

Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities

Interim Report to:

The Honorable Thomas E. Perez
United States Secretary of Labor

The United States Senate
Committee on Health, Education, Labor and Pensions

The United States House of Representatives
Committee on Education and the Workforce

September 15, 2015

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Thomas E. Perez
Secretary of Labor
United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Perez:

The Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities was established under Section 609 of the Rehabilitation Act of 1973, as amended by Section 461 of the Workforce Innovation and Opportunity Act (WIOA) of 2014, to advise in three areas:

- (1) Ways to increase competitive integrated employment (CIE) opportunities for individuals with intellectual or developmental disabilities (I/DD) or other individuals with significant disabilities;
- (2) The use of certificate program carried out under Section 14(c) of the Fair Labor Standards Act (FLSA) for the employment of individuals with I/DD or other individuals with significant disabilities; and
- (3) Ways to improve oversight of the use of such certificates.

The Committee was established in September 2014 according to the provisions of the Federal Advisory Committee Act (FACA), which helps ensure the independent nature of the Committee in providing advice and recommendations to the Administration. The full interim report represents the collaborative work of the Committee as a whole.

The primary purpose of the work of the Committee is to address issues, and make recommendations, to improve the employment participation of people with I/DD and others with significant disabilities by ensuring opportunities for CIE.

Attached you will find the Committee's Interim Report of Preliminary Recommendations. We are, as a committee, committed to continue our work in preparing findings, conclusions, and final recommendations by September 15, 2016.

Sincerely,

David M. Mank
Chair
Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities

Disclaimer

This report is produced by the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the “Committee”). The Committee is established under Section 609 of the Rehabilitation Act of 1973, as amended by Section 461 of WIOA, to advise the Secretary of Labor in three areas:

- (1) Ways to increase competitive integrated employment (CIE) opportunities for individuals with intellectual or developmental disabilities (I/DD) or other individuals with significant disabilities;
- (2) The use of certificate program carried act under Section 14(c) of the Fair Labor Standards Act (FLSA) for the employment of individuals with I/DD or other individuals with significant disabilities; and
- (3) Ways to improve oversight of the use of such certificates.

In accordance with the statute, this Committee has brought together leaders from numerous federal agencies with a diverse group of critical stakeholders including individuals with I/DD and other significant disabilities, providers of employment services, representatives of national disability advocacy organizations, academic experts with expertise on employment and wage policy issues for individuals with I/DD or other significant disabilities, representatives of the employer community and others with expertise on increasing CIE opportunities for individuals with I/DD or other significant disabilities.

The Department of Labor established the Committee on September 15, 2014 for a two year period, in accordance with the provision of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2. FACA helps ensure the independent nature of the body and requires that the Department not exercise “inappropriate influence” over the advice and recommendations in its report. Consistent with this provision, neither this report, nor the preliminary recommendations it contains, have been cleared or approved by the Secretary of Labor, the U.S. Department of Labor, nor the Administration, and, as such, the views expressed in this report should not be regarded as those of the Secretary, the Department, or the Administration. The report represents the collaborative work and preliminary recommendations of the Committee as a whole.

Dedication

In February 2015, shortly after the first meeting of the Advisory Committee, Randee Ellen Chafkin passed away. Randee was a long time employee in the U.S. Department of Labor, contributing her knowledge and passion first at the President's Committee on Employment of People with Disabilities, then the Office of Disability Employment Policy, and most recently the Employment and Training Administration. Randee dedicated her life to increasing employment of people with disabilities, especially youth and adults who experience the most significant barriers to full inclusion in employment and community participation. She will be greatly missed. When she died, a note was pinned to the wall near her desk. The sentiment expressed in that note reflects Randee's dedication and career, and is fitting for the work of the Advisory Committee.

"It's the action, not the fruit of the action that's important. You have to do the right thing. It may not be in your power, may not be in your time that there'll be any fruit. But that doesn't mean you stop doing the right thing. You may never know what results come from your action. But if you do nothing, there will be no result." - Mahatma Ghandi

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* - denotes Federal Member

Abbreviations

AAPD	American Association of People with Disabilities	Com	The AbilityOne® Commission
ABLE	Achieving a Better Life Experience	CRP	Community Rehabilitation Programs
ACA	Affordable Care Act	DD	Developmental Disabilities
ACICIEID	Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities or the Committee	DEI	Disability Equality Index
ACP	Academic Career Planning	DFO	Designated Federal Officer
ACRE	Association of Community Rehabilitation Educators	DOJ	U.S. Department of Justice
ADA	Americans with Disabilities Act	DOL	U.S. Department of Labor
AIDD	Administration on Intellectual and Developmental Disabilities	DOT	U.S. Department of Transportation
AJC	American Job Centers	DSP	Disability Service Professionals
AMC	AMC Theatres	EBP	Evidence Based Practice
ANPRM	Advanced Notice of Preliminary Rule Making	ED	U.S. Department of Education
APSE	Association of People Supporting Employment First	EEOC	Equal Employment Opportunity Commission
BIP	Balancing Incentive Program	EFSLMP	Employment First State Leadership Mentoring Program
Campaign	National Educational Campaign	ERG	Employee Resource Groups
CIE	Competitive Integrated Employment	ESEA	Elementary Secondary Education Act
CIL	Centers for Independent Living	ETA	Employment and Training Administration
CMS	Centers for Medicare & Medicaid Services	FACA	Federal Advisory Committee Act
CNA	Central Nonprofit Agencies	FFP	Federal Financial Participation
		FLSA	Fair Labor Standards Act
		FOCUS	Furthering Opportunities, Cultivating Untapped Strengths
		GAO	Government Accountability Office ¹

¹ On July 7, 2004, the U.S. General Accounting Office changed its name to the U.S. Government Accountability

Office. All in text references refer to reports prior to 2004

HCBS	Home and Community-Based Services	PIE	Partnerships in Employment
HGI	High Growth Industries	PSE	Postsecondary Education
HHS	U.S. Department of Health and Human Services	QWE	Quality Workplace Environment
I/DD	Intellectual or Developmental Disabilities	REDI	Retail Employees with Disabilities Initiative
ID	Intellectual Disabilities	RSA	Rehabilitation Services Administration
IDEA	Individuals with Disabilities Education Act	SAMHSA	Substance Abuse and Mental Health Services Administration
IEP	Individualized Education Program	SEA	State Education Agencies
ILP	Individualized Learning Planning	SME	Subject Matter Experts
IPE	Individual Employment Plan	SSA	Social Security Administration
IPS	Individual Placement and Support	SSDI	Social Security Disability Insurance
IRS	Internal Revenue Service	SSI	Supplemental Security Income
JWOD	Javits-Wagner-O'Day Act	SVRA	State Vocational Rehabilitation Agencies
LEA	Local Education Agencies	SWEP	School Work Experience Programs
LTSS	Long Term Supports and Services	USBLN	U.S. Business Leadership Network
NCD	National Council on Disability	VA	U.S. Department of Veterans Affairs
NIB	National Industries for the Blind	VR	Vocational Rehabilitation
NOD	National Organization on Disability	WDB	Workforce Development Boards
NPA	Nonprofit Agencies	WHD	Wage and Hour Division
OCR	Office of Civil Rights	WIOA	Workforce Innovation and Opportunity Act
ODEP	Office of Disability Employment Policy		
OFCCP	Office of Federal Contract Compliance Programs		
OSEP	Office of Special Education Programs		
OSERS	Office of Special Education and Rehabilitative Services		

Executive Summary

The Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the “Committee”) was established under Section 609 of the Rehabilitation Act of 1973, as amended by Section 461 of the Workforce Innovation and Opportunity Act (WIOA) of 2014, to advise the Secretary of Labor in three areas:

- (1) Ways to increase competitive integrated employment (CIE) opportunities for individuals with intellectual or developmental disabilities (I/DD) or other individuals with significant disabilities;
- (2) The use of certificate program carried out under Section 14(c) of the Fair Labor Standards Act (FLSA) for the employment of individuals with I/DD or other individuals with significant disabilities; and
- (3) Ways to improve oversight of the use of such certificates.

The Committee was established in September 2014 according to the provisions of the Federal Advisory Committee Act (FACA), which helps ensure the independent nature of the Committee in providing advice and recommendations to the Administration. The full interim report represents the collaborative work of the Committee as a whole.

The primary purpose of the work of the Committee is to address issues, and make recommendations, to improve the employment participation of people with I/DD and others with significant disabilities by ensuring opportunities for CIE. WIOA¹ defines “competitive integrated employment” as:

Work performed on a full or part time basis for which an individual is:

- (1) Compensated at not less than federal minimum wage requirements or state or local minimum wage law (whichever is higher) and not less than the customary rate paid by the employer for the same or similar work performed by other individuals without disabilities;
- (2) At a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and
- (3) Presented, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

The Committee is comprised of eighteen (18) non-governmental members and seven (7) federal official members. The non-governmental members represent: self-advocates, providers of employment services, representatives of national disability advocacy organizations, experts with a background in academia, employer representatives and others with related expertise on CIE.

In the subsequent Committee Charter (See Appendix B), the charge to the Committee was further clarified to include:

- Review existing federal policy and make recommendations to break down barriers to CIE;
- Provide recommendations to modernizing the service delivery system and expanding strategies for increasing CIE;
- Recommend system-change strategies to ensure that CIE is the first option for people with significant disabilities; and
- Review the use of the certificate program under Section 14(c) (use of subminimum wages) and recommend ways to improve oversight and reduce reliance on such certificates.

Highlights of Preliminary Recommendations

The work of the Committee began with its first meeting in January 2015, followed by full committee meetings in March, May, and July 2015. The work of the Committee includes formation of four subcommittees. These committees are: Transition to Careers; Complexity and Needs in Delivering Competitive Integrated Employment; Marketplace Dynamics; Building State and Local Capacity; Section 14(c) Subminimum Wage Certificate Program; and AbilityOne® Program. Following are highlights of the Preliminary Recommendations of the Committee.

The primary focus of the work of the Committee and the formation of preliminary recommendations is: (1) to increase opportunities for CIE; (2) to ensure CIE is the first option for people with significant disabilities in order to increase the employment participation rate; and (3) to significantly reduce the use of FLSA Section 14(c) and the dependence on subminimum wages and segregated service placements.

Transition to Careers Subcommittee

The Preliminary Recommendations of the Transition to Careers Subcommittee emphasize:

- Increasing opportunities for early work experiences for all youth with disabilities, including beginning transition at age 14, and conducting research of effective transition practices resulting in CIE for youth;
- Increasing nationwide opportunities for postsecondary education for youth with significant disabilities which includes competitive integrated work experiences;

- Addressing family expectations for CIE at early ages;
- Creating seamless transition and systems integration in policy and funding for transition across related federal agencies; and
- Improving professional supports and incentives by improving school and provider competencies and providing technical assistance to states.

Complexity and Needs in Delivering Competitive Integrated Employment Subcommittee

The Preliminary Recommendations of the Complexity and Needs Subcommittee emphasize:

- Aligning policy and practices to prioritize CIE across federal agencies, “including the U.S. Department of Labor, U.S. Department of Health and Human Services (including the Centers for Medicare & Medicaid Services), U.S. Department of Education (including the Rehabilitation Services Administration), and Social Security Administration;”
- Aligning across federal agencies the funding rules and payment methodologies to prioritize and incentivize CIE and help provide opportunities for CIE to people currently in segregated work and non-work day programs;
- Addressing real and perceived disincentives to employment caused by concerns about loss of healthcare benefits (Medicaid and/or Medicare) and/or cash benefits (Supplemental Security Income and/or Social Security Disability Insurance);
- Addressing systemic low expectations around employment by increasing knowledge of, and capacity to provide, effective practices for achieving CIE for people with significant disabilities; and
- Improving accountability for achieving CIE and ensuring quality through the development of a uniform definition for CIE and requirements for collecting data and outcome measures at the federal and state levels.

Marketplace Dynamics Subcommittee

The Preliminary Recommendations of the Marketplace Dynamics Subcommittee are focused on employer and business model issues for increasing CIE. These emphasize:

- Changing the narrative about hiring people with significant disabilities to promote hiring people with disabilities as good for business outcomes through a national education campaign;
- Creating a sustainable culture of inclusion and diversity through business to business communications and marketing to businesses of all sizes;

- Building better business partnerships between businesses, providers of employment services, and government programs;
- Addressing training issues by improving provider competencies and developing national training requirements; and
- Addressing the complex issues of transportation in urban, sub-urban and rural America.

Building State and Local Capacity Subcommittee

The Preliminary Recommendations of the Building State and Local Capacity Subcommittee emphasize:

- Expanded use of Home and Community-Based Services (HCBS) Waiver programs for CIE by changing the federal match requirements to states to incentivize CIE;
- Aligning and improving data systems on CIE outcomes;
- Promoting and funding innovations in new and existing provider organizations;
- Creating and funding professional development to improve provider competencies; and
- Providing funding for provider transformation.

Section 14(c) Subminimum Wage Certificate Program

Each of the four initial subcommittees worked on the development of Preliminary Recommendations related to the FLSA Section 14(c) certificate program. These Preliminary Recommendations include attention to:

- The need for better data on the use of this program and its outcomes;
- Improving monitoring and oversight of the program;
- Aligning use of the program with modern federal disability policies, including the Americans with Disabilities Act (ADA) and the Supreme Court's *Olmstead* decision, WIOA, and recent rules and guidance from the Centers for Medicare & Medicaid Services (CMS);
- Considering a well-designed phase out of the program as a result of increasing CIE;
- Providing technical assistance to states and providers to reduce the use of the program; and
- Addressing concerns of unintended consequences by ensuring quality alternatives.

AbilityOne® Program

Two of the initial subcommittees addressed issues of the AbilityOne Program. The Preliminary Recommendations emphasize:

- Amending the Javits-Wagner-O'Day (JWOD) Act to align with modern federal disability policies, including the ADA, and change the program to emphasize inclusion of people with significant disabilities alongside nondisabled peers in CIE workplaces instead of congregating and segregating people with significant disabilities;
- Creating an expectation that the AbilityOne Program establish CIE as the expected and priority outcomes;
- Improving oversight of the program; and
- Creating improved data systems on the use and the outcomes of the program.

Conclusion

The primary focus of the work of the Committee, and the formation of preliminary recommendations, is to increase opportunities for CIE for individuals with I/DD or other significant disabilities. Ensuring that CIE is the first option for people with I/DD or other significant disabilities will increase their employment participation rate and lead to a significant reduction in their placement in segregated work and non-work programs and in the use of Section 14(c) certificates for paying subminimum wages. The work of the Committee will continue as it prepares its Final Report to be delivered to the Secretary of Labor and Congress by September 15, 2016.

Introduction: Setting the Context

The Workforce Innovation and Opportunity Act (WIOA), signed into law by President Obama on July 22, 2014, makes significant improvements in federal law for Americans with disabilities, including youth with disabilities as they transition from education to employment, by helping to ensure these citizens have opportunities to acquire the skills and training they need to maximize their potential and enter competitive integrated employment (CIE). Among the many provisions in WIOA designed to strengthen and improve employment for all individuals with disabilities is the establishment of an Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the “Committee”) under Section 609 of the Rehabilitation Act of 1973, as amended by Section 461 of WIOA.

Unemployment and absence from the national workforce among individuals with significant disabilities is a pervasive problem in the United States today. In particular, the drastically low unemployment rate and the even lower workforce participation rate for people with intellectual or developmental disabilities (I/DD) has been widely documented.² While other people with disabilities experience extraordinarily low rates of workforce participation and unemployment, those with I/DD have the lowest employment rates and the lowest compensation rates.³ Those with I/DD are currently the least likely disability group to be participating in CIE. Increasing CIE for individuals with I/DD as well as those with other significant disabilities is a widely shared goal, but one for which a truly comprehensive federal strategy has yet to be defined and implemented.

Currently, an estimated 228,600 people with I/DD and other significant disabilities who are involved in paid work activity are working for subminimum wage under special certificates issued by the U.S. Department of Labor (DOL) Wage and Hour Division (WHD).⁴ Section 14(c) of the Fair Labor Standards Act (FLSA) permits the Secretary of Labor to issue certificates to employers permitting employment at subminimum wage if the Secretary deems this to be necessary to prevent the curtailment of employment opportunities for individuals with disabilities covered under these certificates.⁵ As such, this provision permits employers to pay subminimum wages only when an individual’s disability impairs his or her productivity for the specific work being performed. DOL last amended the Section 14(c) regulations governing the program in 1989.

Existing data confirms that individuals with I/DD and other significant disabilities who are working earn subminimum wage in far greater numbers than those earning competitive wages.⁶ Further, federal data confirms that most all people currently working under Section 14(c) subminimum wage certificates are working for sheltered workshops (also called community rehabilitation programs (CRPs) or work centers) that typically receive public funding, including federal Medicaid and Vocational Rehabilitation (VR) dollars, to provide employment-related

habilitation and rehabilitation services to individuals with disabilities.⁷ Finally, the data suggests that most individuals with disabilities being paid subminimum wage under Section 14(c) are working in production facilities operated by these sheltered workshops.⁸

Nationally, the focus and attention on increasing the CIE participation rate among individuals with disabilities has been growing rapidly over the past decade. Leadership in this area has been provided by members of Congress, state governors and legislators, federal and state agencies, the business community, and the disability community itself. In determining the most effective strategies and comprehensive approach for increasing the participation of individuals with disabilities in CIE, consideration of the role and impact of the Section 14(c) program on the current CIE participation rate is crucial, especially examining the question of the future role and impact of Section 14(c).

In light of these realities, Congress established the Committee. The purpose of the committee is to prepare findings, conclusions and recommendations for the Secretary of Labor on:

- Ways to increase employment opportunities for individuals with I/DD or other individuals with significant disabilities in CIE;
- The use of certificate program carried act under Section 14(c) of the FLSA for the employment of individuals with I/DD or other individuals with significant disabilities; and
- Ways to improve oversight of the use of such certificates.

Within WIOA,⁹ *competitive integrated employment* generally means work performed on a full or part-time basis (including self-employment) for which an individual is:

- (1) Compensated at not less than federal minimum wage requirements or state or local minimum wage law (whichever is higher) and not less than the customary rate paid by the employer for the same or similar work performed by other individuals without disabilities;
- (2) At a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and
- (3) Presented, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

According to DOL Secretary Thomas E. Perez, in his blog¹⁰ announcing the formation of this Committee, “competitive integrated employment works — for individuals, for employers and for society. Models have shown repeatedly that people previously considered “unemployable” *can* work, *can* be productive and *can* achieve independence. As such, investing in this approach is a wise use of public funds.” In light of these truths, finding ways to make CIE accessible for

individuals with I/DD and other significant disabilities should be a shared priority of governments and disability community stakeholders. Creating opportunities, removing barriers, and expecting a substantial improvement in the workforce participation rate of individuals with I/DD and other significant disabilities are all essential elements to ensure full economic inclusion and self-sufficiency. As the nation celebrates the 25th anniversary of the passage of the Americans with Disabilities Act (ADA), it is indeed fitting that attention is turned to vastly improving opportunities for CIE for those individuals with disabilities who have had the least opportunity up to now to access this critical aspect of our American way of life.

Chapter One: The Committee Process to Date

Establishing the Committee

The Workforce Innovation and Opportunity Act (WIOA) directs the Secretary of Labor to establish the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the “Committee”) within sixty (60) days of the passage of the law. WIOA Section 609 dictates that the Secretary of the U.S. Department of Labor (DOL) shall appoint the members of the committee, and that the composition of the Committee shall be as follows:

- (1) The Assistant Secretary for Disability Employment Policy, the Assistant Secretary for Employment and Training, and the Administrator of the Wage and Hour Division, of the Department of Labor;
- (2) The Commissioner of the Administration on Intellectual and Developmental Disabilities, or the Commissioner’s designee;
- (3) The Director of the Centers for Medicare & Medicaid Services of the Department of Health and Human Services, or the Director’s designee;
- (4) The Commissioner of Social Security, or the Commissioner’s designee;
- (5) The Commissioner of the Rehabilitation Services Administration, or the Commissioner’s designee; and
- (6) Representatives from constituencies consisting of—
 - a) Self-advocates for individuals with intellectual or developmental disabilities;
 - b) Providers of employment services, including those that employ individuals with intellectual or developmental disabilities in competitive integrated employment;
 - c) Representatives of national disability advocacy organizations for adults with intellectual or developmental disabilities;
 - d) Experts with a background in academia or research and expertise in employment and wage policy issues for individuals with intellectual or developmental disabilities;
 - e) Representatives from the employer community or national employer organizations; and
 - f) Other individuals or representatives of organizations with expertise on increasing opportunities for competitive integrated employment for individuals with disabilities.

The Department’s Office of Disability Employment Policy (ODEP) is charged with providing administrative support to the Committee and coordinating the process of appointing members to

the Committee. The Deputy Assistant Secretary of ODEP is appointed to be the Designated Federal Officer (DFO) for the Committee.

The Federal Advisory Committee Act (FACA) requires that committee memberships be "fairly balanced in terms of the points of view represented and the functions to be performed." Selection of committee members is made based on the FACA's requirements and the potential member's background and qualifications. Consistent with FACA, ODEP published a Notice in the Federal Register on September 12, 2014 announcing establishment of the Committee and inviting interested parties to submit nominations of for non-governmental members to represent the six constituencies listed in 6(a) through 6(f) above on the Committee. The notice announced the Department's intent to appoint 10-12 members from among these constituencies ensuring at least one member represent each of the six types of constituencies. The notice outlined the Committee's obligations to meet at least eight times over a two year period. The notice also outlined the required process to nominate someone for the Committee. The deadline for submitting nominations was October 14, 2014.

In seeking 10-12 non-governmental members for the Committee, the goal was to ensure broad representation and sufficient input from stakeholders in the formation of Committee recommendations. To this end, in addition to publishing the notice in the Federal Register, DOL also worked closely with other federal agencies represented on the Committee to identify potential Committee members. ODEP, on behalf of DOL, also leveraged the full range of outreach tools used by the Employment and Training Administration (ETA), ODEP, the Wage and Hour Division (WHD), and DOL's Office of Public Engagement to reach a broad spectrum of stakeholders and seek assistance in identifying as many potential candidates as possible. This included social media outreach, such as email listings, web postings and other strategies.

Except as otherwise required by Section 609, the goals in appointing the non-governmental Committee members included formation of a fairly balanced committee with members coming from a cross-section of those directly affected, interested and qualified as appropriate to the nature and functions of the Committee, and ensuring consistency with the applicable FACA regulations. Thus, the final composition of the Committee depended upon several factors, including: (i) the Committee's objectives; (ii) potential geographic, ethnic, social and environmental impact of the Committee's recommendations; (iii) the types of specific perspectives required, as previously outlined; (iv) the need to obtain divergent points of view on the issues before the Committee; and (v) the relevance of state, local or tribal governments to the development of the Committee's recommendations.

Through comprehensive outreach, DOL received over 280 nominations for public membership. Due to the very large number of individuals nominated to serve on the Committee and the DOL's goal to achieve the greatest impact, scope and credibility among diverse stakeholders, ODEP requested to increase the number of non-governmental members of the committee from 10-12 to

15-17, and this was approved by the Secretary in December, 2014. Ultimately, the Secretary of Labor appointed 18 non-governmental members to the Committee who include:

Self-advocates for individuals with intellectual, developmental, or other significant disabilities:

- Patrick Hendry, Mental Health America;
- Karen McCulloh, McCulloh and Associates;
- Santa Perez, People First of Nevada.

Providers of employment services, including those who employ individuals with intellectual or developmental disabilities (I/DD) in competitive integrated employment (CIE):

- Brian Itzkowitz, Goodwill Industries of Arkansas, Inc.;
- Christine McMahan, Fedcap.

Representatives of national disability advocacy organizations for adults with I/DD:

- Alison Barkoff, The Bazelon Center for Mental Health Law;
- Ruby Moore, National Disability Rights Network;
- Mark Perriello, American Association of People with Disabilities (resigned April 26, 2015);
- Ari Ne'eman, Autistic Self Advocacy Network (appointed May 8, 2015).

Experts with a background in academia or research and expertise in employment and wage policy issues for individuals with I/DD:

- Valerie Brooke, Virginia Commonwealth University;
- David Mank, Indiana Institute on Disability and Community.

Representatives from the employer community or national employer organizations:

- Oswald Mondejar, Spaulding Rehabilitation Hospital Network, and Partners Home Care;
- Steve Pemberton, Walgreens;
- James Brett, The New England Council (appointed May 8, 2015).

Other individuals or representatives of organizations with expertise on increasing opportunities for CIE for individuals with disabilities:

- Cesilee Coulson, Washington Initiative for Supported Employment;
- Sharyn Hancock, Workforce Essentials, Inc.;
- Rita Landgraf, Delaware Department of Health and Social Services;
- Lisa Pugh, Disability Rights Wisconsin;
- Fredric Schroeder, Interwork Institute at San Diego State University.

There are also seven federal officials who are members of the committee, as required in statute. These include the:

- Jennifer Sheehy, Acting Assistant Secretary of the Office of Disability Employment Policy (ODEP);

- Portia Wu, Assistant Secretary of the Employment and Training Administration (ETA);
- David Weil, Administrator of the Wage and Hour Division (WHD);
- Sharon Lewis, Commissioner of the Administration on Intellectual and Developmental Disabilities (AIDD);
- John O'Brien, Senior Policy Advisor, Disabled and Elderly Programs Group at the Centers for Medicare & Medicaid Services (CMS), as the designee for the Director of CMS;
- Bob Williams, Senior Advisor to the Deputy Commissioner for Retirement and Disability Policy at the Social Security Administration, as the designee for the Commissioner of Social Security;
- Janet LaBreck, Commissioner of the Rehabilitation Services Administration (RSA).

Committee members' biographies can be found in Appendix C of this report.

Charter Establishing the Committee and Its Duties

ODEP submitted an official Charter and membership balance plan, with the assistance of ETA and WHD, to the Secretary on September 8, 2014 and the Secretary approved the Charter on September 15, 2014. The Charter outlines the description of the Committee's duties as follows:

The Committee advises the Secretary of Labor on the development and implementation of coordinated policies and job-driven strategies across federal agencies to improve opportunities for competitive integrated employment and economic advancement for individuals with intellectual, developmental or other significant disabilities, including both youth and adults. The Committee will evaluate the use of subminimum wages under Section 14(c) of the Fair Labor Standards Act (FLSA) in light of the goals outlined for competitive, integrated employment and advise the Secretary of Labor on policies and practices that will lead to a significant and systematic reduction in the misuse of the 14(c) certification program and the dependence on subminimum wages and segregated service placements. In doing this, the Committee will:

- (1) Review existing Federal policies to identify and recommend strategies and changes to break down barriers that impede pathways to competitive integrated employment outcomes for youth and adults with intellectual, developmental or other significant disabilities, including recommendations related to employment services, and long-term services and supports, family support and transportation as they relate to competitive, integrated employment;*
- (2) Provide recommendations for modernizing the service delivery system and expanding the implementation of job-driven strategies and practices to promote partnerships among education, workforce and rehabilitation entities, providers of employment-related long-term services and support, employers, and others that increase the marketable skills and competitive integrated employment outcomes of youth and adults with intellectual, developmental or other significant disabilities leading to economic self-sufficiency. This includes improving the knowledge, skills, and abilities of youth and adults with intellectual, developmental or other significant disabilities, educators, service professionals and families, building leadership and organizational capacity, increasing*

employer engagement, offering work-based learning, and strengthening accountability and making better use of data;

- (3) Recommend systems-change strategies needed to ensure that competitive integrated employment is the first option for people with intellectual, developmental or other significant disabilities. This includes aligning policy, practice and funding across Federal agencies to support competitive integrated employment and economic advancement as the preferred outcomes of job-driven training and related employment services through regional collaborations among a variety of public and private partners, data sharing, leveraging resources, and employment and earnings outcome measurement and evaluation; and*
- (4) Review the use of the certificate program under Section 14(c) and recommend ways to improve oversight of the use of these certificates and reduce the reliance on such certificates.*

As outlined in the Charter, the Committee reports to both the Secretary of Labor and Congress. The Committee is required to prepare and submit this Interim Report to the Secretary of Labor, summarizing its progress, along with any interim findings, conclusions, and recommendations not later than one year after the date which the Committee is established or September 15, 2015. The Committee is also required to prepare and submit a Final Report, with findings, conclusions, and recommendations to the Secretary of Labor not later than two years after the date on which the Committee is established, or September 15, 2016. The Committee must also provide its Interim and Final Reports to the Senate Committee on Health, Education, Labor and Pensions, and the House Committee on Education and the Workforce. As specified in Section 609, the Committee shall terminate one day after the date on which it submits its final report.

The records of the Committee and its formally and informally established subcommittees are handled in accordance with FACA requirements. These records are available for public inspection and copying subject to the Freedom of Information Act (5 U.S.C. 552).

The Committee's Charter can be found in Appendix B of this report.

Committee Meetings and Formation of Subcommittees

First Meeting: January 22-23, 2015

On December 24, 2014, ODEP published a Notice in the Federal Register announcing the first meeting of the Committee, open to the public, on January 22 and 23, 2015 to be held in-person at the U.S. Access Board in Washington, DC. During the first day, the Committee elected a chairperson, as required by statute. Dr. David Mank, a public member from the state of Indiana and director of Indiana University's Institute on Disability and Community, was elected chairperson.

The first day of the first meeting covered a robust agenda including the opportunity for each Committee members to make opening remarks, an overview of the FLSA Section 14(c) program,

and a panel of individuals with disabilities offering their perspectives about CIE. Secretary Perez also attended to swear in all of the Committee's appointed members.

On the second day of the first meeting, each Committee member was given the opportunity to share their perspectives on the one thing that the Committee should keep in mind as it started its deliberations. The Committee also discussed the subcommittees that were being established to support the full Committee's work and each member of the Committee was encouraged to sign up for a subcommittee. The next section of this report provides more detailed information on the subcommittees. The Committee then heard from four expert panels who addressed the following topics:

- What is Possible: What the Research Tells Us about the Employment of People with Disabilities in Competitive Integrated Employment
- Transitioning to Competitive Integrated Employment
- Civil Rights and Competitive Integrated Employment
- The Complexities of Securing Sustained Competitive Integrated Employment

The second day concluded with public testimony during which ten individuals or organizations presented testimony to the Committee.¹¹ Members of the public were invited to give testimony and instructed on how to do so in the Notice of the meeting posted in the Federal Register on December 24, 2014. The full meeting agenda, materials and minutes can be found at:

<http://www.dol.gov/odep/topics/date/20150120.htm>.

Subcommittees Established

At the first meeting, to facilitate the work of the full Committee within its statutory timelines, four subcommittees were created, as permitted under the Committee's charter. The four subcommittees identified by ODEP, ETA, and WHD, which reflect key areas for detailed inquiry related to the Committee's charge, include:

- Transition to Careers
- Complexity and Needs in Delivering Competitive Integrated Employment
- Marketplace Dynamics
- Building Local and State Capacity

Members of the full Committee were provided a handout which described the subcommittees and enabled each Committee member to select the subcommittee they wished to serve on. ODEP then reviewed and finalized the subcommittee membership, ensuring sufficient expertise and balance of perspectives on each committee. Each subcommittee identified a member to act as chair of the subcommittee and each subcommittee was also assigned a DFO to support the subcommittee's work.

In carrying out their work, each subcommittee was instructed by the Committee chairperson to review relevant materials in their subject matter areas, including the Section 14(c) program, and to draft preliminary findings, conclusions and recommendations for the full Committee to deliberate upon. The scope of the work of each subcommittee is further described in their respective chapters that appear later in this Interim Report.

Because the Committee is operating under FACA, subcommittees did not forward recommendations directly to DOL or congressional committees. Because Section 14(c) of the FLSA is a key area of focus for the Committee and to minimize the possibility that the subcommittee recommendations would be communicated directly to the DOL agency responsible for administering Section 14(c), WHD elected not to participate on any of the subcommittees.

Second Meeting: March 23-24, 2015

On March 9, 2014, ODEP published a Notice in the Federal Register announcing the second meeting of the Committee, open to the public, on March 23 and 24, 2015 to be held in-person at Gallaudet University in Washington, DC. The Notice included information on the planned agenda and how members of the public could provide written testimony for this meeting.

During the first day of this meeting, the Committee reviewed the timeline for its work and heard from expert panels on the topics of mental health services and Medicaid issues. In the afternoon, the Committee broke into its four subcommittees and each subcommittee met to explore key areas of focus and next steps for their work in developing preliminary findings, conclusions, and recommendations to bring to the full Committee. The full Committee then reconvened and each subcommittee reported out on their discussions regarding their priority areas of focus and agreed action steps. The full Committee then heard a follow-up presentation on WHD's enforcement role with regard to Section 14(c) of the FLSA. The Committee finished the day with a discussion on the Section 14(c) program and its regulations.

On the second day of the second meeting, the Committee heard a panel presentation on the topic of "Leading Systems Change" which offered a cross-systems, state-level perspective. The Committee also heard a panel presentation on the Individuals with Disabilities Education Act (IDEA). The subcommittees met a second time to continue exploring key areas of focus and they again reported back on their work to the full Committee. Then, two Committee members representing business, Steve Pemberton and Oz Mondejar, made a presentation the Committee. Nine individuals or organizations submitted written testimony that was distributed to Committee members and included in the public record for this meeting. The full meeting agenda, materials and minutes can be found at: <http://www.dol.gov/odep/topics/date/20150323.htm>.

Third Meeting: May 11-12, 2015

On April 22, 2014, ODEP published a Notice in the Federal Register announcing the third meeting of the Committee, open to the public, on May 11 and 12, 2015 to be held via webinar. The Notice included information on the planned agenda and how members of the public could participate in the webinar. The notice also included information on how member of the public could provide testimony to the Committee during the webinar or submit written testimony to the Committee which would be included in the record of the meeting.

During the first day of this meeting, the Committee heard reports from two of the subcommittees. The Committee also heard testimony from pre-registered members of the public and a presentation on Section 503 of the Rehabilitation Act, as amended.

On the second day of the second meeting, the Committee heard reports from two of the subcommittees. The Committee also heard a presentation on provisions for job seekers with disabilities in WIOA. The Committee ended the meeting with a discussion on the various subcommittees work and next steps in the Committee's timeline and work plan for submission of the Interim Report. Two individuals or organizations provided verbal testimony to the Committee during the meeting. Two individuals or organizations submitted written testimony that was distributed to Committee members and included in the public record for this meeting. The full meeting agenda, materials and minutes can be found at:

<http://www.dol.gov/odep/topics/date/20150401.htm>.

Fourth Meeting: July 13-14, 2015

On June 22, 2015, ODEP published a Notice in the Federal Register announcing the fourth meeting of the Committee, open to the public, on July 13 and 14, 2015 to be held in-person at the U.S. Access Board in Washington, DC. The Notice included information on the planned agenda and how members of the public could provide testimony during the public comment period for this meeting or provide written statements to be included in the record of the meeting.

During the first day of this meeting, the Transition to Careers Subcommittee and the Complexity and Needs in Delivering Competitive Integrated Employment Subcommittee reported out to the full Committee on their preliminary findings, conclusions and recommendations for the topic areas covered under the scope of each subcommittee. The full Committee had an opportunity to ask questions and engage in discussion regarding each subcommittee's report. The Committee also heard a presentation on ODEP's Employment First State Leadership Mentoring Program (EFSLMP) initiative, including participating states' accomplishments and challenges with respect to Employment First policy, and a presentation from an expert panel that addressed experiences with provider transformation to CIE as the priority service option. The Committee was joined by DOL Deputy Secretary Christopher Lu and marked the 25th anniversary of the

Americans with Disabilities Act (ADA) and its connection to the Committee's charge. The Committee also heard public testimony.

During the second day of this meeting, the Building State and Local Capacity Subcommittee and the Marketplace Dynamics Subcommittee reported out to the full Committee on their preliminary findings, conclusions and recommendations for the topic areas covered under the scope of each subcommittee. The full Committee had an opportunity to ask questions and engage in discussion regarding each subcommittee's report. Additionally, each subcommittee presented its preliminary findings, conclusion and recommendations on the FLSA Section 14(c) program and the Committee engaged in discussion on this topic. Finally, the Complexity and Needs in Delivering Competitive Integrated Employment Subcommittee and the Marketplace Dynamics Subcommittee jointly presented their preliminary findings, conclusions, and recommendations on the AbilityOne® Program, followed by questions and discussion with the full Committee. The meeting concluded with a discussion regarding next steps for finalizing the Interim Report. The full meeting agenda, materials and minutes can be found at:

<http://www.dol.gov/odep/topics/date/20150713.htm>.

Fifth Meeting: August 10, 2015

On July 24, 2015, ODEP published a Notice in the Federal Register announcing the fifth meeting of the Committee, open to the public, on August 10, 2015 to be held via webinar. The Notice included information on the planned agenda and how members of the public could provide written statements to be included in the record of the meeting. Statements could be submitted via U.S. Mail or as email attachments.

During the webinar, the Committee discussed drafts of each of the chapters of this Interim Report. Each subcommittee presented a summary of its process and an overview of its chapter, after which they responded to questions from other members of the Committee and heard recommendations for edits and clarifications from other members of the Committee. Most recommended edits were technical in nature.

Jennifer Sheehy, the Committee's DFO, announced that the Committee has received over 2,000 emails up to this point, and in order to facilitate Committee members' continued access to all public comments submitted via email, ODEP is creating an accessible, on-line platform for Committee members.

Chairman David Mank thanked the Committee for its intensive work on the development of the Interim Report and acknowledged the very tight timelines, established by Congress, under which the Committee had to work.

Conclusion and Committee's Plans for Year Two

The primary focus of the Committee's work is to increase opportunities for CIE for people with I/DD or other significant disabilities. The Committee members share the belief that building capacity for CIE is the first priority for increasing the employment participation rate of people with I/DD or other significant disabilities. Increasing CIE will also reduce reliance on placement in segregated work and non-work programs and in the use of FLSA Section 14(c) certificates.

The Committee's work in its first year has been both expansive and intensive. With input from the public at many points, the Committee has gained extensive knowledge of stakeholder perspectives into the many issues and topics within the purview of its charge. Over 2,000 public comments via the Committee's email address have come in thus far, while numerous individuals or organizations have provided public testimony to the Committee or have submitted written statements to the Committee. Additionally, the Committee has received information from numerous expert presenters, which has allowed the Committee as a whole to extend its own expertise on the topics it is charged with addressing. What follows here are the preliminary findings, conclusions, and recommendations of the Committee, based on its work to date.

During the second year of its term, the Committee will continue reviewing, refining and where necessary adding to its preliminary findings, conclusions and recommendations in order to finalize these for the Final Report due to the Secretary of Labor and Congress on September 15, 2016.

The Committee is required to meet at least eight times over the course of its two-year term. The Committee held five meetings during its first year. At least three additional meetings will be held during the second year, including a face-to-face meeting in Washington, DC that has already been scheduled for October 14-15, 2015.

The Committee will continue to solicit public input throughout its second year. To this end, there continues to be on-going opportunities for members of the public to submit written input via the Committee's email address: IntegratedCompetitiveEmployment@dol.gov. There will also be opportunities for public comment and/or submission of written statements for the record at each of the Committee's remaining meetings. At the October 14-15, 2015 meeting, the Committee will begin taking public testimony via telephone, as well as in-person, to enable more members of the public to provide testimony during Committee meetings. ODEP will also expand the timeframe that members of the public have to submit written testimony for this meeting which will become part of the official record.

¹ See Rehabilitation Act of 1973, Section 7(5) as amended by WIOA.

² Unfinished Business: Making Employment of People with Disabilities a National Priority. U.S. Senate Health, Education, Labor and Pensions Committee. March, 2012. Access at: <https://www.disability.gov/resource/unfinished-business-making-employment-of-people-with-disabilities-a->

[national-priority/](#)

³ Ibid.

⁴ Verified by the U.S. Department of Labor's Wage and Hour Division.

⁵ See Appendix D for the relevant statutory and regulatory provisions currently governing the administration of the Section 14(c) program.

⁶ Butterworth, J., Smith, F. A., Hall, A. C., Migliore, A., Winsor, J., & Domin, D. (2014). *StateData: The National Report on Employment Services and Outcomes*. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion.

⁷ GAO, September 2001, Special Minimum Wage Program, *Centers Offer Employment and Support Services to Workers with Disabilities, But Labor Should Improve Oversight* GAO-01-886, Page 9.

⁸ Ibid.

⁹ Rehabilitation Act of 1973, Section 7(5) as amended by WIOA.

¹⁰ To read the full blog by Secretary Perez, see: <http://blog.dol.gov/2015/01/05/ensuring-opportunity-extends-to-all/>

¹¹ Public testimony can be found at: <http://www.dol.gov/odep/topics/date/ACICIEID.htm>

Chapter Two: Transition to Careers

Background

The Transition to Careers Subcommittee (the Subcommittee) is one of four created by the full Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the “Committee”) to examine and make recommendations concerning the transition of youth with intellectual or developmental disabilities (I/DD) and other significant disabilities to competitive integrated employment (CIE). The charge of the Subcommittee was to examine what needs to be done to build or improve transition from school to careers federal/state systems performance and services. Committee members determined their preference for working on specific subcommittees. This Subcommittee is comprised of the following members:

- **Lisa Pugh**, Co-Chair, Public Policy Director, Disability Rights Wisconsin
- **Valerie Brooke**, Co-Chair, Director of Training and Business Connections, Virginia Commonwealth University, Rehabilitation Research & Training Center
- **Portia Wu**, Assistant Secretary, Employment and Training Administration, U.S. Department of Labor
- **Santa Perez**, Project Co-Coordinator, People First of Nevada
- **Sharon Lewis**, Principal Deputy Administrator of the Administration for Community Living, U.S. Department of Health and Human Services
- **David Berthiaume**, Designated Federal Officer of the ACICIEID Subcommittee on Transition to Careers, Office of Disability Employment Policy, U.S. Department of Labor

Acknowledgement: This Subcommittee would like to thank Nancy Farnon-Molfenter, Ph.D., for her work in finding relevant references for our various findings and conclusions.

After an in-depth review of the literature and practice across the nation, the Subcommittee organized its work into five thematic areas as a framework for findings and conclusions and recommendations to increase CIE for youth with I/DD and other significant disabilities: early work experiences, postsecondary education (PSE), family expectations, systems integration/seamless transition, and professional supports and incentives. **Early work experiences** refers to youth discovering personal career interests in authentic, community-based employment settings as a part of their secondary education. The section on **Postsecondary education** discusses the inclusion of educational options for youth and young adults with disabilities post-high school as an option for these individuals to build knowledge and skills alongside their typical peers. **Family expectations** refer to engagement of families early and often in their student’s transition planning and post-school supports. **Systems integration/seamless transition** focus on federal, state, and local level early alignment of

funding and service resources to match the services needed by youth to achieve CIE. And finally, the last thematic area on **professional supports and incentives** examines qualifications and competencies needed by all professionals across systems to deliver quality transition from school to careers services.

The following section of this chapter provides a general overview for which the Subcommittee has based findings and conclusions related to building and/or improving systems, services, and professional capacity needed by youth to transition to CIE. The next section presents findings and conclusions focused on each of the five thematic areas described in the above background section. The final section of the chapter contains the preliminary recommendations of the Subcommittee for increasing CIE for youth with I/DD and other significant disabilities.

Findings and Conclusions

The challenges facing youth with I/DD and other significant disabilities as they prepare for the transition from public secondary education to adult employment have been well documented. These challenges are reflected in several distinct factors that distinguish youth with disabilities from their nondisabled peers. First, they are less likely than their nondisabled peers to finish high school.^{12,13} Second, they are less likely to pursue PSE that will prepare them for good jobs and careers.^{14,15} Third, they are significantly more likely to be unemployed for much of their adult life.¹⁶ And fourth, some groups of students who receive special education services will need connections to ongoing support to sustain the benefit of public education.¹⁷

Such circumstances are often compounded by several other factors related to transition planning and services. These factors include gaps and lack of coordination in employment-related school-based services; sporadic availability of integrated work experiences and CIE during the secondary school years;^{18,19} limited direct participation of youth in their own transition planning;²⁰ inconsistent engagement of families in transition planning and services;²¹ and, the often sporadic, disjointed, or even nonexistent connections to post-school supports that are necessary to maintain a path toward long-term adult employment.²²

Thus, despite more than 25 years of focused federal policy on transition to employment of youth with disabilities to address these known barriers, there continues to be a need for the identification of proven pathways to college, employment, and careers for youth with I/DD and other significant disabilities. Of significance, even though there is strong research support for work-based educational services for transitioning youth,²³ opportunities available for integrated work experiences and competitive wage jobs vary widely. Available opportunities may be based on whether the student is on track to receive a diploma or certificate of school completion, whether the state education agency and/or local school districts embrace work-based experiences as essential adjuncts to the course of study, and whether there is strong collaboration with youth

and adult employment entities which can assist in helping procure and support work experience.²⁴

These barriers must be mitigated to minimize the impact of disjointed service delivery as schools and post-school service providers prepare youth for employment and careers. These longstanding challenges to effective school-to-career transition for youth with disabilities have led to recent attempts to synthesize what works in transition and to suggest approaches to address these challenges. In fact, the increasing knowledge base about effective transition practice has resulted in an emerging consensus among researchers and professionals about the factors that contribute to the delivery of optimal transition services.^{25,26,27} Youth empowerment, family involvement, activities that connect transition resources, solid academic preparation in conjunction with transition planning, and work experiences have been found to be potentially important influencers of post-school employment outcomes. In particular, there is a growing body of evidence that work experience and CIE during secondary school years predicts successful post-school employment.^{28,29} Proven demonstration models (e.g., Project Search,³⁰ Transition Systems Integration Model,³¹ Seamless Transition Model,³²) illustrate how optimal transition practices lead to high levels (60%-70%) of CIE outcomes for students with I/DD and other significant disabilities.

The impact of the Workforce Innovation and Opportunity Act (WIOA) on state and local practices is yet to be known. However, the intent of WIOA holds the promise of insuring that transition from secondary education and/or PSE to CIE is the primary goal for youth in transition, including youth with I/DD and other significant disabilities. After a review of research and practice evidence, the overall conclusion of the Transitions to Careers Subcommittee is that youth should leave their secondary education with integrated work experiences and/or a competitive integrated job.

Area 1: Early Work Experiences

Research has proven that early exposure to CIE and/or integrated work experiences during high school is the number one predictor of post-school employment success for youth with I/DD and other significant disabilities.^{33,34,35} Other predictive factors including individualized planning, career development activities, and transition programming that support work experiences and attainment of individualized transition goals lead to more positive employment outcomes.³⁶

Earlier, timely, and more seamless access to Vocational Rehabilitation (VR) services play an important intervention role of guiding students with I/DD and other significant disabilities to CIE. The Partnerships in Employment (PIE) Systems Change grant³⁷ reports early connection to VR counselors as the most important change in practice that has improved employment outcomes for youth in their projects. Earlier and more seamless access to VR services can offer youth the supports that they need to benefit from integrated work experiences. Youth with I/DD and other significant disabilities often need additional enhancements to access and benefit from early work

experiences. These enhancements include support provided by professionals with specific skill sets, higher success expectations, incentives built into funding and service systems, and extended time to secure permanent CIE—longer than the typical expected VR closure of 18 months.^{38,39}

However, it is well documented that youth categorized by IDEA as having I/DD or having other “significant disabilities” experience low employment outcomes (31% students with intellectual disabilities (ID), 47% with autism, and 33% with multiple disabilities).⁴⁰ Employment for youth with I/DD and other significant disabilities generally falls into low status, low wages jobs.⁴¹ Overall engagement in any category of activity post-school for youth with the most significant disabilities is low. Only two-thirds of the students are doing anything four years out of school – and that includes sheltered employment.

State systems struggle to align policy and practice that prevent the support of integrated work experiences for youth with the most significant disabilities.^{42,43} Secondary education does not adequately prepare some youth with disabilities for employment after high school.^{44,45} Lack of dedicated resources (e.g., transition teacher time and specialized skill training) to build relationships with local employers, VR, employment service providers, and Medicaid DD/Waiver personnel is another barrier for youth to gain access to integrated work experiences.⁴⁶ Some state VR systems deem that youth must have the assurance of long-term employment supports; Medicaid DD/Waiver agencies believe they must secure a denial from VR before they will provide employment supports.

Area 2: Postsecondary Education

Benefits of youth with I/DD and other significant disabilities engaging in PSE have been widely documented.^{47,48,49} Engagement in any type of PSE (e.g., vocational education classes, college certificate, two-year and/or one college class) significantly enhances ability for youth with disabilities to secure CIE outcomes. Those who engage in PSE and who are clients of VR are more likely to secure CIE than those who do not. Students with I/DD and other significant disabilities who have even one or two PSE classes can earn up to 70 percent higher wages than those who do not participate in PSE.

There are known enhancers that will provide the opportunity for students to have quality PSE experiences, and necessitates that secondary and PSE programs/institutions make improvements in these areas:

- ***Self-Determination*** broadly implemented at the secondary education level so that students can self-identify and request accommodations needed to address their own learning style.^{50,51}
- ***Community-based functional and individualized assessment*** is very important within the secondary education transition planning process as students with I/DD, like all adolescents, clearly possess unique amalgamations of strengths and needs. Assessments across systems

must be aligned to maximize and streamline resources while broadening the opportunity for stakeholder input.⁵²

- ***Academic career planning (ACP)*** for students with I/DD and other significant disabilities conducted early in secondary education to ensure their access to coursework and experiences that are necessary for them to pursue a pathway to a skilled job. Success is likely when strategies are implemented to ensure that youth are fully included in the educational planning process to include Individualized Education Program (IEP) meetings, individualized learning planning (ILP), and other ACP activities.^{53,54}
- Student access to the ***General Education curriculum*** so that they have the basic academic foundation to enter PSE that leads to successful in CIE.⁵⁵
- ***Student secondary education completion rate*** should be improved.⁵⁶
- ***Data should be used by PSE programs/institutions*** to understand individual academic strengths and accommodation needs rather than placement testing to screen students out of the system.
- ***Universal instructional design*** broadly implemented in PSE institutions to support students with a variety of learning and support needs.⁵⁷

These identified improvements are based on unique challenges faced by students with I/DD and other significant disabilities as they attempt to gain access to PSE. “Learned helplessness” among students with I/DD and other significant disabilities remains due to their education occurring in segregated settings, thus, excluding them from core academic coursework and employment preparation through community-based work experiences. As a result, a low expectation exists for students with I/DD and other significant disabilities to be successful in PSE. Students along with their families, teachers, and counselors have limited opportunity to learn about PSE opportunities as well as the education and/or support needed to meet PSE requirements. Often students, parents, and teachers misunderstand the accommodations and support differences between the secondary and postsecondary environments.

Placement testing continues to be used, especially in two-year colleges, and this remains a significant barrier to accessing PSE for youth with I/DD and other significant disabilities. Higher education institutions have been slow to embrace policy changes that allow their full participation. College faculty/instructors lack background and receive little training in learning style accommodations and designing coursework aligned with career pathways that will lead to skilled jobs.

Some youth with I/DD and other significant disabilities participate in postsecondary programs. Some of these programs remain largely segregated from the mainstream college campus life.

Many of the existing PSE programs are not focused on career pathways that include integrated work experiences that lead to skilled jobs.

Area 3: Family Expectations

Family expectations are among the strongest predictor of educational outcomes, including college and employment.⁵⁸ Family expectations start early in a child's life.⁵⁹ Expectations about self-determination, employment, and valued social roles have a significant impact on adult outcomes. Expectations that their child with I/DD would eventually be self-supporting are highly associated with employment.⁶⁰ Students, with and without disabilities, are reported to have higher career expectations when their families are engaged with them in an ACP/ILP approach.⁶¹

Pediatricians and health-related professionals, as well as early childhood professionals and K-12 educators influence family expectations. Beginning early in the student's education, families of children/youth with disabilities need assistance in learning about and creating expectations, aspirations, and a vision for the future not just this year's program/plan, but the long range goal that focuses on adult life. Waiting until students are "transition age" to talk about employment is too late. Families receive too many negative messages from system personnel. Often they feel that the roles and responsibilities of post-school systems are not defined and find transition planning puzzling. As a result, many families feel powerless due to their lack of knowledge about the systems.^{62,63}

Challenges faced by families of youth with disabilities are compounded greatly by multiple variables that must be addressed for youth to achieve successful transition outcomes. Cultural and language differences in our diverse society may impede families from getting involved.⁶⁴ Many youth with I/DD and their families live in poverty and need basic human needs met before a job search. Family economic security cannot be ignored and needs to be taken into consideration.⁶⁵ Access to meaningful, individualized work incentive benefits counseling that takes into account the informational needs of a youth and their family can support greater family engagement. Participating in support networks with family peers can be an important influencer to improve family expectations for their child to participate in career pathways toward achieving PSE and/or CIE outcomes.⁶⁶

Research is needed to explore the ways in which family influencers interact with other influencers to shape the skills, services, and supports provided during and after high school for transition-age youth with significant disabilities.⁶⁷ It would be useful to know more broadly the difficulties that family's face, which in turn negatively impacts participation.

Area 4: System Integration/Seamless Transition

Students with I/DD navigate complex systems in moving from high school into adult life, i.e., the Individuals with Disabilities Education Act (IDEA) K-12/transition services, Social Security Income/Social Security Disability Insurance (SSI/SSDI) Program, VR, Medicaid/Long Term Supports and Services (LTSS), PSE, employment supports, etc. These systems are often poorly coordinated and do not share aligned outcome goals.⁶⁸ Despite requirements in IDEA, often transition planning for youth is weak and does not incorporate/coordinate all of the services and supports.⁶⁹ Payer of last resort policies result in roadblocks to funding. Medicaid or VR funded supports and services are either not promoted or not readily available to enable summer, weekend, and after-school employment youth experiences.⁷⁰

Alignment of these multiple system expectations and outcomes is necessary to expedite service delivery so that the student acquires, prior to high school exit, community-based work experiences and/or a competitive integrated job. Jurisdictions in which there has been opportunity to “create a table” for systems collaboration and focus on the coordination and sequencing of funding and activities have shown some success in improving employment outcomes.^{71,72,73} WIOA attempts to foster greater collaboration across agencies to facilitate increased seamless school-to-work transition strategies, but may fall short in key areas of the statute where participation of key partners is encouraged, but not mandatory. For example, Section 511 of WIOA does not mandate all players to be at the table to coordinate around the needs of youth with I/DD and other significant disabilities.

Area 5: Professional Supports and Incentives

Many systems touch and influence youth with I/DD and other significant disabilities as they transition to adulthood including secondary and PSE, Social Security, Medicaid, Welfare, Community Rehabilitation Providers (CRP), workforce development (One-Stops), VR, and others. Under WIOA, youth with disabilities will receive extensive pre-employment transition services. This new direction provides an opportunity for systems to cross-train staff at all levels.

As youth transition from an entitlement system to an eligibility system, the One-Stop Career Center staff is available to provide training on labor market information, career exploration and career readiness skills to its partners. However, staff in these systems often lacks direct experience working with youth with I/DD and other significant disabilities on employment goals, knowledge about resources available across the systems, opportunities to learn how other systems function, and a strong understanding of what services other agencies in the community/state can provide to support CIE for youth between ages 16-24.

National data show that less than half of all special education personnel preparation programs address transition standards, and only 45 percent offer a stand-alone course on transition.^{74,75} Teacher expectations begin in these preparation programs. High expectations of teachers

correlate with better employment outcomes. In a 2010 study, students whose teachers expected them to work during the summer were 15 times more likely to work than teachers without that expectation.⁷⁶ Specifically, special education professionals require better understanding of:

- work incentives and the correlation with benefits programs.
- role of the VR system.
- Medicaid funded supports and services available to youth and families to support employment long-term.
- least restrictive environment policies and how the new WIOA regulations apply to work experiences.
- supplementary aids/ services and assistive technology available and necessary to facilitate CIE for an individual youth.

There is a wide variation in state VR transition statistics suggesting VR could improve its services for transition-age youth. Specific standards and guidelines for VR agencies and staff serving youth between 16 and 24 could be developed and adopted. In addition, systems could encourage and possibly provide incentives for VR and school systems staff to coordinate early in a youth's educational career.

Medicaid Waiver case managers do not have training on evidence-based practices in supported employment. Clear state guidelines complemented by the targeted training in evidence-based employment practices of direct support professionals across systems should lead to a reduction on the high reliance of adult day services with no employment components, and shift to an increase in resources that lead to and support CIE.

Transition to Careers Subcommittee Preliminary Recommendations

The Subcommittee has concluded that in order to promote the outcome of CIE for youth with I/DD and other significant disabilities, the transition from high school to careers process that requires active interagency collaboration and coordination, keyed to the outcome of CIE, must be improved. Recommendations for improvement are as follows.

Area 1: Early Work Experiences

1. The Rehabilitation Services Administration (RSA) should analyze policies and practices that act as barriers for youth in accessing early VR supports and services (i.e., paperwork and application burden, language barriers) and provide such analysis to states with specific guidance on improvement in policy and practice.

2. The U.S. Department of Education (ED) should provide guidance on a VR referral protocol and timeline to State Education Agencies (SEAs). A mechanism should be in place to ensure that families have been provided with meaningful information on the benefits of VR services.
3. ED should make a priority to focus on Post-School Outcomes in Results Driven Accountability for all states. ED should transition states to a process of using IDEA Indicator 14⁷⁷ (post-school outcomes) for annual benchmarking, compliance and quality improvement purposes. Indicator 14 should be further enhanced to differentiate sheltered employment outcomes from CIE outcomes.
4. Any reauthorization of IDEA must:
 - a. Re-establish the age of transition to no later than when a youth turns 14.
 - b. Require early connection to and participation in VR services at the earliest stage of transition as coordinated in a youth's IEP.
 - c. Further define a summary of performance to include a record of a youth's integrated work experiences. Require that the IEP include a description of the integrated work experiences that will be provided to assist the youth in reaching postsecondary goals.
5. Federal research grant priorities should be expanded to explore the research connection related to quality, evidence-based general education inclusion practices, and general education curriculum that leads to college and workforce skills and improved post-school outcomes.
6. ED should increase investment in high quality multivariate correlational research to move from promising practices to evidence-based practices, including determining the combination of practices that will guide the field to improved outcomes as youth transition from school to careers of choice.
7. DOL, ED, and the U.S. Department of Health and Human Services (HHS), Center for Medicare & Medicaid Services (CMS) should work together to leverage federal resources (including WIOA Title I and Title IV) so funding streams and services can work together to focus on strategies that ensure youth with significant disabilities get integrated work experiences and related employment-services, including internships, apprenticeships and on-the-job training, along with related career services and counseling, prior to exiting high school.

Area 2: Postsecondary Education

8. ED and SEAs must act to improve secondary teacher education requirements and paraprofessional training on appropriate strategies to prepare students with disabilities for PSE and include such areas as the value of PSE, setting high expectations, ACP/ILP, disability support services, universal design, and accommodations based upon learning style.
9. ED, RSA, and SEAs must review policies and issue joint guidance to ensure that prior to each student's secondary education graduation, the student's IEP team has identified and engaged the responsible agencies, resources, and accommodations required for PSE that would include the specific types and levels of supports needed by the student for success.
10. ED must require PSE experiences to involve multiple CIE experiences to include paid internships in integrated settings to ensure that the entire experience is oriented and coordinated to support the student's identified career of choice.
11. DOL should direct the workforce system to coordinate with other partners to provide youth with I/DD who are attending PSE, orientation toward careers through work experience, career planning, and career counseling.

Area 3: Family Expectations

12. Federally funded grantees that have early contact with parents of children with I/DD and other significant disabilities (i.e., Parent Training and Information Centers, Family-to-Family Health Centers, IDEA Part B/C, Family Support Programs) should be required to engage with families earlier to support them in acquiring higher expectations that leads to transition long-range planning with self advocates engaged as mentors.
13. ED should prioritize the use of student-led IEPs and best practices promoting self-determination at an early age to improve family expectations for positive employment outcomes.
14. ED must issue guidance on developing embedded discussions in the IEP process, during the pre-transition age, that leads to long-range post-school outcomes planning versus year-to-year planning. With any reauthorization of IDEA, the IEP process must be updated and provide funding sources related to a focus on a vision that builds toward long-range, post-school outcomes planning.
15. RSA should issue guidance to states on how to provide Work Incentives Benefits Counseling and financial literacy that is tailored to individual youth/family household that is tailored to individual youth and is considered a service under Pre-Employment Transition Services.

Area 4: System Integration/Seamless Transition

16. Interagency alignment of outcome goals, coordination of supports, services, and funding oriented toward CIE must be mandated among ED, DOL, RSA, the Social Security Administration (SSA), and CMS. A lead federal agency must be designated. These key federal agencies must provide implementation guidance to the states and states must provide guidance to the local communities to support the following: lowering the age of transition to 14, specifying practices for braiding of resources, clarifying funder of last resort mandates, clearly identifying roles and responsibilities, benchmarking milestones, sharing data collection processes and analyses, tracking outcomes of collaboration over time, and having a plan for dissemination of this information to families and professionals.
17. ED, SSA, RSA, and CMS must work toward presumptive eligibility and a common application process across state agencies for youth with I/DD and other significant disabilities, to the greatest degree possible with a focus on securing automatic VR eligibility for waiver eligible youth who desire employment.
18. Federal agencies must coordinate to develop a pilot and seek demonstration authority to increase flexibility and potentially waive requirements across multiple authorities (IDEA, Elementary Secondary Education Act (ESEA), RSA, SSA, DOL, and CMS) so funds may be streamlined to support youth achieving successful CIE outcomes.
19. ED's The Office of Special Education Programs (OSEP) should ensure that youth with I/DD and other significant disabilities have access to assistive technology. OSEP, RSA, and HHS should ensure that policies allow assistive technology devices to transfer to the student's workplace and/or postsecondary environment.
20. ED in collaboration with RSA should issue guidance specifically on ways in which schools and state VR can and should fund transportation as a service to support integrated work experiences as part of a student's IEP and/or individual employment plan.

Area 5: Professional Supports and Incentives

21. State Medicaid agencies must tie professional certifications and Medicaid provider qualifications to specific competencies related to understanding CIE opportunities for Medicaid beneficiaries.
22. ED, RSA, and DOL must promote and fund pre-service and in-service training for professionals and paraprofessionals across the systems that focuses on building high expectations related to CIE and evidence-based practices to include family engagement strategies, use of labor market information, an understanding of career counseling and pathways, availability of CIE services, person-centered employment services, and employer relations.

23. Federal agencies must update core competencies, standards and pre-service requirements for early childhood and other pediatric medical and social service professions to embed values related to high expectations for children with I/DD and other significant disabilities.
24. “Highly Qualified Special Education Teacher” should be redefined to reflect the unique skills necessary to effectively plan and provide required transition services that lead to CIE outcomes; in turn, these qualifications should become competencies that are embedded in all special education personnel preparation programs.

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⁷⁷ In their IDEA Annual Performance Reports (APRs), States are currently required to report postsecondary outcome data on students who received IDEA services. In response to Indicator 14, States report on the percent of youth who are no longer in secondary school, had IEPs in effect at the time they left school, and were: (a) enrolled in higher education within one year of leaving high school; (b) enrolled in higher education or competitively employed within one year of leaving high school; [and] (c) enrolled in higher education or in some other postsecondary education or training program; or competitively employed or in some other employment within one year of leaving high school. (20 U.S.C. 1416(a)(3)(B)). The following Web site provides more information on the APRs and Indicator 14: <http://www2.ed.gov/policy/speced/guid/idea/bapr/2015/index.html>

Chapter Three: Complexity and Needs in Delivering Competitive Integrated Employment

Overview

Complexity and Needs Subcommittee Members

- **Alison Barkoff**, Subcommittee Chair, Director of Advocacy, Bazelon Center for Mental Health Law
- **Patrick Hendry**, Vice President, Consumer Advocacy, Mental Health America
- **Ruby Moore**, Executive Director, Georgia Advocacy Office
- **Ari Ne’eman**, President, Autistic Self Advocacy Network
- **John O’Brien**, Senior Policy Advisor, Disabled and Elderly Health Programs Group, Centers for Medicare & Medicaid Services, Department of Health and Human Services
- **Fred Schroeder**, Executive Director, National Rehabilitation Association
- **Bob Williams**, Senior Advisor to the Deputy Commissioner, Office of Retirement and Disability Policy, Social Security Administration
- **Bryan Ballmann**, Designated Federal Officer, Office of Disability Employment Policy, Department of Labor

The charge to the Complexity and Needs Subcommittee (the Subcommittee) is broad in scope and potential impact. It includes financing, eligibility, group and individualized approaches, case management roles and structure, civil rights, employment and family support, and incentives. It also includes exploration of current and future use of certificates issued under Section 14(c) of the Fair Labor Standards Act (FLSA). For the Interim Report due to the Secretary of Labor and Congress in September 2015, the Subcommittee identified three primary areas of focus: (1) funding, (2) data and outcomes, and (3) Section 14(c).

In its work on funding, the Subcommittee considered available state and federal funding sources that could help increase competitive integrated employment (CIE) and reduce reliance on sheltered employment and other segregated service models. The Subcommittee explored the alignment between funding sources and federal rules and policies prioritizing employment of people with disabilities; the complexity of using multiple funding streams; eligibility for funding; and the expectations of funding systems for employment.

The Subcommittee also considered the data and information available at the state and federal levels regarding funding for CIE versus segregated day services (such as sheltered employment, day habilitation, or day treatment) and the number of people with disabilities in each. The

Subcommittee also discussed how to measure the quality and impact of CIE through outcome measures and fidelity to evidence-based best practices for employing people with significant disabilities.

The Subcommittee also explored the use of Section 14(c) certificates. It studied the history of Section 14(c) and discussed its alignment with modern disability policy and federal law. It considered federal oversight and enforcement of Section 14(c), as well as state level activities regarding the use of subminimum wage. Finally, the Subcommittee explored the future of Section 14(c). The work of the Subcommittee on Section 14(c) is incorporated into a separate chapter with findings, conclusions, and recommendations on this issue.

In addition, the Subcommittee considered the AbilityOne® Program (which operates pursuant to the Javits-Wagner O'Day Act (JWOD)) as part of its work on funding and Section 14(c). Since the Marketplace Dynamics Subcommittee also studied the AbilityOne Program, the two subcommittees worked together to write a joint chapter.

Finally, the Subcommittee identified several areas that it plans to explore during the next year to include in the Final Report due September 2016. These issues include: non-employment services and supports for people with disabilities who are working and their families (including wraparound supports, family supports, transportation, and case management); the roles of the educational and workforce investment systems in helping people with significant disabilities achieve CIE; and unique issues facing people with different types of disabilities.

Findings and Conclusions

Area 1: Funding

Federal Rules and Policies

Federal rules and policies – including the Workforce Innovation and Opportunity Act (WIOA), the Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act (IDEA), guidance from the Centers for Medicare & Medicaid Services (CMS), and the Achieving a Better Life Experience (ABLE) Act – make CIE a priority for people with significant disabilities.

- WIOA defines and explicitly prioritizes CIE for people with disabilities, particularly transition age youth. It requires a robust collaboration between Vocational Rehabilitation (VR) and high school transition programs. Collaboration should result in increased employment experiences while students with significant disabilities are still in high school. Students with employment experiences are more likely to be successfully employed as adults. WIOA also provides a set of powerful tools to increase economic opportunities for people with significant disabilities. These tools help job seekers with significant disabilities gain access to employment, education, training, and the support services needed to succeed in

the labor market. They match employers with the skilled workers they need to successfully compete in the global economy.

- The ADA's integration mandate, as interpreted by the Supreme Court's decision in *Olmstead v. L.C.*, requires states to prioritize and expand opportunities for CIE for people with significant disabilities and reduce their reliance on sheltered employment and other segregated service models.
- IDEA requires post-school employment plans for students with disabilities; transition programs that focus on the goal of employment; and follow-up one year after students leave transition programs to see the result in the student's life.
- CMS has provided guidance to states about funding supported employment (a service for which, by definition, CIE is the expected outcome) by using 1915(c) Waivers. In addition, a new rule from CMS (the Home and Community-Based Services (HCBS) Settings Rule) establishes requirements for settings funded through HCBS programs and underscores the opportunity for HCBS participants to work in CIE. Therefore, implementation of these rules creates an opportunity for states to expand CIE⁷⁸ and make it a priority.
- The recently-enacted ABLE Act allows people with disabilities and their families to save money for disability-related expenses (including employment training and supports) without impacting their eligibility for benefits, including long term services and supports through Medicaid. For individuals eligible for the ABLE Act, it will incentivize employment and help address concerns that working could lead to a loss of needed benefits.

All of these federal rules and policies are supported by studies showing that CIE promotes the health and welfare of people with significant disabilities. People with significant disabilities who work in CIE have improved health, fewer hospital stays, stronger connections to family and friends, and more confidence in daily activities and routines.

Multiple Funding Resources

Numerous federal agencies provide funding to support CIE for people with significant disabilities, including: CMS; the Social Security Administration (SSA); the Substance Abuse and Mental Health Services Administration (SAMHSA); the Department of Education's (ED) Office of Special Education and Rehabilitative Services (OSERS) and Rehabilitation Services Administration (RSA); the U.S. Department of Veterans Affairs (VA); and the U.S. Department of Labor (DOL).

Rules governing each agency's funding vary. Agencies do not offer clear guidelines on how to individually and collectively encourage CIE outcomes, including ways for states to braid or blend different funding sources or to create payment structures to incentivize CIE. Each state must independently learn the different rules in order to use the money effectively to achieve CIE.

CMS has provided detailed guidance to states on how to support CIE under 1915(c) Waivers. It has not provided similar guidance on how to use other Medicaid authorities to provide services to support employment. In particular, states lack clarity about how various Medicaid authorities (especially 1905(a) state plan services) can be used to fund supported employment for people with serious mental illness.⁷⁹

CMS' HCBS Settings Rule increases opportunities for HCBS participants to work in CIE. However, the Rule prohibits using HCBS funding to provide services (including supported employment) to people who do not live in residences that comply with the Rule, even if the residence is not HCBS-funded. The impact may have the unintended consequence of limiting the ability of people with disabilities to get jobs, thereby also limiting their ability to move to more integrated housing.

The federal match rate for states' Medicaid programs (Federal Financial Participation or FFP) is generally the same for all services. As a result, there is no financial incentive for states to expand opportunities for CIE and help transition people who are participating in other day programs who want to work. While there are a few programs (such as the Balancing Incentive Program or BIP) that states could use to increase FFP for supported employment services, those programs do not require a focus on employment and, in the case of BIP, are time-limited.

Although federal rules and policy initiatives may encourage and promote CIE, only a small percentage of federal funding for day services is used for CIE. Most funding is used for non-work day programs that are either partially or fully segregated, such as day habilitation or day treatment. States may establish different reimbursement methodologies for day services. Yet, few states use them to encourage CIE over other day programs.

Many states are challenged by the complexities in funding, as described above. However, some states have developed strategies to address these complexities and have created employment programs that use best and proven practices to achieve CIE. For example, Maryland's VR and mental health agencies share an electronic integrated system for enrolling people into Individual Placement and Support (IPS) services, an evidence-based practice for achieving CIE. It ensures that VR applicants with mental health diagnoses are referred for IPS supported employment programs.

The complexity of funding sources, absence of clear guidelines and lack of collaboration by federal partners on braiding and blending funding combine to effectively counter the federal emphasis on encouraging and promoting CIE. In addition, states generally do not use all available strategies to develop and increase CIE opportunities. The result is poor or no employment outcomes for people with significant disabilities.

Eligibility

Many people with significant disabilities rely on support through federal benefit programs, including Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI). Once eligible, SSI and SSDI beneficiaries can access healthcare, particularly long term services and supports, through Medicaid (for SSI beneficiaries) and Medicare (for SSDI beneficiaries).

SSI and SSDI eligibility rules present barriers to employment for people with significant disabilities. SSA applies a strict eligibility definition for SSI and SSDI benefits. To be eligible, people must prove that they are not able to earn more than a limited amount due to a permanent disability that is expected to last 12 months or more. In contrast, once they prove they have no or a limited ability to work, then they are encouraged to work by other federal initiatives.

There are various “work incentive” programs that allow disability beneficiaries to retain more of their earning and their healthcare benefits while employed. However, these work incentives vary for SSDI and SSI beneficiaries and are complex and difficult to understand. Many beneficiaries believe they are too risky to use.

One example of a “work incentive” program is SSA’s Ticket to Work Program. The Ticket to Work Program’s purpose is to enable employment providers to assist SSI and SSDI beneficiaries to return to work. To date, the program has had mixed results. One challenge the program faces is that by law “Tickets” are only available to adults aged 18 to 64 who have completed the disability determination process and proven they cannot earn over a limited amount. This requirement often results in the belief that the adult is “unemployable.” It also poses a significant barrier to youth with disabilities who want access to employment experiences during their transition years that will increase their opportunities for work as adults.

Two recent landmark laws, the Affordable Care Act (ACA) and the ABLE Act, have provisions that expand options for people with significant disabilities to save money and keep healthcare benefits while working. In addition, SSA has initiated several demonstrations (including the Benefits Offset National Demonstration and the Accelerated Benefits and Youth Transition Demonstrations) to improve employment and economic prospects for people with significant disabilities.

Despite these work incentive programs, as well as other state and federal efforts to provide accurate information about the importance of work and ways of retaining or returning to benefits when needed, people with significant disabilities still regard SSDI and SSI rules as penalizing rather than encouraging employment. As a result, federal payouts in the aggregate are in the billions of dollars, yet people with significant disabilities who rely on benefits often live in poverty.

Finally, a number of employment-related programs prioritize resources for people with the “most significant disability,” most notably the VR system. Yet there is no agreement among federal

agencies or in federal law on how to define most significant disability. WIOA references “most significant disability,” but does not define it. RSA requires states to develop criteria for making a determination of most significant disability, but states vary widely in the definition they use.

Lack of Expectation

The last and crucial barrier to CIE for people with significant disabilities is a lack of expectations. People with serious mental illness, intellectual, developmental and other significant disabilities are stigmatized and experience widespread bias about their prospects for employment.

Often many employment professionals, educators and people in general have low expectations about people with disabilities and employment. People with significant disabilities may internalize these low expectations. The result is often delays, discouragement or denials of employment support.

Counselors and other professionals responsible for assisting people with significant disabilities to obtain employment are hampered by a lack of knowledge about effective practices in achieving CIE, including Supported Employment, IPS, Customized Employment, and Discovery. According to data provided by RSA, 25.4 percent of the people who apply for services from VR have their cases closed before services are initiated. Approximately 45 percent of all persons that sign an individual employment plan (IPE)—meaning they are eligible and have established a vocational goal based on their strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice and have received services—exit the VR system without getting a job.

While the VR program no longer allows placement in segregated employment settings (including compensation at subminimum wages), far too many people with significant disabilities end up in segregated work or non-work programs because there is a determination made that the person is “too significantly disabled to benefit” from VR services. This determination, combined with a lack of knowledge about services that would effectively secure CIE for people with the most significant disabilities, results in no services or acceptance of segregated employment or other day services.

In employment programs funded by VR, the Community Rehabilitation Program (CRP) (who often is the “employer”) decides whether a person is capable of engaging in typical competitive employment. The same CRP determines the person's productivity level and how many hours the person works each week. There is a conflict of interest in these decisions. There is also limited oversight of these determinations. If the CRP has low expectations, people with significant disabilities either do not get access to good jobs and are referred to day services or end up in sheltered employment working for subminimum wages.

AbilityOne® Program

The Complexity and Needs Subcommittee's findings and conclusions regarding funding through the AbilityOne Program are contained in a separate chapter co-authored with the Marketplace Dynamics Subcommittee.

Area 2: Data and Outcomes

The numerous federal agencies that fund services for people with significant disabilities: (a) have different definitions for CIE; (b) provide different levels of support for federal agency and state data collection; and (c) have different expectations (if any) for what outcome measures should be collected. They generally do not track the number of people in CIE and other day services (such as day habilitation, day treatment, adult day care, and psychosocial rehabilitation), particularly across disability systems (for example, intellectual or developmental disability (I/DD), mental health, physical disability and aging systems). In addition, spending on these services is not consistently reported.

The federal government has not developed a uniform set of outcomes to measure progress towards the goal of quality CIE for people with significant disabilities.

- Federal agencies prioritize enabling people with significant disabilities to become competitive wage earners in typical work settings. Reporting on outcome measures would emphasize this priority.
- Getting a job is not the only important outcome, however. There are factors associated with a job that are important to people with and without disabilities, including typical work schedules, opportunities to increase and learn new skills, and opportunities for career advancement that result in better wages and greater responsibility.
- Tracking all of these outcomes through data collection at the state and federal levels and disseminating the results of progress toward competitive wages and benefits, work hours, and career paths helps assess the quality of the effort and what must change to improve results.

Similarly, state governments have not identified and are not collecting consistent data for CIE (such as wages and benefits paid, hours worked, type of job/occupational classification, group versus individual employment, formal versus natural supports, and average wage increase over time). They are not tracking outcomes measuring the impact of CIE on people with disabilities (such as income, use of healthcare services, housing stability, reliance on cash benefits, taxes paid, community inclusion, social capital, independent living, and cost benefits of wages earned versus support funding expended).

Most states lack robust data systems to collect information on the number of people in or spending on CIE or other day services, particularly across all disability systems. To the extent states keep data on CIE, it usually does not include regularly obtaining and analyzing the outcome measures described above.

While some people with significant disabilities are in CIE, many others are on wait lists with no opportunities; in non-employment programs that do not recognize their work potential, skills and abilities; or in low, subminimum, or no wage jobs with few hours and no career path. Outcome measures must be designed and implemented in order to hold systems accountable to these people too.

There are a number of national initiatives on outcome measures that may be relevant to employment and other day services, including the National Quality Forum's work on Performance Measures in Home and Community-Based Services that Support Community Living and the National Core Indicators.

Research and practice show that innovation combined with accurate data (fidelity) on what works and what does not work leads to better outcomes. For example, the evidence-based IPS model for CIE of people with mental illness requires gathering data and measuring outcomes as part of implementation.

Area 3: Section 14(c) of the Fair Labor Standards Act

The Complexity and Needs Subcommittee's findings and conclusions related to the current and future use of FLSA Section 14(c) are contained in a separate chapter co-authored by all of the subcommittees.

Complexity and Needs Subcommittee Preliminary Recommendations

These recommendations represent the Subcommittee's current work. All assigned topics will continue to be addressed through the Final Report in September 2016.

Area 1: Funding

Federal Rules and Policy

1. DOL should lead a collaboration of federal agencies to identify, align, and develop clear policies and practices across all federal agencies that make CIE outcomes a priority and guide states in applying these policies and practices. The federal agencies should include those participating in the Committee and other relevant agencies in ED and the U.S. Department of Justice (DOJ). DOL and other Committee member agencies should report on progress at each full Committee meeting.
2. ED, in implementing WIOA, should require:
 - a. Intervention for youth beginning prior to age 14;
 - b. Opportunities for integrated work experience for all youth, with access to needed assistive technology, job coaching and other supports, for a period of not less than 24 months; and

- c. Presumed eligibility for VR services for any youth considering sheltered employment.
3. RSA, in implementing WIOA, should:
 - a. Clarify that youth with disabilities must first apply for VR services and, if eligible, work toward a CIE goal, which can include supported employment for a “reasonable” period of time. A “reasonable” period of time should be at least 24 months, regardless of whether the youth has a supported employment IPE or a regular IPE; and
 - b. Clarify that extending the time limit of Supported Employment Services from 18 to 24 months refers to *ongoing support services* provided *after* a person has been successfully placed in a job that meets the WIOA definition of Supported Employment. This is consistent with the definition of Supported Employment Services in WIOA.
4. ED should direct state education and VR agencies to include blueprints for designing and implementing local working agreements in existing state inter-agency agreements. The local agreements should identify how much VR and school financial support is available to implement best practice transition programs that include integrated work experience after age 18 through internships, apprenticeships and similar experiences. These strategies will help students leave transition programs with a job, a solid portfolio of work, and/or an effective plan for additional education leading to a job. State education and rehabilitation agencies should report results of state and local efforts to ED.

Multiple Funding Resources

5. CMS should lead a collaboration of federal agencies, including those participating in the Committee and relevant agencies in ED, to issue federal guidance to states on how to use, braid and/or blend their respective funds to support best practices and/or evidence-based models that result in CIE. In the interim, information should be published about states that are successfully using federal funds to support best practice and evidence-based CIE.
6. DOL, in partnership with CMS and SSA, should lead a collaboration of federal agencies participating in the Committee and relevant agencies in ED, to issue guidance on models and payment methodologies that make CIE outcomes the priority.
7. CMS should issue guidance on how states can use the range of Medicaid authorities to fund services resulting in and supporting CIE for people with significant disabilities, including the use of 1905(a) state plan services to fund supported employment for people with serious mental illness.
8. DOL should collaborate with CMS and other relevant federal agencies, to identify and make available financial support and incentives to help people move from segregated programs (such as sheltered employment, day habilitation and day treatment) to CIE. Such support could be modeled after programs like the Medicaid Infrastructure Grants, Money Follows the Person or Balancing Incentive Programs. Such funds should help build capacity to transition

people from sheltered employment or segregated day programs to CIE or to provide for enhanced FFP to encourage expanding CIE. These efforts should be tied to specific, measurable outcomes such as decreases in the number of people in sheltered employment or other segregated day programs and increases in CIE. DOL, CMS and other Committee members should report back to the full committee by January 2016 about resources in existing federal programs and recommendations for Congressional authorization of additional resources and/or programs.

9. CMS should provide technical assistance to states and managed care organizations on the importance of CIE and how to support CIE for people with significant disabilities through Medicaid.
10. CMS should mitigate the policy that prohibits individuals from receiving CIE services if they do not live in settings that meet the HCBS Settings Rule requirements.
11. DOL should lead a collaboration of federal agencies, including those participating in the Committee and relevant agencies in ED, to ensure technical assistance resources are available to increase the competence and capacity of professionals serving people with disabilities to find and connect people to jobs and careers. This technical assistance partnership of federal agencies should encourage states to participate in providing such supports. Technical assistance is essential to build capacity in current and new programs and to improve the system's ability to deliver best practice and evidence-based models of employment support.

Eligibility

12. SSA should collaborate with the U.S. Department of Health and Human Services (HHS) and other relevant federal agencies to identify and carry out immediate and long-term steps to eliminate the fear that people with disabilities will lose benefits by working. These steps may include wide dissemination of information about work incentives that has been reviewed for clarity by people with disabilities; ready access to benefits counselors; and developing best practices for all counselors to present information and options in ways that are clear, simple, and feel safe to beneficiaries so they can make decisions regarding employment based on accurate information.
13. SSA should provide a report to the Committee about strategies that have proven successful in alleviating concerns about loss of benefits. The report will help the Committee develop recommendations for the Final Report due September 2016. The SSA report should include information from all relevant federal agencies and results of the different SSA demonstration projects pertaining to employment and loss of benefits. The report should include recommendations made by people who participated in the projects.

14. Congress should authorize expanding the Ticket to Work program to the children's SSI program. While many youth receiving SSI go on to receive SSI as adults, access to the Ticket is not available until after an adult redetermination process has already taken place, resulting in lost time. Expansion will enable school districts and other organizations that support youth employment to become employment networks and increase the likelihood that young people with disabilities will have access to employment experiences that are typical of young people without disabilities. These experiences will improve the likelihood of successful employment as adults.
15. RSA should clearly define "most significant disability" by:
 - a. Issuing an Advanced Notice of Preliminary Rule Making (ANPRM) to solicit feedback on how to define "most significant disability." The Subcommittee recommends that RSA consider including in the definition (a) people working in segregated settings and/or being paid below the minimum wage, (b) people receiving SSDI or SSI or at substantial risk of receiving these benefits in the future, and (c) transition age youth who have or have had an Individualized Education Program (IEP) or Section 504 Plan in school.
 - b. Require state VR agencies to establish specific practices for contacting and encouraging SSI and SSDI recipients (who are presumed eligible) to use VR services.
 - c. Encourage state VR agencies to engage in outreach to transition age youth and individuals currently in sheltered employment or other segregated settings about VR services.

Lack of Expectation

16. DOL should lead a should lead a collaboration of federal agencies, including Committee member agencies and relevant agencies in ED, to inform and educate their headquarters and regional personnel and related state agencies (such as VR, I/DD services, and mental health services) staff about use of best practices and evidence-based employment programs to obtain jobs for people with significant disabilities. Knowledge of successful closures and access to best practices in CIE will improve the ability of employment professionals to link people to good jobs and improve employment outcomes.
17. OSERS should disseminate information about effective transition programs that help students leave school with jobs or have effective post-school employment plans that lead to jobs.
18. DOL should lead a collaboration of federal agencies, including those participating in the Committee and relevant agencies in ED, to review states or programs that are effectively moving people to CIE from sheltered employment and other segregated settings and/or who are being paid below the minimum or prevailing wage. Information about these states or programs should be widely disseminated.

19. RSA should analyze the data it collects on individuals whose cases are closed before services are rendered and the reasons for closure. RSA should use its analysis of the data to determine how to reduce the number of eligible individuals that do not receive services.
20. RSA should develop conflict of interest policies requiring the determination of individuals' capacity for CIE be made by an entity separate from the CRP serving the person. There should be more oversight of these decisions by RSA to ensure CIE is widely available.
21. DOL should lead an effort to engage the business community as a major stakeholder in the employment of persons with disabilities. As partners, the business community can provide on-site resources such as options for employment and advice on best practice marketing of employment. They can provide business-to-business leadership in presenting the case for employing, retaining and promoting persons with significant disabilities.
22. DOL should lead a collaboration of federal agencies, including those participating in the Committee and relevant agencies in ED, to ensure that resources are available to states to convey the message of why CIE is important to people with disabilities. People with disabilities, their families and state level advocates should direct educational campaigns about employment and its importance.

AbilityOne® Program

The Complexity and Needs Subcommittee's preliminary recommendations regarding funding through the AbilityOne Program are contained in a separate chapter co-authored with the Marketplace Dynamics Subcommittee

Area 2: Data and Outcomes

23. DOL should lead a collaboration of federal agencies, including those participating in the Committee and relevant agencies in ED, to develop and use a standard definition for CIE across federal agencies. The definition should be based on HCBS definitions and the WIOA definition. The standard definition of CIE should be consistent with the goals of WIOA and the ADA.
24. DOL should lead a collaboration of federal agencies, including those participating in the Committee and relevant agencies in the ED, to develop consistent CIE outcome measures based on the standard definition of CIE recommended above for use at the federal and state levels. DOL should consider the data and outcome measures described in the Findings and Conclusion above regarding employment outcomes (such as wages and benefits paid, hours worked, type of job/occupational classification, group versus individual employment, formal versus natural supports, and average wage increase over time) and the impact of CIE (such as income level, use of healthcare services, housing stability, reliance on cash benefits, taxes paid, community inclusion, social capital, independent living, and cost benefits of wages earned versus support funding expended). Information from the national initiatives on

outcome measures, other labor force surveys and WIOA implementation activities should inform this effort.

25. Each federal agency that funds CIE (including DOL, RSA, and CMS) should require that states collect outcome data at a state, local and agency/provider level. These measures should include comparative hospitalizations, emergency room use, impact on homelessness, taxes paid, reduction in cash benefits, and cost benefit (wages earned versus support funding expended). Each agency should require states to report to it these data on a regular basis. Recognizing that state data systems are expensive to create and vary in sophistication across states, the Committee will attempt to explore best practice and cost effective models of employment data collection for the Final Report due in September 2016.
26. DOL should collaborate with other federal agencies to ensure that outcome data is widely disseminated so that people with disabilities, their families and other stakeholders can make informed decisions about employment, including such information as: where work is available; and which agencies are most effective in supporting people to obtain CIE.
27. CMS should provide guidance and technical assistance to states using Medicaid funding for employment and day services to make it easier for them to incorporate, implement, and track quality and outcome measures for CIE and other day services. Quality measures should be included as a state requirement in HCBS programs, managed care, and other waiver authorities. Quality and outcome measures for any employment service should be based on recommendations made above.
28. DOL should collaborate with other federal agencies that fund CIE to make state and national spending and outcome data widely available. The data should include, at minimum, the number of people employed in CIE at minimum wage or higher, the number of people employed at a subminimum wage, the number using other day services, and spending on employment versus other day services. The federal government should also collect and publish state outcome data (see recommendation above) as well as information regarding the benefits of employment and its positive impact on healthcare costs and social services for people with significant disabilities.
29. CIE programs should participate in fidelity processes to improve practice in connecting job seekers with good jobs that fit their abilities and interests and result in good wages, benefits and working hours. The Committee will review current practice with regard to fidelity in CIE and recommend best practices in the Final Report due in September 2016.

Area 3: Section 14(c) of the Fair Labor Standards Act

The Complexity and Needs Subcommittee's preliminary recommendations related to the current and future use of Section 14(c) of the FLSA are contained in a separate chapter co-authored by all of the subcommittees.

⁷⁸ Also see the discussion on the HCBS Settings Rule in the Section 14(c) chapter.

⁷⁹ Some consumers and disability advocates prefer the term psychiatric disability to serious mental illness (SMI). This Report uses SMI because it is the terminology typically used in state and federal systems.

Chapter Four: Marketplace Dynamics

Overview

Marketplace Dynamics Subcommittee Members

- **Karen McCulloh**, Subcommittee Chair, Self-Advocate, McCulloh & Associates Consulting
- **James Brett**, President and CEO, The New England Council
- **Sharyn Hancock**, Disability Resource Coordinator, Workforce Essentials, Inc.
- **Oswald Mondejar**, Senior Vice President of Mission and Advocacy, Partners Continuing Care
- **Steve Pemberton**, Divisional Vice President and Chief Diversity Officer, Walgreens
- **Jennifer Sheehy**, Acting Assistant Secretary, Office of Disability Employment Policy, Department of Labor-Designated Federal Officer of ACICIEID
- **David Berthiaume**, Designated Federal Officer of the ACICIEID Subcommittee on Marketplace Dynamics, Office of Disability Employment Policy, Department of Labor

The Marketplace Dynamics Subcommittee (the Subcommittee) is charged with exploring the demand-side perspective related to increasing competitive integrated employment (CIE) outcomes for individuals with intellectual or developmental disabilities (I/DD) and other significant disabilities, focusing primarily on the opportunities and issues as identified from the employer perspective. **In representing the demand-side perspective, the Subcommittee seeks to address two fundamental questions:**

1. What do employers need to help them be successful in meeting their diversity goals and increase the hiring, onboarding, and retention of workers with significant disabilities and
2. How can a different business model be supported that allows businesses to succeed with CIE without relying on the subminimum wage certificates authorized by the Fair Labor Standards Act (FLSA) Section 14(c)?

The Subcommittee's efforts to date have included exploring effective practices among diverse employers and federal contractors, reviewing written public testimonies, and hearing directly from business owners or representatives on critical business issues such as: training of employees, sustainable models that can lead to real culture change within an organization, pipeline issues, other systems change, and transportation. Additionally, the Subcommittee continues to explore broader systems issues, including training professional staff within the One-Stop Career Centers and Workforce Development Boards (WDBs) on effective practices for successful employer engagement. The Subcommittee also received presentations and participated in an informational dialogue with representatives from the following entities: AbilityOne®, the

U.S. Business Leadership Network (USBLN), Ad Astra Business Solutions, the National Association of Workforce Boards, SourceAmerica, The National Council on Disability, Disability Rights Education and Defense Fund, and Association of Programs for Rural Independent Living. In addition, Subcommittee members have acted as subject matter experts (SMEs), bringing their perspectives, professional experiences and knowledge to the forefront to further inform the exploratory work of the Subcommittee specifically and the full Advisory Committee generally.

For this Interim Report, the Subcommittee addresses the following primary topic areas:

1. Changing the Business Narrative
2. Creating a Sustainable Culture of Inclusion
3. Building Business Partnerships While Driving Systems Change
4. Addressing Training and Pipeline Issues
5. Transportation Impact on Business Recruitment of Talent
6. Preliminary Recommendations

Initial findings and conclusions are detailed for all topic areas, followed by preliminary recommendations as appropriate. Future topics to be explored and included in the final report include: Office of Federal Contract Compliance Programs (OFCCP) 503 Rules; state use programs; high growth industries (HGI) such as technology, healthcare, and retail; more effective employer engagement with WDBs and Vocational Rehabilitation (VR); self-employment for people with I/DD and other significant disabilities; and Internal Revenue Service (IRS) Tax Incentives for businesses in order to encourage the hiring of people with disabilities and remove architectural barrier. Additionally, ongoing research and further exploration continues for the topics covered in this Interim Report.

Changing the Business Narrative

Currently, the predominant business narrative for hiring individuals with disabilities in America is that it is simply “the right thing to do,” thus appearing to be a patriarchal appeal, rather than an identification of the opportunities and benefits associated with developing an inclusive workforce. Further, such a pervasive message can perpetuate negative perceptions and low expectations for employees with I/DD and other significant disabilities. The Subcommittee believes that pushing business to employ workers with disabilities out of a sense of duty or corporate social responsibility may unintentionally undermine the identities and worth of job seekers with disabilities, and eclipse the reality that individuals with I/DD or other significant disabilities are essential, capable, and efficient members of the community workforce. **“Doing the right thing” runs contrary to why businesses hire employees in the first place – to fill a need and to support the company’s business model to enhance their bottom line.**

The Subcommittee's findings, conclusions, and recommendations focus on the critical need to **change this narrative and to help educate employers that hiring people with disabilities can be good for any business's bottom line.** Businesses with workforces that include employees with I/DD or other significant disabilities consistently report that these employees' performance equals or exceeds that of their coworkers without disabilities.⁸⁰ As such, hiring persons with disabilities must be recognized as a cost-effective way to build an inclusive workforce that is representative of the business's customer base, and individuals with significant disabilities must be perceived and portrayed as an asset to the company, not a risk.

The Subcommittee recommends that the **business narrative move from one of corrective action to one of competitive advantage.** Business leaders must understand that hiring individuals with I/DD or other significant disabilities will allow them to increase revenue or better meet other targets specific to their business models. Business decision-making is based upon data. At the same time, research has shown that exposure to people with disabilities may be more effective at reducing employer discrimination than demonstrating substantial cost-benefits; thus, efforts to directly engage employers in an ongoing dialogue with prospective workers with disabilities also plays an important role in changing the business narrative.^{81,82} As employers recognize that developing a more inclusive workforce results in competitive differentiation within their industry, they adopt this as a continuous, standard component of their human resource process.

To effectively change the current narrative, employers need evidence and examples that persons with significant disabilities both want to work and are qualified and dedicated employees.

Success stories from businesses that have strategically developed a more inclusive workforce model can be promoted to illustrate the benefits from a *business perspective*.

While the specific benefits may vary across businesses, results from these strategic initiatives point to a wide array of positive outcomes, from increased productivity to reduced turn-over and lower absenteeism rates.^{83,84,85}

- In 2007, Walgreens launched an initiative to hire more individuals with disabilities in the first of a new generation of distribution centers. Emphasizing their theme of "Training versus Abilities" as a high priority, training facilities were embedded inside the distribution centers in South Carolina and Connecticut. Inside each distribution center, workstation computer screens were changed from text-based information data entry to touchscreens using icons, adjustable workstations were installed, and processes were simplified and centralized to better support a diverse workforce. The results thus far have been powerful: the new distribution centers have increased efficiency by 20 percent overall. Investments to streamline the technology and processes paid off by improving the efficiency of all employees, not just those with disabilities. Walgreens reports that in the distribution centers, employees with disabilities perform as well or better than other employees as a whole.⁸⁶ In

2012, Walgreens expanded this initiative into their retail stores through the Retail Employees with Disabilities Initiative (REDI). REDI provides in-store training to help people with disabilities develop the skills required for retail and customer service jobs and includes partnerships with local employment service agencies and state VR agencies to provide the necessary funding and support. Externs trained in the four to six week program are evaluated, and those scoring high enough are recommended for hire and invited to apply for jobs. Of the 784 REDI externs who completed the training, 67 percent were recommended for hire, and 165 were hired by Walgreens. Those not hired by Walgreens received valuable skills training that can serve as the foundation for other community employment, though Walgreens does not track these outcomes.

- AMC Theater’s (AMC) *Furthering Opportunities, Cultivating Untapped Strengths* (FOCUS) Program incorporates intentional outreach to recruit youth with significant disabilities for entry-level positions, with competitive pay and benefits. Changes to standard business practices in support of the FOCUS program included changing the interview process from “sit down” interview to “traveling” interviews, where managers walk through the theaters with potential employees; revision of training materials to make them more visual; and including parents or job coaches in performance feedback sessions where appropriate. In an effort to address the performance variability across job coaches, AMC created guidance and standards detailing the company’s expectations for all job coaches working with AMC employees. AMC reports that employees with significant disabilities consistently perform as well as or better than their peers without disabilities and consistently exceed their *own* job performance expectations along with the expectations of their family members. As a result the changes made through the FOCUS program, AMC has improved policy and practices system-wide and positively impacted their corporate culture as a whole.
- Approximately 75 percent of the employees at Habitat International, Inc. (www.habitatinc.com), a Chattanooga-based supplier of artificial-grass and carpet products, experience a disability. Habitat cites an impressive list of business data, including: zero back orders in 24 years, a product defect rate of less than one percent, very low turn-over and absenteeism, a reduced number of supervisors, and lower administrative costs. These successes highlight the myriad of ways in which supporting a more inclusive workforce contributes to a better bottom line. Savings from developing a reliable workforce are profound and can be realized by assessing the costs of the vacancy including advertising, lost productivity, and training time for a new employee.

Many of the better-known business success stories come from large businesses with full-scale initiatives to include more people with disabilities within their workforce. Yet the vast majority of businesses in the United States are those employing fewer than 100 people, so small and medium-sized businesses must be part of the dialogue on how to improve CIE opportunities for workers with significant disabilities. Smaller businesses are less likely to have strategic plans

targeting the recruitment of people with disabilities, including individuals with I/DD and other significant disabilities.^{87,88} **Positive impacts on the business bottom line can occur at businesses of all sizes and in all locations; however, evidence and examples from a variety of businesses and industries – small, mid-size, and large – are needed to advance the narrative and keep it relevant for a greater number of businesses throughout both rural and urban communities.**

Creating a Sustainable Culture of Inclusion

There has never been a greater need for creating a sustainable culture of inclusion within both public and private sector workplaces throughout the United States than there is today. For too long, the presumption that people with I/DD and other significant disabilities will not be able to meet the job requirements of competitive, integrated work environments has resulted in limited access to innovative training opportunities and very few individuals achieving economic self-sufficiency. Data from the 2013 SSI Annual Statistical report shows that of the almost five million individuals with disabilities between the ages of 18 and 64, less than 300,000 (5.9%) were working.⁸⁹ Monthly earnings averaged less than \$1,400: not even \$17,000 per year. Employees with disabilities earn less on average, are more likely to work part-time or in temporary positions, and are less likely to work in technical or managerial positions than their peers without disabilities.^{90,91}

From the Subcommittee's point of view, there are many companies that are proving that employees with significant disabilities are highly valued in their workforce, which dispels myths and stereotypes directed to this disability population. More needs to be accomplished, however. **Creating a sustainable culture of inclusion requires a dedicated effort, and companies, regardless of size, need a tactical, executable plan supported by middle management, executive leadership, and their Board of Directors in order to recruit, train, retain and promote individuals with I/DD and other significant disabilities into their workforce.**

Companies with targeted diversity plans are significantly more likely to hire individuals with disabilities, yet a large number of employers, particularly small employers, do not have either formal staffing or diversity plans.^{92,93} **Public and private employment services staff should be prepared to help businesses develop targeted plans as the first step to increasing employment opportunities for individuals with I/DD or other significant disabilities.** Plans must be both internally and externally focused, and predicated on the assumption that building an inclusive workforce results in a more flexible, responsive corporate culture that better meets the needs of all employees, not just those with disabilities. Workplace flexibility strategies are linked to enhanced performance, productivity, and retention company-wide, thus again ensuring a synergy to businesses' bottom line.^{94,95,96}

Companies that prioritize diversity or disability are much more likely to employ individuals with disabilities, and yet the number of companies with disability plans in place declined between 1995 and 2010.⁹⁷ Many applicants are reluctant to self-identify as a person with a disability for fear of discrimination. Indeed, research shows that employers are less likely to hire applicants who have self-identified as having a disability.^{98,99}

However, it is important for individuals with disabilities to self-identify their disability to federal contractors and subcontractors associated with the OFCCP and the Section 503 Rules. These rules require federal contractors and subcontractors subject to the Section 503 rules to establish a seven percent utilization goal for the employment of people with disabilities, therefore creating important hiring opportunities for individuals with I/DD or other significant disabilities.¹⁰⁰

Businesses need access to support and guidance to develop more inclusive hiring practices, eliminate barriers, and encourage more individuals with significant disabilities to apply and self-identify. The Disability Equality Index (DEI) may offer a starting point for community businesses. A collaborative initiative through USBLN and the American Association of People with Disabilities (AAPD), the DEI is an online tool that provides businesses with an objective assessment of their current disability inclusion practices and helps companies to identify opportunities for building a more inclusive company culture (www.disabilityequalityindex.org).

Effective recruitment requires targeted outreach to potential employees with I/DD and other significant disabilities, but **many companies may not know how to effectively find qualified candidates with disabilities.**¹⁰¹ Developing accessible online recruitment announcements and applications and establishing relationships with employment service providers or public system services such as One-Stop Career Centers, now called American Job Centers (AJCs), or VR agencies can help connect employers with potential applicants.¹⁰² As part of the FOCUS program, AMC revamped the online application process to make it more accessible for potential employees with disabilities. Through the Bridges to Business program, the National Organization on Disability (NOD)¹⁰³ serves an intermediary between businesses and public and private employment service agencies to address this gap.¹⁰⁴ The program has been so successful with one of its sites, Lowe's Home Improvement, that Lowe's ultimately created a position within its diversity team to fulfill the role previously performed by the NOD intermediary.¹⁰⁵

Additionally, departmental silos that exist within larger corporate entities may present barriers to inclusive hiring. Department managers are frequently aware of job vacancies only within their purview and do not have a "bird's eye view" of all possible unmet needs within their organization that could lead to customized employment designs and better job matching. Mitigating strategies may include dedicating a position or part of a position to recruiting and hiring individuals with disabilities company-wide, working with an external consultant to identify unmet needs, and establishing public-private partnerships to identify and fill available positions. For example, the in-house position created by Lowe's following the success of the

Bridges to Business project allows for enhanced coordination of potential employment opportunities for individuals with disabilities.

Employee Resource Groups (ERGs) enhance efforts to establish a sustainable culture of inclusion by providing a structured forum for employees with similar backgrounds to discuss common issues and provide feedback and recommendations to organizational management.^{106,107} Some corporate ERGs include any employee that is interested in a specific area such as family members, caregivers, employees with disabilities, and others to come together to receive information and to discuss issues associated with work, accessibility, the community and resources available. Feedback and guidance from ERGs can enhance outreach and recruitment efforts, as well as ensure that the work culture remains flexible, accepting, and responsive to employees with disabilities.

Another reason companies cite as a reason for a lack of hiring individuals with disabilities is a lack of understanding and fear of the laws and policies around employing individuals with disabilities. Many companies express concerns about perceived risks that they may be subject to litigation for taking disciplinary action against or terminating employees with disabilities. Additionally, companies may be confused about what accommodations are required by the Americans with Disabilities Act (ADA) and the potential costs involved. These **concerns are most effectively alleviated not through the dissemination of written information, but through more direct conversation with employment professionals as part of broader employer engagement initiatives.** Employment services professionals must be prepared to work with companies one-on-one to provide the necessary supports as they transition to a more inclusive workforce.

Establishing business-to-business peer connections are critical to assisting companies in learning more about employing people with I/DD and other significant disabilities.¹⁰⁸

Businesses can learn from the examples of other companies and use them as a model when revising policies and practices. There is no “one size fits all” model, but incorporating practices that have already succeeded and adjusting to each company’s individual needs supports more efficient movement toward the development of a sustainable, inclusive work culture.

Building Business Partnerships While Driving Systems Change

The critical need to build effective partnerships with businesses in order to increase employment opportunities for individuals with intellectual, development, and other significant disabilities cannot be overstated. The success of Walgreens, AMC, Partners Continuing Care, and the businesses participating in the Bridges to Business project showcase the rich job training and employment outcomes possible through such partnerships. Businesses can clearly benefit from developing relationships with government, service providers, secondary and postsecondary educational institutions and other businesses within their local communities. However, **many**

businesses are either not aware of or do not use the supports and services already available through public resources such as AJCs, state VR agencies, or local service providers.^{109,110}

Outreach efforts must therefore be fluid and tailored for attracting employers, and public system personnel and nonprofit service providers must have the skills and experience to support businesses with the development of customized plans and strategies that address the unique needs and opportunities of each specific business.

AJCs, state VR agencies, and employment service provider agencies all provide an array of services designed to support individuals with I/DD and other significant disabilities to achieve CIE outcomes; however, **deficits continue to exist in these public and private systems with regard to business outreach and communication, particularly as it relates to the employment of people with significant disabilities.**¹¹¹

Recent legislation affirms the importance of establishing partnerships between these public systems and the local business communities. The Workforce Innovation and Opportunity Act (WIOA) mandates that VR agencies collaborate with employers in order to maximize CIE opportunities for individuals, including those with the most significant disabilities and authorizes the use of funds to support work-based learning experiences, training for employees with disabilities, and delivering awareness building activities for the business community. Moreover, WIOA specifically requires that AJCs deliver effective business services to engage employers of all sizes within their local regions and cautions against “burdening employers, for example with multiple uncoordinated points of contact.”¹¹²

Local WDBs provide oversight of AJCs. As such, workforce boards need to be educated about the employment of people with significant disabilities so they may act as advocates and support CIE within the AJCs. WIOA requires that a representative from VR serve on WDBs, yet there is no requirement that boards include a representative specifically from the I/DD network.

WIOA requires that state and local WDBs use a standard set of performance metrics to review regularly how effective their programs are at serving job seekers. **Business leaders can provide expert advice to state and local WDBs on how to establish and use these performance metrics to improve the WDBs. Additionally, businesses can help develop performance metrics related to service expectations for employers to ensure that both job seekers and employers are effectively served by workforce development programs.** Performance standards under WIOA allow for performance adjustments based on a number of characteristics, including disability status, and include tracking participation in training programs, both of which can lead to more flexibility in the design and delivery of services for individuals with disabilities.¹¹³

Despite the pivotal need to expand and improve business partnerships, AJCs lack continuity in their outreach to companies and are inconsistent in the quality of services

provided to businesses. AJCs are not using the same language as businesses, and as a result, are not as effective as they could be when connecting employers with individuals with disabilities.¹¹⁴ AJC staff has questions about standards relating to provision of services (e.g., ADA Title II, Section 504), and standards relating to employment (e.g., ADA Title I, and specific parts of Section 504). Further, AJC staff appears to be confused on what they can legally communicate to businesses regarding candidates with disabilities who are seeking employment.¹¹⁵

AJC staff and WDBs need ongoing education on “Disability Awareness” and how to provide quality services to people with I/DD and other significant disabilities. Under WIOA, AJCs are tasked with meeting the needs of both job seekers and regional businesses. To do so requires staff to be equally adept at navigating both the supply-side and the demand-side of the employment equation, and a skills gap currently exists on both of these sides. Public system personnel who lack understanding of business acumen and needs are likely to approach businesses with a standard list of available services- a practice that is largely ineffective if businesses do not see a fit between the services offered and their own needs.

AJC and VR staff must have the requisite skills to help businesses explore and identify opportunities to address their unique workforce needs and to identify the best possible options available for meeting them. For example, Partners Healthcare located in Boston, MA, provides office space for a VR counselor to spend 20 hours a week on-site. This model allows the VR counselor to thoroughly learn about all the offices within the company, and identify and explore vacancies throughout the hospital to identify possible CIE opportunities for individuals with disabilities.

Outreach and innovation efforts directed to businesses must include the recognition and importance of developing relationships with businesses of all sizes. Of the 28 million small businesses in 2014, over 22 million of them were non-employer firms, with one person serving as the sole owner and operator.¹¹⁶ **Small business employed half of the nation’s workforce, and these numbers tend to under-reflect the employment picture in rural communities where small business tends to play an even more significant role.** Moreover, creating flexible, customized job positions is often easier in small businesses, which tend to lack the formal job descriptions found in larger companies.¹¹⁷ Overlooking small business imposes artificial limits on the employment opportunities available to job seekers with I/DD and other significant disabilities.¹¹⁸ Despite the employment opportunities small businesses can provide, employer research surveys and studies to date have focused almost exclusively on medium- and large-sized businesses. It is critical to expand research efforts to include small businesses, including non-employer firms. One size does not fit all when it comes to employers and **public system staff need guidance and support on effective practices for bringing small businesses to the table and customizing initiatives to meet the needs of businesses of any size.**

Addressing Training and Pipeline Issues

Society's chronically low expectations of individuals with significant disabilities have contributed to a mindset that ignores, underserves, and undermines them across all areas of their lives. This mindset has also severely constricted the development of innovative, out-of-the-box training opportunities. **Current training options are often dictated by service professionals, not individual choice, and lead many people with disabilities down the path to a predictable and restricted array of subminimum wage or entry-level employment outcomes.**

Productivity analysis as conducted in segregated work centers trap many people with significant disabilities in a vicious cycle. Low productivity evaluations based on antiquated methodologies reinforce the perception of limited capability and close the door to more advanced training opportunities as evidenced by the fact that only approximately five percent of employees earning subminimum wages ever leave sheltered work for CIE.¹¹⁹ However, access to better training and different job tasks is often the very thing needed to positively impact job performance.

The net impact of this is that few individuals with significant disabilities think about building careers and achieving economic self-sufficiency.¹²⁰ Given the limited opportunities for people with significant disabilities to receive quality education, access innovative training, secure higher-level employment, and live in the communities of their choice, employers specifically and society as a whole may have a very limited view of what individuals with IDD and other significant disabilities can contribute as employees. **Individuals with significant disabilities must receive innovative, out-of-the-box training along with all necessary accommodations in order to achieve higher-level, better paying, and more secure employment.**

Employers that want to hire individuals with disabilities identify challenges with finding qualified applicants as a major barrier.¹²¹ When employers reach out to AJCs, staff may not know applicants who live in the area or who have the necessary skill set, and the conversation stops there. Follow-up with these businesses must be prioritized as they open the door to business partnerships and reveal critical industry information. Businesses want to have potential employees in their human resource pipeline. A lack of applicants with relevant skills in any demand area may create the foundation for work-based learning experiences or paid internships within regional businesses that both provide training opportunities for job seekers in high-need area as well as help businesses build their potential employee base. Public and private employment systems personnel need training to establish business partnerships and to support employers to develop these initiatives.^{122,123} Additionally, standards must be established that give individuals with significant disabilities priority access to these training opportunities.

Businesses also need support from competent and professional employment service providers that understand how businesses work and can support them to identify and address employment needs. Doing so requires extensive knowledge of both the business needs and the job seeker's skill sets and capacities. More traditional vocational evaluations tend to be ineffective for

individuals with I/DD or other significant disabilities; Discovery and other person-centered assessment processes allow employment service providers to identify and showcase to businesses what potential employees with I/DD or other significant disabilities can do.¹²⁴

Walgreens identified that many potential employees with disabilities are unprepared for interviews and may emphasize what they cannot do versus what they can do. Employment services personnel require training and technical assistance on all aspects of creating the job match as well as on providing quality job coaching onsite. **AMC believes that the services provided by job coaches are so significant that they can “make or break” an employee’s ability to succeed on the job yet** found such significant variation in the quality of the job coaches working with employees in the FOCUS program that it began requiring all job coaches to sign a standard performance agreement.

Students with I/DD and other significant disabilities can greatly benefit from internships and mentoring experiences as well in order to prepare them for employment. WIOA allows AJCs and state VR agencies to allocate funds to create pathways to employment within local businesses through work-based learning experiences, paid internships, and on-the-job training. However, at the present time, youth and young adults with I/DD and other significant disabilities are less likely to be offered these opportunities and more likely to participate in a standard job sampling of lower-skilled entry-level positions such as wiping tables, stocking shelves, and processing clothing.

The importance of high-quality training opportunities focused on teaching higher-level skills cannot be overstated. A key part of Walgreen’s success came from the company’s decision to focus on “Training Not Abilities” and to teach supervisors to manage the work instead of the employee’s disability. Focusing on the worker as a whole and the job that needed to be done enabled supervisors to more accurately pinpoint and address training and accommodation needs that might otherwise have been misinterpreted as disability-related performance issues. Walgreens also took a proactive and unprecedented approach by embedding training facilities within their South Carolina and Connecticut distribution centers. The training facilities were designed to replicate the actual work environment so that new employees were better able to transfer the skills learned during training. While this strategy would not work for all businesses, it does showcase the dual-benefit of creating training programs that allow job seekers to build skills while simultaneously creating a pipeline of qualified applicants.

Transportation Impacts Business Recruitment of Talent

Businesses face limitations in recruiting talent with I/DD or other significant disabilities when potential employees cannot travel to a worksite because they do not drive, lack public accessible transportation, or must deal with long commutes or very complicated routes.

Urban areas tend to have more public and private transportation options available, yet may not offer accessible or affordable options. Paratransit transportation services are designed to

supplement other fixed-route transportation services for people with disabilities, but the focus on pick-up time versus drop-off time creates challenges for businesses that require employees or potential employees to arrive at specific times for job interviews or work.¹²⁵ Transportation barriers must be addressed as a part of comprehensive plans to increase employment options for individuals with disabilities, and sufficient resources must be allocated to develop and implement transportation initiatives.

The lack of accessible and affordable transportation restricts employment opportunities and limits access to CIE for many people with significant disabilities. In addition to the more commonly cited issues, such as accessibility and limited routes or hours of operation, individuals with I/DD or other significant disabilities and their family members cite additional concerns related to safety and appropriate treatment and communication. Research documents the devastating reality that individuals with significant disabilities can be subject to abuse and mistreatment when using public and private transportation, which underscores the legitimacy and validity of these concerns.^{126,127}

As policies, regulations, and grassroots efforts drive supports and services away from segregated settings and into the community, safe, accessible, and reliable transportation must become a priority. Dedicated initiatives and funds to ensure transportation to other community locations, including CIE, must be seen as a critical part of all capacity building plans or efforts to support individuals through this transition will be severely undermined. In 2001, the Government Accountability Office (GAO, formerly known as the General Accounting Office) found that 97 percent of the employers holding special wage certificates offered or helped to coordinate transportation for workshop employees.¹²⁸ In fact, one of the greatest marketing points provided by nonprofits that administer sheltered workshops is the provision of door-to-door transportation. Family members highly value these services because safety and treatment are less of concern. **The reality remains that these programs provide a stability of transport that is not guaranteed in the public transportation systems, and any initiatives to increase access to transportation must include measures for meeting these concerns head-on.**

Although large cities such as New York City, Los Angeles, and Chicago have major initiatives to improve inclusive transportation, including accessible taxis, midsize and rural communities have far more limited options for individuals with significant disabilities needing transportation for work. **Consequently, rural areas within the United States have had to be creative in developing transportation models such as the transportation voucher models, where individuals receive vouchers to subsidize the cost of transportation services.**¹²⁹ Project sites created new options for transportation, such as creating systems of volunteer drivers, as well as build upon existing systems, e.g., negotiating trip rates or available hours.^{130,131} **Over the first three years of the project, 117 people in rural communities obtained employment, and 85 percent of the rides provided were for work.**¹³²

Changes to funding options reduced or ended many voucher programs because local government entities and services providers in rural areas had to decide where funds will be used when voucher funds were merged in with other options, reducing or eliminating transportation options for many.¹³³

Obtaining funding to create or maintain transportation in rural areas is complicated and time consuming. **The process for funding must be streamlined so that a faster process can occur for grant review and decision-making, particularly within government funding entities.** The funding issues are critical. The National Council on Disability (NCD) Report 2015 stresses the extreme lack of public transit in most rural communities along with the inequitable allocation of resources between urban and rural areas and recommends that Congress and federal agencies place heightened emphasis on planning and funding rural transit options.¹³⁴

For many individuals with I/DD or other significant disabilities, family members, neighbors, or friends provide transportation to and from work, but transportation systems available to the non-disabled population should also be readily available to people with significant disabilities. Access to transportation not only supports greater employment options, but also promotes and enhances independence – a highly valued outcome in its own right.

Partnerships with businesses can play an important role in transportation initiatives as well. Walgreens, for example, petitioned to have bus stops located near their distribution centers so that employees with I/DD and significant disabilities can travel to work with less trepidation. Employers, particularly large employers, have power within smaller communities, and advocates should not be afraid to invite them to the table during transportation negotiations. The bus stops near Walgreens ultimately benefited all employees and the company as a whole. In other examples, local businesses have provided shuttle buses for transportation from train stations and from other venues, but very few of these shuttles are accessible. Employers must be considered an ally in the transportation conversation, as ensuring reliable, accessible transportation benefits is a key part of building a reliable, consistent workforce.

Marketplace Dynamics Subcommittee Preliminary Recommendations

Please note that the Subcommittee is continuing to address all topic areas and will develop additional recommendations to include in the Final Report.

Changing the Narrative/Building a Sustainable Culture of Inclusion

1. Congress shall appropriate funds for the U.S. Department of Labor (DOL) in collaboration with the U.S. Department of Education (ED) and the U.S. Department of Health and Human Services (HHS) to conduct a National Educational Campaign (the Campaign) to educate the public, the public workforce system, and businesses on the types of jobs individuals with I/DD or other significant disabilities hold in CIE settings.

- a. One of the Campaign’s top priorities must be to include a business-to-business component where successful businesses share their “workforce diversity” models with other businesses that have not begun to hire individuals with I/DD and other significant disabilities. Business-to-business communications need to focus beyond policy to demystify the hiring process and take the fear out of hiring people with disabilities.
- b. The Campaign should focus on the development and dissemination of marketing materials that highlight the competitive advantage that stems from building a more inclusive workforce and showcases examples of businesses that have successfully integrated individuals with I/DD or other significant disabilities into their company culture. In particular, marketing materials should represent and target businesses of all sizes and include both written communication as well as short, promotional videos that may include videos or news releases that have already been developed.
- c. The Campaign should target Chambers of Commerce, human resource organizations, various industry trade organizations, healthcare institutions and healthcare industries, hospitality, retail, and other high-growth industries to dispel the negative myths and stereotypes directed to people with significant disabilities and to emphasize their abilities to perform within the competitive integrated workforce. The Campaign should include funding for the development of new business-based resources and materials, including Public Service Announcements, as well as the dissemination of existing resources.

Building Better Business Partnerships

2. The Employment and Training Administration (ETA) should create an educational module available to AJC and WDB staff and board members on “Disability Awareness” that highlights the communication skills and techniques necessary to most effectively work with people with significant disabilities. The educational module should be provided in one online centralized location.
3. ETA should issue guidance to state level AJC staff and WDBs on developing partnerships with other key stakeholders.
4. HHS shall fund and work in collaboration with the DOL to set up a program for Centers for Independent Living (CILs) to establish partnerships with AJCs/WDBs in their local areas. HHS and DOL should issue guidance to AJCs and WDBs on how to partner with CILs located in areas near AJCs. CILs that hold expertise in employment of individuals with I/DD and other significant disabilities can assist AJC staff onsite to reinforce education on “Disability Awareness” and appropriate communication with people with significant disabilities and provide technical assistance on community supports and accommodations.

5. Congress shall appropriate funding to DOL, ED, HHS, and business organizations to conduct a nation-wide educational campaign. The educational campaign must assist AJCs, WDBs, VR agencies, and service providers on how to communicate with businesses in order to provide quality services and address the needs of individual businesses of all sizes. The educational campaign should include information on the services provided by each agency within the public workforce systems in order to enhance cross-agency communication and reduce service duplication.
6. ETA should issue guidance to WDBs that representatives from Developmental Disabilities (DD) networks, such as state DD Councils, Protection and Advocacy agencies, or state DD agencies, should be appointed to each WDB at both the state and local levels across the United States.

Addressing Training and Pipeline Issues

7. Congress should authorize DOL, ED, and HHS to coordinate and establish national training requirements for all Disability Service Professionals (DSPs), including employment specialists, job coaches, job developers, and service provider organizations, to ensure that DSPs develop the knowledge and skills required to support all individuals with significant disabilities to achieve CIE.
 - a. The Commissioners of the Rehabilitation Services Administration (RSA) and HHS should provide guidance to states outlining these national training requirements for DSPs. At a minimum training requirements must cover topics related to the provision of high-quality employment services for individuals with significant disabilities, including: identifying potential employees' skills and strengths, facilitating connections with potential employers, preparing potential employees for interviews, assisting employers to identify possible high-quality job matches, and providing the necessary training and coaching once jobs are secured in a career that the employee wants to pursue.
 - b. Training requirements must also include specific business-related information including a general overview of different markets and industries as well as recommendations and guidance from businesses that have successfully included individuals with I/DD or other significant disabilities into their workforce.
8. Congress should authorize DOL, ED, and HHS to coordinate and establish national performance standards for all DSPs. DSPs must be held accountable for quality provision of services across the spectrum of employment supports. The Commissioners of RSA and HHS should provide guidance that DSPs who do not meet performance standards should face funding cuts and/or suspension or discontinuation of services.

9. DOL and HHS should collaborate to develop templates for formal agreements between businesses and DSPs/job coaches. Templates must be accessible and available online in one centralized location.
10. Congress should amend WIOA and other applicable laws to ensure that individuals with I/DD and other significant disabilities receive priority access to training and internship opportunities, available through AJCs, state VR agencies, and the school system while utilizing all possible funding resources, including Pell Grants, to ensure that such training opportunities and internships occur.

Transportation

11. Congress should appropriate funding so that the Secretary of the U.S. Department of Transportation (DOT) and allied state programs ensure that public transportation systems planning in both urban and rural areas of the United States are developed and implemented to meet the needs of individuals with significant disabilities. This includes providing resources for travel training, safety mandate requirements, and training to transportation vendors on appropriate communication, treatment and respect to individuals with significant disabilities. Businesses that offer their own transportation services or supports must ensure that their transportation vendors are included in all training and educational information opportunities.
12. The Secretary of DOT should provide financial incentives to plan and implement collaborative and innovative approaches to resolve transportation deficits. Work with local governments, chambers of commerce business representatives and other organizations representing people with significant disabilities to create individualized transit options that identify specific needs of individual communities and their population of people with significant disabilities. Seek guidance from key stakeholders knowledgeable of transportation deficits within both urban and rural public transportation systems while including individuals with significant disabilities and family members in this planning and implementation process.
13. Congress should appropriate funding to ensure that the DOT enforces that public transit systems of all types meet the ADA accessibility requirements while ensuring the accessibility needs of rural transportation systems is addressed and resolved.
14. Congress should appropriate funds to ensure that DOT develops para-transit systems and other transit system options throughout rural America. Incentivize building accessible all-rider public transportation systems to minimize rider expenses.
15. DOT should develop plans and implement those plans to ensure that cross-jurisdictional transportation in larger geographic areas in rural America across the United States so that transportation for people with I/DD and other significant disabilities is seamless and uninterrupted.

16. DOT and allied state programs should prioritize access to public transportation for people with significant disabilities that apply for or hold jobs in competitive integrated workplaces. Additionally, paratransit transportation providers should guarantee drop-off times within 15 minutes of employment start times unless there are extenuating circumstances such as severe weather conditions or accidents.

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⁸⁴ Matos, K. (2014). *2014 National study of employers: Including the talents of employees with disabilities*. New York, NY: Families and Work Institute.

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⁹⁴ Matos, K. & Galinsky, E. (2014). *2014 National study of employers*. New York, NY: Families and Work Institute.

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Chapter Five: Building State and Local Capacity

Background

The Capacity Building Subcommittee (the Subcommittee) is one of four created by the full Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the “Committee”) to examine and make recommendations concerning competitive integrated employment (CIE). The charge of the Subcommittee was to focus on what needs to be done to build systemic and professional capacity for increasing CIE for individuals with intellectual or developmental disabilities (I/DD) and other significant disabilities. Participation in each Subcommittee was by member preference. This Subcommittee was thus constituted by those who chose to work on this issue and included Cesilee Coulson (Subcommittee Chair), Janet LaBreck, Rita Landgraf, Christine McMahon, and Brian Itzkowitz.

The Subcommittee, during several working sessions, subsequently organized its work around three sub-themes: service culture, service delivery, and organizational and professional development.¹³⁵ Service culture refers to how the service system is structured, the expectations it creates, and how it helps or hinders the pursuit of CIE. Service delivery is the resultant impact of state and federal policies related to employment services for individuals with significant disabilities. Organizational and professional development refers to what happens or needs to happen to create local capacity for the delivery of services that feature CIE. The Subcommittee also identified the use of data to inform and drive optimum service delivery as an important theme that is interwoven into the three selected main sub-themes.

The next section of this chapter provides a summary of the findings and conclusions related to building systemic capacity for delivering services which result in CIE. Following a general overview, the section presents the findings and conclusions for each sub-theme identified above. The final section of the chapter contains the Subcommittee’s resultant recommendations for increasing services leading to, and outcomes for, CIE for individuals with significant disabilities.

Findings and Conclusions

Participation in CIE has historically been low and remains so for individuals with significant disability. For example, the most recent comprehensive report on employment services and outcomes indicates that only about 18 percent of individuals served through programs funded by state I/DD service systems are participating in integrated employment.¹³⁶ The remainder is primarily served in either sheltered employment or in facility-based non-work programs, with a growing percentage in community-based, non-work programs. According to this report, the employment participation rate is relatively unchanged over the past decade as sheltered employment and non-work activity remain the predominant service option for individuals with I/DD. In fact, in recent years the rate of entry into sheltered work exceeds that of integrated

employment. Further, more often than not, those who are employed work limited hours, earning low wages.¹³⁷

A recent study, analyzing the National Longitudinal Transition Study two data base that included a large percentage of students with intellectual and multiple disabilities, found that only 26 percent of these youth and young adults were reported to be employed two years after high school.¹³⁸ This report does not differentiate the type of employment achieved by these individuals and therefore includes those employed in congregate settings earning below the minimum wage. State Vocational Rehabilitation (VR) systems have similarly achieved variable results for individuals with I/DD served by those programs. Although individuals with I/DD achieve a rehabilitation rate (i.e., the percent who apply for services who achieve employment as a result of the services) comparable to people with other disabilities, they work fewer hours and earn lower wages.¹³⁹ Further, this rate varies greatly from state to state, suggesting a less than uniform approach to facilitating employment for this group.

Although individuals with I/DD as a group have the lowest employment participation rates compared to other disabilities, the employment participation rates of individuals with other significant disabilities is also considered unacceptably low. For example, individuals served by public mental health systems are reported to be unemployed at three times that of the general population¹⁴⁰ and are the largest and fastest growing group of public disability income beneficiaries.¹⁴¹

For people with I/DD or other significant disabilities, sheltered workshops have widely been used as a place where alternative vocational services could be available for those deemed as either unemployable in CIE, or as needing training to prepare them for eventual CIE in their communities. For the past several decades, sheltered workshops have continued to operate as facility-based vocational service programs attended by adults with disabilities thought to be unable to achieve CIE outcomes. Sheltered employment characteristically offer opportunities for simple work activities such as assembling, packaging, and light manufacturing for which individuals are paid a wage meant to be commensurate with productivity. The commensurate wage for most sheltered employment workers is substantially below minimum wage,¹⁴² as currently allowable under the Fair Labor Standards Act (FLSA) (PL 75-718), Section 14(c). Based on data from the U.S. Department of Labor (DOL) Wage and Hour Division (WHD), as of April 2015, there were 2,820 entities in the United States that hold Section 14(c) certificates (www.dol.gov/whd/specialemployment). WHD determined, in FY 2013, that there were an estimated 228,600 individuals being paid subminimum wage under these certificates.

These circumstances have created a service culture characterized by low employment expectations and a service delivery system that often perpetuates these expectations. However, a significant number of people want to work in CIE, but lack the opportunity as the current service structure does not readily support it.¹⁴³ Poverty and limited financial resources are the result.

Changing the conditions under which more CIE is both expected and supported by education and by the employment service delivery system will require a particular focus on re-building capacity at several levels. There needs to be a change in the service culture, the way services are provided, and the development and preparation of those agencies and professionals who deliver these services. Each of these will be addressed in the subsequent sections.

Service Culture

The current circumstances are an indication that the existing service culture can be a contributing factor to historically low employment expectations as well as simultaneous, and perhaps inadvertently, a perpetuator of these low expectations. In other words, the fact, for example, that most of the individuals with I/DD and other significant disabilities who are served by the I/DD system are in some type of sheltered or facility-based environment suggests a systemic belief that not much else is possible, except for a relatively small minority of persons served. At the same time, these services, which primarily offer an accompanying subminimum wage when work is available, have often led to the conclusion that this type of work and/or productivity is the most that can be expected. In fact, less than four percent of individuals served in sheltered workshops move into jobs in the regular labor market.¹⁴⁴ Consequently, sheltered workshops represent places that, at best, only promote a state of “perpetual readiness” for work, but rarely lead to actual employment in workplaces outside of the workshop.^{145,146}

In order to alter these circumstances, the service culture will need to emphasize the expectation of employment, and its ability to create independence and financial self-sufficiency, throughout the life span. The presumption of employability is a prominent underpinning of current “Employment First” initiatives. These are grassroots initiatives to promote the adoption by states of community-based CIE as the first option for employment services for youth and adults with significant disabilities. However, the Employment First movement does not impose any mandate about CIE. Nor does it require any specific action to invest in building community employment services or minimize the use of sheltered employment. States and employment service providers can adopt its tenets, or not, at their choosing. However, at its core, this movement represents an emerging catalyst for further promoting the notion of presumed employability and complementing the push for ever stronger legislative and policy support of integrated employment. In some cases, these policies focus exclusively on individuals with I/DD. In others, they are cross-disability. What they all have in common is an overt recognition that CIE is a worthwhile, and achievable, goal for individuals considered to have significant disability.

Significantly, presumed employability of individuals with significant disabilities has received progressively strong emphasis in federal legislation over the years. For example, since 1973 the various Rehabilitation Act Amendments, including those contained in the Workforce Investment Act of 1998 have emphasized service priority in the state VR system to those considered to have “severe” disabilities and prohibited the use of disability severity as a disqualifier for services.

Most recently, provisions included in the Workforce Innovation and Opportunity Act (WIOA) make access to sheltered employment and receipt of subminimum wages more difficult for youth and adults with significant disabilities.¹⁴⁷ Likewise, the Individuals with Disabilities Education Act of 2004 reflects an increasing emphasis on planning for post-school life and on education services that lead to optimal post-school outcomes, including employment. However, services have been historically funded and structured for youth and adults with significant disabilities, albeit unintentionally, to do much the opposite. For example, the Medicaid system allocates \$7.8 billion to services that primarily support segregated non-work service options, compared to the \$3.1 billion (with an additional \$27.5 million in supported employment state grant funding) that is allocated to the entire national VR system.¹⁴⁸ The resulting current system is heavily entrenched and weighted in favor of segregated services, creating a longstanding service culture of low expectations for the achievement of CIE.

Compounding this situation is the fact that disability-specific service delivery systems have historically functioned in a manner separate from other, generic, systems such as American Job Centers (AJCs) organized through the WIOA and administered through DOL. There have been initiatives to increase the participation of people with disabilities in AJCs such as the Disability Employment Initiative (jointly administered by the Employment and Training Administration and the Office of Disability Employment Policy (ODEP)) and the ODEP-administered Customized Employment grants. They represent a policy intent to increase available integrated employment services, and therefore expectations, for individuals with disabilities. The ultimate impact of AJCs services on systemic improvement of CIE is hopeful, but as yet not determined.

There are additional pockets of activity that reflect changing expectations. For example, New Hampshire House of Representatives passed SB 47 on April 15, 2015, becoming the first state in the country to prohibit employers from paying persons with disabilities less than the state minimum wage simply because they have a disability. Vermont closed all of its sheltered workshops by 2002. There are also no small group enclaves in the state, and the average wage for a person with I/DD is above minimum wage. In Rhode Island, a settlement with the U.S. Department of Justice (DOJ) intends to end segregated service options for individuals with I/DD by 2022. Similarly, a 2011 Settlement Agreement between the state of Delaware and the U.S. DOJ highlights the advancement of access to employment for individuals with serious persistent mental illness. Other states are in various stages of similar activities to insure access to CIE by individuals with significant disabilities.

Although these activities reflect changing expectations for the impact of service delivery, the longstanding heavy investment in sheltered programs and facilities will be difficult to dismantle without service system alignment and considerable technical assistance to those organizations and professionals involved in current service delivery. There is a need to align multiple service

systems so that resources can be applied to maximize impact on CIE outcomes as discussed in the next topic area.

Service Delivery System

Despite the fact that presumed employability is implicit in relevant federal legislation, the delivery of services and the associated policy still make it difficult to implement services across the board that will support this notion. Since there is no universal legislative mandate to require integrated over segregated employment or non-employment activities, only a handful of states currently prioritize their funding for CIE.¹⁴⁹ State and federal policy and funding realignment will be necessary to help people with disabilities achieve CIE because states do not have consistent policies about promoting CIE.

The service delivery systems in question include not only disability-specific systems, but also the mainstream systems that are increasingly opening their doors to individuals with the full range of disabilities. Thus, the needed alignment and capacity building cuts across not only disability-specific systems such as early intervention, special education, VR, mental health and Medicaid, but also the public Workforce Development System through AJCs, the mainstream education and higher education systems, programs funded through activities of the U.S. Department of Commerce and Small Business Administration, and others.

In effect, CIE has not become a public policy/funding priority despite research that sheltered workshops cost more and produce poorer outcomes than CIE.¹⁵⁰ Recognizing that there is considerable inconsistency in how data is collected, existing data nevertheless documents wide variability among states in services resulting in any type of non-segregated employment, ranging from 10 percent of those in one state receiving these services who earn wages from a competitive integrated job (however differently “integrated” is defined among states – see below for discussion on service definitions) to over 60 percent in another state.¹⁵¹

These results reflect local and state funding structures that are widely inconsistent. Rates that cover various forms of “vocational” service categories under the Center for Medicare & Medicaid Services (CMS) Home and Community-Based Services (HCBS) Waiver vary across states. The disability-specific systems often align their policy and funding in ways that may unintentionally support segregation over integration. For example, a provider may be reimbursed at a higher rate for a group-based placement than for individualized supported or customized employment, thus encouraging group-based outcomes such as sheltered workshops. Typically, service in segregated settings is funded at a higher rate than services intended to result in CIE. Some states pay service providers for a unit of service by the hour, others by the day. Some states pay by service benchmarks, e.g., completing a job development plan, and others pay a flat rate for any service delivered in a time increment such as an hour or a day. Finally, as previously indicated, in many states the reimbursement rates make it more economically advantageous for

service providers to serve people in groups rather than individually, even though the service is counted as integrated employment.

A major part of the service picture is that Medicaid, the biggest funder of services for people with significant disabilities, pays for a service, and rarely the outcome. Under the HCBS Waiver program, each state submits a plan for how it will provide long-term care services in home and community settings rather than in institutional settings. States do not include in their plans a strategy to pay for services that focus exclusively on the outcome of integrated employment. Although day services and supported employment are among those services allowable under the CMS Medicaid Waiver program, there is not a requirement that these services will result in specific quantifiable employment outcomes.

In the HCBS Waiver program, data that is collected by each state Medicaid agency is not necessarily compatible with one another. Each state Medicaid agency, through its state HCBS Waiver Program, tracks services differently. For example, some states track aggregate employment data based on reported monthly earnings, others aggregate and report bi-weekly earnings. In addition, there are inconsistencies in the way states define and track integrated employment. Some count individual competitive jobs, group integrated jobs, self-employment, and contract employment as “integrated employment.” Others define these categories differently and/or count various combinations of them as “integrated employment.” Consequently, CMS does not have a standard data collection system to track employment services rendered to Medicaid beneficiaries participating in its HCBS Waiver program.

Conversely, the federal VR system requires states to collect and manage service and outcome data so that it can be documented into the Federal RSA 911 system. In this way, it is possible to identify and compare the specific outcomes generated by the VR systems in each state. However, this does not align with how data is collected by CMS, which does not include universal data collection on employment outcomes, making it difficult to jointly align these federal agencies to jointly promote CIE. Among other things, the different Medicaid and VR accountability systems make collaboration difficult for achieving common outcomes for jointly served individuals.

Accurate, concise, and quality data is necessary to determine both system effectiveness and policy/practice development. Without it, service is less driven by the use of good data than it is by suppositions and myths about what works and what does not. A consistent data system does not currently exist that provides longitudinal information across systems and that tracks participation in CIE services and the result of that service.

The resulting service system is a mix of different services that include sheltered employment, facility based day services, non-facility based day services, supported or customized employment, and group employment under the AbilityOne® Program. Some people exclusively

receive one of these services, others receive various combinations of these services. Too often, CIE is significantly less available than segregated service options.

Even when services are provided which are intended to result in CIE, Evidence Based Practice (EBP) is not always the basis for how service delivery is designed and implemented. For example, there is considerable research support for experience in community-based workplaces performing actual work tasks as a tool for exposing individuals to career and employment options and as a way of determining work preferences and teaching work skills.^{152,153} However, this EBP strategy is inconsistently applied, or alternative and ineffective strategies are employed, compounding the particular ongoing challenge for service providers to successfully engage employers who might hire individuals with significant disabilities.¹⁵⁴ These circumstances point to an obvious need to elevate the skills of practitioners in the field who are supporting individuals with significant disabilities to seek and obtain integrated employment.

There is already evidence that lack of system capacity to provide services that lead to CIE will result in more people enrolled in non-work day activity programs if sheltered workshops are closed.¹⁵⁵ In order to move the service delivery system so that it more universally promotes CIE, the Subcommittee felt that federal, state, and local policy should be underpinned by presumed employability for youth and adults with significant disabilities and needs to be aligned with the following general goals: 1) build leadership in systems and organizations committed to CIE, 2) create, enhance and/or realign existing infrastructure funding across systems to favor CIE, 3) prioritize, measure and reimburse for service strategies that result in CIE, such as supported and customized employment, and 4) prioritize and fund both staff development (pre-service and in-service) and technical assistance.

Organizational and Professional Development

Changing the circumstances that currently favor segregated services over integrated services and outcomes will require not only a significant change in the management and delivery of a service, but also the way in which organizations are staffed and structured. For staff, there are currently few postsecondary education offerings that emphasize development of disability employment program support professionals, and there are no universally applied standards regarding the hiring and training of staff. There are certifications available, such as through the Association of People Supporting Employment First (APSE) and the Association of Community Rehabilitation Educators (ACRE). There is also a comprehensive Customized Employment Competency Model that identifies knowledge, skills and abilities relevant to practitioners who are in a position to support individuals with significant disabilities pursue customized jobs in competitive integrated work settings (see www.dol.gov/odep/topics/CustomizedEmployment). There are also multiple in-service training opportunities on related topics provided by private and public entities, including, but not limited to, certifications offered through Marc Gold and Associates and Griffin-Hammis & Associates. No entities that fund employment services requires that staff,

hired to support individuals with significant disabilities to secure and maintain CIE, obtain specific credentials related to their capacity to provide this support. While states often require organizational certification that includes licensure, certification and training standards, and VR counselors have available formal pre- and in-service professional development on a host of topics related to VR services and practice, specific training in CIE is not universally available. Further, the training for special education professionals preparing students with significant disabilities for the transition from school to adult life does not typically include training in CIE strategies.¹⁵⁶ As a result, local and state capacity is currently insufficient to meet an increased demand for CIE.

Likewise, the community organizations which employ these practitioners and which are contractors for Medicaid waiver, VR, and other public funds reflect a range of capacity to provide CIE¹⁵⁷ report that there are pockets in many states where there are organizations only providing CIE. There are an unknown, but likely a relatively small number of organizations that have transformed their services from entirely sheltered, non-integrated employment to entirely CIE. However, the service system is represented by a large number of providers which either exclusively provide sheltered, non-integrated employment services or provide primarily sheltered, non-integrated employment, services along with a smaller CIE service component. For these latter organizations, a major shift to CIE services would require considerable technical assistance and re-directed funding streams to transform their operational structures.

Thus, assuming funding and policy support of increased CIE, several major areas of focus would be required to build the capacity of local service providers and practitioners:

1. Structural transformation of organizations which provide employment services, including leadership development, business management models, and staff training and deployment strategies. Especially for the over 3,000 organizations which are heavily invested in providing subminimum wage employment, they would essentially need to learn how to manage and deliver a whole different set of services
2. Training and technical assistance needs to be made more readily available for local field staff who are responsible for supporting individuals to pursue CIE, including how to recruit and negotiate with employers.
3. Both pre-service and in-service training of teachers must result in understanding and strategies that lead to youth transitioning from school into post-school activities that ultimately lead to CIE.

Capacity Building Subcommittee Preliminary Recommendations

The Subcommittee has concluded that in order to promote increased CIE there need to be new ways to pay for services, new ways to account for and track these services and, new ways of

preparing organizations and staff to provide these services. To that end, these specific recommendations are offered:

1. Congress should direct CMS to expand the use of the HCBS Waiver program funds, now used for facility-based services, for CIE services by changing the state match rate to be the same as that for the state VR program, thus providing an incentive for states to prioritize CIE outcomes.
2. CMS should adopt a standard system of publicly reporting employment outcomes, including CIE, using a clear definition for CIE that also includes hours worked, wages and level of integration.
3. Federal agencies that have programs related to providing employment services to individuals with significant disabilities, including CMS and the six core programs covered under WIOA (including VR), should identify common data collection points across federal agencies and establish systems to share data across programs.
4. Working with service providers, federal, state, and local service infrastructures should promote and fund innovative projects that result in the modernization and standardization of services that result in CIE, new programs within existing organizations, and new organizations that provide only services leading to CIE.
5. CMS and VR, and the designated I/DD and VR agencies in each state, should support professional development that includes the development of organizational leaders, program managers, and professional employment staff who focus on CIE.
6. Designated state VR and I/DD agencies should develop state/local standards or adopt national standards of professional competence in providing services leading to CIE.
7. Designated state VR and I/DD agencies should support program transition away from sheltered employment settings and into CIE settings.

¹³⁵ The Subcommittee met a total of seven times: April 14, May 1, May 8, May 20, May 26, June 8, and June 18, 2015.

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- ¹⁵⁵ Butterworth et al., op. cit.
- ¹⁵⁶ Morningstar, M. E., & Benitez, D. (2013). Teacher training matters: The results of a multi-state survey of secondary special educators regarding transition from school to adulthood. *Teacher Education and Special Education*, 36(1), 51-64.
- ¹⁵⁷ Butterworth et al., op. cit.

Chapter Six: Section 14(c) Program

Introduction

While the Wage and Hour Division (WHD) makes it clear that the Fair Labor Standards Act (FLSA) Section 14(c) Subminimum Wage Certificate Program (the Section 14(c) program) should not be the first or primary option for employment of people with disabilities,¹⁵⁸ the Section 14(c) program continues to be used in the employment of roughly 228,600 people with disabilities across the country.¹⁵⁹ Each subcommittee of the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the “Committee”) discussed the Section 14(c) program. This chapter reports the findings, conclusions, and recommendations of each subcommittee.

Transitions to Careers Subcommittee

Findings and Conclusions

Section 511 of the Rehabilitation Act, as added by the Workforce Innovation and Opportunity Act (WIOA), provides limitations on the use of Section 14(c) subminimum wage certificates for youth transitioning from secondary education and limitations on schools regarding contracts with Section 14(c) certificate holder. The intent of Section 511, and WIOA more broadly, is to insure that transition from secondary education and/or postsecondary education (PSE) to competitive integrated employment (CIE) is the primary goal for youth in transition, including youth with significant disabilities.

School Work Experience Programs (SWEPs) are a type of Section 14(c) subminimum wage certificate that are typically issued to schools, but work may occur in a variety of locations, including in the community. According to WHD, there are 95 active SWEP certificates nationally.¹⁶⁰ WHD currently reports that they are unsure of the number of students associated with each of these certificates. Sixty-two percent of the current SWEP certificates are issued in California (CA). As of spring 2014, California’s Department of Education is preventing the use of SWEP certificates in majority of its transition programs, specifically in the Workability Program. It is expected that this policy change will virtually eliminate the use of subminimum wage certificates issued to CA schools. There is no evidence that use of SWEP certificates improves postsecondary outcomes for youth with disabilities.

Further, there is varied information about the capacity for increasing CIE opportunities for youth with significant disabilities in regions that have historically been dependent upon sheltered workshops and other Section 14(c) certificate holders. Youth have greater likelihood of exiting school with integrated jobs at competitive wages when their transition programming focuses on

ensuring that work experiences are based on their interests and are in community-based, integrated employment settings, with workplace supports provided as needed.

Preliminary Recommendations

1. The U.S. Department of Labor (DOL) must immediately discontinue issuance of SWEP certificates.
2. The Individuals with Disabilities Education Act (IDEA) Indicator 13 must disallow a placement in subminimum wage Section 14(c) employment as an acceptable post-school transition goal or transition service on the transition plan.
3. The U.S. Department of Education (ED) should promulgate regulations, in part based upon WIOA requirements as well as the Americans with Disabilities Act (ADA) integration mandate, to prevent the use of Federal IDEA funds for transition services provided in non-integrated settings, including a prohibition on services supporting subminimum wage activity regardless of the setting in which these services occur.
4. Any reauthorization of IDEA must explicitly disallow, as an authorized transition service, any service that involves facility-based employment or service that involves the use of Section 14(c).
5. ED should coordinate with DOL to identify Local Education Agencies (LEAs) that are Section 14(c) certificate holders and assist these LEAs to transform to other proven transition models for youth that include community-based integrated internships and other types of community-based integrated work experiences that lead to CIE.
6. Federal agencies to include ED, the Rehabilitation Services Administration (RSA), the Social Security Administration (SSA), and the Centers for Medicare & Medicaid Services (CMS) should collaborate to design a method, including appropriate data collection, to track and report the post-school status of youth with disabilities in areas where a sheltered workshop utilizing Section 14(c) closes or is downsized.
7. The Subcommittee finds that critical data are lacking from WHD regarding the number of youth using Section 14(c) certificates, their ages, disability-type, wages, work hours, down time,¹⁶¹ and other information. Having access to these data is imperative to making future recommendations and identifying trends – both positive and negative. The Subcommittee recommends that WHD develop a secure, web-based application and data collection system that is mandatory for all Section 14(c) certificate holders. The WHD should also issue guidance to states that encourages them to more closely monitor the use of Section 14(c) certificates for youth and all individuals with disabilities. Such data could be modeled upon the system utilized currently in Wisconsin.

Capacity Building Subcommittee

Findings and Conclusions

Based on April, 2015 data from WHD, there are 2,820 entities in the United States which hold Section 14(c) subminimum wage certificates.¹⁶² Eighty-nine percent of these entities are Community Rehabilitation Programs (CRPs) while only four percent are businesses, four percent are employers of patient workers, and three percent are schools. According to WHD, the actual number of individuals being paid subminimum wage is roughly 228,600.¹⁶³

The fact that 75 percent of individuals with intellectual or developmental disabilities (I/DD) receiving day or employment services through a state I/DD system are in a sheltered or facility-based environment¹⁶⁴ suggests a systemic belief that not much else is possible, except for a relatively small minority of persons served. At the same time, these services, which primarily offer an accompanying subminimum wage when work is available, have often led to the conclusion that this type of work and/or productivity is the most that can be expected. Thus, one by-product of subminimum wage employment is a service culture with a consequent low expectation for CIE.

Preliminary Recommendations

8. The President and/or Congress should appropriate sufficient funding to WHD to ensure adequate staffing resources for monitoring and oversight of the Section 14(c) certificate program and to support on-going collection of data regarding the number of individuals earning subminimum wage, the number of individuals moving from subminimum wage to CIE, the number of individuals who work at subminimum wage levels for multiple years (and primary reasons why – e.g., discouraged or opposed by family/legal guardian, fear of losing other benefits, lack of access to, or denial of, services to obtain CIE, etc.), and the number of individuals who exit Section 14(c) employment, but do not enter CIE. This information can inform the time frame for phasing out the Section 14(c) certificate program.
9. The Secretary of Labor, in consultation with the RSA and the CMS should propose a time frame for phasing out the Section 14(c) certificate program.

Complexity and Needs Subcommittee

Findings and Conclusions

FLSA, as adopted into law in 1938, provides that the Secretary of Labor “to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals . . . whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury” to be paid below the minimum wage.¹⁶⁵ In 1986, Congress amended Section 14(c) of the FLSA to require that individuals with disabilities who are “not entitled to earn the minimum wage” must earn a wage

commensurate with what “non-handicapped” workers employed in the vicinity earn for the same type, quality, and quantity of work, factoring in productivity.¹⁶⁶

The Secretary of Labor, by regulation, has delegated responsibility for implementation of Section 14(c) to the WHD Administrator. Employers seeking to apply for or to renew special minimum wage certificates must apply to the WHD, which determines whether the certificate is necessary to prevent the “curtailment of opportunities for employment.”¹⁶⁷

A 2001 report from the DOL Inspector General¹⁶⁸ found problems in DOL/WHD oversight of Section 14(c) with a pattern of noncompliance by employers that failed to properly review and maintain certificates.

Many states have laws that establish local minimum wage standards. An agency (typically a state Department of Labor) is usually appointed to monitor and enforce the standards and to enforce the rules that govern permission to pay subminimum wage. State efforts to monitor the payment of subminimum wages vary in quality.

Across the nation there are thousands of employers that hire people with disabilities. Any employer that hires a person with a disability may apply for a Section 14(c) certificate to pay subminimum wage. However, according to the Government Accountability Office (GAO formerly known as the General Accounting Office), 95 percent of all workers with disabilities being paid less than minimum wage under Section 14(c) certificates were employed by sheltered workshops, not typical employers.¹⁶⁹

The sheltered workshop model was originally designed to provide general training and experience for people to help them move into competitive jobs. The model has not worked for people with disabilities. The same GAO report regarding the Section 14(c) program estimates that less than five percent of workers leave sheltered workshops for competitive employment in the community.

Research shows that people with significant disabilities are successfully employed in much the same way as people without disabilities. The person’s skills, abilities and interests are identified and matched to available jobs. Training, if needed, is tailored to the job.

Most people in sheltered workshops or pre-vocational services remain for years and often decades in those programs and do not move on to CIE. For example, according to a recent U.S. Department of Justice (DOJ) Findings Letter, nearly half (46.2%) of the people in sheltered workshops in Rhode Island had been there for a decade or longer and over a third (34.2%) were there for 15 or more years.¹⁷⁰ Similarly, the DOJ found that the average stay in sheltered workshops in Oregon was more than a decade (11.72 years) while some people reported staying for 30 years or more.¹⁷¹

The International Encyclopedia of Rehabilitation¹⁷² reports that from a 2008 survey that U.S. citizens working in sheltered workshops earned about \$101/month. They work an average of 74 hours a month and earn about \$1.36/hour.

Current experience demonstrates that people with significant disabilities with access to needed supports can work at typical jobs in regular workplaces at minimum wage or higher. While Section 14(c) of the FLSA may have been regarded as necessary and even progressive in 1938, it is incompatible with current knowledge, practice and experience.

Section 511 of the Rehabilitation Act, as added by WIOA, provides limitations on the use of Section 14(c) of the FLSA including:

- Places limitations on the payment of subminimum wages by any employer holding a Section 14(c) special wage certificate.
- Requires people with disabilities working under Section 14(c) certificates to have access to CIE services, including vocational rehabilitation (VR) services.
- Prohibits anyone age 24 or younger from starting work at subminimum wage unless it is documented that the person received transition services under IDEA; has applied for VR services and was unsuccessful; and has been provided counseling and referral to other resources with the goal of CIE.
- Section 14(c) certificate holders may not continue to employ any person at subminimum wage unless the person has received career counseling; access to the VR agency; and information about self-advocacy, self-determination, and peer mentoring opportunities from an entity without a financial interest in the person's employment outcome.

While Section 511 attempts to limit the use of Section 14(c) certificates, it also permits pathways to subminimum wage placements under Section 14(c) certificates by incorporating Section 14(c) language into WIOA; by offering Section 14(c) placements as an option for people older than 24; and by offering Section 14(c) programs as an employment training option despite data showing that people usually do not leave Section 14(c) programs for CIE.

There are federal agencies other than DOL that are having an impact on states' use of Section 14(c) certificates and on increasing access to CIE, including DOJ and CMS. *Olmstead* enforcement activities by DOJ and private plaintiffs are leading states to closely examine whether people with disabilities have an opportunity to participate in CIE or whether they are unnecessarily segregated in traditional day programs, including sheltered work programs that hold Section 14(c) certificates.

Similarly, states are currently transforming their day support systems as part of the "transition planning" process to comply with the new Home and Community-Based Services (HCBS) Settings Rule from the CMS. The Rule, among other things, requires that HCBS programs offer

more opportunities for CIE, control over daily life and access to the broader community. Some settings, including sheltered workshops, may not be able to comply. In addition, the Rule requires that all people be offered opportunities to receive services and supports in “non-disability specific settings” (settings that are not exclusively or primarily for people with disabilities). These provisions will require most states to expand CIE options.

Due, in part, to the policy changes described above, a number of states have taken steps to limit or phase out the use of Section 14(c) certificates and/or sheltered workshops. Recently, New Hampshire, with the support of its Section 14(c) certificate holders, passed a law that prohibits paying any workers, including workers with disabilities, less than minimum wage. Maine and Vermont phased out funding and provided support for the closure of all of their sheltered workshops. Several other states recently issued transition plans to phase out workshops as they come into compliance with the HCBS Settings rule. Other states are considering minimum wage laws similar to New Hampshire.

The National Council on Disability recommended gradual phase-out of the Section 14(c) program after completing a six-state investigation of Section 14(c) and the feasibility of replacing the program with investments in supported employment.¹⁷³

Preliminary Recommendations

10. Congress should amend Section 14(c) of the FLSA to allow for implementation of a well-designed phase-out of the Section 14(c) program that results in people with disabilities entering CIE. Payment of subminimum wages is inconsistent with current knowledge of the skills and talents of people with significant disabilities. Recognizing that thousands of people with disabilities and their families will be affected by a phase-out, the Committee will recommend a phase-out plan with specific implementation steps in its Final Report due September 15, 2016. This plan will emphasize that CIE is the primary role of all working age people. It will consider strategies to expand CIE capacity and the potential role of other wraparound services (such as mainstream community activities and formal integrated day services) to address the concern that individuals leaving or who otherwise would have been in Section 14(c) programs will be left without meaningful and productive ways to spend their time.
11. WHD should develop and enforce criteria for assuring that the Section 14(c) certificate is only permitted when “necessary... to prevent the curtailment of opportunities for employment.”
12. WHD should develop an interagency process to coordinate issuance/renewals of Section 14(c) certificates with enforcement of the ADA by the DOJ, the U.S. Department of Health and Human Services’ Office of Civil Rights (HHS’ OCR), and the Equal Employment

Opportunity Commission (EEOC), and with implementation of the HCBS Settings Rule by CMS.

13. WHD should require any state that allows the use of Section 14(c) certificates to address why the certificate is “necessary” and to describe the state’s plan for remedying the “lack of employment opportunities.” The state may respond with its *Olmstead* plan; its plan for implementing the HCBS Settings Rule; or its WIOA unified plan. Each of these state plans requires addressing how supports will be provided in more integrated settings. The state should ensure that the plan on which it relies to justify the time-limited use of Section 14(c) certificates includes specific steps on how it will address lack of employment opportunities to make the future use of Section 14(c) certificates unnecessary.
14. WHD should collaborate with state-level wage and hour monitoring agencies to increase the overall effectiveness of monitoring Section 14(c) certificates and enforcing wage and hour requirements.
15. DOL and ED should make enforcement of the law and spirit of Section 511 of the Rehabilitation Act, as amended by WIOA, a priority. The Departments should work with agency field offices and state advocates, including Protection and Advocacy organizations, to identify enforcement actions that will help end the practice of paying people subminimum wages and expand CIE with full wages and benefits.
16. In enforcing the ADA and *Olmstead*, DOJ and HHS’ OCR should provide technical assistance to states that are engaging in affirmative *Olmstead* planning to increase opportunities for CIE and reduce the need for enforcement.
17. CMS should enforce the guidance provided in the September 16, 2011 CMS Informational Bulletin regarding the time-limited nature of pre-vocational services. Enforcement should emphasize that the goal is to move into CIE, not other segregated day services.
18. In their efforts to enforce the HCBS Settings Rule, CMS should offer technical assistance resources and funding to states that want to use it as an opportunity to move toward CIE options for people receiving HCBS services in sheltered workshops. Such technical assistance should include supports to Section 14(c) certificate holders that desire to change business models to provide CIE.

Marketplace Dynamics Subcommittee

Findings and Conclusions

FLSA Section 14(c) provides for the payment of subminimum wages to workers whose “earning or productive capacity is impaired by age, physical or mental deficiency, or injury... to the extent necessary to prevent curtailment of opportunities for employment.”¹⁷⁴ To address the issues related to FLSA Section 14(c) and evaluate options for improved oversight, the

Marketplace Dynamics Subcommittee: reviewed written public testimonies, research directed to subminimum wage, and WHD employer certificate application; invited SourceAmerica staff to expand on their January public testimony to the Committee regarding improved oversight of Section 14(c) via conference call; and gave thoughtful and careful consideration to the charge directed to the WIOA Advisory Committee. The Marketplace Dynamics Subcommittee members posed the following question: “From a business perspective, is Section 14(c) necessary ‘to prevent the curtailment of opportunities for employment’ for people with I/DD and other significant disabilities?” All findings, conclusions, and recommendations are intended to respond to this question as viewed through a business lens and are summarized below.

In 2001, the GAO report on Section 14(c) stated that DOL historically placed a low-priority on the program and lacked the information required to effectively manage it, including accurate information on the number of Section 14(c) employers and workers or on DOL’s own compliance efforts. The report concluded that the DOL did not effectively manage the special minimum wage program or adequately ensure employer compliance with Section 14(c) requirements.¹⁷⁵

Since then, DOL has instituted methods to improve the Section 14(c) program; however, challenges remain because Section 14(c) certificates are attached to the employer and not the worker with a disability making it difficult to accurately know the numbers of workers receiving subminimum wages. Additionally, resource and authority constraints limit WHD’s capacity to adequately monitor each nonprofit or business utilizing the employer certificate with the existing WHD data collection system. Settlement agreements resulting from FLSA violations in two different cases in Rhode Island secured the repayment of over \$550,000 to workers whose subminimum wages were incorrectly calculated.^{176,177} These cases highlight the significant impact FLSA violations and miscalculations can have on some of the country’s poorest workers as well as raise concerns about the system’s overall susceptibility to abuse.

Consequently, the Marketplace Dynamics Subcommittee believes even with suggestions on improved oversight, the employer certificate program remains highly vulnerable to abuse. Moreover, while the Marketplace Dynamics Subcommittee assumes that employer certificate holders will abide by federal disability policies, given that the current FLSA Section 14(c) regulations have not been updated since 1989, there is no specific language in the regulations that requires assurance of compliance with the Americans with Disabilities Act or other more recently enacted laws.¹⁷⁸

The Marketplace Dynamics Subcommittee researched previous initiatives to eliminate subminimum wage as part of its effort to examine Section 14(c) more broadly. For example, a 2007 study found that legislative policies focused solely on eliminating subminimum wages in Arizona, British Columbia, and New Zealand resulted in unintended negative consequences for employees with disabilities. In order to comply with policies prohibiting the payment of

subminimum wage, sheltered work programs converted to training or non-work programs. Following the conversion, workers either lost employment altogether or were paid “training stipends” that were even less than the subminimum wages had been. Ironically, policies designed to lead to increased earnings resulted instead in the loss of the minimal protections assured through FLSA Section 14(c).¹⁷⁹

In sum, the study concluded that in order to effectively eliminate the subminimum wage, there had to be simultaneous efforts to build capacity in sheltered work programs while ensuring that all employees receive high-quality services to secure CIE opportunities. The same study found that of the over 5,000 employers who hold subminimum wage employer certificates, less than one percent of these employers are private businesses.¹⁸⁰

Capacity building efforts must be directed towards helping programs that currently hold special wage certificates to navigate any changes to subminimum wage regulations. Care must be taken to ensure that regulatory changes to Section 14(c) do not lead to a superficial reclassification of the services provided with no net increase in CIE outcomes for individuals with intellectual, developmental, or other significant disabilities. Capacity building at all levels is critically important to increasing CIE outcomes. Service providers, educators, and government agency personnel need training and technical assistance to learn and consistently utilize best practices for identifying employment goals, addressing barriers, and securing CIE outcomes for individuals with significant disabilities.

Subminimum wage provisions essentially make the argument that a worker’s value can and should be evaluated solely on the basis of his or her productivity. Opponents of the FLSA Section 14(c) policy argue that most businesses consider a broader range of characteristics than productivity alone when characterizing a “quality” employee, including factors such as reliability and accuracy.^{181,182} Additionally, productivity levels are not static, but rather are the product of a variety of factors, most significantly the quality of the match between the employee’s skills, the accommodations provided if needed, and the specific job tasks. Tasks that better align with the employee’s skills tend to enhance productivity. Employees who exhibit low productivity for months or years likely are not being assigned job tasks that align well with their skill sets. Training of individuals with significant disabilities is imperative and many individuals on subminimum wage have not received sufficient training to increase their skill sets and productivity.

In spite of the arguments in support of subminimum wage, the overwhelming majority of for-profit businesses currently employing individuals with I/DD or other significant disabilities offer competitive wages. Beyond this, some businesses reportedly raised the concern that paying subminimum wages offered an unfair competitive advantage to companies holding employer certificates.¹⁸³

Individuals who want to earn more money may still experience trepidation about leaving friends and familiar environments behind. Changing jobs is commonly considered on lists of “major life stressors” and it should not be considered any less so for individuals with disabilities transitioning out of segregated employment in spite of the belief that making the change will ultimately be in their own best interest.

Segregated service program staff adept at managing workshop activities or overseeing production contracts may not have the requisite skills necessary to support individuals with intellectual, developmental, or other significant disabilities to navigate the transition to CIE. Similarly, other employment service programs may need additional training or staffing to appropriately meet the needs of individuals transitioning out of segregated employment. Sufficient funding must be allocated to guarantee every person making the transition to CIE has access to all necessary services and supports, including but not limited to: discovery and customized employment services, benefits planning, and assistive technology or other accommodations.

Capacity building initiatives targeting community businesses as well as service systems might yield a wider variety of employment outcomes for individuals with I/DD and other significant disabilities. Resource allocation for staff time to work on inclusive employment initiatives, support business expansion, or fund job creation strategies would allow for greater innovation between public and private entities.

Preliminary Recommendations

The Marketplace Dynamics Subcommittee believes a gradual phase-out is a more prudent way to reduce the reliance on subminimum wages without engendering the unintended consequences that resulted from previous efforts mandating their immediate elimination. Specific recommendations related to phase-out and elimination are as follows:

19. Congress should pass legislation that directs the Secretary of Labor, through WHD, to work with the appropriate Departments across the federal government for a gradual phase-out of FLSA Section 14(c) subminimum wage provision over a period of 8-10 years.
 - a. The legislation must consist of a combination of targeted, strategic capacity building initiatives. Congress should fund initiatives that will provide sufficient financial resources to effect this change.
 - b. The phase-out legislation should direct DOL to develop a careful, detailed plan that recognizes the multi-faceted, complicated process required to successfully phase out FLSA Section 14(c). The plan should include a chronological sequence for meeting all capacity building needs along with detailed steps for addressing corollary areas that will be impacted when FLSA Section 14(c) has ended.

- c. As part of the phase out of Section 14(c), Congress should provide that WHD cease accepting new employer applications to the certificate program one year after the passage of the phase-out legislation.
 - d. Congress should also direct the WHD to monitor and ensure that no new participants may be added by employers to applications for the certificate program one year after the passage of the phase-out plan.
 - e. The phase out legislation ensuring for an orderly phase-out of Section 14(c) should direct WHD to cease the renewal of employer certificates one year prior to the phase-out of FLSA Section 14(c).
20. Congress should allocate financial resources so that DOL can establish and help states develop new systems before individuals with significant disabilities, if they choose, begin the transition to CIE.
- a. In order to avoid any unintended harm to individuals with significant disabilities, it is critical that infrastructure is developed prior to the phase out of Section 14(c).
 - b. In particular, Congress should direct the U.S. Department of Transportation (DOT) to ensure that public transit systems are in place, particularly in rural areas of the United States prior to individuals with disabilities beginning the transition out of segregated employment.
 - c. Congressional resources must also be allocated and directed to support individuals with disabilities who do not choose community employment to explore other individualized options for integrated day services.
 - d. Congress should direct the Secretary of Labor to establish an operational advisory committee, not subject to the Federal Advisory Committee Act (FACA), to oversee the plans for Section 14(c). The committee should include business representatives, subject matter experts from federal agencies as well as appointees from outside the federal government who can help implement and monitor the phase out.
 - e. The Secretary of Labor should hire subject matter experts to oversee and support the plans for the implementation of the phase-out and to ensure all critical actions are taken, funding is allocated, and all state and local systems are up and running before the complete phase-out of Section 14(c).

As part of the phase-out, Congress must direct the DOL to emphasize training. The training must be based on the assumption that all individuals with significant disabilities can learn and perform higher-level job duties that align with and build their skill sets and interests given the opportunity and appropriate accommodations. The training should align with capacity building opportunities for individuals as well as for systems, such as programs offered by community colleges, in order

to maximize and address the limited opportunities that individuals with I/DD or other significant disabilities have had to access innovative training opportunities.

¹⁵⁸ U.S. Department of Labor Wage and Hour Division Presentation to the Committee. January 22, 2015.

¹⁵⁹ Verified by U.S. Department of Labor Wage and Hour Division.

¹⁶⁰ <http://www.dol.gov/whd/specialemployment/SWEPlist.htm>

¹⁶¹ Time spent in a Section 14(c) employment setting where no paid work is available.

¹⁶² See: <http://www.dol.gov/whd/specialemployment/>

¹⁶³ Verified by U.S. Department of Labor Wage and Hour Division.

¹⁶⁴ Butterworth, J., Smith, F. A., Hall, A. C., Migliore, A., Winsor, J., & Domin, D. (2014). *StateData: The National Report on Employment Services and Outcomes*. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion.

¹⁶⁵ 42 U.S.C. § 214(c)(1)

¹⁶⁶ 42 U.S.C. § 214(c)(1)(B)

¹⁶⁷ 29 C.F.R. § 525

¹⁶⁸ Report available at: <http://www.oig.dol.gov/public/reports/oa/2001/05-01-002-04-420.pdf>

¹⁶⁹ U.S. General Accounting Office (GAO), September 2001, Special Minimum Wage Program, *Centers Offer Employment and Support Services to Workers with Disabilities, But Labor Should Improve Oversight* GAO-01-886, Page 4.

¹⁷⁰ Findings letter available at: http://www.ada.gov/olmstead/documents/ri_lof.pdf

¹⁷¹ Findings letter available at: http://www.ada.gov/olmstead/documents/oregon_findings_letter.pdf

¹⁷² Migliore A. 2010. Sheltered Workshops. In: JH Stone, M Blouin, editors. International Encyclopedia of Rehabilitation. Available online: <http://cirrie.buffalo.edu/encyclopedia/en/article/136/>

¹⁷³ The report can be found at: <http://www.ncd.gov/publications/2012/August232012/>

¹⁷⁴ Employment Under Special Certificates, 29 U.S.C. § 214(c)(1)

¹⁷⁵ U.S. General Accounting Office. (2001). *Special minimum wage program: Centers offer employment and support services to workers with disabilities but labor should improve oversight*. (GAO Publication No. GAO-01-886).

¹⁷⁶ U.S. Department of Labor. (2014, January 28). *U.S. Department of Labor secures more than \$250,000 in back wages for student workers with disabilities in Providence, RI*. [WHD News Release No. 13-2358-BOS]. Retrieved August 19, 2015 from <http://www.dol.gov/opa/media/press/whd/WHD20132358.htm>

¹⁷⁷ U.S. Department of Labor. (2014, November 26). *U.S. Labor Department secures \$300K in back wages for staff and workers with disabilities at Training Thru Placement Inc.* [WHD News Release No. 14-2904-BOS]. Retrieved August 19, 2015 from <http://www.dol.gov/opa/media/press/whd/WHD20142904.htm>

¹⁷⁸ Relation to Other Laws. 29 CFR 525.20 (2015).

¹⁷⁹ Butterworth, J., Hall, A., Hoff, D., & Migliore, A. (2007). *State and international efforts to reform or eliminate the use of subminimum wage for persons with disabilities*. Boston: University of Massachusetts, Institute for Community Inclusion.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² DiLeo, D. (2007). *Pennies for pay? Minimum wage should be for everyone*. Retrieved June 15, 2015, from <http://daledileo.com/2011/08/pennies-for-pay-must-end.html>

¹⁸³ Butterworth et al., op. cit., 2007.

Chapter Seven: AbilityOne® Program

The development of this chapter on the AbilityOne® Program is a result of a joint collaboration between two subcommittees of the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the “Committee”): the Complexity and Needs in Delivering Competitive Integrated Employment Subcommittee and the Marketplace Dynamics Subcommittee. Both subcommittees identified the AbilityOne Program as being within their respective purviews. After each subcommittee presented their initial findings, conclusions, and recommendations to the full Committee at its May 2015 meeting, the two subcommittees met jointly to create and reach consensus on this interim report chapter. While the process allowed for the inclusion of recommendations in this chapter that are supported by one but not both subcommittees, discussions resulted in consensus being achieved for all of the preliminary recommendations included in this chapter.

The AbilityOne Program is a federal initiative to help people who are blind or have other significant disabilities find employment by working within a national network of over 600 nonprofit agencies that sell products and services to the U.S. government. The Committee for Purchase from People Who Are Blind or Severely Disabled, referred to as the AbilityOne Commission in this chapter, is the federal agency authorized to administer the AbilityOne Program.¹⁸⁴ Below is an overview of the AbilityOne Program, findings and conclusions, and recommendations, considered in light of the program’s history and purpose.

Overview of AbilityOne® Program

The Javits-Wagner-O’Day (JWOD) Act is a federal law passed in 1971 that requires all federal agencies to purchase specified supplies and services from nonprofit agencies employing persons who are blind or have other significant disabilities. JWOD expanded upon a much older federal law – the Wagner-O’Day Act – which was passed in 1938, the same year that the Fair Labor Standards Act (FLSA) was passed, with provisions permitting people with disabilities to be paid subminimum wages under Section 14(c) of the FLSA. This was done because in the midst of the Great Depression it was thought to be the only way to create any employment opportunities at all.

The AbilityOne Program permits only a limited pool of federal contractors to compete for the contracts set aside for the Program. Those eligible must be Qualified Nonprofit Agencies (NPAs) formally affiliated with the AbilityOne Program.¹⁸⁵ NPAs provide specified products and services to agencies of the federal government. The specified supplies and services are determined by the AbilityOne Commission, the federal agency charged with administering the JWOD Act. The qualified NPAs must ensure at least 75 percent of the labor hours necessary to complete AbilityOne contracts are done by people who are blind or have other significant

disabilities. The NPAs that participate in AbilityOne may pay subminimum wages to individuals with disabilities working on these contracts using authority granted through Section 14(c) of the FLSA.

In Fiscal Year 2014, AbilityOne awarded approximately \$2.8 billion in noncompetitive federal contracts to NPAs that employ people who are blind or have other significant disabilities.¹⁸⁶ This represents a major federal investment intended to create employment opportunities for individuals who are blind or have significant disabilities.

SourceAmerica and the National Industries for the Blind (NIB) are the Central Nonprofit Agencies (CNAs) that work with AbilityOne NPAs. NIB oversees approximately 94 NPAs that are eligible to receive contracts through AbilityOne,¹⁸⁷ while SourceAmerica oversees approximately 550 NPAs that are eligible receive these contracts.¹⁸⁸ In 2014, the overall income from sales of goods and services to the federal government was \$612.8 million by NIB's NPAs and \$2.269 billion by SourceAmerica's NPAs. SourceAmerica and NIB receive a fee from each of their own NPAs for being involved in the negotiation of contracts with federal customers.

Fifteen Presidential appointee members, eleven of whom represent government agencies (including U.S. Departments of Agriculture, Air Force, Army, Commerce, Defense, Education, Justice, Labor, Navy, and Veterans Affairs, and the General Services Administration) vote on the Procurement List additions. The remaining four members are private citizens knowledgeable about the employment challenges of people who are blind or have significant disabilities, including those employed by nonprofit agencies affiliated with the AbilityOne Program. The Presidential Appointees who are private citizens serve five-year terms and may be reappointed. federal government appointees serve for the period of time designated by their agency.¹⁸⁹ Because the AbilityOne Commission's primary statutory responsibility is to make decisions about the suitability of products and services for the Procurement List, and to ensure federal procurement policy supports the AbilityOne Program, most of the federal agency appointees are not experts in either disability policy or evidence-based practices that shape our nation's modern-day thinking directed to competitive integrated employment (CIE) and economic self-sufficiency for Americans with disabilities. Typically, only the federal appointees from the U.S. Department of Education (ED) (Rehabilitation Services Administration (RSA)) and the U.S. Department of Labor (DOL) (Office of Disability Employment Policy (ODEP)) bring that kind of expertise. It is worth noting however that while the U.S. Department of Justice (DOJ) has traditionally been represented on the Commission by a senior procurement specialist from the Bureau of Prisons, attorneys from the Civil Rights Division have recently provided the Commission with expert advice related to CIE.

According to the AbilityOne presentation to the Committee, during fiscal year 2014, there were 46,630 workers across 565 agencies engaged in contract work under AbilityOne.¹⁹⁰ According to a recent AbilityOne Commission memo citing data from the last five year period, participating NPAs place an average of 23,600 individuals who are blind or have significant disabilities into

competitive employment or supported employment annually – which works out to an average of just 40 individuals placed each year by each NPA.¹⁹¹ These placement numbers include people who did not previously work on AbilityOne so it is impossible to determine how many of these placements involved transitions to CIE from AbilityOne employment. However, during fiscal year 2014, 1,936 individuals (4%) were transitioned to community employment.¹⁹²

Intersection between AbilityOne® and Use of FLSA Section 14(c) Subminimum Wage Certificates

With regard to workers being paid subminimum wage under FLSA Section 14(c), data presented by AbilityOne staff to the Advisory Committee in January of 2015 shows that 4,426 individuals (9.5%) of the 46,630 individuals working on AbilityOne contracts are paid less than minimum wage.¹⁹³

AbilityOne® Workers paid less than \$5.00/hour:

- A total of 2,599 individuals who have significant disabilities worked on AbilityOne contracts and were paid less than \$5.00 per hour.
- Forty-six (46) participating NPAs employed 2,473 people at subminimum wage on product contracts. These individuals averaged 5.88 hours of work per week on these AbilityOne contracts.
- Four (4) participating NPAs employed 126 people at subminimum wage on service contracts. These individuals averaged 7.46 hours of work per week on these AbilityOne contracts.

AbilityOne® Workers paid \$5.01-\$7.24/hour:

- A total of 1,827 individuals who have significant disabilities worked on AbilityOne contracts and were paid between \$5.01 and \$7.24 per hour.
- Thirty (30) participating NPAs employed 1,402 people at subminimum wage on product contracts. These individuals averaged 8.12 hours of work per week on these AbilityOne contracts.
- Fourteen (14) participating NPAs employed 425 people at subminimum wage on service contracts. These individuals averaged 16.50 hours of work per week on these AbilityOne contracts.

Findings and Conclusions

JWOD was Passed in 1971 and has not been Substantially Updated Since Its Passage

The roots of JWOD go back 77 years to the Wagner-O'Day Act of 1938. Much has changed since that time in terms of federal policy regarding individuals with disabilities. Our country has largely left behind this era where children with significant disabilities were barred from public schools, people with significant disabilities were institutionalized for their lives, and society assumed that people with significant disabilities were unable to learn, contribute, work, and make decisions about their own lives. Modern disability policy – as reflected in the Americans

with Disabilities Act (ADA) and other federal laws – embraces high expectations and full inclusion of people with disabilities in all aspects of life, including the workplace. CIE, as part of the mainstream workforce, is now the expected and priority outcome that the federal government and many states are embracing. AbilityOne has not evolved far enough and does not fully reflect modern disability policy goals, including those enshrined in the ADA and the Supreme Court’s decision in *Olmstead v. L.C.*

AbilityOne® Perpetuates People with Significant Disabilities Working for Community Rehabilitation Programs rather than Mainstream American Businesses

Although transitions of AbilityOne participants into CIE outside the program are occurring at a very modest rate, the program’s primary business model still involves community rehabilitation programs (CRPs) functioning as the employer of record for AbilityOne participants. The AbilityOne Program currently places no obligation on participating CRPs to facilitate CIE outside the program for individuals eligible for or working on AbilityOne contracts. Therefore, rather than using the purchasing power of the federal government to stimulate a partnership with business to create CIE opportunities for individuals with significant disabilities, AbilityOne does not engage the business community and instead contracts exclusively with CRPs. Consequently, up to this point, AbilityOne has not been an effective springboard to permanent CIE in the general workforce for individuals who are blind or have significant disabilities.

AbilityOne® Does Not Focus on Providing Training and Experience for the Achievement of Competitive Integrated Employment outside the Program

Over 600 NPAs currently are eligible to receive set-aside contracts through the AbilityOne Program. None are required to achieve, on an annual or biennial basis, a certain number or percentage of transitions of AbilityOne workers to CIE outside of the program in order to maintain their eligibility to receive contracts through in AbilityOne Program. According to data provided by the AbilityOne Commission, for FY 2014, 565 NPA contractors, who collectively received over \$2.8 billion in federal contracts, each averaged less than four (4) transitions of individuals who are blind or have significant disabilities into CIE.¹⁹⁴

AbilityOne® Program Contracts Perpetuate Congregation and Segregation

Because the JWOD Act continues to require 75 percent of contract hours to be accomplished by individuals who are blind or have significant disabilities, this has led to the segregation and congregation of these individuals. The JWOD Act of 1971 and its predecessor, the Wagner-O’Day Act of 1938, historically were strongly rooted in providing employment opportunities in sheltered workshops for individuals who are blind or have significant disabilities.¹⁹⁵ Indeed, sheltered workshop employment was long regarded as the only type of work in which such individuals could engage. Since the mid-1970’s, however, such workers have proven this and many similar assumptions wrong. Nonetheless, most AbilityOne contracts for products, which

employ 28 percent of all individuals working on AbilityOne contracts, continue to be completed in sheltered workshop settings. According to the AbilityOne Fiscal Year 2013 report,¹⁹⁶ AbilityOne production contracts account for 24 percent of all hours worked by individuals who are blind or have significant disabilities. A total of 13,292 individuals worked over 11.2 million hours on production contracts.

While AbilityOne contracts for services, as opposed to products, may provide opportunities to do work outside of sheltered workshops, those opportunities typically, but not exclusively, involve individuals with disabilities doing this contract work in enclave or work crew models (also sometimes called group supported employment) and/or separated from individuals without disabilities – either because they are completing the service contracts in separate work areas or at times when other employees at the location are not working. AbilityOne service contracts account for 76 percent of all hours worked by individuals who are blind or have significant disabilities. A total of 35,524 individuals—72 percent of all individuals working on AbilityOne contracts—worked over 36.4 million hours on service contracts.

Programs that lead to the segregation and congregation of people with disabilities instead of providing them opportunities for CIE are inconsistent with the goals of the ADA and the Workforce Innovation and Opportunity Act (WIOA).

AbilityOne® Participates in the Continued Use of Section 14(c) Subminimum Wage Certificate Program

According to the Deputy Executive Director of AbilityOne, 428 of the approximately 500 SourceAmerica NPAs currently hold FLSA Section 14(c) certificates.¹⁹⁷ In contrast, according to the President and CEO of National Industries for the Blind (NIB), many NPAs associated with NIB have never utilized special minimum wage certificates. All but two (2) of those that had in the past have discontinued the practice. The two (2) NPAs associated with NIB that still use a Section 14(c) certificate employ a total of 57 individuals with disabilities at sub minimum wages. Ten additional NIB NPAs still hold Section 14(c) certificates, but are not using them.

In FY 2014, 4,426 (9.4%) out of 46,621 individuals with disabilities working on AbilityOne contracts were paid subminimum wages under Section 14(c) certificates held by the participating NPAs.¹⁹⁸ Data suggests there may also be a strong correlation between being paid subminimum wage and working very low hours. According to the data presented by AbilityOne staff to the Advisory Committee in January 2015, 90 percent of individual paid subminimum wage worked less than nine hours a week.¹⁹⁹ The number of work hours may be artificially limited based on a misunderstanding regarding work incentives associated with Social Security disability benefits received under Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), or a focus on maintaining rather than reducing individuals' reliance on other public subsidies.

AbilityOne® Program Based on Requirement that Participants are Deemed Incapable of Competitive Integrated Employment

To be eligible to work on an AbilityOne contract, an individual with a disability must be legally blind or must have a physical or mental disability that "constitutes a substantial handicap to employment and is of such a nature as to prevent the individual under such disability from currently engaging in normal competitive employment."²⁰⁰ The determination of an individual's inability to engage in CIE in the general workforce (referred to as "normal" competitive employment in the statute) is delegated to the NPA and does not require any evidence of unsuccessful, good faith effort to secure competitive employment in the general workforce for the individual. Indeed, for an NPA focused on assuring that a sufficient number of eligible individuals who are blind or have other significant disabilities are available to perform at least 75 percent of the work hours on AbilityOne contracts, there may be little incentive to recognize—and help individuals realize—their potential to work in CIE. The AbilityOne Program currently does not include sufficient requirements to ensure that CIE is truly not possible as a condition of participation in AbilityOne, and more particularly as a condition of on-going participation in AbilityOne. Nor does the AbilityOne Program currently encourage and reward an NPA for assisting individuals otherwise eligible for AbilityOne to obtain CIE outside of the NPA.

Additional Conflicts of Interest for NPAs Participating in AbilityOne® Program

Currently, in addition to NPAs being given authority to decide whether an individual is incapable of engaging in "normal competitive employment," NPAs are also given authority to determine the individual's productivity level for the purposes of paying a subminimum wage for work performed on AbilityOne contracts. There is limited oversight of the methods and procedures used by NPAs to make the determination of the individual's productivity. That results in an inherent conflict of interest. The NPA makes decisions regarding whether an individual should be paid a subminimum wage even though the NPA is the entity that stands to benefit financially from the payment of subminimum wages. As a result, the program has been subject to instances of abuse.²⁰¹

AbilityOne® Commission Functions Are Not Well Aligned with Ensuring Effective Oversight of the Program and Alignment with Modern Federal Disability Policy

The AbilityOne Commission was not designed to ensure that the AbilityOne Program is well aligned with, and supportive of, federal disability policy as it has evolved over time. The Commission relies on its federal agency members for their procurement expertise. While this is consistent with the legislative history of the JWOD Act, it now means that the Commission is not designed to function as an effective oversight body directed to federal policy of the 21st Century. Additionally, AbilityOne does not currently have its own dedicated Office of the Inspector General to provide oversight of the entire program.

Preliminary Recommendations for Consideration by the Full Committee

1. Congress should amend the JWOD Act to:
 - a. Fully align the Act with modern federal disability policy goals, including those enshrined in the ADA and the Supreme Court’s *Olmstead* decision;
 - b. Clearly establish CIE, in the mainstream workforce as the expected and priority outcome of the AbilityOne Program so that individuals who are blind or have significant disabilities may receive the supports they need to enter into competitive employment within their communities;
 - c. Ensure all AbilityOne Program contract work is accomplished in fully integrated work settings where individuals with disabilities work, on an individualized basis, alongside of their non-disabled peers, consistent with the goals of the ADA and *Olmstead*;
 - d. Ensure the federal government’s purchasing power is used to effectively engage all federal contractors in creating CIE opportunities for job seekers and workers who are blind or have significant disabilities;
 - e. Establish new criteria for who is eligible to work on AbilityOne contracts, with changes made to ensure that:
 - i. The requirement that a person eligible for AbilityOne must have a disability that “prevents the individual from currently engaging in normal competitive employment” is eliminated; and
 - ii. NPAs are not given discretion to determine who is and is not qualified to work on AbilityOne contracts.
2. The Committee should consider, and make recommendations in its final report, regarding what changes may be needed to the structure, make up and role of the AbilityOne Commission in order to ensure that the program is well aligned with, and fully supportive of, federal disability policy in general, and employment policy in particular, as it evolves over time.
3. The President should issue an Executive Order outlining a plan to phase-out expeditiously the use of FLSA Section 14(c) certificates within the AbilityOne Program. As part of this Executive Order:
 - a. All AbilityOne NPAs, who currently employ workers at subminimum wage on AbilityOne contracts, must be required to develop a plan that addresses the expectation to retain those workers at no less hours than they are currently working and to be paid at least federal minimum wage; and

- b. The AbilityOne Commission should be expected to develop a collaborative initiative with the Social Security Administration, RSA, and the Centers for Medicare & Medicaid Services to ensure the provision of work incentives benefits analysis and counseling to all AbilityOne workers directly impacted by the phase out of subminimum wage in the AbilityOne Program so that the full benefits of earning minimum wage accrue to every individual.
4. Congress should appropriate funding to provide a dedicated Inspector General to provide direct oversight of the entire AbilityOne Program.
5. RSA should update and reissue guidance to state Vocational Rehabilitation (VR) programs clarifying that AbilityOne placements shall not be considered CIE unless all criteria for what constitutes a competitive wage and an integrated setting are met. It should be noted that enclaves or work crews (regardless of size, wage and benefits provided to workers) do not meet RSA's standards for CIE.
6. The AbilityOne Commission, in collaboration with RSA and DOL (ODEP), should update JWOD regulations to require all NPAs participating in the AbilityOne Program to:
 - a. Provide highly qualified staff that are certified through one or more nationally recognized credentialing bodies to assist in the placement of individuals working under the AbilityOne Program, and those who have been determined eligible for AbilityOne, into CIE;
 - b. Maintain contracts as qualified vendors of CIE services purchased by the state VR program and the local Workforce Development Boards;
 - c. Achieve, on an annual basis, a certain number or percentage of transitions of AbilityOne workers to CIE outside of the program—in order to maintain their eligibility to receive contracts through the AbilityOne Program— so the program functions as a springboard to CIE in the general workforce and can, over time, benefit many more individuals who are blind or have significant disabilities; and
 - d. Demonstrate on an annual basis, a certain minimum percentage of AbilityOne workers who transitioned to CIE have successfully retained their employment, as evidenced by data from NPAs following-up with all AbilityOne workers transitioned into CIE and their employers on a quarterly basis after placements have occurred to confirm:
 - i. Job retention has occurred
 - ii. The skill sets and performance of the workers continue to be well-matched with employers' needs and expectations
 - iii. The worker is satisfied with his/her job.

7. The AbilityOne Commission should implement the following through sub-regulatory guidance or as necessary, through regulation:
 - a. For Central Nonprofit Agencies (CNAs), sub-regulatory guidance or regulation that ensures the AbilityOne Commission assumes a stronger role in oversight of CNAs, including their processes and procedures, including but not limited to:
 - i. Requiring CNAs to invest a certain percentage of revenues received from administrative fees in the AbilityOne Program on providing training and technical assistance to NPAs about effective practices for helping people with significant disabilities achieve CIE;
 - ii. Requiring the collection and annual reporting of data on placement rates of workers with disabilities on AbilityOne contracts (wages, hours, and type of setting);
 - iii. Requiring CNAs to meet specific governance standards as articulated in the 2004 draft Notice of Proposed Rule Making issued by the AbilityOne Commission.
 - b. For NPAs, sub-regulatory guidance or regulation that:
 - i. Requires the annual reporting of data on:
 1. Number of individuals on AbilityOne contracts that are eligible for/receiving any of the following: IDEA-funded transition supports; VR-funded employment supports; Medicaid-funded services that can be used to obtain and maintain CIE (e.g., supported employment services));
 2. Wages, hours worked and type of setting (e.g., integrated; group supported employment; or facility-based) for workers with disabilities employed on AbilityOne contracts;
 3. Types of services offered, number served and funds expended in the provision of services to AbilityOne employees with disabilities to assist them in transitioning from AbilityOne work to CIE.
 - ii. Requires establishment of conflict-of-interest policies to delineate the role of an NPA as an AbilityOne contractor from the same entity's role as a community-rehabilitation provider that is required to provide supports *in the most integrated setting* to clients receiving federally-funded services;
 - iii. Requires documented assurances that prior to hiring an eligible individual onto an AbilityOne contract, the NPA has:
 1. Assisted the individual to apply for VR services; and
 2. If the individual is determined eligible for VR services, the NPA has committed to providing services, funded by VR, to enable the individual to

obtain CIE in the broader community if the individual selects the NPA as his/her provider; or

3. If the individual is determined ineligible for VR services, the NPA has further determined if the individual is eligible for Medicaid-funded services that can be used to obtain and maintain CIE (e.g., supported employment services) and, if so, the NPA has, in partnership with the individual, sought authorization from the state Medicaid agency for these services and the NPA has further committed to providing these Medicaid-funded services if the individual selects the NPA as his/her provider.
- iv. Requires the NPA to meet specific governance standards as articulated in the 2004 draft Notice of Proposed Rule Making issued by the AbilityOne Commission;
- v. Requires the NPA to engage in the Quality Workplace Environment (QWE) initiative at AbilityOne and will finalize a plan and take action as a result within two years of signing up for QWE. For those NPAs that have already signed up to be involved in the QWE, they will be considered in compliance if their participation results in a plan and action is taken within two years.

¹⁸⁴ http://www.abilityone.org/about_us/index.html

¹⁸⁵ Within JWOD, a qualified nonprofit agency is defined as follows: (6) QUALIFIED NONPROFIT AGENCY FOR OTHER SEVERELY DISABLED.— The term “qualified nonprofit agency for other severely disabled” means an agency—(A) (i) organized under the laws of the United States or a State; (ii) operated in the interest of severely disabled individuals who are not blind; and (iii) of which no part of the net income of the agency inures to the benefit of a shareholder or other individual; (B) that complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and (C) that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind or other severely disabled individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services. [See http://www.abilityone.gov/laws_and_regulations/jwod.html]

¹⁸⁶ AbilityOne Fiscal Year 2014 Annual Report. See:

http://www.jwod.gov/media_room/documents/Commission_AnnualReport_Final_040815_nocropmarks_508v2_FINAL.pdf

¹⁸⁷ According to the official web site of the National Industries for the Blind, “NIB and its network of 94 associated nonprofit agencies nationwide serve as the largest employer of people who are blind through the sale of SKILCRAFT® and other products and services provided by the AbilityOne Program, established by the Javits-Wagner-O’Day Act.” [See <http://www.nib.org/about-us/mission>]

¹⁸⁸ The official SourceAmerica website describes itself as a “nationwide network of more than 550 community nonprofit agency partners”. [See <http://www.sourceamerica.org/about-us>]

¹⁸⁹ <http://www.abilityone.gov/commission/commission.html>.

¹⁹⁰ <http://www.dol.gov/odep/topics/date/KimberlyZeich.pdf> [Slides 7, 11]

¹⁹¹ AbilityOne Commission memo to Jennifer C. Sheehy, Designated Federal Officer for the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities. May 11, 2015.

¹⁹² <http://www.dol.gov/odep/topics/date/KimberlyZeich.pdf> [Slide 11]

¹⁹³ <http://www.dol.gov/odep/topics/date/KimberlyZeich.pdf> [Slide 13]

¹⁹⁴ <http://www.dol.gov/odep/topics/date/KimberlyZeich.pdf> [Slides 7, 11]

¹⁹⁵ <http://www.presidency.ucsb.edu/ws/index.php?pid=36033>

¹⁹⁶ AbilityOne Fiscal Year 2013 Report. See:

http://www.abilityone.gov/media_room/documents/AbilityOne_AR_Pages_final_508_Repl_coverV3.pdf

¹⁹⁷Information provided by the AbilityOne Deputy Executive Director to the ACICIEID Marketplace Dynamics Subcommittee and incorporated into the Marketplace Dynamics Subcommittee's presentation at the May, 2015 ACICIEID meeting which can be accessed at:

<http://www.dol.gov/odep/pdf/MarketplaceDynamicsSubcommitteePresentation.pdf>

¹⁹⁸ It is important to note that the data presented by AbilityOne is from the SourceAmerica ERS data system, and thus only contains data on 28,400 of the total 46,630 workers under the AbilityOne Program. See

http://www.dol.gov/odep/topics/date/KimberlyZeich.pdf_Slides_11-12.

¹⁹⁹ See http://www.dol.gov/odep/topics/date/KimberlyZeich.pdf_Slides_11-12.

²⁰⁰ 41 U.S.C. §8501

²⁰¹ For example, 2012 case involving National Center for the Employment of the Disabled (NCED). See

<http://www.fbi.gov/elpaso/press-releases/2011/ep021711.htm> and <http://www.kvia.com/539342>

Appendix A: Statutory Language establishing the Committee

“SEC. 609. ADVISORY COMMITTEE ON INCREASING COMPETITIVE INTEGRATED EMPLOYMENT FOR INDIVIDUALS WITH DISABILITIES.

“(a) ESTABLISHMENT.—Not later than 60 days after the date of enactment of the Workforce Innovation and Opportunity Act, the Secretary of Labor shall establish an Advisory Committee on Deadline.

29 USC 795n.

29 USC 795m.

29 USC 795l.

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Increasing Competitive Integrated Employment for Individuals with Disabilities (referred to in this section as the ‘Committee’).

“(b) APPOINTMENT AND VACANCIES.—

“(1) APPOINTMENT.—The Secretary of Labor shall appoint the members of the Committee described in subsection (c)(6), in accordance with subsection (c).

“(2) VACANCIES.—Any vacancy in the Committee shall not affect its powers, but shall be filled in the same manner,

in accordance with the same paragraph of subsection (c), as the original appointment or designation was made.

“(c) COMPOSITION.—The Committee shall be composed of—

“(1) the Assistant Secretary for Disability Employment Policy, the Assistant Secretary for Employment and Training, and the Administrator of the Wage and Hour Division, of the Department of Labor;

“(2) the Commissioner of the Administration on Intellectual and Developmental Disabilities, or the Commissioner’s designee;

“(3) the Director of the Centers for Medicare & Medicaid Services of the Department of Health and Human Services, or the Director’s designee;

“(4) the Commissioner of Social Security, or the Commissioner’s designee;

“(5) the Commissioner of the Rehabilitation Services Administration, or the Commissioner’s designee; and

“(6) representatives from constituencies consisting of—

“(A) self-advocates for individuals with intellectual or developmental disabilities;

“(B) providers of employment services, including those that employ individuals with intellectual or developmental disabilities in competitive integrated employment;

“(C) representatives of national disability advocacy organizations for adults with intellectual or developmental disabilities;

“(D) experts with a background in academia or research and expertise in employment and wage policy issues for individuals with intellectual or developmental disabilities;

“(E) representatives from the employer community or national employer organizations; and

“(F) other individuals or representatives of organizations with expertise on increasing opportunities for competitive integrated employment for individuals with disabilities.

“(d) CHAIRPERSON.—The Committee shall elect a Chairperson of the Committee from among the appointed members of the Committee.

“(e) MEETINGS.—The Committee shall meet at the call of the Chairperson, but not less than 8 times.

“(f) DUTIES.—The Committee shall study, and prepare findings, conclusions, and recommendations for the Secretary of Labor on—

“(1) ways to increase the employment opportunities for individuals with intellectual or developmental disabilities or other individuals with significant disabilities in competitive integrated employment;

“(2) the use of the certificate program carried out under Section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c));

Recommendations.

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U.S.C. 214(c)) for the employment of individuals with intellectual or developmental disabilities, or other individuals with significant disabilities; and

“(3) ways to improve oversight of the use of such certificates.

“(g) COMMITTEE PERSONNEL MATTERS.—

“(1) TRAVEL EXPENSES.—The members of the Committee shall not receive compensation for the performance of services for the Committee, but shall be allowed reasonable travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Committee. Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept the voluntary and uncompensated services of members of the Committee.

“(2) STAFF.—The Secretary of Labor may designate such personnel as may be necessary to enable the Committee to perform its duties.

“(3) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be detailed to the Committee without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

“(4) FACILITIES, EQUIPMENT, AND SERVICES.—The Secretary of Labor shall make available to the Committee, under such arrangements as may be appropriate, necessary equipment, supplies, and services.

“(h) REPORTS.—

“(1) INTERIM AND FINAL REPORTS.—The Committee shall prepare and submit to the Secretary of Labor, as well as the Committee on Health, Education, Labor and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives—

“(A) an interim report that summarizes the progress of the Committee, along with any interim findings, conclusions, and recommendations as described in subsection (f); and

“(B) a final report that states final findings, conclusions, and recommendations as described in subsection (f).

“(2) PREPARATION AND SUBMISSION.—The reports shall be prepared and submitted—

“(A) in the case of the interim report, not later than 1 year after the date on which the Committee is established under subsection (a); and

“(B) in the case of the final report, not later than 2 years after the date on which the Committee is established under subsection (a).

“(i) TERMINATION.—The Committee shall terminate on the day after the date on which the Committee submits the final report

Appendix B: Advisory Committee Charter

U.S. Department of Labor

ADVISORY COMMITTEE CHARTER **Advisory Committee on Increasing Competitive** **Integrated Employment for Individuals with Disabilities**

Purpose

The Workforce Innovation and Opportunity Act (WIOA) makes significant improvements for individuals with disabilities, including youth with disabilities as they transition from education to employment, by helping to ensure these individuals have opportunities to acquire the skills and training they need to maximize their potential and enter competitive, integrated employment. Among the many new provisions designed to strengthen and improve employment for all individuals with disabilities is the establishment of an Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities.

Committee's Official Designation (Title)

Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the Committee).

Authority

The Committee is authorized under section 609 of the Rehabilitation Act of 1973, as amended by section 461 of WIOA. It is established in accordance with the provision of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2. The Committee will act in accordance with FACA and its implementing regulations.

Objectives and Scope of Activities

The Committee shall study and prepare findings, conclusions, and recommendations for the Secretary of Labor on:

- (1) Ways to increase the employment opportunities for individuals with intellectual or developmental disabilities or other individuals with significant disabilities in competitive integrated employment;
- (2) The use of the certificate program carried out under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)) for the employment of individuals with intellectual or developmental disabilities, or other individuals with significant disabilities; and
- (3) Ways to improve oversight of the use of such certificates.

Description of Duties

The Committee advises the Secretary of Labor on the development and implementation of coordinated policies and job-driven strategies across federal agencies to improve opportunities for competitive integrated employment and economic advancement for individuals with intellectual, developmental or other significant disabilities, including both youth and adults. The Committee will evaluate the use of subminimum wages under section 14(c) of the Fair Labor Standards Act (FLSA) in light of the goals outlined for competitive, integrated employment and advise the Secretary of Labor on policies and practices that will lead to a significant and systematic reduction in the misuse of the 14(c) certification program and the dependence on subminimum wages and segregated service placements. In doing this, the Committee will:

- (1) review existing Federal policies to identify and recommend strategies and changes to break down barriers that impede pathways to competitive integrated employment outcomes for youth and adults with intellectual, developmental or other significant disabilities, including recommendations related to employment services, and long-term services and supports, family support and transportation as they relate to competitive, integrated employment;
- (2) provide recommendations for modernizing the service delivery system and expanding the implementation of job-driven strategies and practices to promote partnerships among education, workforce and rehabilitation entities, providers of employment-related longterm services and support, employers, and others that increase the marketable skills and competitive integrated employment outcomes of youth and adults with intellectual, developmental or other significant disabilities leading to economic self-sufficiency. This includes improving the knowledge, skills, and abilities of youth and adults with intellectual, developmental or other significant disabilities, educators, service professionals and families, building leadership and organizational capacity, increasing employer engagement, offering work-based learning, and strengthening accountability and making better use of data;
- (3) recommend systems-change strategies needed to ensure that competitive integrated employment is the first option for people with intellectual, developmental or other significant disabilities. This includes aligning policy, practice and funding across Federal agencies to support competitive integrated employment and economic advancement as the preferred outcomes of job-driven training and related employment services through regional collaborations among a variety of public and private partners, data sharing, leveraging resources, and employment and earnings outcome measurement and evaluation; and
- (4) review the use of the certificate program under section 14(c) and recommend ways to improve oversight of the use of these certificates and reduce the reliance on such certificates.

Agency or Official to Whom the Committee Reports

The Committee makes recommendations and reports to the Secretary of Labor. The Committee will prepare and submit an interim report to the Secretary of Labor, summarizing its progress, along with any interim findings, conclusions, and recommendations not later than one year after the date which the Committee is established. The Committee will prepare and

submit a final report, with findings, conclusions, and recommendations to the Secretary of Labor not later than two years after the date on which the Committee is established.

The Committee will provide interim and final reports to the Senate Committee on Health, Education, Labor, and Pensions, and the House Committee on Education and the Workforce.

Support

The Department of Labor's Office of Disability Employment Policy (ODEP) will provide support to the Committee to enable it to carry out its duties. Other Department of Labor agencies, including the Wage and Hour Division (WHD) and the Employment and Training Administration (ETA), will contribute resources to support the Committee.

Estimated Annual Operating Costs and Staff

Years \$400,000; 2.5 staff years

Designated Federal Officer (DFO)

The Deputy Assistant Secretary of ODEP, a permanent employee, appointed in accordance with agency procedures, will serve as the DFO. The DFO will approve or call all advisory committee and subcommittee meetings, prepare and approve all meeting agendas, attend all committee meetings, and adjourn any meeting when the DFO determines adjournment to be in the public interest.

Estimated Number and Frequency of Committee Meetings

The Committee is required to meet at the call of the Chairperson, but not less than eight times.

Duration

The Committee shall terminate one day after the date on which it submits its final report. The final report is to be prepared and submitted not later than two years after the date on which the Committee is established.

Termination

As specified in Section 609, the Committee shall terminate one day after the date on which it submits its final report. The final report is to be prepared and submitted not later than two years after the date on which the Committee is established.

Membership and Designation

Membership shall consist of seven ex officio members: the Assistant Secretary of Disability Employment Policy, the Assistant Secretary for Employment and Training Administration, and the Administrator of the Wage and Hour Division of the Department of Labor; the Commissioner of the Administration on Intellectual and Developmental

Disabilities, or the Commissioner's designee; the Director of the Centers for Medicare and Medicaid Services, or the Director's designee; the Commissioner of Social Security, or the Commissioner's designee; the Commissioner of the Rehabilitation Services Administration, or the Commissioner's designee.

It shall further consist of approximately 15-17 representatives, appointed by the Secretary, with at least one from each of the following constituencies consisting of:

- Self-advocates for individuals with intellectual or developmental disabilities;
- Providers of employment services, including those that employ individuals with intellectual or developmental disabilities in competitive integrated employment;
- Representatives of national disability advocacy organizations for adults with intellectual or developmental disabilities;
- Experts with a background in academia or research and expertise in employment and wage policy issues for individuals with intellectual or developmental disabilities;
- Representatives from the employer community or national employer organizations; and
- Other individuals or representatives of organizations with expertise on increasing opportunities for competitive integrated employment for individuals with disabilities.

The Committee shall elect a Chairperson of the Committee from among the appointed members of the Committee.

Except as otherwise required by Section 609, the Committee's membership will be consistent with the applicable FACA regulations. Membership on the Committee will be fairly balanced, and members will come from a cross-section of those directly affected, interested, and qualified as appropriate to the nature and functions of the Committee. The composition of the Committee will depend upon several factors, including: (i) the Committee's objectives; (ii) potential geographic, ethnic, social and environmental impact of the Committee's recommendations; (iii) the types of specific perspectives required, as previously outlined; (iv) the need to obtain divergent points of view on the issues before the Committee; and (v) the relevance of state, local or tribal governments to the development of the Committee's recommendations.

To the extent permitted by FACA and other laws, Committee membership also should be consistent with achieving the greatest impact, scope and credibility among diverse stakeholders. The diversity in such membership includes, but is not limited to, race, gender, disability, sexual orientation and gender identity.

Subcommittees

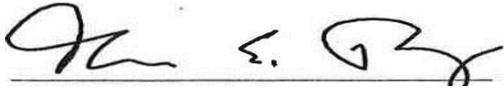
The Secretary, through ODEP, may create subcommittees which must report back to the Committee. Subcommittees must not provide advice or work products directly to the Secretary or to Congress.

Recordkeeping

The records of the Committee, formally and informally established subcommittees, shall be handled in accordance with General Records Schedule 26, Item 2, "Records Created by Advisory Commissions, Committee, Councils, Boards and Other Groups Established under the FACA." These records shall be available for public inspection and copying subject to the Freedom of Information Act (5 U.S.C. 552).

Date

This charter is amended on the date indicated below and expires on September 15, 2016.



THOMAS E. PEREZ

Secretary of Labor

DEC 2 2014

Date

Appendix C: Committee Member Biographies

Federal Official Members



**David Weil, Administrator
Wage & Hour Division
U.S. Department of Labor**

Dr. David Weil was sworn in as the Administrator of the Wage and Hour Division on May 5, 2014. Dr. Weil is an internationally recognized expert in public and labor market policy; regulatory performance; industrial and labor relations; transparency policy; and supply-chain restructuring and its effects.

Prior to this appointment, Dr. Weil served as professor of economics and the Peter and Deborah Wexler Professor of Management at Boston University School of Management. He also served as co-director of the Transparency Policy Project at the Ash Institute at Harvard's Kennedy School of Government. He has written three books on labor market policy, including the recently published *The Fissured Workplace*. He has authored numerous articles and publications in a variety of economics, public policy, management, and industrial relations journals and books, as well as numerous publications in non-academic outlets.

No stranger to the Department's mission or its work, Dr. Weil has served as an adviser to both the Wage and Hour Division and to the Occupational Safety and Health Administration, as well as to a number of other government agencies. He also has served as mediator and adviser in a range of labor/union and labor/management settings across the globe. In addition to his work for the Department, his research has been supported by the National Science Foundation, the National Institutes of Health, the Russell Sage Foundation, the Alfred P. Sloan Foundation, and the National Institute of Occupational Safety and Health, among others. Dr. Weil received his B.S. at Cornell University and M.A. and Ph.D. in public policy at Harvard University.



**Jennifer Sheehy, Acting Assistant Secretary
Office of Disability Employment Policy
U.S. Department of Labor**

Jennifer Sheehy is the Acting Assistant Secretary in the Office of Disability Employment Policy, U.S. Department of Labor. Prior to her current position, Jennifer spent ten years at the U.S. Department of Education in many roles, including Director of Policy and Planning in the Office of Special Education and Rehabilitative Services (OSERS), acting Director of the National Institute on Disability and Rehabilitation Research (NIDRR),

acting Deputy Commissioner of the Rehabilitation Services Administration and Special Assistant to the Assistant Secretary of OSERS. Jennifer came to the Department of Education from the Presidential Task Force on Employment of Adults with Disabilities where she was Senior Policy Advisor and served a detail as Associate Director in the White House Domestic Policy Council. Before she joined the task force staff, Jennifer was Vice President of the National Organization on Disability and Director of its CEO Council. Jennifer earned a B.A. from Cornell University and graduated with honors from Georgetown University, where she received her M.B.A.



**Portia Wu, Assistant Secretary
Employment & Training Administration
U.S. Department of Labor**

As the Assistant Secretary of Labor for Employment and Training, Portia Wu works to advance job-driven skills training. Previously, she served as Special Assistant to the President for Labor and Workforce Policy at the White House Domestic Policy Council (DPC). From 2011 to 2012, she served as the Senior Policy Advisor for Mobility and Opportunity at DPC. Prior to joining the Administration, she was the Vice President at the National Partnership for Women and Families from 2010 to

2011. From 2003 to 2010, Ms. Wu worked at the Senate Health, Education, Labor, and Pensions (HELP) Committee in a number of roles, including Labor and Pensions Counsel, Chief Labor and Pensions Counsel, and Labor Policy Director and General Counsel.

Prior to working in the U.S. Senate, Ms. Wu was an attorney at Bredhoff & Kaiser, PLLC, and clerked for Judge Richard A. Paez in the United States District Court for the Central District of California. Ms. Wu received a B.A. from Yale College, an M.A. from Cornell University, and a J.D. from Yale Law School.



**Sharon Lewis, Principal Deputy Administrator
Administration on Intellectual & Developmental Disabilities
Administration on Community Living
U.S. Department of Health and Human Services**

Sharon Lewis serves in the dual roles of Principal Deputy Administrator of the Administration for Community Living, as well as HHS Secretary Burwell's Senior Advisor on Disability.

From March 2010 to November 2013, Ms. Lewis served as the Commissioner of the Administration on Intellectual and Developmental Disabilities. Prior to her appointment as Commissioner, she served as the Senior Disability Policy Advisor to the U.S. House Committee on Education & Labor, advising members of the Committee on legislative strategy and disability-related policy issues in education, employment and healthcare, and as a Kennedy Public Policy Fellow for the U.S. Senate Subcommittee on Children & Families. Sharon is the recipient of numerous awards, including the 2010 Distinguished Leadership in National Disability Policy Award and the Consortium for Citizens with Disabilities Chairman's Award.

In Oregon, Sharon worked on public policy for the Oregon Developmental Disabilities Coalition and for the Arc. She served as the co-chair of the Oregon Family Action Coalition Team, founded DisabilityCompass.org and managed the Oregon Partners in Policymaking Program, working with individuals with disabilities and family members to participate in policy decisions at all levels. Sharon is a parent to three daughters, including one with disability. She is a native of Michigan and a graduate of Washington University in St. Louis.

**John O'Brien, Senior Policy Advisor and Elderly Health Programs Group
Centers for Medicare & Medicaid Services
U.S. Department of Health and Services**

John O'Brien is the Senior Policy Advisor for the Disabled and Elderly Health Programs Group at the Centers for Medicare & Medicaid Services. Previously, John was the Senior Advisor to the Administrator on Health Care Reform at the Substance Abuse and Mental Health Services Administration (SAMHSA). John O'Brien was the Director of several national projects funded by the Robert Wood Johnson Foundation to develop strategies for coordinating funding for human services from federal, state and local dollars. Prior to his work at SAMHSA, Mr. O'Brien worked with the Technical Assistance Collaborative for fifteen years as a Senior Consultant. He has provided consultation to over 30 states and local human services authorities. He has worked with Medicaid, state mental health and substance abuse authorities. He has worked with states to develop federal Medicaid Waivers, Medicaid state plan amendments, and federal grant applications (e.g., children's system of care).

Mr. O'Brien has also been a manager at KPMG Peat Marwick and worked for the Eunice Kennedy Shriver Center, the Massachusetts Developmental Disability Council, the Illinois Governor's Office, and the Illinois Legislative Commission on Mental Health, Mental Retardation and Substance Abuse. He was a program staff at Thresholds, Inc. in Chicago.



**Janet LaBreck, Commissioner
Rehabilitation Services Administration
U.S. Department of Education**

As commissioner of the Rehabilitation Services Administration, Janet LaBreck oversees programs that help people with disabilities find employment and live more independently. Prior to that role within the U.S. Department of Education, she was the Commissioner of the Massachusetts Commission for the Blind (MCB), a position she held since 2007.

Ms. LaBreck joined the MCB in 1985 as Consumer Advocate. She has served in a number of positions at the MCB since then, including Independent Living Coordinator, Vocational

Rehabilitation Counselor, and Regional Director of Central Massachusetts. Since 2005, she has worked as an Adjunct Professor at Assumption College, where she teaches courses in rehabilitation of the blind and case management in rehabilitation. She was awarded an honorary Doctorate of Humane Letters from the New England College of Optometry. She received a B.A. from the University of Massachusetts and an M.Ed. from Springfield College.



**Bob Williams
Senior Advisor to the Deputy Commissioner
Office of Retirement and Disability Policy
U.S. Social Security Administration**

Bob Williams is a Senior Advisor to the Deputy Commissioner for Retirement and Disability Policy in the Social Security Administration's Office of Retirement and Disability Policy. Mr. Williams formerly served as a Senior Advisor to the Acting Associate Commissioner of the Social Security Administration's Office of Employment Support Programs.

Immediately prior to this, he was the Special Assistant to the Director of the Washington, DC Department on Disability Services. He has also advised the Kaiser Foundation, the Commonwealth Fund and others on policy issues affecting the health, independence and economic well-being of Americans with disabilities of all ages.

From 1993-2000, Williams served as Commissioner on Developmental Disabilities and then as the Deputy Assistant Secretary for Disability, Aging and Long Term Care Policy in the U.S. Department of Health and Human Services. In 1990, he worked on enacting the Americans with Disabilities Act and began his career serving on a court appointed monitoring team charged with closing Forest Haven, the District of Columbia's institution for people with developmental disabilities.

Public Citizen Members

Self-Advocate Category



Patrick Hendry – Mental Health America

Patrick has worked as a mental health advocate for the past twenty-four years. His areas of expertise include social inclusion, self-directed care, recovery-based trainings, peer workforce development and peer-run programs. In his capacity at Mental Health America he is currently developing the first national certification program for employing people living with psychiatric disabilities in private behavioral health care. In 1992 he co-founded the first peer-run organization in Florida to contract directly with the State for the provision of services and has, since that time, assisted with the development of numerous peer-run programs. He is a strong supporter of the inclusion of mental health consumers in all aspects of the mental health system.



Karen McCulloh – McCulloh & Associates Consulting

Karen McCulloh understands firsthand the opportunities and challenges in the workforce development system for the disability community. A professional registered nurse (RN) specializing in neurosurgical intensive care who also worked in community health nursing, as a nurse executive and as a nurse entrepreneur, McCulloh was initially informed that she was being considered for sheltered employment after developing multiple disabilities before her first in-person meeting with her vocational rehabilitation counselor. McCulloh's personal experience spurred her in a new professional direction. Unable to find employment as a healthcare professional after becoming disabled, McCulloh became the first RN in the state of Illinois who has multiple disabilities to set up a for-profit practice while creating her own specialty in nursing, Community Health

Disability Education. She also co-founded the National Organization of Nurses with Disabilities, NOND, www.nond.org in 2003. She has worked for the past 24 years in the workforce development arena for and with people representing cross-disabilities. She has worked with local, state, national and global corporations focusing on CEO education. McCulloh's work extends to the promotion of healthcare careers for qualified veterans and civilians with disabilities and to the development of supports and best practices for healthcare professionals who are mature workers that become disabled after licensure.

In 2005, McCulloh accepted the founding Executive Director position of disabilityworks, an initiative set up at the Chicagoland Chamber of Commerce where she focused her work in the Northeast Region of Illinois on the employment of people with disabilities, an initiative that went statewide in 2007. In 2006, McCulloh accepted a federal appointment from the U.S. Secretary of the Department of Labor to the National Job Corps Advisory Committee and was appointed as the Chair of the Disability Subcommittee. She was the only person with a disability to serve on this advisory committee.

In 2008, McCulloh resigned from her federal appointment to serve on President-elect Barack Obama and Vice President-elect Joe Biden's Transition Team in Washington, DC while continuing as executive director for disabilityworks. In 2010, she resigned as the executive director of disabilityworks to reestablish her own independent contracting business, Karen McCulloh & Associates Consulting. She received a Presidential Appointment from President Obama to the U.S. AbilityOne® Commission in 2011. In October 2012, McCulloh joined National Disability Institute as the founding Project Director for the LEAD Center while telecommuting, a position she held until resigning in October 2013. Karen is a graduate of Loyola University of Chicago and Grant Hospital School of Nursing in Columbus, Ohio.



Santa Perez – People First of Nevada

Statewide President, People First of Nevada Live, Laugh, Love, Advocate Santa Perez – Advocate Co-coordinator for the People First of Nevada Project funded by the Nevada Governor's Council on Developmental Disabilities (NGCDD) Santa Perez is from Southern California where she was very active in the self-advocacy movement. She earned her Bachelors of Arts degree in Psychology from Cal State Northridge. When Santa moved to Las Vegas in the mid-1990s, she discovered that there were no advocacy groups for people with disabilities. This was unacceptable for Santa and she started her quest to bring a self-advocacy group to Nevada. Santa completed the Partners in Policy Making program in 1999 at The University of Nevada, Reno. Their UCEDD had just started a new project, AmeriCorps

Vista (Volunteers in Services to America), and she was informed that they wanted her to become a member. This became her golden opportunity to fulfill her goal of bringing a self-advocacy group to Nevada. Through this project, Santa co-founded People First of Nevada and her dream is now a reality with 7 chapters all around the state. Santa is a very proud and active President of the People First of Nevada. She has testified before the state legislation and was instrumental in getting the Signature Stamp Law and the People First Respectful Language Law passed. Santa is currently working for Community Chest of Nevada, reporting through the NGCDD as an Advocate Co-Coordinator for the People First of Nevada Project. She has given many presentations at national conferences around the country. In her personal life Santa has accomplished many things. She has her own home and is a part of her community, but in her eyes, her greatest accomplishment is her son Noah.

Provider Organizations



Brian Itzkowitz – Goodwill Industries of Arkansas

Brian Itzkowitz, President and CEO of Goodwill Industries of Arkansas, a nonprofit organization whose mission is to help build lives, families and communities by assisting people with disabilities and other special needs reach their highest potential through training, education and employment services. Itzkowitz joined the agency in August 2008, and has over 16 years of experience in the Goodwill network. Since his arrival, Goodwill has seen the people served increase by over 500%, people placed in employment increase 40 fold, and has created more than 500 jobs internally. Currently, he oversees more than 700 employees and 38 retail and donation locations across the state.

Prior to Goodwill Industries of Arkansas, Itzkowitz served as Vice President of Retail Operations at Goodwill Industries of Southwest Florida. He began his nonprofit career at Goodwill Industries of the Chesapeake in Baltimore, Maryland as director of retail operations. Collectively, Itzkowitz has over 20 years of senior management experience. Itzkowitz maintains active involvement in several professional and community service organizations.

Currently, he serves on both the Arkansas Workforce Investment Board and the Little Rock Workforce Investment Board, Arkansas State Rehabilitation Council and Goodwill Industries International's board of directors. He is also involved in other local nonprofit organizations, serving on the Boards of the CARTI Foundation, Arkansas Society of Association Executives, University of Miami Alumni Board of Directors, University of Arkansas – Little Rock College of Business Advisory Board and serves on the leadership team for Arkansas Walk Now for Autism Speaks. Itzkowitz is also an active member of the Rotary Club of Little Rock. He holds a

bachelor's degree in international finance and marketing from the University of Miami. Additionally, he has been certified as Chief Executive Officer, and is a graduate of Goodwill's Executive Development program.



Christine McMahon – Fedcap

Christine McMahon joined Fedcap in 2009 and has championed the organization's strategic growth, significantly increasing the nonprofit's size as well as its service delivery and reach among people in need throughout the Northeast.

Ms. McMahon has more than 25 years' experience in social and mental-health services in New York and New England. She is nationally recognized for the breadth of her strategic

vision and her expertise across a wide range of social programs, for the implementation of numerous social-service-delivery and community-based initiatives, and for influencing state and local healthcare and social policy. She previously served as Senior Vice President and COO of an Easter Seals region that encompassed New Hampshire, Vermont, Maine, Rhode Island, New York and Massachusetts.

Ms. McMahon received her Master of Health Administration from the University of New Hampshire and her BA in Psychology from New England College. Her numerous honors include the New Hampshire Business Review-Outstanding Women in Business Award, the National Easter Seals – Lou Lowenkron Award for Program Innovation, the Division for Children, Youth and Families – Director's Choice Award, and the Riverbend Community Mental Health – Rainbow Award.

National Disability Organizations



Alison Barkoff – Bazelon Center

Alison Barkoff is the Director of Advocacy at the Bazelon Center. She works on policy and litigation related to community integration and inclusion of people with disabilities, including Olmstead, Medicaid, employment, housing, and education. From 2010 to 2014, she served as Special Counsel for Olmstead Enforcement in the Civil Rights Division of the Department of Justice. In that position, she led the Division's efforts to enforce the right of individuals with disabilities to live, work and receive services in the community. Under her leadership, the Division issued its first

Olmstead guidance and was actively involved in Olmstead litigation across the country, including numerous cases culminating in statewide system reform settlement agreements.

During her time with the federal government, Ms. Barkoff also worked with the Centers for Medicare & Medicaid Services on finalizing rules governing Medicaid-funded community-based services and with the Department of Labor on implementation of its new home care rule in Medicaid-funded disability service systems. Prior to her time with the government, she worked at the Bazelon Center and at other public interest organizations on Olmstead enforcement, disability discrimination, Medicaid, employment, and education cases. She clerked for U.S. Supreme Court Justice Sonia Sotomayor when she was on the U.S. Court of Appeals for the Second Circuit, and for Judge William Pauley of the United States District Court for the Southern District of New York. She is a graduate of Cornell University and Emory University School of Law. Ms. Barkoff also is a sibling of an adult brother with a developmental disability.



Ruby Moore – National Disability Rights Network

Ruby Moore is the Executive Director of the Georgia Advocacy Office, the designated Protection and Advocacy System for People with Disabilities in Georgia. Moore is nationally known for her work in the disability field over the past 39 years, particularly in the areas of employment, augmentative communication, and the design and implementation of supports necessary for people with significant disabilities to live, work, play, and go to school in the community. Her experience includes growing up with family members with disabilities, working in both institutional and community settings, running provider organizations, working within

and outside government bureaucracies, individual and systemic advocacy, directly supporting individuals to obtain employment, housing, and other supports necessary to live in the community, and working to improve local, state and national disability policy.

Moore has over 30 years of experience helping people wrongly considered “unemployable” due to type or level of disability, to get jobs and build careers. She was one of the original architects of the national supported employment initiative and was one of a small group of people working on early national technical assistance grants to the states for their statewide systems change initiatives. She ran an employment institute in MA, and was an employment provider for 16 years. She helped to set up statewide employment institutes and technical assistance centers in NH and CT. Moore also ran a federally-funded model demonstration program securing high quality employment for people with dual sensory impairments (“deaf-blindness”) in New England, replicated the project in California. She has provided technical assistance across the

United States and in several other countries. Moore hosts a statewide employment initiative in GA.



Ari Ne'eman – Autistic Self Advocacy Network

Ari Ne'eman is the President and co-founder of the Autistic Self Advocacy Network, an advocacy organization run by and for Autistic adults seeking to increase the representation of Autistic people across society. In 2009, President Obama nominated Ari to the National Council on Disability, a federal agency charged with advising Congress and the President on disability policy issues. He was confirmed by the Senate in July 2010 and currently chairs the Council's Entitlements Committee. From 2010 to 2012, he served as a public member

to the Interagency Autism Coordinating Committee, a Federal advisory committee that coordinates all efforts within the Department of Health and Human Services concerning autism. Ari also served as an adviser to the DSM-5 Neurodevelopmental Disorders Workgroup convened by the American Psychiatric Association.

Appointed by Governor Jon Corzine, Ari served as Vice Chair of the New Jersey Adults with Autism Task Force, where he represented autistic adults in reviewing the state's autism services. He also previously served on the New Jersey Special Education Review Commission, where he authored a minority report on the topic of aversives, restraint and seclusion. He is also a board member of TASH, an advocacy organization focusing on advancing social justice for people with significant disabilities. In addition, he was named by the New York Jewish Week as one of their "36 by 36" in 2010. He has a bachelor's degree from the University of Maryland-Baltimore County, where he studied political science in the Sondheim Public Affairs Scholars Program.

Academia/Research



Vicki (Valerie) Brooke, M.Ed. – Virginia Commonwealth University

Ms. Brooke has been with Virginia Commonwealth University since 1979 earning a M.Ed. in Special Education with an emphasis on employment for people with disabilities. Ms. Brooke was one of our country's original job coaches and has served as the Center's Director of Training for over 20 years. In addition to these responsibilities, in the last several years she has also managed an employment services program as a vendor with Virginia Department of Aging and Rehabilitative Services

and Virginia Medicaid Waiver program, serving individuals with intellectual disabilities, autism, brain injury and spinal cord injury. Ms. Brooke has served as the Project Director/Principal Investigator for multiple national and state grants all related to employment of people with significant disabilities and has gained close working relationships with vocational rehabilitation managers, public school systems, and community businesses both through the vendorship and as a Board member of the Virginia Business Leadership Network.

Ms. Brooke has served on the editorial board for Journal of Vocational Rehabilitation since 2000 and is a frequent speaker, consultant and contributor to the literature with numerous book chapters, journal articles, newsletters, and briefing papers. She is committed to creating opportunities that support the full partnership of people with disabilities that are achieved through community integrated competitive employment.



David Mank, Ph.D. – Indiana Institute on Disability and Community; **Committee Chair**

David Mank, Ph.D., is the Director of the Indiana Institute on Disability and Community at Indiana University, Indiana's University Center for Excellence on Disabilities, and Full Professor in the School of Education.

As a writer and researcher, Dr. Mank has an extensive background in the education and employment for persons with disabilities. He has authored or coauthored numerous articles and book chapters.

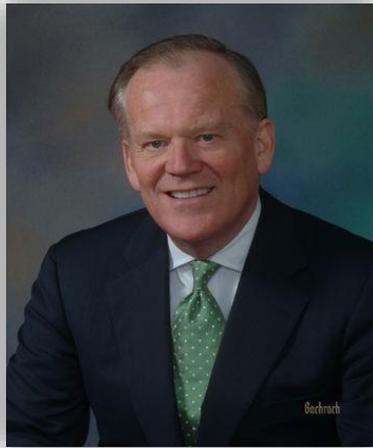
His interest also includes a focus on the transition of persons with disabilities from school to employment and community living.

Mank holds a Bachelor's Degree in Psychology and English from Rockhurst College in Kansas City (1975), a Master's from Portland State University in Special Education (1977), and a Doctorate in Special Education and Rehabilitation from the University of Oregon, Eugene (1985).

Mank is a member of the editorial boards of the Research and Practice for Persons with Severe Disabilities (TASH), the Journal of Vocational Rehabilitation, the Journal of Disability Policy Studies, Siglo Cero, and Associate Editor for the journal on Intellectual and Developmental Disabilities.

He has served on the Board of Directors of the American Association on Intellectual and Developmental Disabilities. He is Past President of the Association of University Centers on Disabilities. He was a founding board member of APSE, The Network on Employment. He was recipient of the Franklin Smith Award for National Distinguished Service from The Arc of the United States.

Employers



Jim Brett – President and Chief Executive Officer, The New England Council

James T. Brett, President and Chief Executive Officer of The New England Council, was appointed to those positions by the Council's board of directors in October 1996. Mr. Brett has been a leading voice in advocating for public policy issues such as health care, education, financial services and energy throughout New England and Washington, DC.

Before joining the Council, Mr. Brett served for more than fifteen years as a member of the Massachusetts House of Representatives. He held a succession of important leadership positions, including the chairmanship of two of the most significant committees in the Massachusetts legislature, Banking and the Committee on Taxation. In these positions, he brought together various constituencies to create economic opportunity for the Commonwealth's citizens and businesses. He previously served as Chairman of the Joint Committee on Banks and Banking, the Joint Committee on Criminal Justice, the Joint Committee on Congressional Redistricting, the Joint Committee on Counties, and the House Committee on Legislative Redistricting.

Mr. Brett recently served as the Chairman of The President's Committee for People with Intellectual Disabilities and continues to serve as a member, as well as serving as Chairman of the Governor's Commission on Intellectual Disability. Mr. Brett is Past President of the Board of Directors of the Massachusetts Association for Mental Health.

In addition to a Bachelor's degree from American University, Mr. Brett holds Master's degrees in Public Administration from both Suffolk University and the John F. Kennedy School of Government at Harvard University.



Oswald (“Oz”) Mondejar – Partners Continuing Care

Oz Mondejar is the Senior Vice President of Mission and Advocacy for Partners Continuing Care (PCC). Comprised of the Spaulding Rehabilitation Network and Partners HealthCare at Home, PCC is a member of Partners HealthCare and one of the largest not-for-profit post-acute providers in the country. In his role, Mr. Mondejar touches on many areas from community outreach to workforce development as well as implementation of key initiatives such as “Working Partners”, recognized as a first of its kind public/private partnership between Spaulding Rehabilitation Network and the Massachusetts Rehabilitation Commission that works to break down barriers to employment for people with disabilities.

Over his distinguished career in the private and public sector, Mr. Mondejar has served in numerous leadership positions with a focus on human resources and community relations. A significant focus for him has been on work force development opportunities for the community with disabilities and employer education by striving to demystify the obstacles both real or perceived, to considering qualified candidates with disabilities.

With a practical result based approach, he has continually demonstrated the significant economic value to businesses and society as a whole of engaging this largely untapped talent pool. Mr. Mondejar has worked with a wide variety of businesses from small local employers to large global corporations to develop models and processes to enhance their recruitment and retention programs by incorporating the community with disabilities. He has been recognized numerous times by public and private organizations for his work in this arena as well as for a lifetime of mentorship and youth development.



Steve Pemberton – Divisional Vice President and Chief Diversity Officer, Walgreens

Fortune 50 Executive, Author of “A Chance in the World” & Voice of Change for Youth. A ward of the state for much of his childhood, Steve Pemberton has made opportunity, access, and equality pillars of his personal and professional life. One of America's most inspiring executives, he is recognized as a leader on matters of diversity and inclusion and their importance to the growth of the American industrial complex.

Overcoming seemingly insurmountable odds, Pemberton has gone from being a forgotten ward of the Commonwealth of Massachusetts to becoming a trailblazing Divisional Vice

President at Walgreens and the first Chief Diversity Officer for the 113 year old company. As such, he directs activities to help serve diverse markets and populations, including customers in medically underserved areas, food deserts, and urban areas, as well as strengthens relationships with diverse suppliers and communities. Prior to that, he made history as the first Chief Diversity Officer and Vice-President of Diversity and Inclusion for an Internet start-up while at Monster.com.

His memoir, *A Chance in the World: An Orphan Boy, a Mysterious Past, and How He Found a Place Called Home*, chronicles his difficult path through foster care and his determined search for his family. Pemberton's story has garnered nationwide attention and has been captured in major media outlets such as *People Magazine*, *The Steve Harvey Show* and multiple news networks.

Hollywood has taken notice and is currently adapting *A Chance in the World* into a screenplay. In the corporate world, Pemberton is recognized as an enlightened executive driven by his commitment to diversity and the capacity to lead through adversity. As founder of the non-profit *A Chance in the World*, he focuses on connecting people who are in need of a chance with people willing to give them one that will help move them in their desired direction in life. He also serves on several boards including *The Home for Little Wanderers* where *The Pemberton Fund for the Future* has been established in his name. Furthermore, as a board member of *UCAN*, he assists in providing guidance and offering inspiration to children in need.

Other Experts



Cesilee Coulson – Washington Initiative for Supported Employment
Ces brings 20 years of experience in training and development to her position, including, leadership development, Employment First strategy development and non-profit management. She designs, implements and manages employment training and technical assistance projects that increase employment opportunities and outcomes. She holds certifications as an Executive Coach by the Hudson Institute and a Somatic Executive and Leadership Coach by the Strozzi Institute. She is a past board member for National APSE, the National APSE Foundation and is a current board member with the Community Employment Alliance (a WA State Association of Employment Agencies). She holds a Master's Degree in Social Psychology/Exercise and Movement Science from the University of Oregon. Ces lives in Bellingham, WA where she enjoys sailing in the San Juan Islands, golfing, camping and gardening with her family and two dogs.



Sharyn Hancock – Workforce Essentials Inc.

Sharyn Hancock is assigned as the Disability Resource Coordinator at Workforce Essentials, Inc. a non-traditional, private, non-profit organization delivering workforce development services for Tennessee Department of Labor and Workforce Development in middle Tennessee overseeing the Tennessee Career Center System and delivery of Adult, Dislocated and Youth programs to Job Seekers and Employers.

Sharyn Hancock has been charged with addressing accessibility issues or other barriers preventing individuals with disabilities from fully utilizing Career Center services at the 9 county career centers, as well as managing their Workforce Investment Board Employment Network through the Social Security Administrations Ticket to Work Program. Her 20 years' experience in the public workforce system has led Sharyn to obtain strong expertise in working with job seekers, employees, employers and youth of all levels and backgrounds. Sharyn holds a Bachelor of Science in Business Administration from Everest University, in Fort Lauderdale, Florida.



Rita M. Landgraf – Delaware State Department of Health & Social Services

Rita M. Landgraf was sworn in as Secretary of the Department of Health and Social Services on Jan. 22, 2009. As Secretary, she leads the principal agency charged with keeping Delawareans healthy, advancing initiatives that promote self-sufficiency while ensuring that those citizens who are most vulnerable receive the appropriate services and supports that produce quality of life outcomes. She oversees one of the largest departments in the Delaware government, with an annual state budget of more than \$1 billion.

Landgraf, who has spent more than 30 years of her career in support of individuals with disabilities, served as a key adviser to Gov. Jack Markell during his yearlong initiative as Chair of the National Governors Association to increase employment opportunities for people with disabilities. The Governor's 2012-2013 initiative, "A Better Bottom Line: Employing People with Disabilities," culminated with the release of a [blueprint](#) for his fellow governors specifically focused on the role that state governments and businesses can play in creating more employment opportunities for people with disabilities and on improving employment outcomes. Landgraf continues to work with the Governor to increase employment opportunities for individuals with disabilities in Delaware's private, nonprofit and public sectors.

Secretary Landgraf has been a leader on health care, disabilities, and senior issues, including formerly as executive director of The Arc of Delaware, where she was instrumental in creating a community based job development and placement program, and during her tenure at The Arc provided guidance to self-advocates in creating Delaware People First. Landgraf also served as the Executive Director of the National Alliance on Mental Illness in Delaware, and president of AARP Delaware. For her efforts, the University of Delaware inducted her into the University Of Delaware Alumni Wall Of Fame in June 2011, and she will be inducted into the Delaware Women's Hall of Fame this March.



Lisa Pugh – Disability Rights Wisconsin

Lisa Pugh is the Public Policy Coordinator for Wisconsin's Disability Policy Partnership and Policy Director for the state's Protection and Advocacy agency, Disability Rights Wisconsin. In this role she educates policymakers at the state and federal level and coordinates and informs the work of other advocates, coalitions and organizations that support people with disabilities in Wisconsin. The policy partnership is a unique collaboration of Disability Rights Wisconsin, the Board for People with

Developmental Disabilities and People First Wisconsin. As a Joseph P. Kennedy, Jr. Foundation Public Policy Fellow in 2009-2010, served as a disability policy advisor in the U.S. House of Representatives Committee on Education and Labor and in the Office of the Under Secretary at the U.S. Department of Education.

Lisa has worked to advance initiatives and train advocates, including people with disabilities, on a variety of issues. In the past year she was instrumental in coordinating support for significant investments in integrated, competitive wage employment initiatives for people with disabilities and extending access to long-term care programs throughout Wisconsin. She is currently the policy lead on Wisconsin's youth Partnerships in Employment systems change grant - Let's Get to Work - funded through the Administration on Intellectual and Developmental Disabilities and serves as Education Issue Team Lead for the statewide Survival Coalition of Wisconsin Disability Organizations. In May 2014 Lisa was appointed by President Obama to serve on the President's Committee for People with Intellectual Disabilities. Lisa lives in Madison, Wisconsin. She has three children, one of whom as a developmental disability.



Fredric Schroeder – Interwork Institute at San Diego State University

Dr. Fredric K. Schroeder was born in Lima, Peru, in 1957. He and his brother Steve were adopted and moved to the United States when he was nineteen months old. Born with normal vision, Dr. Schroeder became blind at the age of seven after suffering a severe allergic reaction known as Stephens-Johnson's Syndrome. As a result, his vision deteriorated over a nine-year period, leaving him totally blind at the age of sixteen.

Following graduation from high school, Dr. Schroeder attended the Orientation Center for the Blind in Albany, California. There he joined the National Federation of the Blind, and his involvement in the disability consumer movement has been central to his life and work ever since. His professional achievements are impressive. In 1980, Dr. Schroeder returned to New Mexico to work as a teacher of blind children for the Albuquerque Public Schools. Six years later, Dr. Schroeder was appointed the New Mexico Commission for the Blind's first executive director. In 1994, President Bill Clinton appointed Schroeder to serve as the ninth commissioner of the Rehabilitation Services Administration (RSA) within the U.S. Department of Education. As RSA commissioner he administered a \$2.5 billion dollar program providing services to more than one million people with disabilities each year. He focused on high-quality employment—better jobs, jobs with a future, jobs enabling people to achieve a good and equitable standard of living. His crowning achievement as RSA commissioner was ending the practice of having state vocational rehabilitation agencies place people with disabilities in segregated employment settings, often at subminimum wages.

Following his service as RSA commissioner, he joined the faculty of the Interwork Institute at San Diego State University. He now works as a research professor specializing in leadership and public policy in vocational rehabilitation. He also serves as the Executive Director of the National Rehabilitation Association, a grassroots organization of rehabilitation professionals. His involvement in the National Federation of the Blind also continues. On July 5, 2006, Dr. Schroeder was unanimously elected first vice president of the National Federation of the Blind, and he often represents the Federation at national and international meetings and conferences. Dr. Schroeder has also held a number of leadership positions internationally. He was the founding president of the International Council on English Braille and presently serves as the first vice president of the World Blind Union.

Dr. Schroeder attended San Francisco State University, earning a Bachelor's Degree in Psychology in 1977; a master's degree in Special Education in 1978; and a Ph.D. in Education Administration from the University of New Mexico in May 1994.

Appendix D: Relevant Statutory and Regulatory Provisions Currently Governing the Administration of the Section 14(c) Program

29 U.S.C. § 214 is entitled “Employment under special certificates.” The entirety of 29 U.S.C. § 214(c) reads:

(c) Handicapped workers

- (1) The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury, at wages which are—
 - (A) lower than the minimum wage applicable under section 206 of this title,²⁰²
 - (B) commensurate with those paid to nonhandicapped workers, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work, and
 - (C) related to the individual's productivity.
- (2) The Secretary shall not issue a certificate under paragraph (1) unless the employer provides written assurances to the Secretary that—
 - (A) in the case of individuals paid on an hourly rate basis, wages paid in accordance with paragraph (1) will be reviewed by the employer at periodic intervals at least once every six months, and
 - (B) wages paid in accordance with paragraph (1) will be adjusted by the employer at periodic intervals, at least once each year, to reflect changes in the prevailing wage paid to experienced nonhandicapped individuals employed in the locality for essentially the same type of work.
- (3) Notwithstanding paragraph (1), no employer shall be permitted to reduce the hourly wage rate prescribed by certificate under this subsection in effect on June 1, 1986, of any handicapped individual for a period of two years from such date without prior authorization of the Secretary.
- (4) Nothing in this subsection shall be construed to prohibit an employer from maintaining or establishing work activities centers to provide therapeutic activities for handicapped clients.
 - (A) Notwithstanding any other provision of this subsection, any employee receiving a special minimum wage at a rate specified pursuant to this subsection or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. An employee or the employee's parent or guardian may

file such a petition for and in behalf of the employee or in behalf of the employee and other employees similarly situated. No employee may be a party to any such action unless the employee or the employee's parent or guardian gives consent in writing to become such a party and such consent is filed with the Secretary.

- (B) Upon receipt of a petition filed in accordance with subparagraph (A), the Secretary within ten days shall assign the petition to an administrative law judge appointed pursuant to section 3105 of Title 5.²⁰³ The administrative law judge shall conduct a hearing on the record in accordance with section 554 of Title 5²⁰⁴ with respect to such petition within thirty days after assignment.
- (C) In any such proceeding, the employer shall have the burden of demonstrating that the special minimum wage rate is justified as necessary in order to prevent curtailment of opportunities for employment.

The relevant provisions of 29 C.F.R. § 525, *et seq.*, entitled “Employment of Workers with Disabilities Under Special Certificates” are excerpted below:

These provisions “[p]rovide for the employment [1] under certificates [2] of individuals with disabilities [3] at special minimum wage rates [4] which are commensurate with those paid to workers not disabled for the work to be performed [5] employed in the vicinity [6] for essentially the same type, quality, and quantity of work.” *Id.* at § 525.1.

A “worker with a disability” is “an individual whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury, for the work to be performed.” *Id.* at § 525.3.

Employers seeking a special minimum wage certificate must submit an application to the Wage and Hour Division (WHD) of the Department of Labor. *See id.* at § 525.7. In reviewing such applications, WHD is seeking to determine whether issuance of the certificate is “necessary in order to prevent the curtailment of opportunities for employment” of workers with disabilities. *Id.* at § 525.9. Certificates are issued for a particular period of time, designated by the Administrator of WHD. *Id.* at § 525.12. When a certificate is due to expire, the employer can submit an application to renew. *Id.* at § 525.13.

The employer derives the “commensurate wage” of a worker with a disability for purposes of the certificate by comparing the individual productivity of the worker with “the wage and productivity of experienced nondisabled workers performing essentially the same type, quality, and quantity of work in the vicinity in which the individual under certificate is employed. For example, the commensurate wage of a worker with a disability who is 75% as productive as the average experienced nondisabled worker, taking into consideration the type, quality, and quantity of work of the disabled worker, would be set at 75% of the wage paid to the nondisabled worker.” *Id.* at § 525.3. The prevailing wage must be based upon work utilizing similar methods and equipment. *Id.* at § 525.10. An experienced nondisabled worker is one “who has learned the

basic elements or requirements of the work to be performed, ordinarily by completion of a probationary or training period. Typically, such a worker will have received at least one pay raise after successful completion of the probationary or training period.” *Id.* at § 525.3.

An employer that primarily employs nondisabled workers may use those employees’ productivity and wages for comparison purposes; an employer that primarily employs people with disabilities may conduct a survey of wages paid to nondisabled workers at a comparable employer “in the vicinity.” *Id.* at § 525.10. Employers may also use sources such as the Bureau of Labor Statistics or private or state employment services. *Id.* “[T]here is no prescribed method for tabulating the results of a prevailing wage survey.” *Id.* Where an employer cannot figure out the prevailing wage for a specific job, “such as [a job that involves] collating documents,” it can use “the wage paid to experienced individuals employed in similar jobs such as file clerk or general office clerk.” *Id.* Employers must be able to “demonstrate [to WHD] that the rate being used as prevailing for determining a commensurate wage was objectively determined according to [the guidelines described in this and the preceding paragraphs].” *Id.*

The initial evaluation of a worker’s productivity, in order to determine the worker’s commensurate wage, must be conducted within the first month after employment begins. *Id.* at § 525.12. However, “evaluations should not be conducted before a worker has had an opportunity to become familiar with the job or at a time when the worker is fatigued or subject to conditions that result in less than normal productivity.” *Id.* The employer must compensate the employee if it determines that the rate paid prior to the evaluation was lower than the commensurate wage rate. *Id.*

After the initial application for a Special Certificate, employers must have available to WHD “written assurances” that wage rates of individuals paid on an hourly rate basis (not those doing piece work) under the Certificate are being “reviewed” at least every six months, and that the wages of all employees (including those doing piece work) are being reviewed at least annually. *See id.* at §§ 525.1, 525.9, 525.12 (“Conducting reviews at six-month intervals should be viewed as a minimum requirement... Reviews must be conducted in a manner and frequency to insure payment of commensurate wages”). Employers must also “maintain and have available for inspection” records providing “verification” of each worker’s disability, evidence of the productivity of each worker with a disability, the prevailing wages paid workers not disabled for the job, and the production standards and supporting documentation used. *Id.* at § 525.16.

WHD can revoke a certificate “if it is found that the certificate is no longer necessary in order to prevent curtailment of opportunities for employment” of workers with disabilities. *Id.* at § 525.17. However, “[e]xcept in cases of willfulness or those in which the public interest requires otherwise, before any certificate shall be revoked, facts or conduct which may warrant such action shall be called to the attention of the employer in writing and such employer shall be afforded an opportunity to demonstrate or achieve compliance with all legal requirements.” *Id.*

“Any person aggrieved by any action of the Administrator taken pursuant to this part” can file a “petition for review.” *Id.* at § 525.18. “Other interested persons, to the extent it is deemed appropriate, may be afforded an opportunity to present data and views” regarding the petition. *Id.* The Administrator can conduct an investigation in response, and hold a hearing if “deemed appropriate.” *Id.* at § 525.19.

An employee receiving a special minimum wage or the parent or guardian of such an employee may petition the Secretary to review their special minimum wage rate. *Id.* at § 525.22. Such a petition may be filed on behalf of other employees “similarly situated” if those employees consent to participate in writings filed with the Secretary.²⁰⁵ The petitioner(s) and the employer are entitled to a hearing before an ALJ, review by the Secretary, and judicial review pursuant to 5 U.S.C. Chapter 7.^{206,207}

The regulations also create an “Advisory Committee on Special Minimum Wages.” *See id.* at § 525.24.

“No provision of [the] regulations, or of any special minimum wage certificate issued thereunder, shall excuse noncompliance with any other Federal or State law or municipal ordinance establishing higher standards.” *Id.* at § 525.20.

* * *

²⁰² 29 U.S.C.A. § 206 (“Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: (1) except as otherwise provided in this section, not less than -- (A) \$5.85 an hour, beginning on the 60th day after May 25, 2007; (B) \$6.55 an hour, beginning 12 months after that 60th day; and (C) \$7.25 an hour, beginning 24 months after that 60th day...”).

²⁰³ 5 U.S.C. § 3105 (“Each agency shall appoint as many administrative law judges as are necessary...”).

²⁰⁴ 5 U.S.C. § 554 (“This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing...”).

²⁰⁵ 29 U.S.C. § 214(c)(5)(A)

²⁰⁶ Governing review of a final agency action.

²⁰⁷ 29 C.F.R. § 525.22

Appendix E: Crosswalk of Committee Recommendations

This section of the report provides a list of all subcommittee recommendations and the targeted agency or organization. Below is the list of abbreviations for each of the agencies and programs that have been targeted by a recommendations followed by a cross tab for each chapter of the Interim Report.

Abbreviations

Agency or Program	Abbreviation
President	President of the United States of America
Congress	United States Congress
All Federal Agencies	All Federal Agencies
DOL WHD ETA	U.S. Department of Labor Wage and Hour Division Employment and Training Administration
ED RSA OSERS	U.S. Department of Education Rehabilitation Services Administration Office of Special Education and Rehabilitative Services
DOT	U.S. Department of Transportation
SSA	Social Security Administration
HHS CMS OCR	U.S. Department of Health and Human Services Centers for Medicare & Medicaid Services Office of Civil Rights
DOJ	U.S. Department of Justice
SEA	State Education Agencies
LEA	Local Education Agencies
ACICIEID	Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities
AbilityOne®-Com	The AbilityOne® Commission
AbilityOne®-NPA	AbilityOne® Nonprofit Agencies
AbilityOne®-CNA	Central Nonprofit Agencies (SourceAmerica and National Industries for the Blind)
CIE Programs	Competitive Integrated Employment Programs
SVRA	State Vocational Rehabilitation Agencies
SIDD	State Intellectual or Developmental Disability Agencies
IDEA	The Individuals with Disabilities Education Act

Page No.	Recommendation Number and Description	President	Congress	All Federal Agencies			U.S. Dep. of Labor			U.S. Dep. of Education			Secretary of Transportation	U.S. Dep. of Health and Human Services				LEA	AC/IEID	AbilityOne@-Com	AbilityOne@-NPA	AbilityOne@-CNA	CIE Programs	SVRA	SIID	IDEA			
				DOL	Secretary of Labor	WHD	ETA	ED	RSA	OSERS	DOT	SSA		HHS	CMS	OCR	DOJ										SEA		
29	9 ED, RSA, and SEAs must review policies and issue joint guidance to ensure that prior to each student's secondary education graduation, the student's IEP team has identified and engaged the responsible agencies, resources, and accommodations required for PSE that would include the specific types and levels of supports needed by the student for success.							X	X							X													
29	10 ED must require PSE experiences to involve multiple competitive integrated employment experiences to include paid internships in integrated settings to ensure that the entire experience is oriented and coordinated to support the student's identified career of choice.								X																				
29	11 DOL should direct the workforce system to coordinate with other partners to provide youth with I/DD who are attending PSE, orientation toward careers through work experience, career planning, and career counseling.			X																									
<i>Area 3: Family Expectations</i>																													
29	12 Federally funded grantees that have early contact with parents of children with I/DD and other significant disabilities (i.e., Parent Training and Information Centers, Family-to-Family Health Centers, IDEA Part B/C, Family Support Programs) should be required to engage with families earlier to support them in acquiring higher expectations that leads to transition long-range planning with self advocates engaged as mentors.																												
29	13 ED should prioritize the use of student-led IEPs and best practices promoting self-determination at an early age to improve family expectations for positive employment outcomes.								X																				
29	14 ED must issue guidance on developing embedded discussions in the IEP process, during the pre-transition age, that leads to long-range post-school outcomes planning versus year-to-year planning. With any reauthorization of IDEA, the IEP process must be updated and provide funding sources related to a focus on a vision that builds toward long-range, post-school outcomes planning.								X																				
29	15 RSA should issue guidance to states on how to provide Work Incentives Benefits Counseling and financial literacy that is tailored to individual youth/family household that is tailored to individual youth and is considered a service under Pre-Employment Transition Services.									X																			
<i>Area 4: System Integration/Seamless Transition</i>																													
30	16 Interagency alignment of outcome goals, coordination of supports, services, and funding oriented toward competitive integrated employment must be mandated among ED, DOL, RSA, the Social Security Administration (SSA), and CMS. A lead federal agency must be designated. These key federal agencies must provide implementation guidance to the states and states must provide guidance to the local communities to support the following: lowering the age of transition to 14, specifying practices for braiding of resources, clarifying funder of last resort mandates, clearly identifying roles and responsibilities, benchmarking milestones, sharing data collection processes and analyses, tracking outcomes of collaboration over time, and having a plan for dissemination of this information to families and professionals.			X				X	X			X	X																
30	17 ED, SSA, RSA, and CMS must work toward presumptive eligibility and a common application process across state agencies for youth with I/DD and other significant disabilities, to the greatest degree possible with a focus on securing automatic VR eligibility for waiver eligible youth who desire employment.							X	X			X	X																
30	18 Federal agencies must coordinate to develop a pilot and seek demonstration authority to increase flexibility and potentially waive requirements across multiple authorities (IDEA, Elementary Secondary Education Act (ESEA), RSA, SSA, DOL, and CMS) so funds may be streamlined to support youth achieving successful competitive integrated employment outcomes.			X																									
30	19 ED's The Office of Special Education Programs (OSEP) should ensure that youth with I/DD and other significant disabilities have access to assistive technology. OSEP, RSA, and HHS should ensure that policies allow assistive technology devices to transfer to the student's workplace and/or postsecondary environment.							X	X			X																	

Page No.	Recommendation Number and Description	President	Congress	All Federal Agencies	U.S. Dep. of Labor			U.S. Dep. of Education			Secretary of Transportation	U.S. Dep. of Health and Human Services			SEA	LEA	ACICIEID	AbilityOne@-Com	AbilityOne@-NPA	AbilityOne@-CNA	CIE Programs	SVRA	SIDD	IDEA
					DOL	Secretary of Labor	WHD	ETA	ED	RSA		OSERS	HHS	CMS										
30	20 ED in collaboration with RSA should issue guidance specifically on ways in which schools and state VR can and should fund transportation as a service to support integrated work experiences as part of a student's IEP and/or individual employment plan.								X	X														
<i>Area 5: Professional Supports and Incentives</i>																								
30	21 State Medicaid agencies must tie professional certifications and Medicaid provider qualifications to specific competencies related to understanding competitive integrated employment opportunities for Medicaid beneficiaries.												X											
30	22 ED, RSA, and DOL must promote and fund pre-service and in-service training for professionals and paraprofessionals across the systems that focuses on building high expectations related to CIE and evidence-based practices to include family engagement strategies, use of labor market information, an understanding of career counseling and pathways, availability of CIE services, person-centered employment services, and employer relations.			X				X	X															
31	23 Federal agencies must update core competencies, standards and pre-service requirements for early childhood and other pediatric medical and social service professions to embed values related to high expectations for children with I/DD and other significant disabilities.			X																				
31	24 "Highly Qualified Special Education Teacher" should be redefined to reflect the unique skills necessary to effectively plan and provide required transition services that lead to competitive integrated employment outcomes; in turn, these qualifications should become competencies that are embedded in all special education personnel preparation programs.																							

Chapter Three: Complexity and Needs in Delivering Competitive Integrated Employment Subcommittee Recommendations

Page No.	Recommendation Number and Description	President	Congress	All Federal Agencies						Secretary of Transportation	SSA	U.S. Dep. of Health and Human Services			DOJ	SEA	LEA	ACICIEID	AbilityOne@-Com	AbilityOne@-NPA	AbilityOne@-CNA	CIE Programs	SVRA	SIDD	IDEA
				DOL	Secretary of Labor	WHD	ETA	ED	RSA			OSERS	HHS	CMS											
<i>Area 1: Funding</i>																									
42	1 DOL should lead a collaboration of federal agencies to identify, align, and develop clear policies and practices across all federal agencies that make CIE outcomes a priority and guide states in applying these policies and practices. The federal agencies should include those participating in the Committee and other relevant agencies in ED and the U.S. Department of Justice (DOJ). DOL and other Committee member agencies should report on progress at each full Committee meeting.				X													X							
42	2 ED, in implementing WIOA, should require:																								
42	2a. Intervention for youth beginning prior to age 14;								X																
42	2b. Opportunities for integrated work experience for all youth, with access to needed assistive technology, job coaching and other supports, for a period of not less than 24 months; and								X																
43	2c. Presumed eligibility for VR services for any youth considering sheltered employment.								X																
43	3 RSA, in implementing WIOA, should:																								
43	3a. Clarify that youth with disabilities must first apply for VR services and, if eligible, work toward a CIE goal, which can include supported employment for a “reasonable” period of time. A “reasonable” period of time should be at least 24 months, regardless of whether the youth has a supported employment IPE or a regular IPE; and								X																
43	3b. Clarify that extending the time limit of Supported Employment Services from 18 to 24 months refers to ongoing support services provided after a person has been successfully placed in a job that meets the WIOA definition of Supported Employment. This is consistent with the definition of Supported Employment Services in WIOA.								X																
43	4 ED should direct state education and vocational rehabilitation agencies to include blueprints for designing and implementing local working agreements in existing state inter-agency agreements. The local agreements should identify how much VR and school financial support is available to implement best practice transition programs that include integrated work experience after age 18 through internships, apprenticeships and similar experiences. These strategies will help students leave transition programs with a job, a solid portfolio of work, and/or an effective plan for additional education leading to a job. State education and rehabilitation agencies should report results of state and local efforts to ED.								X																
43	5 CMS should lead a collaboration of federal agencies, including those participating in the Committee and relevant agencies in ED, to issue federal guidance to states on how to use, braid and/or blend their respective funds to support best practices and/or evidence-based models that result in CIE. In the interim, information should be published about states that are successfully using federal funds to support best practice and evidence-based CIE.								X			X						X							
43	6 DOL, in partnership with CMS and SSA, should lead a collaboration of federal agencies participating in the Committee and relevant agencies in ED, to issue guidance on models and payment methodologies that make CIE outcomes the priority.				X						X	X													
43	7 CMS should issue guidance on how states can use the range of Medicaid authorities to fund services resulting in and supporting CIE for people with significant disabilities, including the use of 1905(a) state plan services to fund supported employment for people with serious mental illness.											X													

Page No.	Recommendation Number and Description	President	Congress	All Federal Agencies							U.S. Dep. of Labor				U.S. Dep. of Education			Secretary of Transportation				U.S. Dep. of Health and Human Services				
				DOL	Secretary of Labor	WHD	ETA	ED	RSA	OSERS	DOT	SSA	FHS	CMS	OCR	DOJ	SEA	LEA	AC/IEID	AbilityOne@Com	AbilityOne@NPA	AbilityOne@CNA	CIE Programs	SVRA	SIDD	IDEA
43	8 DOL should collaborate with CMS and other relevant federal agencies, to identify and make available financial support and incentives to help people move from segregated programs (such as sheltered employment, day habilitation and day treatment) to CIE. Such support could be modeled after programs like the Medicaid Infrastructure Grants, Money Follows the Person or Balancing Incentive Programs. Such funds should help build capacity to transition people from sheltered employment or segregated day programs to CIE or to provide for enhanced FFP to encourage expanding CIE. These efforts should be tied to specific, measurable outcomes such as decreases in the number of people in sheltered employment or other segregated day programs and increases in CIE. DOL, CMS and other Committee members should report back to the full committee by January 2016 about resources in existing federal programs and recommendations for Congressional authorization of additional resources and/or programs.			X									X													
44	9 CMS should provide technical assistance to states and managed care organizations on the importance of CIE and how to support CIE for people with significant disabilities through Medicaid.												X													
44	10 CMS should mitigate the policy that prohibits individuals from receiving CIE services if they do not live in settings that meet the HCBS Settings Rule requirements.												X													
44	11 DOL should lead a collaboration of federal agencies, including those participating in the Committee and relevant agencies in ED, to ensure technical assistance resources are available to increase the competence and capacity of professionals serving people with disabilities to find and connect people to jobs and careers. This technical assistance partnership of federal agencies should encourage states to participate in providing such supports. Technical assistance is essential to build capacity in current and new programs and to improve the system's ability to deliver best practice and evidence-based models of employment support.			X													X									
44	12 SSA should collaborate with the U.S. Department of Health and Human Services (HHS) and other relevant federal agencies to identify and carry out immediate and long- term steps to eliminate the fear that people with disabilities will lose benefits by working. These steps may include wide dissemination of information about work incentives that has been reviewed for clarity by people with disabilities; ready access to benefits counselors; and developing best practices for all counselors to present information and options in ways that are clear, simple, and feel safe to beneficiaries so they can make decisions regarding employment based on accurate information.										X	X	X													
44	13 SSA should provide a report to the Committee about strategies that have proven successful in alleviating concerns about loss of benefits. The report will help the Committee develop recommendations for the Final Report due September 2016. The SSA report should include information from all relevant federal agencies and results of the different SSA demonstration projects pertaining to employment and loss of benefits. The report should include recommendations made by people who participated in the projects.										X															
45	14 Congress should authorize expanding the Ticket to Work program to the children's SSI program. While many youth receiving SSI go on to receive SSI as adults, access to the Ticket is not available until after an adult redetermination process has already taken place, resulting in lost time. Expansion will enable school districts and other organizations that support youth employment to become employment networks and increase the likelihood that young people with disabilities will have access to employment experiences that are typical of young people without disabilities. These experiences will improve the likelihood of successful employment as adults.	X																								
45	15 RSA should clearly define "most significant disability" by:																									

Page No.	Recommendation Number and Description	President	Congress	All Federal Agencies							U.S. Dep. of Labor				U.S. Dep. of Education		Secretary of Transportation				U.S. Dep. of Health and Human Services					
				DOL	Secretary of Labor	WHD	ETA	ED	RSA	OSERS	DOT	SSA	FHS	CMS	OCR	DOJ	SEA	LEA	ACICIEID	AbilityOne@Com	AbilityOne@NPA	AbilityOne@CNA	CIE Programs	SVRA	SIDD	IDEA
46	24 DOL should lead a collaboration of federal agencies, including those participating in the Committee and relevant agencies in the ED, to develop consistent CIE outcome measures based on the standard definition of CIE recommended above for use at the federal and state levels. DOL should consider the data and outcome measures described in the Findings and Conclusion above regarding employment outcomes (such as wages and benefits paid, hours worked, type of job/occupational classification, group versus individual employment, formal versus natural supports, and average wage increase over time) and the impact of CIE (such as income level, use of healthcare services, housing stability, reliance on cash benefits, taxes paid, community inclusion, social capital, independent living, and cost benefits of wages earned versus support funding expended). Information from the national initiatives on outcome measures, other labor force surveys and WIOA implementation activities should inform this effort.			X																						
47	25 Each federal agency that funds CIE (including DOL, RSA, and CMS) should require that states collect outcome data at a state, local and agency/provider level. These measures should include comparative hospitalizations, emergency room use, impact on homelessness, taxes paid, reduction in cash benefits, and cost benefit (wages earned versus support funding expended). Each agency should require states to report to it these data on a regular basis. Recognizing that state data systems are expensive to create and vary in sophistication across states, the Committee will attempt to explore best practice and cost effective models of employment data collection for the Final Report due in September 2016.			X				X					X													
47	26 DOL should collaborate with other federal agencies to ensure that outcome data is widely disseminated so that people with disabilities, their families and other stakeholders can make informed decisions about employment, including such information as: where work is available; and which agencies are most effective in supporting people to obtain CIE.			X	X																					
47	27 CMS should provide guidance and technical assistance to states using Medicaid funding for employment and day services to make it easier for them to incorporate, implement, and track quality and outcome measures for CIE and other day services. Quality measures should be included as a state requirement in HCBS programs, managed care, and other waiver authorities. Quality and outcome measures for any employment service should be based on recommendations made above.												X													
47	28 DOL should collaborate with other federal agencies that fund CIE to make state and national spending and outcome data widely available. The data should include, at minimum, the number of people employed in competitive integrated employment at minimum wage or higher, the number of people employed at a subminimum wage, the number using other day services, and spending on employment versus other day services. The federal government should also collect and publish state outcome data (see recommendation above) as well as information regarding the benefits of employment and its positive impact on healthcare costs and social services for people with significant disabilities.			X	X																					
47	29 CIE programs should participate in fidelity processes to improve practice in connecting job seekers with good jobs that fit their abilities and interests and result in good wages, benefits and working hours. The Committee will review current practice with regard to fidelity in CIE and recommend best practices in the Final Report due in September 2016.																					X				

Chapter Four: Marketplace Dynamics Subcommittee Recommendations

Page No.	Recommendation Number and Description	President	Congress	All Federal Agencies							Secretary of Transportation	U.S. Dep. of Health and Human Services				SEA	LEA	AC/IEID	AbilityOne@-Com	AbilityOne@-NPA	AbilityOne@-CNA	CIE Programs	SVRA	SIDD	IDEA
				DOL	Secretary of Labor	WHD	ETA	ED	RSA	OSERS		DOT	SSA	HHS	CMS										
<i>Changing the Narrative/Building a Sustainable Culture of Inclusion</i>																									
61	1 Congress shall appropriate funds for the U.S. Department of Labor (DOL) in collaboration with the U.S. Department of Education (ED) and the U.S. Department of Health and Human Services (HHS) to conduct a National Educational Campaign (the Campaign) to educate the public, the public workforce system, and businesses on the types of jobs individuals with I/DD or other significant disabilities hold in competitive integrated employment settings.		X																						
62	1a. One of the Campaign’s top priorities must be to include a business-to-business component where successful businesses share their “workforce diversity” models with other businesses that have not begun to hire individuals with I/DD and other significant disabilities. Business-to-business communications need to focus beyond policy to demystify the hiring process and take the fear out of hiring people with disabilities.																							X	
62	1b. The Campaign should focus on the development and dissemination of marketing materials that highlight the competitive advantage that stems from building a more inclusive workforce and showcases examples of businesses that have successfully integrated individuals with I/DD or other significant disabilities into their company culture. In particular, marketing materials should represent and target businesses of all sizes and include both written communication as well as short, promotional videos that may include videos or news releases that have already been developed.																							X	
62	1c. The Campaign should target Chambers of Commerce, human resource organizations, various industry trade organizations, healthcare institutions and healthcare industries, hospitality, retail, and other high-growth industries to dispel the negative myths and stereotypes directed to people with significant disabilities and to emphasize their abilities to perform within the competitive integrated workforce. The Campaign should include funding for the development of new business-based resources and materials, including Public Service Announcements, as well as the dissemination of existing resources.																								
<i>Building Better Business Partnerships</i>																									
62	2 The Employment and Training Administration (ETA) should create an educational module available to AJC and WDB staff and board members on “Disability Awareness” that highlights the communication skills and techniques necessary to most effectively work with people with significant disabilities. The educational module should be provided in one online centralized location.			X				X																	
62	3 ETA should issue guidance to state level AJC staff and WDBs on developing partnerships with other key stakeholders.							X																	
62	4 HHS shall fund and work in collaboration with the DOL to set up a program for Centers for Independent Living (CILs) to establish partnerships with AJCs/WDBs in their local areas. HHS and DOL should issue guidance to AJCs and WDBs on how to partner with CILs located in areas near AJCs. CILs that hold expertise in employment of individuals with I/DD and other significant disabilities can assist AJC staff onsite to reinforce education on “Disability Awareness” and appropriate communication with people with significant disabilities and provide technical assistance on community supports and accommodations.			X								X	X												
63	5 Congress shall appropriate funding to DOL, ED, HHS, and business organizations to conduct a nation-wide educational campaign. The educational campaign must assist AJCs, WDBs, VR agencies, and service providers on how to communicate with businesses in order to provide quality services and address the needs of individual businesses of all sizes. The educational campaign should include information on the services provided by each agency within the public workforce systems in order to enhance cross-agency communication and reduce service duplication.	X																							

Page No.	Recommendation Number and Description	President	Congress	All Federal Agencies			U.S. Dep. of Labor			U.S. Dep. of Education			Secretary of Transportation			U.S. Dep. of Health and Human Services			LEA	ACIC/IEID	AbilityOne@Com	AbilityOne@NPA	AbilityOne@CNA	CIE Programs	SV/RA	SIDD	IDEA	
				DOL	Secretary of Labor	WHD	ETA	ED	RSA	OSERS	DOT	SSA	HHS	CMS	OCR	DOJ	SEA	HHS										CMS
63	6																											
<i>Addressing Training and Pipeline Issues</i>																												
63	7					X			X								X	X										
63	7a.								X								X	X										
63	7b.																											
63	8	X			X			X	X								X	X										
64	9				X												X	X										
64	10	X																										
<i>Transportation</i>																												
64	11		X																									
64	12												X															

Page No.	Recommendation Number and Description	President	All Federal Agencies										U.S. Dep. of Health and Human Services													
		Congress	DOL	Secretary of Labor	WHD	ETA	ED	RSA	OSERS	DOT	Secretary of Transportation	SSA	FHS	CMS	OCR	DOJ	SEA	LEA	ACICIEID	AbilityOne@-Com	AbilityOne@-NPA	AbilityOne@-CNA	CIE Programs	SVRA	SIDD	IDEA
64	13 Congress should appropriate funding to ensure that the DOT enforces that public transit systems of all types meet the ADA accessibility requirements while ensuring the accessibility needs of rural transportation systems is addressed and resolved.	X																								
64	14 Congress should appropriate funds to ensure that DOT develops para-transit systems and other transit system options throughout rural America. Incentivize building accessible all-rider public transportation systems to minimize rider expenses.	X																								
64	15 DOT should develop plans and implement those plans to ensure that cross-jurisdictional transportation in larger geographic areas in rural America across the United States so that transportation for people with I/DD and other significant disabilities is seamless and uninterrupted.									X																
65	16 DOT and allied state programs should prioritize access to public transportation for people with significant disabilities that apply for or hold jobs in competitive integrated workplaces. Additionally, paratransit transportation providers should guarantee drop-off times within 15 minutes of employment start times unless there are extenuating circumstances such as severe weather conditions or accidents.									X																

Chapter Five: Building State and Local Capacity Subcommittee Recommendations

Page No.	Recommendation Number and Description	President	Congress	All Federal Agencies	U.S. Dep. of Labor			U.S. Dep. of Education			Secretary of Transportation	U.S. Dep. of Health and Human Services				SEA	LEA	ACICIEID	AbilityOne@-Com	AbilityOne@-NPA	AbilityOne@-CNA	CIE Programs	SVRA	SIDD	IDEA	
					DOL	Secretary of Labor	WHD	ETA	ED	RSA		OSERS	DOT	SSA	HHS											CMS
76	1 Congress should direct CMS to expand the use of the HCBS Waiver program funds, now used for facility-based services, for competitive integrated employment services by changing the state match rate to be the same as that for the state VR program, thus providing an incentive for states to prioritize competitive integrated employment outcomes.	X																								
76	2 CMS should adopt a standard system of publicly reporting employment outcomes, including competitive integrated employment, using a clear definition for competitive integrated employment that also includes hours worked, wages and level of integration.												X													
76	3 Federal agencies that have programs related to providing employment services to individuals with significant disabilities, including CMS and the six core programs covered under WIOA (including VR), should identify common data collection points across federal agencies and establish systems to share data across programs.			X										X												
76	4 Working with service providers, federal, state and local service infrastructures should promote and fund innovative projects that result in the modernization and standardization of services that result in competitive integrated employment, new programs within existing organizations, and new organizations that provide only services leading to competitive integrated employment.			X																						
76	5 CMS and VR, and the designated I/DD and VR agencies in each state, should support professional development that includes the development of organizational leaders, program managers, and professional employment staff who focus on competitive integrated employment.												X										X	X		
76	6 Designated state VR and I/DD agencies should develop state/local standards or adopt national standards of professional competence in providing services leading to competitive integrated employment.																						X	X		
76	7 Designated state VR and I/DD agencies should support program transition away from sheltered employment settings and into competitive integrated employment settings.																						X	X		

Chapter Six: Section 14(c) Program Recommendations

Page No.	Recommendation Number and Description	President	Congress	All Federal Agencies			U.S. Dep. of Labor			U.S. Dep. of Education			Secretary of Transportation			U.S. Dep. of Health and Human Services			SEA	LEA	ACIC/IED	AbilityOne@-Com	AbilityOne@-NPA	AbilityOne@-CNA	CIE Programs	SVRA	SIDD	IDEA	
				DOL	Secretary of Labor	WHD	ETA	ED	RSA	OSERS	DOT	SSA	HHS	CMS	OCR	DOJ	U.S. Dep. of Health and Human Services												
<i>Chapter Six: 14(c) Transitions</i>																													
79	1 The U.S. Department of Labor (DOL) must immediately discontinue issuance of SWEP certificates.				X																								
79	2 The Individuals with Disabilities Education Act (IDEA) Indicator 13 must disallow a placement in subminimum wage Section 14(c) employment as an acceptable post-school transition goal or transition service on the transition plan.																											X	
79	3 The U.S. Department of Education (ED) should promulgate regulations, in part based upon WIOA requirements as well as the Americans with Disabilities Act (ADA) integration mandate, to prevent the use of federal IDEA funds for transition services provided in non-integrated settings, including a prohibition on services supporting subminimum wage activity regardless of the setting in which these services occur.								X																				
79	4 Any reauthorization of IDEA must explicitly disallow, as an authorized transition service, any service that involves facility-based employment or service that involves the use of Section 14(c).																											X	
79	5 ED should coordinate with DOL to identify Local Education Agencies (LEAs) that are Section 14(c) certificate holders and assist these LEAs to transform to other proven transition models for youth that include community-based integrated internships and other types of community-based integrated work experiences that lead to competitive integrated employment.				X				X																				
79	6 Federal agencies to include ED, the Rehabilitation Services Administration (RSA), the Social Security Administration (SSA) and the Centers for Medicare & Medicaid Services (CMS) should collaborate to design a method, including appropriate data collection, to track and report the post-school status of youth with disabilities in areas where a sheltered workshop utilizing Section 14(c) closes or is downsized.								X	X			X		X														
79	7 The Subcommittee finds that critical data are lacking from WHD regarding the number of youth using Section 14(c) certificates, their ages, disability-type, wages, work hours, down time and other information. Having access to these data is imperative to making future recommendations and identifying trends – both positive and negative. The Subcommittee recommends that WHD develop a secure, web-based application and data collection system that is mandatory for all Section 14(c) certificate holders. The WHD should also issue guidance to states that encourages them to more closely monitor the use of Section 14(c) certificates for youth and all individuals with disabilities. Such data could be modeled upon the system utilized currently in Wisconsin.							X																					
<i>Chapter Six: 14(c) Capacity Building</i>																													
80	8 The President and/or Congress should appropriate sufficient funding to WHD to ensure adequate staffing resources for monitoring and oversight of the Section 14(c) certificate program and to support on-going collection of data regarding the number of individuals earning subminimum wage, the number of individuals moving from subminimum wage to competitive integrated employment, the number of individuals who work at subminimum wage levels for multiple years (and primary reasons why – e.g., discouraged or opposed by family/legal guardian, fear of losing other benefits, lack of access to, or denial of, services to obtain competitive integrated employment, etc.), and the number of individuals who exit Section 14(c) employment, but do not enter competitive integrated employment. This information can inform the time frame for phasing out the Section 14(c) certificate program.	X	X																										
80	9 The Secretary of Labor, in consultation with the RSA and the CMS should propose a time frame for phasing out the Section 14(c) certificate program.				X				X								X												

Page No.	Recommendation Number and Description	President	Congress	All Federal Agencies						U.S. Dep. of Labor			U.S. Dep. of Education			Secretary of Transportation			U.S. Dep. of Health and Human Services			SEA	LEA	ACIC/IEID	AbilityOne@-Com	AbilityOne@-NPA	AbilityOne@-CNA	CIE Programs	SVRA	SIDD	IDEA					
				DOL	Secretary of Labor	WHD	ETA	ED	RSA	OSERS	DOT	SSA	FHS	CMS	OCR	DOJ																				
<i>Chapter Six: 14(c) Complexity & Needs</i>																																				
83	10		X																																	
		Congress should amend Section 14(c) of the FLSA to allow for implementation of a well-designed phase-out of the Section 14(c) program that results in people with disabilities entering CIE. Payment of subminimum wages is inconsistent with current knowledge of the skills and talents of people with significant disabilities. Recognizing that thousands of people with disabilities and their families will be affected by a phase-out, the Committee will recommend a phase-out plan with specific implementation steps in its Final Report due September 15, 2016. This plan will emphasize that CIE is the primary role of all working age people. It will consider strategies to expand CIE capacity and the potential role of other wraparound services (such as mainstream community activities and formal integrated day services) to address the concern that individuals leaving or who otherwise would have been in Section 14(c) programs will be left without meaningful and productive ways to spend their time.																																		
83	11							X																												
		WHD should develop and enforce criteria for assuring that the Section 14(c) certificate is only permitted when "necessary... to prevent the curtailment of opportunities for employment."																																		
83	12							X																												
		WHD should develop an interagency process to coordinate issuance/renewals of Section 14(c) certificates with enforcement of the ADA by the DOJ, the U.S. Department of Health and Human Services' Office of Civil Rights (HHS' OCR), and the Equal Employment Opportunity Commission (EEOC), and with implementation of the HCBS Settings Rule by CMS.																																		
84	13							X																												
		WHD should require any state that allows the use of Section 14(c) certificates to address why the certificate is "necessary" and to describe the state's plan for remedying the "lack of employment opportunities." The state may respond with its Olmstead plan; its plan for implementing the HCBS Settings Rule; or its WIOA unified plan. Each of these state plans requires addressing how supports will be provided in more integrated settings. The state should ensure that the plan on which it relies to justify the time-limited use of Section 14(c) certificates includes specific steps on how it will address lack of employment opportunities to make the future use of Section 14(c) certificates unnecessary.																																		
84	14							X																												
		WHD should collaborate with state-level wage and hour monitoring agencies to increase the overall effectiveness of monitoring Section 14(c) certificates and enforcing wage and hour requirements.																																		
84	15				X					X																										
		The Departments of Labor and Education should make enforcement of the law and spirit of Section 511 of the Rehabilitation Act, as amended by WIOA, a priority. The Departments should work with agency field offices and state advocates, including Protection and Advocacy organizations, to identify enforcement actions that will help end the practice of paying people subminimum wages and expand competitive integrated employment with full wages and benefits.																																		
84	16																																			
		In enforcing the ADA and <i>Olmstead</i> , DOJ and HHS' OCR should provide technical assistance to states that are engaging in affirmative Olmstead planning to increase opportunities for CIE and reduce the need for enforcement.																																		
84	17																																			
		CMS should enforce the guidance provided in the September 16, 2011 CMS Informational Bulletin regarding the time-limited nature of pre-vocational services. Enforcement should emphasize that the goal is to move into CIE, not other segregated day services.																																		
84	18																																			
		In their efforts to enforce the HCBS Settings Rule, CMS should offer technical assistance resources and funding to states that want to use it as an opportunity to move toward CIE options for people receiving HCBS services in sheltered workshops. Such technical assistance should include supports to Section 14(c) certificate holders that desire to change business models to provide competitive integrated employment.																																		
<i>Chapter Six: 14(c) Marketplace Dynamics</i>																																				

Page No.	Recommendation Number and Description	President	Congress			U.S. Dep. of Labor			U.S. Dep. of Education			Secretary of Transportation			U.S. Dep. of Health and Human Services			SEA	LEA	ACIC/IEID	AbilityOne@Com	AbilityOne@NPA	AbilityOne@CNA	CIE Programs	SVRA	SIDD	IDEA
		All Federal Agencies	DOL	Secretary of Labor	WHD	ETA	ED	RSA	OSERS	DOT	SSA	FHS	CMS	OCR	DOJ	U.S. Dep. of Health and Human Services											
87	19 Congress should pass legislation that directs the Secretary of Labor, through WHD, to work with the appropriate Departments across the federal government for a gradual phase-out of FLSA Section 14(c) subminimum wage provision over a period of 8-10 years.	X		X	X																						
87	19a. The legislation must consist of a combination of targeted, strategic capacity building initiatives. Congress should fund initiatives that will provide sufficient financial resources to effect this change.	X																									
87	19b. The phase-out legislation should direct DOL to develop a careful, detailed plan that recognizes the multi-faceted, complicated process required to successfully phase out FLSA Section 14(c). The plan should include a chronological sequence for meeting all capacity building needs along with detailed steps for addressing corollary areas that will be impacted when FLSA Section 14(c) has ended.				X																						
88	19c. As part of the phase out of Section 14(c), Congress should provide that WHD cease accepting new employer applications to the certificate program one year after the passage of the phase-out legislation.	X				X																					
88	19d. Congress should also direct the WHD to monitor and ensure that no new participants may be added by employers to applications for the certificate program one year after the passage of the phase-out plan.	X				X																					
88	19e. The phase out legislation ensuring for an orderly phase-out of Section 14(c) should direct WHD to cease the renewal of employer certificates one year prior to the phase-out of FLSA Section 14(c).					X																					
88	20 Congress should allocate financial resources so that DOL can establish and help states develop new systems before individuals with significant disabilities, if they choose, begin the transition to competitive integrated employment.	X	X																								
88	20a. In order to avoid any unintended harm to individuals with significant disabilities, it is critical that infrastructure is developed prior to the phase out of Section 14(c).																										
88	20b. In particular, Congress should direct the U.S. Department of Transportation (DOT) to ensure that public transit systems are in place, particularly in rural areas of the United States prior to individuals with disabilities beginning the transition out of segregated employment.	X								X																	
88	20c. Congressional resources must also be allocated and directed to support individuals with disabilities who do not choose community employment to explore other individualized options for integrated day services.	X																									
88	20d. Congress should direct the Secretary of Labor to establish an operational advisory committee, not subject to the Federal Advisory Committee Act (FACA), to oversee the plans for Section 14(c). The committee should include business representatives, subject matter experts from federal agencies as well as appointees from outside the federal government who can help implement and monitor the phase out.	X			X																						
88	20e. The Secretary of Labor should hire subject matter experts to oversee and support the plans for the implementation of the phase-out and to ensure all critical actions are taken, funding is allocated, and all state and local systems are up and running before the complete phase-out of Section 14(c).				X																						

Chapter Seven: AbilityOne® Program Recommendations

Page No.	Recommendation Number and Description	President	Congress	All Federal Agencies			U.S. Dep. of Labor			U.S. Dep. of Education			Secretary of Transportation				U.S. Dep. of Health and Human Services				AbilityOne®-Com	AbilityOne®-NPA	AbilityOne®-CNA	CIE Programs	SVRA	SIDD	IDEA	
				DOL	Secretary of Labor	WHD	ETA	ED	RSA	OSERS	DOT	SSA	HHS	CMS	OCR	DOJ	SEA	LEA	ACICIEID									
96	1 Congress should amend the Javits-Wagner-O'Day (JWOD) act to:																											
96	1a. Fully align the Act with modern federal disability policy goals, including those enshrined in the ADA and the Supreme Court's <i>Olmstead</i> decision;		X																									
96	1b. Clearly establish competitive integrated employment, in the mainstream workforce as the expected and priority outcome of the AbilityOne Program so that individuals who are blind or have significant disabilities may receive the supports they need to enter into competitive employment within their communities;		X																			X						
96	1c. Ensure all AbilityOne Program contract work is accomplished in fully integrated work settings where individuals with disabilities work, on an individualized basis, alongside of their non-disabled peers, consistent with the goals of the ADA and <i>Olmstead</i> ;		X																									
96	1d. Ensure the federal government's purchasing power is used to effectively engage all federal contractors in creating competitive integrated employment opportunities for job seekers and workers who are blind or have significant disabilities;		X																			X						
96	1e. Establish new criteria for who is eligible to work on AbilityOne contracts, with changes made to ensure that:																											
96	1ei. The requirement that a person eligible for AbilityOne must have a disability that "prevents the individual from currently engaging in normal competitive employment" is eliminated; and		X																									
96	1eii. NPAs are not given discretion to determine who is and is not qualified to work on AbilityOne contracts.		X																									
96	2 The Committee should consider, and make recommendations in its final report, regarding what changes may be needed to the structure, make up and role of the AbilityOne Commission in order to ensure that the program is well aligned with, and fully supportive of, Federal disability policy in general, and employment policy in particular, as it evolves over time.																											
96	3 The President should issue an Executive Order outlining a plan to phase-out expeditiously the use of FLSA Section 14(c) certificates within the AbilityOne Program. As part of this Executive Order:		X																									
96	3a. All AbilityOne NPAs, who currently employ workers at subminimum wage on AbilityOne contracts, must be required to develop a plan that addresses the expectation to retain those workers at no less hours than they are currently working and to be paid at least federal minimum wage; and																											
97	3b. The AbilityOne Commission should be expected to develop a collaborative initiative with the Social Security Administration, RSA, and the Centers for Medicare & Medicaid Services to ensure the provision of work incentives benefits analysis and counseling to all AbilityOne workers directly impacted by the phase out of subminimum wage in the AbilityOne Program so that the full benefits of earning minimum wage accrue to every individual.									X				X		X						X						
97	4 Congress should appropriate funding to provide a dedicated Inspector General to provide direct oversight of the entire AbilityOne Program.		X																									
97	5 RSA should update and reissue guidance to state Vocational Rehabilitation (VR) programs clarifying that AbilityOne placements shall not be considered competitive integrated employment unless all criteria for what constitutes a competitive wage and an integrated setting are met. It should be noted that enclaves or work crews (regardless of size, wage and benefits provided to workers) do not meet RSA's standards for competitive integrated employment.									X																		

Page No.	Recommendation Number and Description	President	Congress	All Federal Agencies						U.S. Dep. of Labor		U.S. Dep. of Education		Secretary of Transportation				U.S. Dep. of Health and Human Services							
				DOL	Secretary of Labor	WHD	ETA	ED	RSA	OSERS	DOT	SSA	FHS	CMS	OCR	DOJ	SEA	LEA	AC/IEID	AbilityOne@-Com	AbilityOne@-NPA	AbilityOne@-CNA	CIE Programs	SVRA	SIDD
97	6 The AbilityOne Commission, in collaboration with RSA and DOL (ODEP), should update JWOD regulations to require all NPAs participating in the AbilityOne Program to:			X																					
97	6a. Provide highly qualified staff that are certified through one or more nationally recognized credentialing bodies to assist in the placement of individuals working under the AbilityOne Program, and those who have been determined eligible for AbilityOne, into competitive integrated employment;																		X						
97	6b. Maintain contracts as qualified vendors of competitive integrated employment services purchased by the state VR program and the local Workforce Development Boards;																		X			X			
97	6c. Achieve, on an annual basis, a certain number or percentage of transitions of AbilityOne workers to competitive integrated employment outside of the program—in order to maintain their eligibility to receive contracts through the AbilityOne Program— so the program functions as a springboard to competitive integrated employment in the general workforce and can, over time, benefit many more individuals who are blind or have significant disabilities; and																		X						
97	6d. Demonstrate on an annual basis, a certain minimum percentage of AbilityOne workers who transitioned to competitive integrated employment have successfully retained their employment, as evidenced by data from NPAs following-up with all AbilityOne workers transitioned into competitive integrated employment and their employers on a quarterly basis after placements have occurred to confirm:																		X						
97	6di. Job retention has occurred																								
97	6dii. The skill sets and performance of the workers continue to be well-matched with employers' needs and expectations																								
97	6diii. The worker is satisfied with his/her job.																								
98	7 The AbilityOne-Com should implement the following through sub-regulatory guidance or as necessary, through regulation:																		X						
98	7a. For Central Nonprofit Agencies (CNAs), sub-regulatory guidance or regulation that ensures the AbilityOne Commission assumes a stronger role in oversight of CNAs, including their processes and procedures, including but not limited to:																			X					
98	7ai. Requiring CNAs to invest a certain percentage of revenues received from administrative fees in the AbilityOne Program on providing training and technical assistance to NPAs about effective practices for helping people with significant disabilities achieve competitive integrated employment;																			X					
98	7aai. Requiring the collection and annual reporting of data on placement rates of workers with disabilities on AbilityOne contracts (wages, hours, and type of setting);																	X							
98	7aii. Requiring CNAs to meet specific governance standards as articulated in the 2004 draft Notice of Proposed Rule Making issued by the AbilityOne Commission.																			X					
98	7b. For AbilityOne-NPAs, sub-regulatory guidance or regulation that:																								
98	7bi. Requires the annual reporting of data on:																								
98	7bi1. Number of individuals on AbilityOne contracts that are eligible for/receiving any of the following: IDEA-funded transition supports; VR-funded employment supports; Medicaid-funded services that can be used to obtain and maintain competitive integrated employment (e.g., supported employment services);																			X					
98	7bi2. Wages, hours worked and type of setting (e.g., integrated; group supported employment; or facility-based) for workers with disabilities employed on AbilityOne contracts;																			X					

Page No.	Recommendation Number and Description	President	Congress	All Federal Agencies						U.S. Dep. of Labor		U.S. Dep. of Education		Secretary of Transportation				U.S. Dep. of Health and Human Services				SEA	LEA	ACIC/IED	AbilityOne@Com	AbilityOne@NPA	AbilityOne@CNA	CIE Programs	SVRA	SIDD	IDEA										
				DOL	Secretary of Labor	WHD	ETA	ED	RSA	OSERS	DOT	SSA	FHS	CMS	OCR	DOJ																									
98	7bi3. Types of services offered, number served and funds expended in the provision of services to AbilityOne employees with disabilities to assist them in transitioning from AbilityOne work to competitive integrated employment.																																								
98	7bii. Requires establishment of conflict-of-interest policies to delineate the role of an NPA as an AbilityOne contractor from the same entity's role as a community-rehabilitation provider that is required to provide supports in the most integrated setting to clients receiving federally-funded services;																									X															
98	7biii. Requires documented assurances that prior to hiring an eligible individual onto an AbilityOne contract, the NPA has:																									X															
98	7biii1. Assisted the individual to apply for VR services; and																									X															
98	7biii2. If the individual is determined eligible for VR services, the NPA has committed to providing services, funded by VR, to enable the individual to obtain competitive integrated employment in the broader community if the individual selects the NPA as his/her provider; or																									X															
99	7biii3. If the individual is determined ineligible for VR services, the NPA has further determined if the individual is eligible for Medicaid-funded services that can be used to obtain and maintain competitive integrated employment (e.g., supported employment services) and, if so, the NPA has, in partnership with the individual, sought authorization from the state Medicaid agency for these services and the NPA has further committed to providing these Medicaid-funded services if the individual selects the NPA as his/her provider.																									X															
99	7biv. Requires the NPA to meet specific governance standards as articulated in the 2004 draft Notice of Proposed Rule Making issued by the AbilityOne Commission;																									X															
99	7bv. Requires the NPA to engage in the Quality Workplace Environment (QWE) initiative at AbilityOne and will finalize a plan and take action as a result within two years of signing up for QWE. For those NPAs that have already signed up to be involved in the QWE, they will be considered in compliance if their participation results in a plan and action is taken within two years.																									X															