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The Committee for Purchase From People Who Are Blind or Severely Disabled
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Committee Members:

Thank you for the opportunity to submit our comments to you regarding the Committee's plans to regulate the governance of nonprofits participating in the Javits-Wagner-O'Day (JWOD) program. ACCSES is a national trade association of providers of services to people with disabilities. Many of our members are JWOD producers, including some of the largest producers in the country. ACCSES, however, receives no funds from the JWOD program or from federal, state, or local governments. We attended the Committee's public hearing on January 12 in Arlington and submitted oral comments, but we also wanted to submit more extensive written comments.

We appreciate the opportunity to submit comments to the Committee for its consideration before it promulgates proposed regulations in this area. Regulations that will affect the governance and executive compensation of JWOD-producing nonprofits will have a significant effect on the JWOD community, and we urge the Committee to consider both the intended and unintended consequences that may result from such regulations.

Since the December Federal Register notice wherein the Committee outlined its thinking on governance matters covered a few different areas, we will separate our comments in the categories of Board of Directors Governance and Regulation of Executive Compensation.

Board of Directors Governance

In general, we feel the Committee should exercise caution in promulgating rules that will mandate the size and terms of boards of directors. The size of a board, in and of itself, is not an indication that an organization is well-run. While it may be true that in general larger boards will have more expertise than smaller boards and thus exercise better oversight, this is not always the case. In fact, if a board is too large board members often exercise little oversight and most of the power to run the organization is delegated to staff.

Keeping this in mind, ACCSES generally agrees with many of the policies and procedures outlined in the Federal Register notice that the Committee considers as "best practices" regarding board governance.

Board Term Limits

One item on the Federal Register list to which we take exception is this one: "(4) The organization's bylaws should set forth term limits for the service of board members."

While term limits may be useful for some boards that have grown stagnant because of low turnover and few new voices, we do not feel it is wise to mandate board term limits. There are many boards that benefit from long-serving board members, and to force these boards to shed such members because of an arbitrary limit will do more to hurt board oversight than help. Furthermore, many JWOD producers located in rural or underserved areas find it difficult to recruit talented people willing to serve on a board.

In these instances, mandating term limits will most likely prevent some boards from accomplishing two other goals stated in the same section: "The board of directors (the board) should be composed of individuals who are personally committed to the mission of the organization and possess the specific skills needed to accomplish the mission" as well as "Board membership should reflect the diversity of the communities served by the organization."

Outside Accreditation

In the same Federal Register section discussing board governance issues, the Committee asked, "Should accreditation by one or more state or national organizations be recognized as evidence of a nonprofit agency adhering to good governance practices without further review by the Committee?"

ACCSES has had a long and fruitful relationship with national accreditation organizations like CARF and we support their work on raising the operating standards of the industry. There are a few issues to be considered, however, when discussing accreditation. As brought up at the public hearings, many states do not require accreditation. Similarly, in the states where accreditation is mandated for participation in certain government programs, some JWOD producers do not participate in these programs and thus do not seek accreditation. Mandating accreditation would impose a financial burden on these agencies.

Furthermore, to our knowledge, no national accreditation agencies currently have accreditation standards that would satisfy the Committee's governance standards. These standards would have to be implemented by accreditation agencies and would require a new round of compliance reviews for all agencies that currently have accreditation. This would also likely impose a financial burden to community rehabilitation programs.

The financial burden imposed by accreditation should be considered when the Committee discusses this issue.

Small Non-profit Agencies

Another question asked by the Committee in the Federal Register was "should the size and/or the annual revenue of the nonprofit agency be a factor or factors in assessing appropriate governance practices?"

We strongly urge the Committee to consider exempting from governance regulations nonprofits with a minimal percentage of revenue from JWOD contracts and JWOD producing nonprofits that have a small annual budget. Many JWOD-producing nonprofits have a relatively small proportion of their revenue from JWOD contracts. If the Committee were to enact regulations with significant compliance costs it is likely these organizations would simply choose to forgo any JWOD contracts. This would mean that fewer organizations would participate in the JWOD program and that fewer people with severe disabilities would have jobs.

Similarly, some JWOD-producing nonprofits have small budgets that would not easily allow them to comply with governance regulations. It is likely that these nonprofits would then be forced to choose between an important source of revenue that imposes significant compliance costs or forgoing JWOD contracts and possibly not having enough revenue to survive. We feel this is an unfair choice. The possible hardships for nonprofits with small budgets should be considered when promulgating regulations.

Regulation of Executive Compensation

As we mentioned during our oral comments, ACCSES understands the Committee's desire to regulate executive compensation. This is the issue that receives the most attention from the media and Congress. And while there have been a handful of instances where there have been alleged abuses of the system, there is no evidence of any widespread compensation abuses from executives at JWOD-producing nonprofits.

In the Federal Register notice, the Committee seems to be reaching for some reason under which to justify its desire to regulate executive compensation. It appears to have settled upon the idea that somehow high executive compensation leads to prices for JWOD goods and services that are not within the fair market value. There is absolutely no evidence that executive pay leads to high prices for JWOD goods and services. If the Committee truly believes there is such a connection it should produce evidence showing those nonprofits that pay their executives higher salaries produce goods and services at higher prices than nonprofits that pay their executives lower salaries.

In fact, as we stated during our oral comments, imposing an arbitrary limit on executive compensation may paradoxically result in nonprofits being *less* able to offer a fair price on JWOD contracts. Many JWOD producers, in order to attract the best executives possible, must offer salaries and benefits that are competitive with the for-profit sector.

The most successful nonprofits are essentially businesses with a social mission, and they must operate like a business to survive.

These nonprofits must offer competitive salaries and benefits in order to attract the level of executives needed to keep their organizations alive and thriving. They are competing against the for-profit business world for talented men and women to professionally run these businesses. If the Committee were to hamper these efforts it is likely that these organizations will be handicapped in their ability to attract the best executives and provide the highest level of services to people with disabilities.

This could, in turn, mean that the organization would be less prepared to offer a fair price on a JWOD contract. Good executives produce the conditions wherein their organizations are efficient, the workers are fairly treated and compensated, and their goods and services are well-positioned in the marketplace. Depriving an organization of good executives by arbitrarily imposing a salary cap will harm their ability to provide goods and services under the JWOD Act and similarly limit their ability to help the people with disabilities served by their organizations.

Furthermore, the Internal Revenue Service (IRS) has regulations in place dealing with executive compensation. It has policies and procedures to ensure this compensation is not excessive and penalties in place if it is. All nonprofits are bound by these regulations. The Committee should not duplicate the work of the IRS in this area.

We are also troubled by the question in the Federal Register regarding connecting pay of highly paid individuals to the pay of line workers. The notion that there should be some connection between the two misunderstands the very nature of how JWOD producers operate. Line workers and executives do two completely different jobs and are compensated by vastly different criteria.

Some workers on JWOD contracts are paid below prevailing wages because they have disabilities that affect their work performance. This is not an arbitrary determination on the part of the CRP staff – their commensurate wage rate is carefully regulated by the Department of Labor. These are workers who most likely have not been able to find jobs in the competitive job market. JWOD-producing nonprofits have set up programs to employ them and provide them the supports and services they need. They are not exploited and they are not paid below what their labor is worth.

If the Committee were to mandate the raising of their wages it is likely that most nonprofits would find it too costly to comply with this mandate and they would simply stop employing these workers. Since these workers are among the most severely disabled, this policy would have the unintended consequence of harming the very population the JWOD Act is designed to help.

In our opinion, the Committee for Purchase should refrain from promulgating any regulations dealing with executive compensation. There is no rationale for such regulations and any regulations will likely have unintended, harmful consequences for the JWOD program.

The Committee should instead consider providing material to JWOD-producing nonprofits on the salary ranges of other non-profits and for-profits in their region. This would give boards of directors useful information to make salary determinations for their executives. It would also help establish a rebuttable presumption of reasonableness for IRS reviews of compensation.

Conclusion

As the Committee and its staff begin to consider the shape and scope of governance regulations for JWOD-producing nonprofits, we hope you will seriously consider the ramifications your policies may have. Nonprofits with JWOD contracts employ thousands of people with severe disabilities and enrich the lives of them as well as their customers. Any governance regulations should be written to ensure these nonprofits are not burdened in a way that will make them less able to achieve their difficult mission of finding good jobs for people with severe disabilities.