

WIOA:  
What it means for people with intellectual  
and/or developmental disabilities (I/DD)

National  
Policy  
Matters



# WIOA:

## What it means for people with intellectual and/or developmental disabilities (I/DD)

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## Introduction

On July 22, 2014, the [Workforce Innovation and Opportunity Act \(P.L. 113-128\)](#), also known as WIOA, was signed into law. WIOA replaced the Workforce Investment Act and amended the [Rehabilitation Act of 1973](#). Reauthorization of this legislation was a top legislative priority for The Arc. In fact, The

[WIOA: wee-oh-uh](#)

Arc advocated for many improvements and supported the compromise under WIOA, along with other national disability groups. This edition of National Policy Matters will provide an overview of WIOA and how it impacts people with intellectual and/or developmental disabilities (I/DD).

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## Background

In updating vocational rehabilitation services under the Rehabilitation Act, WIOA seeks to address a number of employment challenges facing people with disabilities. As stated in The Arc's [position statement on employment](#), the majority of people with I/DD have been either unemployed or underemployed despite their ability and desire to work in the community. Many have been placed in "prevocational" programs and "disability-only" workshops where they are paid below minimum wage and have had little expectation of moving into integrated employment.

According to the [2013 American Community Survey](#) (ACS), the estimated employment rate of working-age (16 years and older) people with disabilities in the United States was 22.5%; far less than the estimated 65.4% employment rate for working-age people without disabilities. The ACS also indicated that median annual earnings of working age people with disabilities was \$20,885 while that of their non-disabled counterparts was \$30,928.

According to the [National Report on Employment Services and Outcomes](#), in Fiscal Year (FY) 2010, approximately 20% of people receiving day services from an I/DD state agency did so in an integrated setting while the remainder participated in facility-based and non-work settings. On average, people with I/DD who have exited a vocational rehabilitation (VR) program worked 23.5 hours per week and earned \$200 per week in 2010. This is far less than their peers with other disabilities (who worked approximately 31 hours and earned \$400/week) and those without dis-

abilities (who earned approximately \$600/week) during the same time period.

The Arc's own research has similar findings. In the [2010 Family and Individual Needs for Disabilities Supports National Survey \(FINDS Survey\)](#), only 15% of family caregivers reported that the person with I/DD for whom they provided support had a job. Thus, people with I/DD are less likely to have job experience and are more likely to earn lower incomes as compared to individuals without disabilities.

"Integrated employment" is typically paid and takes place in a community setting where most people do not have disabilities.

"Facility-based employment" occurs in a setting where the majority of people have a disability and is often referred to as a sheltered workshop.

"Non-work settings" can be either community-based or facility-based and typically do not involve paid work.

Higher educational attainment generally leads to better employment outcomes. However, people with I/DD often exit the school system with little planning for transition from school to work or post-secondary education. This transition period "...from adolescence to adulthood is a critical time for youth with and without disabilities... For youth with disabilities, particularly youth with IDD, this period can also include transitioning from receiving services and supports from their school district... to adult services providers such as state [Vocational Rehabilitation] VR and IDD agencies" (Butterworth, et al., 2012, p. 33).

## What is WIOA?

WIOA reauthorizes the Workforce Investment Act of 1998 (WIA) through FY 2020. Last authorized in 1998, WIA provided a framework for both job seekers and businesses through a national workforce preparation and employment system consisting of training assessments, local training providers, job placement assistance, and labor market information and trends.

The successor to WIA, WIOA is a compromise between the SKILLS Act (H.R. 803), which passed the U.S. House of Representatives in March of 2013, and the Workforce Investment Act of 2013 (S. 1356), which passed the U.S. Senate Health, Education, Labor, and Pensions (HELP) Committee in July of 2013. This bipartisan, bicameral legislation was developed by Senator Tom Harkin (D-IA), Representative John Kline (R-MN), Senator Lamar Alexander (R-TN), Representative George Miller (D-CA), Senator Patty Murray (D-WA), Representative Virginia Foxx (R-NC), Senator Johnny

Isakson (R-GA), and Representative Rubén Hinojosa (D-TX). The Senate passed WIOA on June 25, 2014 by a [vote of 95-3](#). On July 9th, 2014, it passed in the House of Representatives by a [vote of 415 to 6](#), with 11 abstaining. WIOA was signed by the President on July 22, 2014.

In addition to reauthorizing WIA, WIOA includes amendments to the Rehabilitation Act of 1973 which significantly impact people with disabilities. As amended over the years, the Rehabilitation Act authorizes grants for vocational rehabilitation programs, supported employment, independent living, and client assistance. Additionally, it authorizes training and service discretionary grants administered by the Rehabilitation Services Administration. Further, The Rehabilitation Act authorizes research activities, the work of the National Council on Disability, as well as a variety of provisions focused on rights, advocacy and protections for individuals with disabilities.

# What does WIOA do for people with disabilities?

In general, WIOA focuses vocational rehabilitation outcomes on competitive integrated employment and promotes greater emphasis on transition services for youth with disabilities. It also provides increased emphasis on coordination between vocational rehabilitation (VR) and other agencies, including school systems. Similar to recent trends related to increased community inclusion of people with I/DD, such as the [Supreme Court's \*Olmstead\* decision](#) and the Centers for Medicare and Medicaid's recent [regulations](#) on Home and Community-Based Settings, WIOA seeks to increase access to and opportunities for the employment, education, training, and support services often needed to succeed in the labor market.

## *What is transition?*

Transition typically refers to the period of time during which a student (typically an individual aged 14-21 years) transitions from secondary education (typically high school) to either a post-secondary program at an institution of higher learning (e.g., college) or into employment. For students who have I/DD, this can also mean transition into adult services (e.g., employment or non-work supports and services).

## *What are pre-employment transition services?*

WIOA adds a new section to the Rehabilitation Act which requires each state to provide, or otherwise arrange for the provision of, pre-employment transition services for all eligible students with disabilities. This includes: job exploration counseling; work-based learning experiences (e.g., in-school or after school opportunities including internships) in an integrated environment to the extent possible; counseling related to transition or post-secondary education at institutions of higher learning (e.g., college); workplace readiness training; and instruction in self-advocacy.

An eligible student is an individual who has had an assessment of eligibility and vocational rehabilitation needs resulting in a finding that they have a physical or mental impairment which causes a substantial impediment to employment and that they require VR services to prepare for, secure, retain, advance in, or regain employment [Section 413(a)(1)(A-C)].

Funds may also be used to further improve the transition of students with disabilities from school to post-secondary life through additional activities such as provision of instruction to VR counselors and school personnel involved in transition, application of evidence-based findings to improve policy, development of model transition demonstration projects, establishment of multi-state or regional partnerships, and information dissemination.

Local VR offices are required to coordinate pre-employment transition which includes attendance at a student's individualized education program (IEP) meeting when invited, work with schools to coordinate and ensure the provision of pre-employment transition services, and work with local workforce development boards to develop work opportunities for students with disabilities.

Each state is required to dedicate 15% of its federal grant funds to pre-employment transition services for students with disabilities. Further, half of the state's Supported Employment grants must be spent for the provision of services to youth with the most significant disabilities.

## What are the characteristics of a youth with a significant disability?

The Rehabilitation Act defines an individual, including youth, who has a significant disability as a person who:

- Has a “severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;”
- Can be expected to require “multiple vocational rehabilitation services over an extended period of time;” and
- Has one or more physical or mental disabilities (e.g., autism, blindness, cerebral palsy, deafness, head injury, intellectual disability) or a combination of disabilities assessed to cause comparable substantial functional limitation.

While the Rehabilitation Act originally focused on individuals with significant disabilities, WIOA places added emphasis on youth with disabilities, including those with significant disabilities. WIOA defines youth with disabilities as individuals aged 14-24 who meet the above criteria.

## Who is eligible for VR services under WIOA?

As amended by WIOA, individuals, including those with significant disabilities, are presumed to have an employment goal. The VR agency is tasked with exploring an individual’s ability, capability, and capacity to perform in work situations through the use of trial work experiences in which the individual is provided appropriate supports and training (e.g., supported employment and customized employment). WIOA emphasizes that a determination of ineligibility shall “be an individualized one, based on the available data, and shall not be based on assumptions about broad categories of disabilities.”<sup>1</sup> A determination of ineligibility can be made only when the designated state unit “can demonstrate by clear and convincing evidence that such individual is incapable of benefitting in terms of an employment outcome due to the severity of the individual’s disability.”

Should an individual be determined ineligible for vocational services, they must be provided with a description of services offered under the state’s Client Assistance Program and how to contact the program.

## Is technical assistance provided?

Yes. In addition to the provision of technical assistance (TA) allowed to businesses seeking to employ individuals with disabilities, as well as to state educational agencies and local educational agencies (LEA) to assist with transition planning as allowed in the Rehabilitation Act, WIOA allows provision of TA to establish, develop, or improve assistive technology (AT) programs. WIOA also allows technical assistance to community rehabilitation programs to build their capacity to provide supports leading to competitive integrated employment.

## Is post-secondary support available?

Yes. WIOA allows support (such as tuition when appropriate) to eligible individuals with disabilities for advanced training in a science, technology, engineering, or mathematics (including computer science) field, medicine, law, or business.

## Does WIOA prohibit sheltered workshops?

No, however, it does add a new section, titled Section 511: “Limitations on use of subminimum wage,” to the Rehabilitation Act. In general, Section 511 states that no entity which holds a [14\(c\) special wage certificate](#) under the Fair Labor Standards Act of 1938 (FLSA) may compensate an individual with a disability under the age of 24 at a wage which is less than the federal minimum wage (commonly referred to as a “subminimum” wage) unless the individual is already employed by an entity with a valid 14(c) certificate (this means they may be “grandfathered in”) or the individual has documented completion of each of the following:

1. Receipt of VR pre-employment transitions services or transition services through the Individuals with Disabilities Education Act (IDEA);

2. Provision of career counseling, program referrals in his/her geographic area related to employment services and supports designed for exploration, discovery, and attainment of competitive integrated employment compensated at FLSA minimum wage; and
3. An application for VR services resulting in:
  - a. Determination of ineligibility; or
  - b. Determination of eligibility, in which:
    1. The individual has an individualized plan for employment;
    2. The individual has been working toward outcomes in the employment plan for a reasonable period of time without success despite the provision of appropriate supports and services; and
    3. The VR case has been closed.

- 3) These options are presented every six months for the first year of employment in a subminimum wage position and then annually thereafter.

Designated state entities are responsible for developing a process to document completion of the above actions.

### *How else does WIOA impact subminimum wage employment?*

WIOA establishes a new Federal Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities. Members include officials from: Department of Labor (DOL), Administration on Intellectual and Developmental Disabilities (AIDD), Centers for Medicare and Medicaid Services (CMS), Social Security Administration (SSA), Rehabilitation Services Administration (RSA), as well as representatives of I/DD specific constituencies such as self-advocates, employment service providers, national advocacy, academics/researchers on employment for people with I/DD, community or national employee organizations, and other individuals or representatives from organizations with expertise on increasing opportunities for competitive integrated employment for individuals with disabilities. Over two years the Committee will study and make recommendations on ways to increase integrated, competitive employment for people with I/DD and other significant disabilities; use of 14(c) certificates for people with I/DD; and ways to improve oversight of 14(c) certificates.

### *How does WIOA impact supported employment?*

WIOA refines the existing definition of supported employment under the Rehabilitation Act to include 'customized employment.' Further, it defines the period when an individual is working towards integrated competitive employment in supported employment, as a short-term program. WIOA also amends the Rehabilitation Act to increase the provision of supported employment from 18 to 24 months, which may be extended, if necessary to achieve the employment outcome identified in the individualized employment plan.

*WIOA describes competitive integrated employment as: part- or full-time work performed by an individual which is compensated by at least minimum wage under the Fair Labor Standards Act; occurs in a location which affords the opportunity to interact with other individuals who do not have disabilities; and provides an opportunity for advancement similar to that of non-disabled peers in similar positions (See Section 404(5) for complete definition).*

Entities with a valid 14(c) certificate may not continue to compensate employees at a subminimum wage unless the individual:

- 1) Is provided career counseling and information by the designated state agency which are delivered in a manner facilitating independent decision making and informed choice;
- 2) Is informed by the employer of self-advocacy, self-determination, and peer mentoring training opportunities available in the individuals' geographic area; and

“The term ‘supported employment’ means competitive integrated employment... or employment in an integrated work setting in which individuals are working on a short-term basis toward competitive integrated employment that is individualized and customized consistent with the strengths, abilities, interests, and informed choice of the individuals involved, for individuals with the most significant disabilities.”

### *How does WIOA strengthen state systems?*

WIOA presents new charges to states’ Governors to reconfigure the existing state workforce development board which shall consist of the Governor and a member of each chamber of the state legislature. Additionally, the Governor shall appoint members including: business owners and/or executives with hiring power, business representatives, labor organizations, and community-based organizations with experience in addressing barriers to employment and providing training. The state board must, in part: assist the Governor in development, implementation, and modification of a state plan; review state policy, programs, and recommendations related to workforce development; strive to continuously improve the state workforce development system (e.g., identification and removal of barriers, support of career pathways, improvement of access); and disseminate information on best practices.

Additionally, WIOA establishes a new performance accountability system to assess the effectiveness of states and local areas in achieving positive outcomes for individuals served. Performance indicators include post-completion

employment at two and four quarter intervals, median income or program participants, participants’ earning of post-secondary credential or participation in programs leading to such a credential, and other indicators identified by the state.

### *What else does WIOA do?*

WIOA streamlines federal efforts by transferring three entities into the Department of Health and Human Services (HHS):

- The National Institute on Disability and Rehabilitation Research (NIDRR) is renamed the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) and moves from the Department of Education to the Department of Health and Human Services, Administration on Community Living (HHS/ACL);
- The Independent Living Program moves from the Rehabilitation Services Administration, Department of Education to HHS/ACL; and
- Assistive Technology Programs move from the Department of Education to HHS/ACL.

### *What Are the Next Steps?*

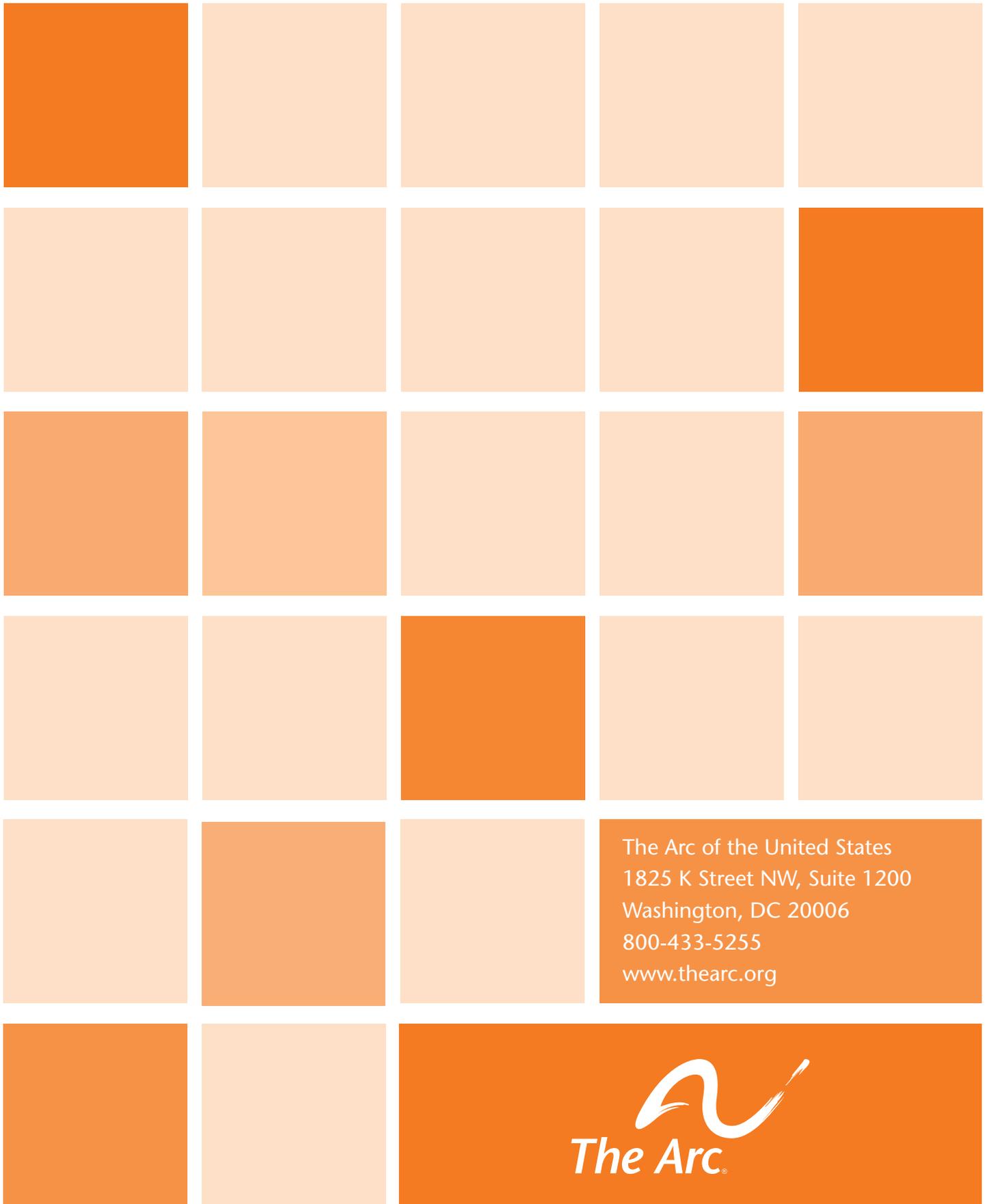
There are a number of [deadlines](#) associated with WIOA implementation including:

- **July 1, 2015:** provisions of WIOA take effect;
- **January 22, 2016:** DOL, Department of Education, and Department of Health and Human Services must publish Final Rules;
- **March 3, 2016:** deadline for submission of state unified plan; and
- **July 22, 2016:** deadline for provisions related to subminimum wage for people with I/DD.

# Resources

## Resources related to WIOA:

- A link to the [law](#);
- WIOA [Fact Sheet](#);
- WIOA [FAQs](#);
- Guidance: [Workforce Innovation and Opportunity Act Announcement and Initial Informational Resources](#);
- Guidance: [Information for Stakeholder Engagement for the Workforce Innovation and Opportunity Act Implementation](#)
- [WIOA Webcast Series](#); and
- [Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities](#).



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