



## MEMORANDUM

September 10, 2012

**To:** The Committee on Education and the Workforce  
U.S. House of Representatives  
Attention: Jody Calemine, Staff Director

**From:** David Bradley, Specialist in Labor Economics, 7-7352

**Subject:** **State Unified Plan Provisions in H.R. 4297**

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This memorandum has been prepared in response to your request for information on H.R. 4297, the Workforce Investment Improvement Act of 2012, which would reauthorize and amend the Workforce Investment Act of 1998 (WIA; P.L. 105-220). Specifically, you requested an analysis of the H.R. 4297 provisions related to the “State Unified Plan,” which would allow a state to apply for the authority to consolidate funding from various non-WIA programs. This memorandum briefly describes WIA, describes the provisions in current law related to state unified plans, and then describes the changes that H.R. 4297 would make to current provisions.

## WIA Background and Reauthorization

The Workforce Investment Act of 1998 (WIA; P.L. 105-220) is the primary federal program that supports workforce development activities, including job search assistance, career development, and job training. WIA established the One-Stop delivery system as a way to co-locate and coordinate the activities of multiple employment programs for adults, youth, and various targeted subpopulations. The delivery of these services occurs primarily through more than 3,000 One-Stop career centers nationwide.

The authorizations for appropriations for most programs under WIA expired at the end of Fiscal Year (FY) 2003. Since that time, WIA programs have been funded through the annual appropriations process. In the 108<sup>th</sup> and 109<sup>th</sup> Congresses, bills to reauthorize WIA were passed in both the House and the Senate, however, no further action was taken. In June 2011 of the 112<sup>th</sup> Congress, the Senate Committee on Health, Education, Labor, and Pensions (HELP) released discussion drafts of legislation to amend and reauthorize WIA. While markup of this legislation was scheduled, it was ultimately postponed indefinitely. No legislation on this draft proposal has since been introduced.

The House Committee on Education and the Workforce, however, has ordered reported H.R. 4297—the Workforce Investment Improvement Act of 2012. This bill was introduced on March 29, 2012, by Representative Virginia Foxx of North Carolina, the chair of the Subcommittee on Higher Education and Workforce Training (for herself, Representative Howard P. “Buck” McKeon of California, and Representative Joseph Heck of Nevada). A legislative hearing on H.R. 4297 was held before the full

Committee on Education and the Workforce on April 17, 2012. On June 7, 2012, the committee, after considering 23 amendments to H.R. 4297, ordered the bill reported by a vote of 23 to 15.

H.R. 4297 would maintain the One-Stop delivery system established by WIA. It would also repeal numerous programs authorized by WIA and other federal legislation, while consolidating other programs into a new single funding source—the Workforce Investment Fund (WIF). In addition, H.R. 4297 would increase the role of business representatives in the state and local governance structure of WIA and would increase the ability of states to propose further program consolidation in the funding and delivery of workforce services. Adult Education and Vocational Rehabilitation would retain separate titles and funding in H.R. 4297.

## State Unified Plan Provisions in WIA

Under Section 112 of WIA, states are required to submit a plan (State plan) to the Secretary of Labor that “outlines a 5-year strategy for the statewide workforce investment system” of the state. Section 501 of WIA, however, also provides states the option of submitting a state unified plan that covers WIA and related workforce development programs and activities. If a state chooses to submit a unified plan, that state is not required to submit any other plans for programs or activities that are covered in the unified plan. The unified plan provisions in WIA were enacted primarily for purposes of coordinating workforce development activities and programs but do not explicitly permit consolidation of program funding. Section 501 of WIA includes the following main provisions:

- Permits a state to “develop and submit to the appropriate secretaries a State unified plan” for approval. An “appropriate secretary” is defined as the head of the agency who has administrative authority over a program or activity included in the unified plan;
- Requires that a unified plan cover at least two activities or programs currently identified as One-Stop partner programs in WIA law;<sup>1</sup> and
- Requires the unified plan to describe “the methods used for joint planning and coordination of the programs and activities included in the unified plan” and “an assurance that the methods included an opportunity for the entities responsible for planning or administering such programs and activities to review and comment” on the plan.

While permitting states the option of submitting a unified plan that specifies methods for coordinating workforce development activities and programs, Section 501 also includes two statutory limits with respect to the authority to coordinate.

- Section 501(c) of WIA explicitly notes that the activities or programs described in the unified plan shall “be subject to the requirements, if any, applicable to a plan or application for assistance under the Federal statute authorizing the activity or program.” In other words, Section 501(c) indicates that although activities and programs may be coordinated, authorizing statute requirements (e.g., performance standards, uses of funds) related to those programs or activities must be adhered to in carrying out the coordination.

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<sup>1</sup> The list of programs is in WIA Section 501(b)(2). For a list of these programs, see CRS Report R41135, *The Workforce Investment Act and the One-Stop Delivery System*, by David H. Bradley.

- Section 501(d) establishes an approval process by which the appropriate secretaries must review state unified plans. Specifically, a proposed state unified plan is to be considered approved within 90 days of submission to the relevant Secretary unless the Secretary determines that the relevant portion of the proposed unified plan “is not consistent with the requirements of the Federal statute authorizing the activity or program.” In addition, Section 501(d) authorizes the relevant Secretary to deny a state unified plan if the plan itself does not follow the statutory requirements for submission established by Section 501, such as providing assurances that entities responsible for affected programs were given the opportunity to review and comment on proposed coordination proposals.

Taken together these provisions seem to authorize the Secretary to deny a unified plan if any of the proposed activities in the plan do not meet the requirements of the underlying program statute or do not follow plan submission procedures.

## State Unified Plan Provisions Under H.R. 4297

Section 142 of H.R. 4297 would amend provisions for the state unified plan to allow for fund consolidation of certain programs.<sup>2</sup> Specifically, H.R. 4297 would create a new subsection (501(e), “Authority To Consolidate Funds Into Workforce Investment Fund”) with the following major provisions:

- Provides that states with an “approved application” (i.e., a state unified plan that has been approved by the appropriate secretaries) may consolidate funds into the Workforce Investment Fund from eligible programs included in the state unified plan (see **Table 1** for a list of eligible programs). The amendment states that the purpose of this provision is to “reduce inefficiencies in the administration of federally-funded State and local employment and training programs;”
- Provides that states with an “approved application” may treat funds consolidated into the Workforce Investment Fund “as if they were original funds allotted to a State under section 132(b).” This section of WIA (132(b)) provides for allotments into the state Workforce Investment Fund. Thus, funds from certain programs would be treated as if they were initially allocated to the state Workforce Investment Fund. These consolidated funds would no longer be linked to the source programs from which they were generated; and
- Prohibits states from consolidating funds allocated under the Carl D. Perkins Career and Technical Education Act of 2006 and funds allocated under the Rehabilitation Act of 1973.

**Table I. Program and Activity Funding Potentially Subject to Consolidation Provisions in H.R. 4297**

Statutory Reference in H.R. 4297	Program Description/Notes
Programs and Activities Authorized Under Title I	Workforce development programs allowable under the WIF, including Job Corps and employment and training services

<sup>2</sup> For the specific text of the amendment, see Amendment in the Nature of a Substitute to H.R. 4297, [http://edworkforce.house.gov/uploadedfiles/06.07.12\\_amend1\\_sub.pdf](http://edworkforce.house.gov/uploadedfiles/06.07.12_amend1_sub.pdf).

Statutory Reference in H.R. 4297	Program Description/Notes
Programs and Activities Authorized Under Title II	Educational services for adults with less than a high school education and English as a second language
Programs and Activities Authorized Under Title II of the Trade Act of 1974	Trade Adjustment Assistance (TAA) for Workers, as well as funding for other non-formula programs to assist parties affected by international trade
National Apprenticeship Act of 1937	Oversight of registered apprenticeship programs
Programs Authorized Under the Community Services Block Grant (CSBG)	CSBG grants fund local community entities to provide a wide range of anti-poverty activities
Programs Authorized Under Part A of Title IV of the Social Security Act	Temporary Assistance for Needy Families (TANF) block grant (which funds cash assistance and other activities for low-income families), mandatory child care, and a variety of other competitive grants
Programs Authorized Under State Unemployment Compensation Laws (in accordance with applicable Federal law)	Because the authorizing statute for the Employment Service (ES) is repealed in H.R. 4297, it is not entirely clear which programs would be eligible for consolidation
Work Programs Authorized Under Section 6(o) of the Food Stamp Act of 1977	Supplemental Nutrition Assistance Program (SNAP) work requirements and eligibility limitations for able-bodied adults without dependents (ABAWDs)
Programs and Activities Authorized Under Title I of the Housing and Community Development Act of 1974	Community Development Block Grant program funds cities and states for neighborhood revitalization, housing rehabilitation, and economic development
Programs and Activities Authorized Under the Public Workers and Economic Development Act of 1965	Funds for public works and economic development activities in distressed areas
Activities as Defined Under Chapter 41 of Title 38, United States Code	Disabled Veterans' Outreach Program specialists and Local Veterans' Employment Representatives, as well as several other non-formula programs

**Source:** CRS analysis of H.R. 4297.

**Notes:** Programs and activities authorized under the Carl D. Perkins Career and Technical Education Act of 2006 and under the Rehabilitation Act of 1973 are not included in **Table I**. Although these programs and activities are eligible to be included in a state unified plan, H.R. 4297 explicitly prohibits the consolidation into the WIF of funds from these Acts.

While H.R. 4297 would retain the provisions that allow a state to submit a unified plan for coordination of workforce development activities, it would also expand the potential scope of this coordination by adding the ability to consolidate funds from programs authorized under legislation other than H.R. 4297. Because H.R. 4297 would allow a state to treat “any and all funds consolidated into the Workforce Investment Fund as if they were original funds allotted to a State under section 132(b),” this might be interpreted to mean that any program requirements associated with the source funds would not apply to the funds upon consolidation into the WIF. Rather, this provision of H.R. 4297 would seem to subject consolidated funds to the program requirements of WIA only. Thus, for example, if TANF funds were consolidated into the WIF, TANF program requirements (e.g., work requirements) may no longer apply to that portion of funding because the TANF funding would not exist (i.e., it would be part of the WIF and thus subject to WIF program requirements).

There is some uncertainty, however, about the actual scope for consolidation due to sections 501(c) and 501(d) of WIA.

- While Section 501(c) would remain in WIA (see above), the new paragraph 501(e)(2) states that, “[N]otwithstanding subsection (c).” The clause “notwithstanding” is used

sometimes by Congress to underscore the primacy of a directive. Although the use of “notwithstanding” does not definitely preclude existing provisions of WIA, it may be construed as an intent to override conflicting provisions.<sup>3</sup> In the case of H.R. 4297, if the provisions in Section 501(c) are overridden by the provisions proposed in Section 501(e), then it appears that original program requirements (of the program being consolidated) would not need to be followed. It is not clear how the seeming contradiction between Section 501(c) and Section 501(e) might be reconciled.

- On the other hand, H.R. 4297 would not amend Section 501(d). As noted above, this section of WIA grants the relevant Secretary the authority to deny a state unified plan if the proposed unified plan “is not consistent with the requirements of the Federal statute authorizing the activity or program.” So, sticking with the previously mentioned example, if a state proposed to consolidate funds from the TANF program under the provisions proposed in Section 501(e) and treat those funds as if they were allotted under WIA (i.e., use the funds for workforce development activities authorized under WIA), the Secretary of HHS would seem to have the authority to deny the unified plan because the proposed use of the TANF funds would not be consistent with the requirements of Part A of Title IV of the Social Security Act.
- Finally, there does not appear to be any provision in Section 501 (as amended by H.R. 4297) that would require states to propose consolidation in the state unified plan submitted to the relevant secretaries. Section 501(e) would allow states the option of consolidating funds “under an approved application under subsection (d) into the Workforce Investment Fund.” But H.R. 4297 does not amend subsection (d) to require that state unified plans specify consolidation plans. Thus, one reading of the amendments in Section 501 is that a state could submit a state unified plan that meets the requirements of WIA and, upon receiving an approved application, choose to consolidate funds at a later time.

In conclusion, the provisions in H.R. 4297 related to the state unified plan appear to expand the scope of current law by allowing states to propose consolidation of funds from programs authorized outside of WIA and to use those funds in a manner consistent with WIA. Although the amendment in H.R. 4297 indicates that this proposed allowable consolidation is to “reduce inefficiencies in the administration” of programs, this purpose is not addressed further in the amendment and is not part of the description of how consolidated funds are to be used. There is some uncertainty, however, about whether a Secretary would apply the provisions of Section 501(d), which appear to require that any programs and activities in a state unified plan must be consistent with the statute authorizing that program or activity, in approving or denying a state unified plan proposal.

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<sup>3</sup> For a discussion of Congressional use of “notwithstanding,” see page 37 of CRS Report 97-589, *Statutory Interpretation: General Principles and Recent Trends*, by Larry M. Eig.