



SENT VIA EMAIL

October 2, 2015

Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities
US Department of Labor
200 Constitution Avenue, NW, Suite S-1303
Washington, DC 20210

Dear Committee Members:

The National Federation of the Blind (NFB) was pleased to read the recommendations in the interim report about Section 14(c) of the Fair Labor Standards Act and the AbilityOne® Program. The report very clearly states that the practice of paying workers with disabilities subminimum wages is outdated and does not lead to increasing competitive integrated employment for individuals with disabilities. We wanted to take this opportunity to applaud the committee for including these chapters in the interim report and voice our support for these chapters to remain in the final report.

The National Federation of the Blind knows that with the proper training, support, and expectations, any person with a disability can obtain competitive integrated employment. Although attitudes are impossible to legislate, any recommendation that the committee can make that reinforces the importance of high expectations for people with disabilities in the employment sphere should and must be made. It is low expectations that keep workers with disabilities in low-level positions. Recommending that the practice of paying people with disabilities subminimum wages be eliminated is a logical first step.

The first stated goal of the WIOA Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities is to build on the development and implementation of the innovative strategies that are already being identified by the US Department of Labor's office of Disability Employment Policy. These strategies have been proven to be effective in creating competitive integrated employment opportunities for individuals with intellectual or developmental disabilities and other individuals with significant disabilities. Another goal of the committee is to advise the Secretary of Labor about ways to improve oversight of the Section 14(c) certificate program. Oversight of the Section 14(c) program is not the solution to providing more competitive integrated employment, because Section 14(c) is an assertion that it is the disability that curtails employment opportunities. Research demonstrates it is the lack of effective training that is the true barrier to competitive integrated employment for workers with disabilities. A greater emphasis should be placed on requiring those entities that profess to provide employment opportunities for individuals with significant disabilities to implement the innovative training and employment strategies that are beginning to emerge.

Consequently, it makes perfect sense that the committee would recommend changes to the AbilityOne Program, because the intended purpose of this program is to provide employment opportunities for people with disabilities. The National Industries for the Blind (NIB), the central nonprofit agency responsible for the employment of the blind under the AbilityOne Program, is effectively working to phase out the use of special wage certificates by their associated nonprofits, and they should be encouraged to continue to move in this direction. However, SourceAmerica®, the central nonprofit agency responsible for the employment of individuals that are severely disabled under the AbilityOne Program, has not demonstrated the same commitment to modernizing their associated nonprofits. This is despite the SourceAmerica Pathways Program, which is a demonstration project with proven success in creating competitive integrated employment opportunities for people with significant disabilities. We support the findings in Chapters Six and Seven of the report about the Section 14(c) Program and the AbilityOne Program.

Chapter Six: Section 14(c) Program

The National Federation of the Blind supports the responsible phase out of Section 14(c) of the Fair Labor Standards Act and specifically would like to see a recommendation from the advisory committee encouraging Congress to pass legislation that will achieve this goal. One such piece of legislation is the Transitioning to Integrated and Meaningful Employment (TIME) Act. The TIME Act will do three things. First, upon passage, it will legislate that the Department of Labor immediately stop issuing new 14(c) certificates. Second, it will responsibly phase out the use of Section 14(c) over a three year period. Third, it will repeal Section 14(c) after three years.

Many of the current recommendations offered in the interim report already reflect the outcomes that would result from passage of the TIME Act. For example, Recommendation 19(c) states that the Wage and Hour Division of the Department of Labor should, “cease accepting new employer applications to the certificate program one year after the passage of the phase-out legislation.” The first paragraph of Section 3 of the TIME Act will accomplish this goal in a slightly more ambitious time frame. It states: “Effective on the date of enactment of this Act, the Secretary of Labor shall discontinue issuing special wage certificates under section 14(c) of the Fair Labor Standards Act of 1938 to any new entities not currently holding a certificate.”

Additionally, the TIME Act outlines a phase-out of special wage certificates, which reflects Recommendation 9. While Recommendation 9 states: “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,” the TIME Act suggests a specific timeline allowing three years for the phase out of Section 14(c). Workers with disabilities who are trapped in subminimum wage environments do not have time to wait. There are many tools, such as the Vermont Conversion Institute, that can assist 14(c)-certificate-holding entities in transitioning their business model to one that does not rely upon paying their workers with disabilities less than the federal minimum wage. As presenters at the various committee meetings have attested, such as SRVS, transition is truly possible and in a short time. Transition does not mean shutting the doors to an entire service provider. It means integrating new innovative strategies that help people with disabilities reach their full vocational potential in integrated and competitive jobs. For SRVS, this meant closing the workshop aspect of their operation down, while keeping and enhancing programs that did not utilize the 14(c) certificate. As SRVS explained, change was difficult, and they were resistant to

make the change at first. But once they started down the path of phasing out the use of their subminimum wage certificate, they found that the results were great. Responsibly phasing out Section 14(c) will yield similar results for other 14(c)-certificate-holding entities. Without the incentive to change, entities that do hold 14(c) certificates will continue in a business-as-usual fashion—sheltering people with disabilities from integrated competitive jobs.

While the transition period is going on for all Section-14(c)-certificate-holding entities, it is imperative that the Departments of Labor and Education work concurrently to develop regulations that will ensure that Section 511 of WIOA is enforced. Recommendation 15 reflects this sentiment:

“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.”

Section 511 will help reduce the number of youth tracked into subminimum wage environments. But, without regulations that will enforce Section 511, Section-14(c)-certificate-holding entities will take a business-as-usual approach. For example, if there was no threat of a fine for stealing candy bars, everyone would steal candy bars. The same logic applies to Section-14(c)-certificate-holding entities: if there is a law that says individuals with disabilities aged 24 and younger cannot be compensated at subminimum wages without first going through certain steps, but there is no penalty for hiring young people with disabilities at subminimum wages, countless entities are going to continue to do so. Recommendation 15 is right on target.

Chapter Seven: AbilityOne® Program

Throughout the chapter on AbilityOne, the topic of subminimum wages arose again. Specifically, recommendation 3 states: “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 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.” This is a superb recommendation because eliminating the option to pay AbilityOne workers subminimum wages will ensure that they are in competitive employment. Additionally, this recommendation reflects the sentiment of President Obama’s 2014 Executive Order which called for all federal contract workers in the service sector, including workers with disabilities, be paid at least \$10.10 per hour.

Last month, the National Federation of the Blind, along with six other disability advocacy organizations, jointly issued a press release outlining seven reform principles for the AbilityOne Program. In summary, the seven reform principles are: a commitment to integrated employment, the use of Supported Employment and Customized Employment methods, the elimination of conflicts of interest in contract implementation, the payment of prevailing wages, financial and operational transparency, to connect employees with disabilities to mainstream employers, and to award contracts to disability-owned businesses. Many of the recommendations made by the Committee reflect our reform principles. For example, Recommendation 3 reflects reform principle

four regarding the payment of prevailing wages. The only reform principle that was not reflected in the Committee's recommendations was number seven. We suggest that the AbilityOne Program award contracts to disability-owned businesses.

Our first reform principle, as well as the committee's first recommendation, stresses the importance of integrated employment. We applaud the committee for stressing the importance of the *Olmstead* decision and urging Congress to "amend the JWOD Act to 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*." When workers with disabilities are in integrated settings, they are more likely to rise to their full potential. Their coworkers act as positive role models and will set high expectations for workers with disabilities. By requiring 75% of the labor hours necessary to complete AbilityOne contracts are done by people who are blind or have other significant disabilities, the AbilityOne Program almost automatically ensures that workers under these contracts will be in segregated settings. In fact, the interim report cites that: "most AbilityOne contracts for products, which employ 28 percent of all individuals working on AbilityOne contracts, continue to be completed in sheltered workshop settings." In addition, while many of the service contracts are completed outside of sheltered workshops, oftentimes the workers on these contracts are clustered together in groups called enclaves. This may be a small step above working in the physical sheltered workshops, but it is a far cry from integrated employment. More often than not, the individuals in the enclaves have very little contact with the day-to-day workers at the enclave sites. Reforming the AbilityOne Program to ensure the employment opportunities for AbilityOne workers are integrated is essential.

Recommendation 1(e)(2) states: "Congress should amend the JWOD Act to establish new criteria for who is eligible to work on AbilityOne contracts, with changes made to ensure that NPAs are not given discretion to determine who is and is not qualified to work on AbilityOne contracts." The National Federation of the Blind also agrees with this recommendation. It reflects our third proposed reform principle which calls for the elimination of conflicts of interest within the AbilityOne Program. When qualified nonprofit agencies determine who is eligible to work under AbilityOne contracts, they are declaring that these individuals have a disability that "prevents the individual from currently engaging in normal competitive employment." This criterion reflects the low expectations recruiters of the AbilityOne Program are forced to have towards workers with disabilities. If an AbilityOne recruiter declares that an individual is incapable of "normal competitive employment" from day one, then it seems very unlikely that the recruiters will ever help those individuals who are labeled as incapable find competitive integrated employment. The National Federation of the Blind supports recommendation 1(e)(i): the practice of labeling individuals with disabilities incapable of competitive work before they are permitted participation in the AbilityOne Program should be eliminated.

The National Federation of the Blind has some suggestions regarding recommendation 2, which is rather vague in the interim report but promises to be more specific in the final report, regarding the make-up, structure and role of the AbilityOne Commission. Currently, the make-up of the Commission reflects the attitude that the AbilityOne program is a procurement program rather than an employment program for people with disabilities. As a result, eleven of the fifteen positions are granted to government agencies which include US Departments of Agriculture, Air Force, Army, Commerce, Defense, Education, Justice, Labor, Navy, and Veterans Affairs, as well

as the General Services Administration. The other four positions are granted to two individuals who are conversant with the problems incident to the employment of the blind or severely disabled and two who represent blind or severely disabled individuals employed in qualified nonprofit agencies. To ensure that the AbilityOne Program is promoting competitive integrated employment, the make-up of the committee should be filled with experts on employing workers with disabilities. We would recommend that at least 51 percent of the Commission be made up of people with disabilities, and that agencies like the Department of Health and Human Services and Centers for Medicare & Medicaid Services be represented on the Commission.

Instead of procuring contracts, the main role of the Commission should be to foster employment opportunities for people with disabilities in competitive and integrated settings. One way to accomplish this goal would be to support businesses that are owned and operated by people with disabilities. Reform principle number seven states: "Prioritizing awarding of contracts available through the procurement process to disability-owned businesses, including self-employed individuals with disabilities: rather than all contracts going to the nonprofit organizations currently involved in the program, individuals with disabilities should be encouraged to compete for service contracts." Not only will implementing this suggestion ensure that people with disabilities participating in the AbilityOne Program will be in competitive, integrated employment, but people with disabilities who are already employed will be supported and their businesses will be able to thrive.

Conclusion

Thank you to the Committee for working hard to ensure that more individuals with disabilities are able to obtain competitive integrated employment. Responsibly phasing out Section 14(c) of the Fair Labor Standards Act is an imperative step to achieving competitive employment for workers with disabilities. Also, reforming the AbilityOne Program is overdue. When reformed, this program holds the promise to ensure that more workers with disabilities are employed in competitive and integrated settings. The National Federation of the Blind looks forward to working with you as your work continues. We hope that the final report will look similar to the interim report. Should you have any questions, please do not hesitate to reach out to me.

Sincerely,



John G. Paré, Jr.
Executive Director of Advocacy and Policy
National Federation of the Blind

Enclosure

JGP/rs

Leading Organizations of Americans with Disabilities Call for Reform of AbilityOne Program

Organizations Set Forth Seven Reform Principles

Seven leading organizations comprised of Americans with disabilities announced today that they are calling for reform of the AbilityOne Program and set forth seven principles for overhaul of the program, which affects hundreds of thousands of American workers with disabilities. The announcement was made by the National Federation of the Blind (NFB), TASH, the National Council for Independent Living (NCIL), the National Disability Rights Network (NDRN), the Association of People Supporting Employment First (APSE), the Autistic Self Advocacy Network (ASAN), and the United Spinal Association. The seven principles for reform put forward by the organizations are as follows:

1. *Commitment to the expressed integration mandate set forth by the Supreme Court of the United States in the case of Olmstead v. L.C.:* Segregation of people with disabilities in work sites, such as sheltered workshops and enclaves, is inconsistent with Title II of the Americans with Disabilities Act. People with disabilities must be supported to lead fully integrated lives in their communities, including throughout their workday.
2. *Implementation and development of best practices for employment of people with significant disabilities:* People employed by contracts negotiated through the AbilityOne procurement process must have their employment goals supported by providers implementing recognized best practices, such as Supported Employment and Customized Employment, that result in good jobs in the community.
3. *Elimination of conflicts of interest that contribute to exploitation, fraud, and abuse:* Conflicts of interest in AbilityOne contract implementation are rampant, and must be identified and prohibited. These include determination of employee eligibility by community rehabilitation programs (CRPs) implementing contracts, as well as the use of contract funds for lobbying and other purposes.
4. *Payment of prevailing wages and the elimination of subminimum-wage payments:* Payment of subminimum wages to people with disabilities is intolerable in the United States. People with disabilities should be paid the prevailing wage for the task they are performing.
5. *Ensuring financial and operational transparency and accountability:* AbilityOne contract use of funds must be transparent and readily available (online) to the public at every level, including the purpose and amount of funds used by the Central Nonprofit Agencies, executive compensation packages of nonprofits involved in the program, worker wage ranges, and purposes of funds used.

6. *Relationship with employer.* The ultimate objective of a federally-sanctioned special procurement program should be to connect employees with mainstream employers, as opposed to having people with disabilities working for nonprofit entities under specialized, set-aside contracts.
7. *Prioritizing awarding of contracts available through the procurement process to disability-owned businesses, including self-employed individuals with disabilities:* Rather than all contracts going to the non-profit organizations currently involved in the program, individuals with disabilities should be encouraged to compete for service contracts.

The AbilityOne Program must be brought up to contemporary standards of practice for supporting people with disabilities to access competitive integrated employment. When these reforms are adopted, an inspector general should be appointed to provide rigorous oversight to ensure that the days of exploitation and fraud are brought to an end.