



A Partnership of The Arc &  
United Cerebral Palsy

# WASHINGTON WATCH

VOLUME 5, ISSUE 5  
JULY 2007

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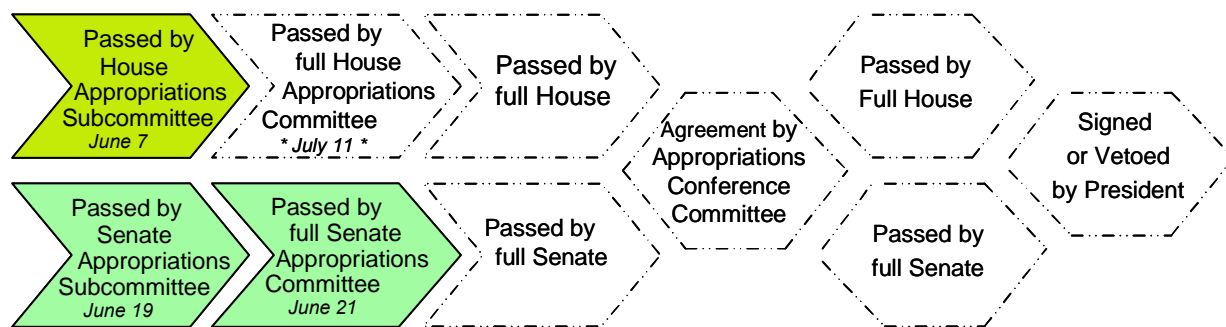
## APPROPRIATIONS SEASON IN HIGH GEAR

### Departments of Labor, Health and Human Services and Education

In the earliest action taken in years on legislation to appropriate funds for the Departments of Labor, Health and Human Services, Education and related agencies (referred to as Labor-HHS-Ed), committees in both the House and Senate have approved bills. The Labor-HHS-Ed appropriations bill is often the last to be tackled by Congress, frequently resulting in these agencies operating under continuing budget resolutions until appropriations can be agreed upon. This is due to the large number of programs covered by the Labor-HHS-Ed bill, their sizable budgets, and the contentious debates that often arise over spending on social and human service programs versus tax cuts or spending on other priorities. For the disability advocacy community, an early start in the appropriations process may provide more opportunity to weigh in on programs that are of vital interest to us.

The House Labor-HHS-Education spending bill has, so far, just cleared the subcommittee. In the Senate, the full Appropriations Committee has cleared its version of the bill. The Senate bill is expected to be voted on by the full Senate in late July.

The status of the Labor-HHS-Ed Appropriations bill is depicted in the graphic below, with the unshaded shapes indicating the remaining steps in the process.



\* = scheduled dates

It is not anticipated that either the House or the Senate would have the votes to override Presidential vetoes of the appropriations bills, should Presidential vetoes occur. In that event, it would be back to the drawing boards for appropriators who would then have to cut their recommended funding for agencies and programs or find another way to appease the White House.

The House and Senate Labor/HHS/Education and Related Agencies bills differ somewhat, with both adding significant amounts above the President's recommendations for the federal agencies that cover the vast majority of programs of interest to people with disabilities and their families. The Senate bill appropriates a total of \$149.2 billion, while the House bill calls for \$151.5 billion, both significantly above the President's request of \$140.9 billion and about 5% more than the FY 2007 level. In general, the Senate bill places more emphasis on health programs while the House bill favors education programs, although this does not hold true for Special Education. While the House bill gives considerably more attention to the majority of education programs, including No Child Left Behind and Higher Education, the Senate recommendations for Special Education programs are greater than those of the House appropriators.

Some highlights of the House and Senate Labor/HHS/Education Appropriations bills are presented on the following page:

- ◆ Both the House and Senate bills call for amounts above the President's request in some key disability programs, like the Department of Labor's Office of Disability Employment Policy. Both bills call for \$27.7 million, while the President recommended only \$18.6 million.
- ◆ While the President "zeroed out" the Supported Employment State Grants under the Rehabilitation Services Administration, both the House and Senate are recommending a return to FY 2007 funding levels of \$29.7 million.
- ◆ For Special Education, the Senate bill calls for \$11.2 billion for the Individuals with Disabilities Education Act's (IDEA) Part B, State and Local Grants. This amount is approximately \$400 million more than the \$10.8 billion appropriated in FY 2007. The House bill calls for a smaller increase of about \$175 million, providing \$10.97 billion for FY 2008.
- ◆ For IDEA's Part C, Grants for Infants and Toddlers and Preschool Grants, funding remains level with FY 2007 funding in the House bill, and there is a small increase in the Senate bill.
- ◆ Programs funded under the Developmental Disabilities Act fared better in the Senate bill than in the House, with the Senate calling for \$20 million above FY 2007 amounts for the Act. Increases of \$5 million each would go to State Councils on Developmental Disabilities (DD Councils) and Protection and Advocacy (P & A) Systems and an increase of \$5.5 million was proposed for the University Centers for Excellence in Developmental Disabilities (UCEDDs). The Senate bill would also provide a \$4 million increase for the Projects of National Significance (PNS) and \$2 million under the DD Act to create a National Clearinghouse and Technical Assistance Center to "...promote leadership by families of children with disabilities in the design and improvement of family-centered and family-controlled systems of family support services." The House bill calls only for an increase for DD Councils of \$5 million, no increases for the other DD Act programs and no new family support initiative.
- ◆ Both bills fund the Health Resources and Services Administration's State Grants for Traumatic Brain Injury, a program that the President "zeroed out" in his budget request. The House bill level funds the grant program at \$8.9 million, and the Senate bill funds it at \$10 million.
- ◆ The large block grants that provide a number of health, developmental and social services for families and children - the Maternal & Child Health Block Grant and the Child Care and Development Block Grant - have significantly larger appropriations on the House side.
- ◆ Neither the House bill nor the Senate bill provides funding for the Lifespan Respite Care Act that passed in 2006. The President also recommended no funding for the program.

### **Social Security Administration**

As one of the "related agencies" covered by the Labor/HHS/Education bill, the Social Security Administration (SSA) also has its funding differ in the House and Senate bills. With concern mounting about the growing backlogs in disability cases, the Commissioner of Social Security originally requested an increase in SSA's FY 2008 administrative budget, known as the Limitation on Administrative Expenses (LAE), for a total of \$10.44 billion. The President, however, in his February budget recommendations, requested only \$9.59 billion - \$843 million less than the SSA Commissioner requested. In May, the joint House/Senate Budget Resolution was passed setting discretionary funding levels for the Appropriations Committees to follow. The Budget Resolution provided for a total of \$10.1 billion - closer, but still short of the Commissioner's request. The amounts included in both the House and Senate bills, however, are lower than the Budget Resolution provisions.

Disability advocates have steadily requested full funding at the Commissioner's request level because of the impact on the thousands of people whose disability benefits are being held hostage by inadequate staffing and resources at SSA offices nationwide. SSA is clearly unable to address the growing backlogs in disability cases without an influx of new staff and other resources. Advocates are now urging that Congress appropriate the \$10.1 billion included in the Budget Resolution.

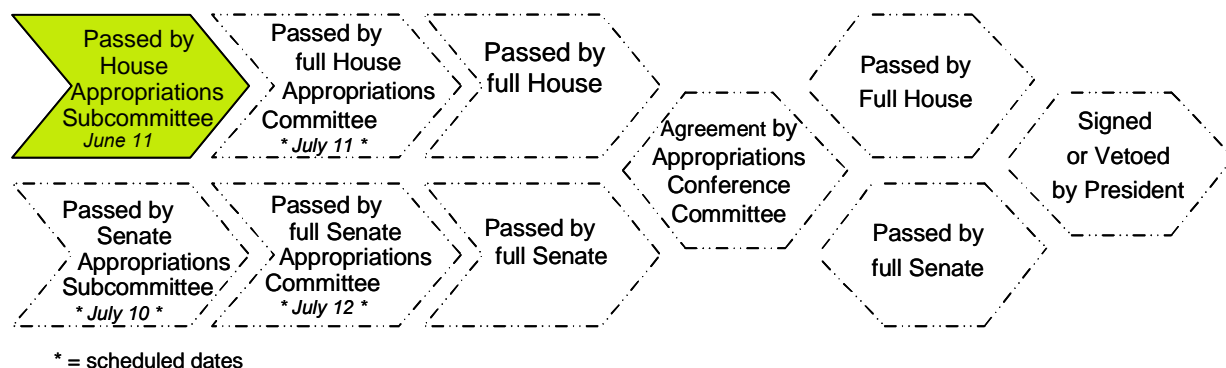
Nonetheless, the House's current proposal is just \$9.69 billion for SSA's LAE (just \$100 million above the President's request) and the Senate Appropriations Committee included \$9.72 billion (just \$125 million above the President's request).

Advocates are concerned that, even if the Senate prevails with its higher level of funding, this will not be enough to address SSA's administrative needs. As previously reported in *Washington Watch*, people with disabilities are losing their homes, losing their families, experiencing further deterioration in health conditions, and even dying before they get a hearing on their claims for disability benefits. Congress has failed to appropriate enough funding since FY 2000; further shortfalls in funding will continue to make the problems worse. It is people with severe disabilities who find themselves unable to work who bear the brunt of these short-sighted funding policies on a daily basis.

### Departments of Transportation and Housing and Urban Development

The House Appropriations Subcommittee on Transportation and Housing and Urban Development passed its FY 2008 bill on June 11. The House Appropriations Committee Chair, Representative David Obey (D-WI), has scheduled markup of the Transportation/HUD bills by the full committee for July 11 with floor passage anticipated late in July. The Senate Appropriations Subcommittee on Transportation/HUD will mark up its version of the bill on July 10, to be followed two days later by action by the full Senate Appropriations Committee.

The status of the Transportation and Housing and Urban Development Appropriations bill is depicted in the graphic below, with the un-shaded shapes indicating the remaining steps in the process.



The House Subcommittee restored the \$112 million that the President's budget had proposed to cut from the Section 811 Supportive Housing for People with Disabilities Program. The subcommittee's restoration of the funds results in funding of \$237 million for the Section 811 program, level with FY 2007 amounts. In addition, the Subcommittee provided funds for 3,000 new incremental Section 8 Housing Choice Vouchers for non-elderly people with disabilities. This is the first time since FY 2003 that the Subcommittee has funded new Section 8 vouchers targeted to people with disabilities.

For the Department of Transportation (DOT), the bill supports the highway and transit amounts guaranteed by the current DOT authorization legislation, known as SAFETEA-LU – the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. The appropriations bill provides \$9.7 billion for transit investments, including \$87.5 million for the New Freedom program and \$127 million for the Section 5310 program for people with disabilities and those who are elderly. The New Freedom program provides funding for new transportation services and public transportation alternatives to assist people with disabilities that go beyond the requirements of the Americans with Disabilities Act (ADA). The Section 5310 program funds projects and services that meet the special transportation needs of individuals with disabilities and those who are elderly.

### **The Bottom Line on Appropriations**

It is unclear whether or not the President will make good on his threat to veto any appropriations bills that exceed his recommended budget, which most are likely to do. At present, it appears that the first appropriations bill to be vetoed could be that of the Department of Homeland Security, which raises spending 7 percent above the Administration's request. The President is not projected to veto the Military Construction and Veterans Affairs bill, however, which is even more costly, with an 8 per cent increase over the Administration's request – likely because the veto would probably be overridden due to support for veterans.

Congressional leaders have urged constituents and advocates not to expect massive increases in funding for programs simply because there is a Democratic Congress. While the Congress recognizes that there have been 12 years of budgetary downturns in programs that provide vital services to children, adults and families, they also assert that it will take time to repair. The national debt is more than \$8.8 trillion and has continued to increase an average of \$1.10 billion per day since the beginning of this fiscal year, having risen by about \$3 trillion per year for most of the past seven years of the Bush Administration. As House Appropriations Committee Chairman, Representative David Obey (D-WI), told a hearing room full of human services and education advocates recently while urging support for a House appropriations bill that many still consider inadequate, “We can’t undo 12 years of neglect in one year.”

A summary of the current status of appropriations that are relevant to the disability community is provided in the table on the following page.

**FY 2008 APPROPRIATIONS:  
LABOR, HHS, EDUCATION, SOCIAL SECURITY,  
HUD, TRANSPORTATION**

*All numbers in millions*

<b>FEDERAL PROGRAMS by Agency</b>	<b>FY 2007</b>	<b>FY 2008 President</b>	<b>FY 2008 House</b>	<b>FY 2008 Senate</b>	<b>DPC</b>
<b>DEPARTMENT OF LABOR</b>					
<b>Workforce Investment Act</b>					
Adult Employment	864.2	712.0	864.2	864.2	987.9
Youth Activities	940.5	840.5	940.5	940.5	1,093.4
<b>Office of Disability Employment Policy</b>	27.7	18.6	27.7	27.7	47.5
<b>Work Incentives Grants</b>	19.5	0	9.8	19.5	28.0
<b>DEPARTMENT OF HEALTH AND HUMAN SERVICES</b>					
<b>Developmental Disabilities Programs</b>					
Basic State Grants – Councils on DD	71.7	71.7	76.7	77.3	77.3
Protection & Advocacy (P & A) Systems - DD	38.7	38.7	38.7	42.7	45.0
University Centers for Excellence in DD	33.2	33.2	33.2	38.7	37.6
Projects of National Significance (PNS)	11.4	11.4	11.4	15.4	7.0
Family Support (previously included in PNS)	NA	NA	0	5.0	15.0
Research & Technical Assistance-Fam Supp.	NA	NA	0	2.0	2.0
<b>Lifespan Respite Care Act</b>	NA	0	0	0	40.0
<b>Maternal &amp; Child Health Block Grant</b>	693.0	693.0	750.0	673.0	729.0
<b>Centers for Disease Control &amp; Prevention</b>					
Birth Defects, DD, & Health	124.7	124.5	**	128.6	137.6
Chronic Disease Prevention	835.0	835.0	**	851.1	917.4
<b>National Institutes of Health</b>					
Natl. Inst. - Child Health & Human Dev.	1,254.7	1,264.9	1,273.8	1,282.2	1,341.0
Natl. Inst. - Neurological Disorders & Stroke	1,535.5	1,537.0	1,559.1	1,573.3	1,611.5
<b>Combating Autism *</b>					
CDC programs	15.0	15.0	**	16.4	16.5
HRSA programs	20.0	20.0	**	37.0	37.0
<b>Social Services Block Grant</b>	1,700.0	1,700.0	1,700.0	1,700.0	2,380.0
<b>Child Care &amp; Development Block Grant</b>	2,062.1	2,062.1	2,137.1	2,062.1	2,588.0
<b>State Grants to Remove Barriers to Voting P &amp; A for Voting Access</b>	10.9	10.9	10.9	11.4	25.0
	4.8	4.8	4.8	5.3	10.0
<b>DEPARTMENT OF EDUCATION</b>					
<b>IDEA</b>					
Part B State & Local Grants	10,783.0	10,492.0	10,957.4	11,240.0	19,229.0
Preschool Grants	380.8	380.8	380.8	380.8	841.0
Part C Early Intervention	436.4	423.1	436.4	450.0	725.0
Personnel Preparation	89.7	89.7	89.7	89.7	180.0
Parent Information Centers	25.7	25.7	25.7	27.0	28.6
Transition Initiative	0	2.0	0	0	5.5
<b>Rehabilitation Services Administration</b>					
Rehabilitation State Grant	2,837.2	2,837.2	2,874.0	2,874.0	3,120.0
Rehabilitation Training	38.4	38.4	38.4	38.4	42.7

<b>FEDERAL PROGRAMS by Agency</b>	<b>FY 2007</b>	<b>FY 2008 President</b>	<b>FY 2008 House</b>	<b>FY 2008 Senate</b>	<b>DPC</b>
P&A for Individual Rights	16.5	16.5	16.5	17.5	22.0
Supported Employment State Grant	29.7	0	29.7	29.7	50.0
<b>National Institute for Disability &amp; Rehabilitation Research (NIDRR)</b>	106.7	106.7	106.7	106.7	120.0
<b>State Assistive Technology Programs &amp; TA</b>	30.5	26.1	30.5	27.4	32.3
<b>P&amp;A for Assistive Technology</b>	4.4	0	0	4.6	6.0
<b>SOCIAL SECURITY ADMINISTRATION</b>					
Limitation on Administrative Expenses	9,295.5	9,596.9	9,696.9	9,721.9	10,440.0
<b>DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT</b>					
<b>Section 811 Supportive Housing</b>	236.6	118.8	237.0	***	240.0
<b>DEPARTMENT OF TRANSPORTATION</b>					
Section 5310--Elderly & People with Disabilities.	117.0	127.0	127.0	***	127.0
Section 5317--New Freedom Program	81.0	87.5	87.5	***	87.5

\* The Combating Autism Act authorized \$168 million in funding, of which \$114.5 is for the National Institutes of Health (NIH). It is estimated that in FY 2007, in addition to expenditures by CDC and HRSA, NIH spent about \$90 million. Neither the House nor the Senate bill, however, created a separate line item for FY 2008 autism research at NIH, although funding for the Combating Autism Act is anticipated.

\*\* The House committee bill lists funding levels only for broader categories for these line items and does not specify amounts for the programs within those categories.

\*\*\* The Senate appropriations process for the Departments of Housing and Urban Development and Transportation has not yet begun.

## THE AMERICANS WITH DISABILITIES ACT (ADA): SEVENTEEN YEARS LATER

*“Now I sign legislation which takes a sledgehammer to another wall, one which has for too many generations separated Americans with disabilities from the freedom they could glimpse, but not grasp.... I now lift my pen to sign this Americans with Disabilities Act and say ‘Let the shameful wall of exclusion finally come tumbling down.’”*  
President George H.W. Bush (1990)

When it was passed by the 101<sup>st</sup> Congress and signed by President George H.W. Bush in 1990, the Americans with Disabilities Act (ADA) had the stated intention of providing a “clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” Americans with disabilities looked forward to the day when the barriers would be gone that had always prevented access to full participation, inclusion, and equality of opportunity in America. On July 26, 2007, we celebrate the seventeenth anniversary of the enactment of the ADA.

In its seventeen years of existence, the ADA has brought a host of changes in access to community activities, services, transportation, communication, and many other aspects of American life. And as people have sought the help of the courts to have their rights under the ADA upheld, there have been many lower court rulings and a few Supreme Court decisions that have clearly served to liberate people with disabilities (e.g. Supreme Court decisions in *Tennessee v. Lane*, *Martin v. PGA Tours*, and *Olmstead v. L.C.*).

Unfortunately, however, the ADA’s promise has gone unfulfilled for thousands of Americans with disabilities who want to work and who face discrimination that restricts their ability to do so. This is due to a host of lower court rulings and some significant Supreme Court rulings that have retreated from the core principles of the ADA, and that the “shameful wall of exclusion” has not “come tumbling down” after all.

Seventeen years after the ADA was signed:

- ◆ The employment rate of people with disabilities has not improved. Up to 70% of people with disabilities of working age are unemployed, the same as in 1990.
- ◆ Two-thirds of people with disabilities who do not have a job indicate they would work if they could find employment.
- ◆ Courts decide in favor of employers and against people who charge workplace disability discrimination 97% of the time, often before the person has even had a chance to show that the employer treated them unfairly.

**Why do the courts rule against people who charge discrimination in employment?** The courts have created an absurd Catch-22 for people who claim employment discrimination. The employer can say a person is “too disabled” to do the job but not “disabled enough” to be protected by the law. The case is then thrown out of court, and the individual is never given the chance to prove he or she can do the job.

People with conditions like epilepsy, diabetes, HIV, cancer, hearing loss, or mental illness, for example, who manage their disabilities with medication, prosthetics, hearing aids, or other “mitigating measures” are viewed as “too functional” to have a disability and are denied the ADA’s protection from employment discrimination. Likewise, people who have been denied a job or fired because an employer mistakenly believed that they could not perform the job, or the employer just did

not want “people like that” in the workplace, are also denied the ADA’s protection from employment discrimination.

Just this year, in one of the most absurd court decisions of all, a man with intellectual and developmental disabilities and a diagnosis of Down syndrome was determined by the 11<sup>th</sup> Circuit Court of Appeals not to be disabled for purposes of the ADA. In Littleton v. Wal-Mart Stores, Inc., (No. 05-12770 - 11th Cir. May 11, 2007), the Eleventh Circuit found that Charles Littleton “sometimes has difficulty thinking or communicating... {but} it is unclear whether thinking, communicating and social interaction are ‘major life activities’ under the ADA.” The court went on to say, “Assuming that thinking, communicating and social interaction are ‘major life activities’ under the ADA, we conclude that Littleton has failed to create a genuine issue of material fact that he is substantially limited in those pursuits. Thus he has failed to assert a prima facie case of discrimination under the ADA.” Therefore, a man who has a clear record of having an intellectual disability his entire life was put in the position of not only having to prove that he has a legitimate disability but of having to prove that thinking, communicating and social interaction are “major life activities.”

**How did we get to this point?** Charles Littleton’s case is just a recent example. In 2005, the U.S. District Court of Delaware decided that Rob Emory, who has hemiplegic cerebral palsy, did not have a disability as defined by the ADA, since he had achieved high school graduation (through special education), employment, and various types of community participation. The Appeals Court, however, found that the lower court focused on Emory’s achievements “but ignored ample evidence of his substantial limitations in learning and performing everyday manual tasks” and overturned this egregious decision.

The U.S. Supreme Court, however, has rendered the most damaging and far-reaching decisions. It began in 1999 when the high court heard the case of *Sutton v. United Airlines* in which twins with severe (if not corrected) vision impairments had unsuccessfully sought pilot jobs with United Airlines and felt they had been discriminated against when they were not hired. The court ruled that they were not actually disabled because their vision could be corrected by “mitigating measures,” – eyeglasses- discounting altogether their claim of discrimination. Since then, the Supreme Court has rendered a number of decisions that clearly placed the burden on the individual with a disability to prove her/his disability rather than proving that discrimination occurred.

**Can Congress do anything?** As one of the original co-sponsors of the ADA in 1990, Congressman Steny Hoyer (D-MD) said in his 2002 Washington Post op-ed, “Not Exactly What We Intended, Justice O’Connor,” that it was not the intent of Congress “that lawyers for businesses and individuals should spend time and money arguing about whether people can brush their teeth and take out the garbage” before being able to show unfair discrimination in employment.

Last year, in an effort to restore the ADA’s original intent, Congressmen Jim Sensenbrenner (R-WI), Steny Hoyer (D-MD) and John Conyers (D-MI) introduced the Americans with Disabilities Act Restoration Act. This bill would have amended the ADA to bar discrimination against anyone “on the basis of disability,” a change from the act’s current wording which bars discrimination “against an individual with a disability,” the very wording that has been so narrowly construed by the courts and has often resulted in judges trying to decide whether someone actually has a disability that qualifies them for protection. A similar legislative “fix” is currently under consideration this year in both the House and the Senate.

**What are the chances for success?** As Congressional supporters attempt to return the ADA to the track that Congress meant for it to follow in 1990, the best strategy for passing new legislation has still not emerged from our champions in the House and Senate. With no bill yet introduced in either chamber, time is running short this year to assemble the same kind of broad bipartisan and bicameral coalition that passed the original ADA.

Seventeen years have gone by since the signing of the ADA, eight since the first devastating Supreme Court decision. Will it look the same on the 18<sup>th</sup> anniversary? Will yet more people face unfair job discrimination only to face unfair rulings by unfair courts? How many more people will have to suffer discrimination? How many more bad court decisions will have to be handed down before the Congress decides to act to make real the promises it made to Americans with Disabilities so long ago?

Restoration of the ADA remains among the “critical” Legislative Goals for The Arc and United Cerebral Palsy. To learn more about ADA Restoration efforts, go to the Consortium for Citizens with Disabilities website, [www.c-c-d.org](http://www.c-c-d.org).

## **LEGISLATION TO ESTABLISH NATIONAL HOUSING TRUST FUND INTRODUCED IN HOUSE**

Rep. Barney Frank (D-MA), Chairman of the House Financial Services Committee (which authorizes housing programs), Rep. Jim Ramstad (R-MN) and 14 bi-partisan cosponsors introduced the National Housing Trust Fund Act of 2007 (H.R. 2895) on June 28.

The purpose of the fund, which is modeled on successful state programs, is to construct, rehabilitate and preserve 1.5 million units of housing over 10 years. Funding for this effort would not come from annual Congressional appropriations. Instead, a dedicated source of financing would come from Fannie Mae and Freddie Mac profits as well as funds generated from the Federal Housing Administration. As the New York Times put it in an editorial hailing the bill, “the government would direct money made from housing right back into the same area.”

This bill is especially important for the disability community because of the housing affordability and accessibility crisis facing people with disabilities. This crisis has escalated in recent years due in large part to the lack of housing production. Housing affordability particularly impacts persons with disabilities who primarily rely on Supplemental Security Income (SSI) benefits to survive. According to *Priced Out in 2006*, a publication of the Technical Assistance Collaborative and the Consortium for Citizens with Disabilities Housing Task Force, 4 million Americans with disabilities who rely on a monthly SSI benefit that nationally averages \$632 for all their basic needs would have to pay 113.1 % of their entire monthly income to rent a modest one-bedroom unit – up from 109.6 % in 2004. For the first time, the cost of renting a smaller studio/efficiency rental unit also rose above monthly SSI income (100.1 percent in 2006).

Under H.R. 2895, 75% of funds must go to extremely low-income families (below 30% of median income). At least 30% of funds must go to families with incomes below the SSI income limit. Under the bill’s funding formula 60% of monies will go to participating local jurisdictions and 40% to states, Indian Tribes and insular areas. A 1% minimum amount floor is provided for each state. A proportionate amount must go to rural areas. If the total amount available in any year is less than \$2 billion, there is a \$1 million minimum funding threshold for local jurisdictions.

States and participating local jurisdictions are required to make Trust Fund grants to eligible recipients, which can be any organization, agency, or other entity, including for-profits, nonprofits (such as an affiliate of United Cerebral Palsy or chapter of The Arc), and faith-based organizations, that have demonstrated the experience and the capacity to carry out the proposed Trust Fund activity.

In a letter to Chairman Frank, the Disability Policy Collaboration applauded the legislation, not only for addressing the affordability crisis facing people with disabilities but for ensuring that federal accessibility law will apply to units built with Trust Fund dollars – which will dramatically increase the number of wheelchair accessible units across the country. We noted that “As more and more of our constituents age, their need for such housing increases.”

A Senate version of this bill has not yet been introduced. You can read the full text of the National Housing Trust Fund Act of 2007 (H.R. 2895) at: <http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.2895/>

### **SENATOR SMITH INTRODUCES THE PATHWAYS TO INDEPENDENCE ACT OF 2007**

On June 28, Senator Gordon Smith (R-OR), introduced a bill, S. 1730, modifying the federal Temporary Assistance for Needy Families (TANF) law to ensure that states have the flexibility needed to provide services and supports to people with disabilities to help them become employed. Senators Stabenow (D-MI), Conrad (D-ND) and Collins (R-ME) joined Senator Smith as original co-sponsors. The bill builds on bipartisan legislation introduced in the 109<sup>th</sup> Congress, S. 456, *The Pathways to Independence Act of 2005*. Since the introduction of S. 456 in February 2005, Congress enacted new TANF requirements as part of the Deficit Reduction Act (P.L. 109-171) and the Department of Health and Human Services (HHS) issued its interim final rules. Both the DRA and HHS's regulations had the effect of limiting states' ability to craft programs that address the needs of individuals with disabilities. S. 1730 would provide states greater flexibility to address the needs of these individuals and move them into the workforce.

**Current Federal Law:** The new federal TANF law requires states to satisfy higher work participation rates for welfare recipients, including individuals with disabilities, in a very short timeframe. In order to comply with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, states are required to make modifications to the work requirements they impose on TANF recipients with disabilities. But under the federal TANF rules, states only get credit when recipients participate in a narrow set of activities for a specific number of hours each week, with limited flexibility for people with disabilities. Thus, if states provide the ADA-required modifications to work requirements for people with disabilities, they may not meet the state's TANF work rate and face fiscal penalties *even if the recipients are actively engaged in activities designed to help them secure employment.*

**States Object:** In their formal comments on HHS's TANF regulations, over 20 states identified problems in being able to both serve individuals with disabilities appropriately and meet the federal TANF requirements. The state comments raised many of the same concerns as the DPC did in our comments on the regulations that we submitted as part of the Consortium for Citizens with Disabilities (CCD). The disability community and many of the states both recognize that additional

flexibility is needed to provide the individualized services many people with disabilities require and to meet the requirements of the Americans with Disabilities Act.

**Bill Summary:** The Smith bill would adjust the federal work participation requirements (in accordance with ADA's and the Rehabilitation Act's obligations) so that states could get credit when individuals with disabilities participate in work-related activities - even if the nature of those activities or the number of hours do not match the standard TANF requirements. The bill allows states to:

- Develop modified employability plans for TANF recipients who have been determined by a qualified professional to have a disability or to be caring for someone with a disability. This plan can include reasonable modifications to work activities and/or hourly participation requirements. Unlike current law, these TANF recipients would count towards the state's work participation rate if they comply with the requirements in their modified employability plans.
- Exclude two limited groups of people with severe disabilities from the TANF work participation rates. The two groups are: 1) people with a pending application for Supplemental Security Income (SSI), *if* the state has made a determination that the individual's disability is severe enough to qualify for SSI and 2) people with severe temporary disabilities - such as complications related to a pregnancy or recovery from serious surgery - that make it impossible, in the short term, for them to meet the work requirements (they are ineligible for SSI if their disabilities are expected to last less than 12 months).

States that opt to follow either of the above provisions must provide a detailed annual report to HHS explaining how they have used this flexibility, and HHS also must provide Congress with a summary of the impact of the provision each year. You can read the full text of the Pathways to Independence Act of 2007 (S. 1730) at: <http://www.thomas.gov/cgi-bin/query/z?c110:S.1730/>

### **THE SENATE HEALTH, EDUCATION, LABOR AND PENSIONS (HELP) COMMITTEE UNANIMOUSLY ENDORSED THE HIGHER EDUCATION AMENDMENTS OF 2007**

On June 20, the Senate Health, Education, Labor and Pensions (HELP) Committee unanimously endorsed the Higher Education Amendments of 2007 (S. 1642). This bill reauthorizes the higher education programs and creates new programs for people with intellectual and cognitive disabilities.

Nationwide, many institutions of higher education have begun to support youth with intellectual disabilities in post-secondary education. It is estimated that there are 120 diverse programs on college campuses that include youth with intellectual disabilities. The new federal support provided by S. 1642 will build on the existing models, focusing on individual student vision and choice, integrated work experiences leading to gainful employment, independent living skills, socialization and academic enrichment.

Section 773 of the bill creates the model comprehensive transition and postsecondary program for students with intellectual disabilities. The Secretary of Education is directed to award at least 10 grants per year – each for 5 years – to institutions of higher education to develop these model programs. It is expected that these programs will work in partnership with other relevant agencies

(such as vocational rehabilitation), integrate students with disabilities into student housing, or involve other students at the college who are studying special education, general education, vocational rehabilitation or assistive technology.

Section 774 creates a coordinating center for technical assistance, evaluation and development of accreditation standards. The purpose of the coordinating center is to facilitate collaboration and evaluation between model programs and to develop accreditation standards for programs in higher education for students with intellectual disabilities.

Students with intellectual disabilities who enroll in a comprehensive transition and postsecondary program for students with intellectual disabilities will be eligible, for the first time, for student federal financial assistance – Pell grants, work study grants and campus based grants.

The higher education reauthorization also includes other programs of interest to the disability community. Title II of the bill, which is for teacher preparation is targeted to undergraduate and Masters programs with a focus on clinical preparation. There is a new focus on teacher residency programs where living stipend is paid to the Masters students while they are in a one year intensive residency program. The undergraduate programs include a 2 year new teacher induction component. Universities must partner with high need schools or school districts and one of the purposes of the grants is to address shortage areas including special education.

The Demonstration Projects for Students with Disabilities are reauthorized. The purpose of the program includes improving retention and completion of postsecondary education by students with disabilities. The new language highlights transition programs, distance learning, supporting and training staff in disability related fields, and making postsecondary education accessible through curriculum development. If enacted, the new programs targeted to individuals with intellectual disabilities provide exciting new opportunities for transitioning youth. Academic programs, work study and the other options that are being tried throughout the nation will fill the void that exists for many students leaving the educational system and looking for work. The new teacher preparation will help more teachers meet the standards set in the No Child Left Behind law for teacher qualifications and will help ameliorate the crisis of tens of thousands of special education teachers who do not the standards.

There is, as of yet, no House companion bill for this reauthorization bill. You can read the full text of the Higher Education Amendments of 2007 (S. 1642) at <http://www.thomas.gov/cgi-bin/query/z?c110:S.1642:/>