA)

The SBA should

- Take the information provided in this report and, if necessary, gather further information on the historic and continuing cultural bias against people with disabilities
- Take the actions required under the 8(a) Business Development program regulations to determine whether to include people with disabilities in the presumptively eligible group for the 8(a) program—starting by issuing a notice in the *Federal Register*

### Department of Labor, OFCCP

OFCCP should

- Amend its regulations to require that the 7 percent utilization for federal contractor hiring of people with disabilities be an enforceable mandatory requirement and not simply an aspirational goal
- Amend its regulations to require that each contractor *annually* invite employees to self-disclose a disability rather than every five years under the current regulations
- Require federal contractors to maintain a written reasonable accommodation plan or review personnel policies *annually* as opposed to an undefined “periodic” review requirement
- Significantly increase the number and scope of Section 503 compliance reviews



# Research Methodology Appendix

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## Interviews

Andy Imparato, Association of University Centers on Disabilities  
Brigette Weston, SCORE  
Cheri Mitchell, People First Georgia, ADAPT  
David Mank, Subject Matter Expert and Professor Emeritus, Indiana University  
Emily “Shea” Tanis, University of Colorado  
Jennifer Mizrahi, RespectAbility  
John Connelly, Council of State Administrators of Vocational Rehabilitation  
Julie Hocker, Administration on Community Living  
Kathy West-Evans, Council of State Administrators of Vocational Rehabilitation/The NET  
Kevin Nickerson, National Disability Institute–American Dream Employment Network  
Marc Maurer, National Federation of the Blind  
Commissioner Mark Schultz, Rehabilitation Services Administration  
Michael Morris, National Disability Institute  
Michael Rogers, Self-advocate (Washington State)  
Michelle Schimp, Small Business Administration  
Natalie Veeney, Office of Personnel Management  
Richard Luecking, University of Maryland  
Ruby Moore, Subject Matter Expert and Executive Director, Georgia Advocacy Office  
Stephen Wooderson, Council of State Administrators of Vocational Rehabilitation  
Susanne Bruyere, Cornell University  
Tia Nelis, Director of Policy and Advocacy, TASH, past chairperson of the National Organization of Self-Advocates Becoming Empowered

## Data Collection

In December 2019 and January 2020, NCD requested and received data pertaining to the employment of people with disabilities from Office of Personnel Management (OPM), Social Security Administration (SSA), Office of Federal Contract Compliance Program (OFCCP), Office of Disability Employment Policy (ODEP), and Equal Employment Opportunity Commission (EEOC).

## Advisory Group

An advisory group of six individuals with expertise in disability employment policy ranked, refined, and grouped 10 barriers to employment that NCD had identified as persistently problematic in its reports since the passage of the ADA, and provided input and feedback throughout the research and drafting process.

**Advisory group members include:**

Alison Barkoff, Center for Public Representation

Cesilee Coulson, Washington Initiative on Supported Employment (WISE)

David Mank, University of Indiana (ret.)

Lynnae Ruttledge, Consultant

Rich Luecking, University of Maryland

Susanne Bruyere, Cornell University

## Endnotes

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- 5 L. Newman et al., "The Post-High School Outcomes of Young Adults with Disabilities up to 8 Years After High School. A Report from the National Longitudinal Transition Study-2 (NLTS2)," *NCSE 2011-3005* (2011), <https://ies.ed.gov/ncser/pubs/20113005/pdf/20113005.pdf>.
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**National Council on Disability**  
**1331 F Street, NW, Suite 850**  
**Washington, DC 20004**