

Public Testimony

as presented to

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

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by

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When Congress enacted Section 609 of the Rehabilitation Act, as amended by Section 461 of the Workforce Innovation and Opportunity Act (WIOA) (PL 113-128) and created the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (ACICIEID), it charged the Committee with the task of *studying, preparing 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.* Congress thus recognized the need to improve employment outcomes for individuals with disabilities and to improve the administration of the 14(c) program. Congress directed this Committee to recommend the most sensible and practical reforms to improve opportunities for all. ACCSES is pleased to contribute its views on such reforms.

What We Believe—Our Values and Guiding Principles

- 1) We embrace the **precept** embedded in numerous disability-specific laws that disability is a natural part of the human experience that in no way diminishes the rights of individuals with significant disabilities to achieve the four **goals of disability policy** articulated in the Americans with Disabilities Act (ADA):
 - Equality of opportunity (individualization, effective and meaningful access to services and supports, and administration of programs in the most integrated setting appropriate);
 - Full participation (informed choice and self-determination based on one's strengths, interests, priorities, needs, abilities and capabilities);
 - Live independently; and

- Enjoy economic self-sufficiency.
- 2) We recognize that **work is a valued activity** both for the individual and society. We believe that work provides both tangible and intangible benefits. Work helps people achieve independence and economic self-sufficiency. Work also gives people purpose, dignity, self-esteem, and a sense of accomplishment and pride. Individuals, including individuals with disabilities, should enjoy every opportunity to pursue careers, participate in the workforce and engage actively in the economic marketplace.
 - 3) We **abhor discrimination and worker exploitation**; we support initiatives to protect individuals with disabilities from discrimination and exploitation. We believe that we must draw a clear line in prohibiting and preventing employers from taking advantage of persons with significant disabilities.
 - 4) We **respect the inherent value of each person we support**. We provide services and supports tailored to each individual's strengths, priorities, needs desires, abilities and capabilities. We foster independence and community participation among individuals we serve, enhancing their quality of life. Individuals are empowered to maximize their potential through the provision of resources and supports necessary for increased independence and inclusion in the community.
 - 5) Consistent with the right of individuals with significant disabilities to make **informed choices** and with the principle of **self-determination**, we support a **full array of community-based employment opportunities** for persons with the most significant disabilities provided by qualified rehabilitation professionals, including supported employment and customized employment opportunities provided in competitive, integrated settings; self-employment; and employment opportunities in skill development centers and disability-focused non-profit businesses operated by accredited community rehabilitation programs (CRPs). We also support federal policy that facilitates employment options for all individuals, including those who do not meet productivity standards, without or without reasonable accommodations. [Section 14(c) of the Fair Labor Standards Act]
 - 6) We believe that public policy should encourage and **facilitate efforts to find competitive integrated employment opportunities** (at or above the minimum or prevailing wage) as the presumptive, priority outcome. For those who have not been exposed to competitive integrated employment, public policy should also encourage and facilitate ongoing **discovery and exposure** to alternative career exploration in competitive integrated employment.
 - 7) The right of individuals with significant disabilities to make **informed choices should include the right to work in skill development centers and disability-focused non-profit businesses** operated by accredited CRPs. These centers and businesses use qualified rehabilitation professionals to provide individualized jobs, ongoing services and supports (including door-to-door transportation), and job stability and security.
 - The opportunity to work in a skill development center or disability-focused non-profit business may be temporary while the individual develops job skills, explores the world of work, and identifies their own interests and talents. For these individuals, CRPs facilitate placement in competitive, integrated employment, either directly or through support by, collaboration with, or referral to publicly-supported programs providing funding for vocational rehabilitation and necessary ongoing services and supports.

- For other individuals with significant disabilities, the opportunity to work in a skill development center or disability-focused non-profit business may be long term given the individual's strengths, interests, capacities, desires, and ongoing needs for supports and services. This same right to informed choice and self-determination should extend to employment opportunities that include job crews and enclaves.
- 8) We recognize that some individuals with significant disabilities may not be able to meet standards and perform the essential functions of a job (with or without reasonable accommodations) and as a result are not currently employable at the federal or state minimum wage or prevailing wage. In order to enable such individuals to work and receive the benefits of working, Congress enacted Section 14(c) of the Fair Labor Standards Act (FLSA).
- In the language of the legislation, Section 14(c) is designed “to prevent the curtailment of opportunities for employment” of persons with significant disabilities by allowing the payment of special minimum wages commensurate with their level of productivity (skills-based wages).
 - **Without Section 14(c), these individuals would have limited or no opportunities to work**, which could have the effect of forcing them to stay at home, enter day habilitation centers (if a space were available) or otherwise engage in unproductive and unsatisfactory activities. In short, eliminating or phasing out skills-based wages would likely result in many individuals with significant disabilities receiving no pay whatsoever, instead of a skills-based wage, and would deny them the tangible as well as the intangible benefits of work. In addition, such a policy would likely result in “creaming” or “cherry-picking” (i.e., excluding those with the most significant disabilities in favor of those with more moderate disabilities).
- 9) Based on information from the employment marketplace, employment-related training services and supports should target areas of present and future workforce growth. Input from employers is critical to effectively direct employment-related training and services.
- 10) A nation that has a strong workforce has a **workforce that is inclusive** and offers any person, with or without disabilities, an opportunity to engage in activities that support and/or enhance their own defined personal and self-sufficiency goals. To accomplish this vision we believe:
- The system must provide seamless access to services, timely response to individuals' needs, and be inclusive to enable any and all individuals the opportunity to seek and gain employment.
 - States must have in place effective partnerships with businesses to meet their hiring needs and the needs of job seekers for the jobs they offer. This collaboration must include resources to make it possible for individuals to obtain and retain employment. It is imperative that the needs of large and small business owners be met.
 - Systems developed must have true accountability occurring on all levels by assuring that:
 - BOTH job seekers and businesses are satisfied – we need both business and ALL residents to feel our nation wants and needs them in their workforce;

- Businesses are educated, engaged, and supported in their quest to hire, train and retain employees that help them meet their bottom lines;
- Individuals are assisted to find, choose, and maintain employment which matches the person's career goals, interests, and skills; and
- Critical data on the attainment of outcomes in the system is collected so true progress throughout our country can be objectively measured.

Recommendations (In General)

We **support** initiatives to enhance meaningful opportunities, options, and choices for individuals with the most significant disabilities, including enhanced opportunities to work in competitive integrated employment (at or above the minimum or prevailing wage) and self-employment. More specifically, we **support**:

- 1) Increasing focus, emphasis, and priority on **youth with disabilities** across all systems and agencies, including all federal employment projects and proposals (for example, internships, job readiness, AmeriCorps, Job Corps, and mentoring programs). We also support strengthening statutory connections between IDEA and the Rehabilitation Act as well as the Social Security Act, SCHIP, Medicaid, and the developmental disabilities and other systems to require smooth transition from school to work. In particular, we support implementation of Section 511 of the Rehabilitation Act, as added by the Workforce Innovation and Opportunity Act, which would ensure that youth and their families are made aware of alternatives and opportunities for competitive, integrated employment before participating in programs paying a special wage under Section 14(c) of the Fair Labor Standards Act.
- 2) **Funding systems change initiatives** designed to expand the availability of supported employment and customized employment in competitive, integrated settings (at or above the minimum wage), self-employment, and other employment-related supports for individuals with disabilities, particularly for youth with disabilities, by creating additional incentives to operate such programs, including funding for long-term services and supports and ensuring seamless transitions between funding streams. These initiatives also need to include support and technical assistance for CRPs that want to expand and improve the array of services they provide, including supported employment services, customized employment services, transition services, and services leading to self-employment.
- 3) Funding **research and demonstration projects** to test different types of incentives, wage subsidies, flexible funding and other strategies to determine what works best to improve wages for individuals with significant disabilities currently paid below the minimum or prevailing wage and expand employment options. Research should also test improved job placement techniques such as on-the-job training, trial work, use of job coaches and natural supports. Research should also identify the full cost implications of these approaches.
- 4) **Incentivizing the adoption and utilization of best practices** to enhance the quality of the work environment, including adopting approaches for enhancing productivity and wages, such as the use of assistive technology, career advancement, and promotion in various work environments.

- 5) Expanding and improving the **Work Incentives Planning and Assistance Act** and the **work incentive provisions in SSI and SSDI** programs and expanding the availability of health care, including Medicaid and Medicare. Also, providing better education and targeted outreach to increase community knowledge of SSI and SSDI work incentives, including increased support for benefits counseling.
- 6) Improving state **workforce delivery infrastructures** that increase successful employment outcomes such as one-stop career centers, vocational schools, vocational rehabilitation programs, community and four-year colleges (disability and career services).
- 7) Expanding the focus on **employer** and business-related **outreach** initiatives.
- 8) Implementing and enforcing **affirmative action programs** under Section 501 and 503 of the Rehabilitation Act, including changes in the Section 503 regulations to include goals and timetables.
- 9) Modernizing and more fully utilizing the **AbilityOne** program and expanding the utilization of **State Use** contracting programs throughout the United States.
- 10) Implementing and **enforcing existing laws** such as the Americans with Disabilities Act that can improve employment outcomes for people with the most significant disabilities.
- 11) Utilizing accredited providers and qualified rehabilitation professionals in the delivery of employment services and supports.

Recommendations (Section 14(c) Program)

We **support** the following recommendations for improving the Section 14(c) of the Fair Labor Standards Act, including efforts to foster increased employment, minimize exploitation, and strengthen enforcement and sanctions when exploitation does occur.

- 1) Establish an ongoing **advisory committee** at the Wage-Hour Division, which includes community rehabilitation providers, tasked to review the administration of the Section 14(c) program and make recommendations for streamlining and simplifying the program to avoid unintended violations and enhance accountability and accuracy of determinations.
- 2) Significantly **increase funding to enforce wage and hour laws** for the two agencies that administer the Section 14(c) provisions—the DOL Wage and Hour Division and the Office of the Solicitor. More specifically, direct the Department of Labor to substantially increase:
 - The availability of funding for technical assistance provided directly by DOL or others to employers to maximize voluntary compliance; and
 - The number of onsite investigations to ensure compliance.
- 3) Add **increased penalties for willful violations**.
- 4) Increase administrative funding to the Social Security Administration to **improve oversight of the representative payee system**.

- 5) Develop and implement a plan to **make information about the Section 14(c) program more readily accessible** to workers themselves, their families and authorized representatives as well as to the public. Information should be available about the types of disabilities of the workers participating, and the number of workers receiving wages under the Section 14(c) regulations.

We **oppose** initiatives that would **phase out and eventually repeal** Section 14(c) for persons with the most significant disabilities.

- 1) Individuals with the most significant disabilities must not be denied the opportunity to work at a wage that reflects their skills and productivity.
- 2) Eliminating, repealing, or restricting Section 14(c) will simply have the effect of denying the opportunity to work for individuals with the most significant disabilities who cannot meet productivity standards (with or without reasonable accommodations).

Conclusion

We believe that the intent of Congress regarding the principles and goals outlined in disability policy including the ADA, WIOA, IDEA and the FLSA for those with significant disabilities has not been fully achieved and much more work needs to be accomplished. We believe that every individual with a disability should have the opportunity to secure work consistent with the principle of **self-determination** and the right to make **informed choices** based on one's strengths, interests, priorities, needs, abilities and capabilities. We support the purpose of the ACICIEID in helping to ensure individuals with disabilities have expanded opportunities for competitive, integrated employment. We support the need to make improvements in the administration of the 14(c) program.

ACCSES stands ready to assist the ACICIEID with its work as it moves forward.