

Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities

Final Report to:

The Honorable Thomas E. Perez
United States Secretary of Labor

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

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Committee on Education and the Workforce

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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) signed into law on July 22, 2014, to advise the Secretary of Labor on:

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

The Committee Charter (See Appendix) detailed the charges to the Committee to address issues, and make recommendations, for ensuring the increase of CIE for individuals with I/DD and other significant disabilities. Within WIOA, CIE¹ 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 do not have disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who do not have disabilities and who are in comparable positions interact with other persons; and
3. Presented, as appropriate, with opportunities for advancement that are similar to those offered other employees who are not individuals with disabilities and who have similar positions.

The Committee was 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. The work of the Committee began with its first meeting in January 2015, followed by full committee meetings in March, May, and July 2015, and April, July, and September 2016. The culmination of the Committee’s work is organized around the overall theme that specific areas of

capacity building will be necessary in order to increase CIE. Following are the highlights of the Committee's recommendations.

Overall Capacity Building

In order to build more systemic capacity for CIE, there needs to be:

1. guidance, policies and strategies to prioritize federal funding for CIE,
2. data collection and analysis requirements for recipients of federal funding based on a common definition of CIE and outcomes,
3. funding and initiatives to help agencies build CIE capacity, develop national standards of professional competence, and train professionals skilled in facilitating CIE, and
4. the creation of a federal interagency task force focused on policies to expand capacity of CIE

Capacity Building for Youth

For youth to effectively transition to adult employment there needs to be:

1. early work experiences,
2. family involvement and support,
3. professional development and training,
4. systems integration for seamless transition, and
5. available and transferable assistive technology

Capacity Building through Changes in the Use and Oversight of 14(c) Certificates

Subminimum wages paid under certificates allowable under the FLSA, Section 14(c) inhibit participation in CIE. To address this, the Committee recommends that:

1. Congress amend the FLSA to allow for a multi-year, well-planned phase out of Section 14(c),
2. the Wage and Hour Division of the U.S. Department of Labor engage in stronger oversight of the current use of 14(c) certificates, and
3. the federal government assist states with building capacity of service systems to provide CIE services as alternatives to those provided under programs using a 14(c) certificate.

Building Capacity in the Marketplace

Increased business and employer engagement will be necessary to increase CIE and will require:

1. increased and more effective communication and outreach to businesses,

2. specific business-oriented professional development for employment services personnel,
3. incentives to create work experiences as preludes to employment,
4. expansion of available benefits counseling,
5. more accessible transportation,
6. hiring initiatives in high-growth industries, particularly healthcare,
7. additional outreach to federal contractors regarding the Office of Federal Contract Compliance Programs (OFCCP) Section 503 regulations which establish disability hiring goals, and
8. revisions to federal tax incentives and credits available to employers who hire people with disabilities.

Capacity Building in Specific Federal Agencies

Increasing CIE will require partnerships and complementary actions among multiple federal agencies, including these activities:

1. establishment of a cross-agency working group to provide policy guidance and technical assistance on services that complement and maximize CIE,
2. demonstrating how the waiver of certain requirements in use of the Ticket to Work program will enable youth receiving Supplemental Security Income/ Social Security Disability Insurance (SSI/SSDI) to access services across systems that lead to CIE, and
3. developing a policy reform initiative designed to increase the number of SSI/SSDI beneficiaries in CIE while simultaneously maintaining eligibility for income maintenance and essential health benefits.

Increasing Competitive Integrated Employment in the AbilityOne® Program

Reforming the AbilityOne® Program so that it can create CIE opportunities on a broad scale will require:

1. amending the Javits-Wagner-O'Day Act (JWOD) to fully align the Act with modern federal disability law and policy goals by reforming the criteria for contract procurement selection and for program eligibility,
2. research on current use of AbilityOne in order to identify how the program is serving the target population and to determine steps for improving its ability to create CIE opportunities, and
3. evaluation of the implementation and impact of AbilityOne reforms.

Conclusion

The work of the Committee, and the formation of its recommendations, was intended 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.

¹ See statutory definition of competitive integrated employment in the Appendix.

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 transitioning from education to employment, by helping to ensure that these individuals have opportunities to acquire the skills and training needed to maximize their potential and enter competitive integrated employment (CIE). Among the many provisions in WIOA designed to increase 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.

The Committee’s overall charge is to prepare findings, conclusions and recommendations for the Secretary of Labor on:

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

WIOA² defines *competitive integrated employment* as 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 do not have disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who do not have disabilities and who are in comparable positions interact with other persons; and
3. Presented, as appropriate, with opportunities for advancement that are similar to those offered other employees who are not individuals with disabilities and who have similar positions.³

The work of the Committee is intended to bolster WIOA’s goal to address the pervasive unemployment and low workforce participation among individuals with significant disabilities in the United States today. As presented in detail in the Committee’s Interim Report to Congress in

September 2015 (www.dol.gov/odep/topics/WIOA.htm), there are many circumstances that illustrate the need for increasing CIE. These circumstances include the widely-documented drastically low unemployment rate and the even lower workforce participation rate for people with I/DD.⁴ 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 the rate of the general population⁵ and are the largest and fastest growing group of public disability income beneficiaries.⁶ 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.

For people with I/DD or other significant disabilities, center-based employment, also called sheltered workshops, have long been used as a place to provide “prevocational” services for people deemed as either unemployable in CIE or as “needing training” to prepare them for eventual CIE in their communities. However, center-based employment has been shown to rarely result in CIE and most participants in center-based employment are paid substantially below minimum wage, as is currently allowed under Section 14(c) of the FLSA (PL 75-718).⁷ Currently, an estimated 228,600 people with I/DD and other significant disabilities are being paid subminimum wage under certificates issued by the U.S. Department of Labor (DOL) Wage and Hour Division (WHD).⁸ Section 14(c) of the 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. DOL last amended the Section 14(c) regulations governing the program in 1989.

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 for increasing the number of individuals with disabilities participating in CIE, considering the current and future role and impact of the Section 14(c) program is crucial.

Another back drop to the Committee’s work is the evolving federal disability employment policy which presumes that all individuals with disabilities are employable when opportunity and support are available. The notion of the presumption of employability is a prominent underpinning of current “Employment First” initiatives. These are grassroots initiatives advocating for states to make CIE the first option for employment services for youth and adults with significant disabilities.⁹ As a result, a few states have adopted changes in policy and funding that are intended to increase CIE. However, in most states these Employment First initiatives

have not resulted in a mandate about CIE. Nor have they resulted in any specific action other than non-binding proclamations that building CIE services is a worthy goal. However, at its core, the Employment First 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 CIE.

In light of these realities, Congress established the Committee. According to DOL Secretary Thomas E. Perez, in his blog¹⁰ announcing its formation, “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. Thus, 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 federal and state 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 participation and self-sufficiency. As the nation recently celebrated 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 historically had the least amount of opportunities for gaining access to this critical aspect of our American way of life.

² Rehabilitation Act of 1973, Section 7(5) as amended by WIOA.

³ See statutory definition of competitive integrated employment in the Appendix.

⁴ 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.

⁵ Lutterman, T. (2013). *Uniform reporting systems results and national outcome measures (NOM) trends*. NASMHPD/NRI.

⁶ Drake, R., Skinner, J., Bond, G., & Goldman, H. (2009). Social Security and mental illness: Reducing disability with supported employment. *Health Affairs*, 28, 76-770.

⁷ Cimera, R.E. (2011). Does Being in Sheltered Workshops Improve the Employment Outcomes of Supported Employees with Intellectual Disabilities? *Journal of Vocational Rehabilitation*, 35, 21-27.

⁸ Verified by the U.S. Department of Labor’s Wage and Hour Division.

⁹ Kiernan, W., Hoff, D., Freeze, S., & Mank (2011). Employment First: A beginning, not an end. *Intellectual and Developmental Disabilities*, 49, 300-304.

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

Chapter One: Increasing Competitive Integrated Employment will require Capacity Building

Introduction

Despite the fact that presumed employability of people with significant disabilities is implicit in relevant federal legislation,¹¹ the current service capacity and associated federal and state policies have made it difficult to make this concept a reality. To date, only a handful of states prioritize funding for competitive integrated employment (CIE) in a way that has translated to meaningful employment rates for people with significant disabilities.¹² To broadly build capacity for CIE, realignment of state and federal policies and funding will be necessary to help people with disabilities achieve CIE. In practice, CIE has still not become a public policy and funding priority, despite research that center-based employment, or sheltered workshops, and facility-based day services cost more and produce poorer outcomes than CIE.¹³ Although there is considerable inconsistency in how data is collected, existing data nevertheless documents wide variability among states in the percentage of people receiving publically funded day receiving services that result in CIE, ranging from 10 percent to over 60 percent.¹⁴

This disparity in CIE participation across states is a reflection of widely inconsistent local and state funding structures. Reimbursement rates that cover various forms of “vocational” service categories under the Medicaid authorities (including Home and Community-Based Services (HCBS) waivers, state plan services, and managed care authorities) vary across states. Medicaid-funded disability service systems often align their policy and funding in ways that may unintentionally support segregation over integration in their vocational and other day services. For example, a provider may be reimbursed at a higher rate for group-based placement than for individualized supported or customized employment, thus encouraging group-based outcomes such as sheltered workshops or facility-based day habilitation. Typically, service in segregated settings is funded at a higher rate than services that lead to CIE. Some states pay service providers for a unit of service by the hour, and other states pay by the day. Some states pay by service benchmarks, e.g., completing a job development plan, and other states pay a flat fee-for-service rate for any service delivered in a time increment such as an hour or a day. Finally, in many states the reimbursement rates often make it more economically advantageous for service providers to serve people in groups rather than individually, even though the service may be counted as integrated employment in state data. Although day services and supported employment are among those services allowable under the Centers for Medicare & Medicaid Services (CMS) Medicaid Waiver program, there is not an expectation that these services will result in specific quantifiable employment outcomes. In effect, the way in which most states fund services incentivizes segregation over integration.

Moreover, in the HCBS Waiver program, data that are collected by one state Medicaid agency are not necessarily comparable with that of another state. Each state Medicaid agency tracks services differently. For example, while CMS does have a definition of supported employment, there is not a consistent definition of what counts as CIE, leading to inconsistent tracking of data. Some agencies only include individual competitive jobs, and other states also include group employment (also known as crews or enclaves), self-employment, and/or contract employment as “integrated employment.” In addition, some agencies track aggregate employment data based on reported monthly earnings, others aggregate and report bi-weekly earnings. 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 vocational rehabilitation (VR) system has longstanding specific program guidance on employment in integrated settings and 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 different states. However, this does not align with how data is collected by CMS, which does not include universal data collection on employment outcomes. This makes it difficult to align these federal agencies to jointly promote CIE. Among other things, the different Medicaid and VR accountability systems make collaboration difficult at the federal and state agency levels for achieving common outcomes for individuals served by both systems.

Accurate, concise, and quality data are therefore necessary to determine both system effectiveness and develop policy and practices. Without good data, services end up being driven by suppositions and myths about what works and what does not. Neither the federal government nor most states have a consistent data system that can provide longitudinal information across systems or track participation in services that lead to CIE services outcomes.

The resulting service system is a mix of different services that include sheltered employment, facility-based day services, non-facility-based day services, group employment, and individual supported or customized employment. Some people exclusively receive one of these services, whereas others receive various combinations of these services. Typically, services that lead to CIE are significantly less available than other service options.¹⁵

Even when services 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 providing 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.^{16,17} However, this EBP strategy is inconsistently applied, or alternative and ineffective strategies are employed, such as “work readiness training” in sheltered workshops, which compounds the ongoing

challenge service providers face in successfully engaging employers who might hire individuals with significant disabilities.¹⁸ These circumstances point to an obvious need for elevating the skills of practitioners in the field who are supporting individuals with significant disabilities in seeking and obtaining CIE. Delivering services that result in CIE requires a highly skilled workforce delivering service to a standard that has yet to be set nationally. In order to develop this workforce there needs to be access to quality training and a rebalancing of funding to pay professional wages that acknowledge the need for high standards to achieve high CIE outcomes.

Finally, the service delivery systems available to help individuals with disabilities obtain CIE include not only disability service systems, but also the mainstream employment 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 service systems such as special education, VR, mental health, and Medicaid, but also the public Workforce Development System through American Job Centers (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 order to move the service delivery system to universally promote and maximize participation in CIE, the Committee recommends changes in the following areas: (1) funding of employment services; (2) collection and use of employment service and outcome data; (3) training of personnel supporting CIE; (4) the oversight and direction provided by federal agencies involved in CIE funding and policy. Specific recommendations and related details for each area are presented in this chapter.

Recommendations

- 1. The U.S. Department of Labor (DOL) should lead a collaboration of federal agencies to identify, align, and develop clear policies and practices across all federal agencies that make CIE a funding priority for all individuals with significant disabilities.*

Collaborative efforts should include Workforce Innovation and Opportunity Act (WIOA) committee members including the various offices within DOL (Wage and Hour Division, Employment and Training Administration, and Office of Disability Employment Policy) that are currently on the Committee; the Social Security Administration (SSA); the U.S. Department of Education (ED) represented by the Rehabilitation Services Administration (RSA); and the U.S. Department of Health and Human Services (HHS) (including CMS, Administration on Community Living (ACL) and Substance Abuse and Mental Health Services Administration (SAMHSA)). Other agencies participating should include ED representation from the Office of Special Education Programs (OSEP) and the U.S. Department of Justice (DOJ). From this collaboration, participating agencies should agree on common principles that align cross-agency

funding priorities and develop guidance for states on policy, practice and accountability measures that establish CIE as the priority.

Recommendation Detail

- a. To inform the recommended collaboration effort federal agencies should:
 - i. Identify states/state programs that are currently most effective in delivering services that result in CIE outcomes for people with significant disabilities, and describe the funding strategies they are using.
 - ii. Develop guidance on how to braid, blend and fully leverage available federal funding to improve employment outcomes for people with significant disabilities. This recommendation is relevant to CMS and its funding of CIE through all Medicaid authorities, including Waivers, State Plans, and Managed Care authorities. CMS should issue specific guidance on how to use the various Medicaid authorities (especially Section 1905(a) of the Social Security Act) for funding supported employment for people with severe mental illness, as many of the Medicaid authorities commonly used to fund supported employment for other populations are not always a viable option for this population. This recommendation is also relevant to the RSA since WIOA requires a focus on CIE and development of strategies that avoid use of center-based, group or other segregated employment settings.
 - iii. Through its use of existing demonstration authorities or by seeking Congressional authorization for new authorities, CMS and other federal agencies should make available additional financial support and incentives to states, providers and/or beneficiaries to help individuals with significant disabilities achieve CIE outcomes, including by:
 1. Providing an enhanced federal match rate to states for CIE outcomes (similar to Community First Choice) or enhanced funding to providers or beneficiaries to incentivize CIE outcomes over other segregated employment or day services.
 2. Providing time-limited increased federal funding to states to help transition people from segregated employment settings to CIE (for example, enhanced federal match rate similar to the Money Follows the Person Program for residential transitions).
 - iv. Develop demonstration or other pilot efforts with robust data collection requirements to determine what is effective in assisting states to improve CIE outcomes.

- v. Support existing strategies and encourage new pay for performance strategies that increase access to CIE. CMS and other federal agencies should issue guidance on allowable pay for performance methodologies and initial outcomes (including milestones) which are expected to be measured and reported and that could be used by states. These federal agencies should also provide technical assistance to states wishing to use these payment strategies.
 - vi. Provide technical assistance to states through internal federal agency expertise (like ODEP's Employment First State Leadership Mentor Program) and/or funding for the use of external expertise from other states and programs that are successfully financing and implementing CIE strategies. Technical assistance should include funding strategies, capacity building strategies at the state and provider level, and professional competence in delivering CIE.
- b. For effective implementation of WIOA and best use of funding that leads to improved CIE outcomes, OSEP and RSA should clarify the importance of the following practices:
- i. OSEP, in implementing WIOA should require that all youth with significant disabilities:
 - 1. Begin transition services or pre-employment transition services at or prior to age 14;
 - 2. Gain opportunities for integrated work experiences, access to assistive technology and assistive technology assessments conducted by a qualified entity to assess the needs of people with significant disabilities, job coaching and other supports for a period of not less than 24 months;
 - 3. Be presumed eligible for VR services for anyone considering center based or segregated employment.
 - ii. RSA, in implementing WIOA, should clarify:
 - 1. That youth with disabilities must first apply for VR services in order to receive transition services or other VR services;
 - 2. Students and youth in Supported Employment should be provided opportunities to work toward a CIE goal identified in an individual employment plan (IPE) for a reasonable period not more than 24 months, that period may be extended as necessary, in order to achieve the employment outcome identified in the IPE;

3. That extending the time limit of Supported Employment Services from 18 months to 24 months in WIOA refers to the provision of supported employment services;
 4. That funds for extended services for youth with the most significant disabilities may be used to provide extended services to youth with the most significant disabilities for up to four years or until the individual no longer meets the definition of “youth with a disability” as defined in WIOA title IV;
 5. That eligibility should be presumed for VR services for anyone in 14(c) employment who expresses interest in CIE.
 6. That eligibility should be presumed VR services for anyone considering center-based or segregated employment. To the extent any individuals in these categories are not already covered by existing law and policy regarding presumptive eligibility, RSA should take regulatory action and/or seek statutory changes as necessary to fully implement this recommendation.
- c. Together OSEP and RSA should develop close working agreements between their agencies, including at the state and local levels, that encourage:
1. Students with significant disabilities to leave school either employed or with a post-school employment plans that lead to employment; and
 2. Students with significant disabilities to participate in transition programs that include integrated work experience, internships, apprenticeships or similar job experiences; and
 3. State education and VR agencies to report results of state and local efforts to their respective federal agencies.
2. *Congress should provide CMS with capacity building funding and the authority to move toward maximizing opportunities for individuals to have access to highly skilled employment professionals working in community employment agencies, the opportunity to receive services in the most integrated setting and away from settings with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS. This dedicated funding and authority should include, at a minimum, an expansion of the original Money Follows the Person program to allow states to receive and utilize an increased federal match incentive to support the transition of people out of facility-based non-residential settings (i.e., sheltered workshops and day habilitation centers) and into CIE and other outcomes related to socioeconomic advancement, independent living, and community engagement.*

Recommendation Detail

- a. Congress should provide CMS with the authority to issue further guidance about how Medicaid claims could financially support training, development and ongoing technical assistance for direct support staff and providers under HCBS. This will help increase capacity for providing supported employment and customized employment services that lead to improved CIE outcomes.
 - b. Guidance should be issued jointly by CMS and RSA that directs state Medicaid and VR agencies to work together to explore an agreed-upon rate structure across both systems that assures a consistent set of rates/reimbursement for both short-term and long-term services related to discovery, career planning, integrated work-based learning experiences, and supported/customized employment. This will make it possible for people who are eligible for both services (and the providers serving them) to obtain a consistent level of support for these services as they transition from VR resources to longer-term supports and services received under Medicaid HCBS.
3. *HHS (including CMS, ACL, and SAMHSA) and RSA, DOL, and the designated I/DD and VR agencies in each state, should: promote and fund innovative projects that result in new CIE programs within existing organizations as well as new organizations that provide only CIE services; and facilitate program transition away from sheltered employment and into CIE.*

Recommendation Detail

- a. State I/DD agencies, State VR agencies, State education agencies and their partners should become familiar with the *Olmstead* settlement agreements between the U.S. Department of Justice (DOJ) and Rhode Island and between DOJ, private plaintiffs and Oregon which require these states to change their service systems to decrease the use of segregated center-based day services and increase the capacity of CIE, and should keep abreast of future court decisions related to CIE.
- b. State labor, VR, I/DD, and MH agencies will need to collaborate to establish statewide public and private sector employer initiatives that encourage innovation and piloting of employer-driven models that enhance services and expand outcomes. States should support innovative models so that new services can emerge for individuals new to the system by promoting, funding and supporting:
 - i. CIE pilots or start-ups
 - ii. School-to-work transition pilots
 - iii. Training and technical assistance for pilots and start-ups

- c. Providers exclusively or primarily offering sheltered, non-integrated employment services will need technical assistance to transform services to focus primarily on CIE service provision. CMS, VR, and partnering federal agencies, through their state agency entities, should provide short term funding for transformation efforts and make technical assistance available regarding:
 - i. Business models including reimbursement strategies that effectively support CIE
 - ii. Deployment of staff to provide services that lead to CIE
 - iii. Training, supporting and managing staff that provide CIE supports
4. *Federal agencies that provide funding for people with disabilities to obtain CIE should establish a common definition of CIE and develop common outcome data points on which states that receive funding must regularly report to ensure accountability.*

Recommendation Detail

- a. The common working definition of CIE should be derived from the WIOA and HCBS definitions and be consistent with the goals described in WIOA and the Americans with Disabilities Act as interpreted by the Supreme Court's decision in *Olmstead*.
- b. The task of defining CIE should be led by DOL and include representatives from ED, HHS, and SSA.
- c. The task of developing outcome data requirements should be led by CMS and include other relevant agencies in HHS, DOL, ED and SSA.
- d. Regular collection and reporting by states of individual outcome data should be required to ensure accountability of funding and, at a minimum, include:
 - i. number of people employed in jobs that meet the definition of CIE,
 - ii. wages earned,
 - iii. hours worked
 - iv. length of time in CIE, and
 - v. benefits (e.g., paid days off)
- e. Additional consideration should also be given to collecting data on:
 - i. income level over time,
 - ii. taxes paid, and

- iii. reduction of public income support (cash benefits from SSA, TANF, SNAP, and the reduction of medical coverage resulting from primary insurance through employers)
 - f. The studies that link employment to other social and health benefits for people with severe mental illness have been helpful in demonstrating the importance of employment. Federal agencies, in particular the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR), Social Security Administration, and Office of Disability Employment Policy, should study and/or provide support for studying the impacts of employment on all people with severe disabilities. The studies should look at the impact of employment on:
 - i. utilization of healthcare services, including institutional long-term services and supports, and utilization of acute services such as hospitals, emergency rooms, and crisis services, and
 - ii. housing stability,
 - iii. use of public benefits, including public income supports, and
 - iv. employer-based health benefits that offset public health benefits.
 - g. Federal funding agencies should provide guidance, technical assistance and resources to states for implementing data systems that will collect and report the minimum individual CIE data including number of people employed in CIE, wages received, hours worked and paid days off. Congress should ensure states have sufficient funding to build effective data collection infrastructures.
 - h. Data on wages, hours, and other employment information is collected in various programs such as TANF, SSA, VR and others. Those data systems should be examined to determine if they can contribute to building the recommended State data collection process. The review should be led by the DOL and include HHS, ED, and SSA.
 - i. Federal agencies should ensure that state-level data and outcomes are publicly reported in consumer friendly and accessible formats so that the impact of CIE can be assessed and people with disabilities and their families can make good decisions about choosing the best pathway to employment.
5. *The state Medicaid agency, the state department of labor, the state VR agency, the state mental health agency, the designated state I/DD agency, and the state education agency in each state should: encourage the development of state/local standards or adopt national standards¹⁹ of professional competence in providing services to support CIE; and support professional development that includes the development of organization leaders, program*

managers, and professional employment staff responsible for delivering services to support CIE.

Recommendation Detail

- a. CIE capacity-building for service provider staff needs to be driven by a common standard by which performance can be developed, supported and measured so that:
 - i. Pre-service and in-service training, ideally framed by certification standards, and technical assistance related to the expectation, value and outcome of CIE and skill development to facilitate CIE is provided at various levels, including:
 1. Workforce development/employment and education/training service staff of all WIOA core programs and key partners (e.g. HCBS) at all levels of employment (i.e. executive, supervisory, and direct service personnel)
 2. State agency workforce development/employment and education/training vendors.
 3. Certification, licensing, and quality assurance personnel associated with respective state agency workforce development/employment and education/training partners.
 4. Teachers and educators at all levels (early learning, pre-K, K-12, special education, higher education).
 5. Medical professionals who treat individuals with disabilities, including individuals with acquired disabilities (e.g. doctors, nurses, physical therapists, occupational therapists, speech therapists, medical specialists, trauma medical staff, etc.)
- b. CMS and RSA should collaborate with DOL, SAMHSA, ACL, and OSEP to develop new tools and supports for CIE. These tools for assessing an individual's capabilities and employment potential should be based on current, mainstream human performance methodologies and implemented by all front line case management professionals to guide the development of services and supports.
- c. ED should make personnel preparation grants to institutions of higher education to development the next generation of employment professional staff who will be implementing CIE.²⁰
- d. HHS, through NIDILRR, as well as other federal agencies that sponsor employment research, will need to prioritize research and development on CIE so that

contemporary evidence is established for what constitutes effective delivery of CIE and so that this knowledge is translated into training curricula and practice.

6. *Congress should direct the formation of an interagency operational task force to develop an implementation plan for incorporating these capacity building steps for increasing CIE. At a minimum, this task force should include representatives from: DOL (ETA and ODEP), ED (RSA, OSEP), HHS (SAMHSA, CMS, ACL) and SSA.*
 - a. The team should be charged with developing the implementation plan within a specified time frame.
 - b. The implementation plan will be the framework for implementing the activities outlined under the previous recommendations.

¹¹ The Ticket to Work and Work Incentives Improvement Act of 1999, The Individuals with Disabilities Education Improvement Act of 2004, and the Workforce Innovation and Opportunity Act are each predicated on the expectation that services delivered through their respective mandates are available to and will benefit all individuals with disabilities to whom the services apply.

¹² Kiernan, W., Hoff, D., Freeze, S., & Mank (2011). Employment First: A beginning, not an end. *Intellectual and Developmental Disabilities*, 49, 300-304.

¹³ Cimera, R.E., R.E. (2012). The economics of supported employment: What new data tells us. *Journal of Vocational Rehabilitation*, 37, 109-117.

¹⁴ 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.

¹⁵ Butterworth et al., op.cit.

¹⁶ Carter, E. W., Austin, D., & Trainor, A. A. (2012). Predictors of postschool employment outcomes for young adults with severe disabilities. *Journal of Disability Policy Studies*, 23, 1–14.

¹⁷ Gold, P., Fabian, E., & Luecking, R. (2013). Job acquisition by urban youth with disabilities transitioning from school to work. *Rehabilitation Counseling Bulletin*, 57, 31-45.

¹⁸ Luecking, R. (2011). Connecting employers with people who have intellectual disability. *Intellectual and Developmental Disabilities*, 49, 261-273.

¹⁹ See Chapter Four, Building Capacity in the Marketplace, Recommendation 2 regarding further discussion on national standards.

²⁰ See also Chapter Two: Capacity Building for Youth, Recommendation 6 for further discussion of professional development.

Chapter Two: Capacity Building for Youth

Introduction

The challenges facing youth with disabilities as they prepare for the transition from public secondary education to adult employment have been well documented. This transition can be a particularly difficult time for many students and youth with intellectual and developmental disabilities (I/DD) and other significant disabilities and their family members. As presented in detail in the Interim Report,²¹ these challenges are reflected in the continuing poor adult employment outcomes. The most salient challenges include limited access to work experiences during secondary school, disjointed service delivery by multiple youth-serving agencies, challenges accessing necessary assistive technology, uneven access to information by families, and lack of staff training in competitive integrated employment (CIE) strategies. These barriers must be mitigated to maximize access to CIE and to minimize the impact of disjointed service delivery as schools and post-school service providers assist youth and their families to achieve CIE and careers.

The 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 ways of addressing these challenges. In particular, there is a growing body of research showing that work experience and CIE during secondary school years predicts successful post-school employment.^{22,23} Notably, post-school employment success is most likely to occur when: work experiences happen throughout secondary school and begin early in secondary school; when integrated paid work is experienced before students exit school; and when participation in work experience is supported by families.²⁴ Further, research evidence informs us that students are especially likely to be successful in pursuing career pathways when their families expect them to be employed and when their families are supported in navigating linkages with public post-school entities that may support the transition needs of youth-- including vocational rehabilitation, intellectual and developmental disabilities and mental health agencies, workforce development agencies, and other public entities.²⁵

In fact, collaboration among multiple systems is often necessary to expedite service delivery so that the student acquires, prior to high school exit, community-based work experiences and a competitive integrated job. Done well, such collaboration can result in the student exiting school already employed. The movement from school to employment and adult life is thus “seamless” because there is no interruption of service, support, and employment status after school exit. Jurisdictions in which systems collaborate to create work experiences and employment have demonstrated notable success in improving employment outcomes. Multiple demonstration models that feature this type of collaboration (e.g., Project Search,²⁶ Transition Systems

Integration Model,²⁷ Seamless Transition Model²⁸) have led to high levels (60 to 70%) of CIE outcomes for students with I/DD and other significant disabilities. Seamless transition for youth who benefit from assistive technology also requires collaboration so that the student can access assistive technology as a work accommodation and so that the technology follows the student from school to the workplace.²⁹

Finally, it is important to note that the Workforce Innovation and Opportunity Act (WIOA) reflects many of the features youth with disabilities need for transitioning to employment. There is much in WIOA that represents strong support for employment of youth with I/DD and other significant disabilities. These include reducing the use of subminimum wages, a requirement for school/vocational rehabilitation (VR) collaboration, targeted supported employment services funds for youth with the most significant disabilities, and especially, the designated VR funds for Pre-Employment Transition Services, which include services to support the kinds of work experience that are key to successful transition to CIE.

To realize the promise of the research findings and noted demonstrations, as well as the intent of the WIOA, broad-scale capacity must be built for the professionals who implement programs for transition age-youth, the programs themselves, and the federal and state services systems. A critical component for the effective implementation of high-quality transition services for youth with significant disabilities is competency-based professional development programs that are focused on CIE outcomes.³⁰

Accordingly, based on the need to mitigate continuing challenges, and to learn from research and effective demonstration models, the Committee's recommendations for transition focus on five general areas: early work experiences, family involvement and support, professional development and training, systems integration for seamless transition, and assistive technology.

Recommendations to Bolster Early Work Experiences

1. *The U.S. Department of Education (ED), Office of Special Education Programs (OSEP), within its oversight authority of Individuals with Disabilities Education Act (IDEA), should encourage the use of Indicator 14 to strengthen opportunities for youth with disabilities to gain paid integrated work experiences, including:*
 - a. Annual IDEA Indicator 14 reporting on all school exiters, to include postsecondary education and/or CIE with specific data on type of employment that match student choice, hours worked, and wages earned,
 - b. States education agencies (SEAs) working with local education agencies (LEAs) to develop improvement plans for lower-performing schools as evidenced by IDEA indicator 14 post-school outcome data, and

- c. SEAs establishing policies for technical assistance to lower performing schools as evidenced by IDEA Indicator 14 post-school outcome data.
2. *ED should invest in high-quality multivariate correlational research to move from promising practices to evidence-based practices that would document new models and transition assessment methods and/or tools to move youth from school to careers.*
 3. *Congress should reauthorize IDEA and the Carl Perkins Career and Technical Education Improvement Act to align with WIOA and expand responsibilities of programs funded through the Act in order to support early paid work experiences for youth with the most significant disabilities. Specifically, Congress should amend IDEA to support:*
 - a. setting of transition goals that are based on CIE first and “presumed employability” of all individuals,
 - b. a requirement for a minimum of one competitive integrated job prior to high school exit that is documented as a transition service,
 - c. required participation of both the state vocational rehabilitation services agency and the state intellectual/developmental disabilities agency at IEP meetings of transition-age youth, and/or or other agencies responsible for providing or paying for transition services,
 - d. prohibition of Section 14(c). subminimum wage employment or services as an allowable transition service or post-school outcome, and
 - e. the age of concentrated transition planning to begin no later than 14.

Recommendations for Family Expectations and Support

4. *ED/OSEP should encourage SEAs and LEAs to use quarterly ongoing progress monitoring and reporting to parents and include a review of transition services and progress made toward achieving transition-to-career goals.*
5. *ED, the U.S. Department Health and Human Services, and the Social Security Administration (SSA) should incorporate into grant priorities, training requirements, and activities, stronger guidance on post-school predictors of obtaining CIE, and resources for families.*
 - a. Specifically, federal agencies should look to enhance grant priorities and other funding sources that support families of children and youth with intellectual and developmental disabilities as well as other significant disabilities. These include Parent Training and Information Centers, Community Parent Resource Centers, Family-to-Family Health Centers, IDEA Parts B and C grantees, Family Support Programs, and Statewide Family Network Programs.

- b. Stronger guidance and grant-funding requirements are needed in these areas:
 - i. Information to families of students with disabilities about strong predictors of post-school success, to include paid, community-based, integrated work experiences prior to school exit.
 - ii. Family engagement strategies to include:
 - 1. support for the whole family in working toward shared goals for their children,
 - 2. a clear role for family participation,
 - 3. a role for successfully-employed self-advocates and their families to mentor students and their families from diverse cultures who are learning about their own possible career pathways,
 - 4. career exploration opportunities,
 - 5. building students' self-advocacy and self-determination skills,
 - 6. progress monitoring at key transition stages en route to achieving job of choice (from early intervention, middle school, high school, to post-school, and including CIE and postsecondary education), and
 - 7. sensitivity to cultural diversity among families.

Recommendations for Professional Development and Training

- 6. *ED/OSEP should improve professional support and training to help students make meaningful progress toward CIE by:*
 - a. updating all personnel and professional development grant programs and related funding priorities (for general and special educators), to incorporate provisions related to predictors of post-school success for youth with significant disabilities,
 - b. including strategies to address the specific needs of culturally diverse families,
 - c. incorporating assessments of teacher trainee ability within special education teacher preparation programs, and
 - d. disseminating information to State Education Agencies about predictors of post-school success in teacher preparation programs and post-school outcome data on youth with significant disabilities.
- 7. *Congress should reauthorize the Higher Education Act to:*
 - a. reflect predictors of post-school success for youth with significant disabilities, and

- b. update personnel and professional development evaluation monitoring components accordingly to ensure general and special education educators are prepared to facilitate high quality post-school outcomes for youth with disabilities.

Recommendations for Systems Integration and Seamless Transition

8. *Congress should provide limited authority to the four relevant federal agencies – ED (RSA, OSEP, and the Office of Career, Technical, and Adult Education-OCTAE); HHS (Centers for Medicare & Medicaid-CMS, Administration for Community Living-ACL, Substance Abuse and Mental Health Services Administration-SAMHSA); the U.S. Department of Labor (DOL) (Employment & Training Administration-ETA; Office of Disability Employment Programs-ODEP); and SSA – to waive requirements that make it difficult for states to use and braid funds targeted at transition-age students with significant disabilities (those students participating in Alternate Assessments as defined in Every Student Succeeds Act (signed into law on December 10, 2015))*
9. *Congress should require these federal agencies to collaborate in order to develop opportunities for states to support local pilots that can demonstrate success when provided the opportunity to combine resources across federal programs for implementing ambitious yet achievable plans for comprehensive reform and create coordinated, seamless and sustainable CIE outcomes for youth with significant disabilities. Authority should be secured to:*
 - a. waive statutory and/or regulatory requirements that make it challenging for states to effectively use and braid funds due to payer of last resort policies,
 - b. structure a pilot that allows flexible use of funds and incentive payments for achieving CIE outcomes for youth with significant disabilities,
 - c. support alignment of required outcomes and reporting across relevant federal funding streams supporting youth with the most significant disabilities,
 - d. support presumptive eligibility processes across programs participating in the pilots, and
 - e. ensure access to supports and services needed for maintaining CIE – including assistive technology and transportation.
 - f. The Pilot Projects should:
 - i. target youth with significant disabilities whose achievement is measured against alternative academic achievement standards (these students constitute a small group for initial investment are most at risk of being referred to 14(c) employment and are often the most costly to serve in adult systems.),

- ii. require adoption of evidence-based predictors of post-school success and incentivize capacity-building efforts within federal employment programs, including technical assistance and training, to serve youth with significant disabilities,
 - iii. include a robust data collection and evaluation component that tracks participant outcomes for a minimum of five years after exiting post-secondary education, and
 - iv. support state and local programs in developing innovative, best practices for the hardest-to-serve populations, focused upon students with significant disabilities, including those in rural communities and those who are disproportionately underserved, by incentivizing outcomes and considering pay-for-performance models.
- g. If such pilots can demonstrate on a limited basis that increasing flexibility across federal programs results in improved longitudinal outcomes for this small group of students who have traditionally experienced very low success rates, the models could be scaled to incorporate a broader group of students with significant disabilities. Additionally, by limiting pilots to this small group of students, the likelihood of granting a broader flexibility is higher.

Recommendation for Assistive Technology

10. U.S. Department of Justice and ED should collaborate to issue specific joint agency guidance regarding Assistive Technology and quality Assistive Technology assessments as connected to the interpretation of Least Restrictive Environment, WIOA Section 511, and Americans with Disabilities Act Title II and Olmstead provisions. Specific guidance should include:

- a. evidence-based practices that require supplementary aids and services to be provided in a competitive, community-based, integrated employment setting,
- b. strategies to support education personnel and employment service organizations,
- c. requirements that local and state entities (including LEAs, SEAs, VR, and Medicaid) develop joint policies to fund assistive technologies that students need to access CIE, and eliminate barriers to continued access to assistive technology as a work accommodation, allowing the technology to follow students from school to the workplace, and
- d. a strengthened review of access to assistive technology for students with significant disabilities as part of state oversight, monitoring, and enforcement strategies.

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- ²¹ Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, Chapter Two: Transition to Careers, September 2015.
- ²² Carter, E. W., Austin, D., & Trainor, A. A. (2012). Predictors of post school employment outcomes for young adults with severe disabilities. *Journal of Disability Policy Studies*, 23(1), 50-63.
- ²³ Test, D. W., Mazzotti, V. L., Mustian, A. L., Fowler, C. H., Kortering, L. J., & Kohler, P. H. (2009). Evidence-based secondary transition predictors for improving post-school outcomes for students with disabilities. *Career Development for Exceptional Individuals*, 32, 160–181.
- ²⁴ Wehman, P., Sima, A., Ketchum, J., West, M., Chan, F. & Luecking, R. (2014). Predictors of successful transition from school to employment for youth with disabilities. *Journal of Occupational Rehabilitation*, 25, 223-234.
- ²⁵ Carter, et al., op cit., Test, et al., op cit.
- ²⁶ Schall, C., Wehman, P., Brooke, V., Graham, C., McDonough, J., Brooke, A., Allen, J. (2015). Employment interventions for individuals with ASD: The relative efficacy of supported employment with or without prior Project SEARCH training. *Journal of Autism and Developmental Disorders*. Advance online publication. doi:10.1007/s10803-015-2426-5.
- ²⁷ Certo, N., Luecking, R., Murphy, S., Brown, L., Courey, S., & Belanger, D. (2009). Seamless transition and long-term support for individuals with severe intellectual disabilities. *Research and Practice for Persons with Severe Disabilities*, 33, 85-95.
- ²⁸ Luecking, D.M. and Luecking, R. (2015). Translating research into a seamless transition model. *Career Development and Transition for Exceptional Individuals*, 38; 1, 4-13
- ²⁹ Hess, J., Gutierrez, A. (2009). Family information guide to assistive technology and transition planning. Academy for Educational Development, Washington, DC.
- ³⁰ Morningstar, M. E., & Mazzotti, V. L. (2014). *Teacher preparation to deliver evidence-based transition planning and services to youth with disabilities*. University of Florida, Collaboration for Effective Educator, Development, Accountability, and Reform Center website. <http://cedar.education.ufl.edu/wp-content/uploads/2014/08/transition-planning.pdf>.

Chapter Three: Capacity Building through Changes in the Use and Oversight of 14(c) Certificates

Introduction

As detailed in the Interim Report and as reiterated in this report's introduction, an estimated 228,600 people with intellectual or developmental disabilities (I/DD) and other significant disabilities involved in paid work are working for subminimum wages under Section 14(c) certificates issued by the U.S. Department of Labor (DOL) Wage and Hour Division (WHD).³¹ The great majority of these individuals are working in congregate work centers, or sheltered workshops, or other congregate working situations such as work crews comprised of other individuals with disabilities. Based on April, 2015 data from WHD, there are 2,820 entities in the United States which hold Section 14(c) subminimum wage certificates, almost all (89%) of whom are Community Rehabilitation Programs (CRPs) serving individuals in congregate settings.³² The fact that 75 percent of individuals with I/DD receiving day or employment services through a state I/DD system are in a sheltered or facility-based environment³³ suggests a systemic belief that not much else is possible, except for a relatively small minority of persons served. At the same time, these facility-based 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 culture with a low expectation for competitive integrated employment (CIE).

Recognizing the need to minimize this fate for students and youth with disabilities who are preparing to exit public school, 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 prohibitions on schools contracting with Section 14(c) certificate holders. The intent of Section 511, and WIOA more broadly, is to ensure that transition from secondary education and/or postsecondary education (PSE) to CIE is the primary goal for youth in transition, including youth with significant disabilities.

In light of the goals outlined for CIE within WIOA, the Advisory Committee Charter (2014) specifies that the Committee evaluate the use of subminimum wages under Section 14(c) of the Fair Labor Standards Act (FLSA), and advise the Secretary of Labor on policies and practices that will lead to a significant and systematic reduction in the misuse of 14(c) certificate programs and the dependence on subminimum wages and segregated service placements. The Charter also directs the Committee to review the use of certificate programs and recommend ways to improve oversight and reduce reliance on such certificates.

To that end, each of the recommendations below is a result of the underlying need to amend Section 14(c) of the FLSA so that it reflects and aligns with modern federal disability policy and laws, which are based on the assumption that all individuals with disabilities are capable of, and have a right to, CIE.³⁴ The current widespread practice of paying workers subminimum wages, based on the assumptions that individuals with disabilities cannot perform work, or on assumptions about the unavailability of alternative work opportunities, is antithetical to the intent of modern federal policy and law.

Addressing this disparity between policy intent and current practice through the amendment of Section 14(c) of FLSA will require three areas of activity and focus:

- Congress amending the FLSA to allow for a multi-year, well-planned phase-out of Section 14(c). The plan should include measures to mitigate unintended consequences for individuals currently receiving services from organizations using 14(c) certificates;
- WHD engaging in stronger oversight of 14(c) certificates and using stricter standards for issuance of new certificates and renewals of existing certificates; and
- The federal government assisting states with capacity building of service systems to provide CIE services as alternatives to those provided under programs using a 14(c) certificate.

The original nine recommendations contained in the Interim Report³⁵ are represented in these three main thematic areas. The following, along with a brief summary of applicable details and principles, are primary recommendations from the Committee on the use and oversight of 14(c) certificates.

Recommendations

1. *Congress should amend Section 14(c) of FLSA to allow for a well-designed, multi-year phase-out of the Section 14(c) Program that results in people with disabilities entering CIE.*
 - a. Oversight of the phase out should include:
 - i. Enhanced data collection and analysis of 14(c) certificate holders and individuals paid under the certificate, including earnings and hours worked
 - ii. Data collection and analysis of employment services received by individuals paid under the certificate and employment outcomes achieved
 - iii. Increased penalties for misuse of the certificate
 - b. A federal interagency panel should be appointed, by the Secretary of Labor, to develop and oversee a detailed plan for the phase out that considers:
 - i. Mandates of WIOA
 - ii. Resources for technical assistance (see Recommendation Number 3)
 - iii. Measures to mitigate unintended impact of service transformation on subminimum wage recipients

- iv. Safeguards to ensure self-determination and that individuals are engaged and equipped with information and the opportunities necessary for understanding options and making informed choices
 - v. Attention to the long-term development of career pathways for individuals
2. *WHD should engage in stronger enforcement of 14(c) certificates and should use a strict standard for issuance or renewal of 14(c) certificates “only when necessary... to prevent the curtailment of opportunities for employment.”*
- a. Prior to issuing a new 14(c) certificate or renewing an existing one, DOL should require a state (through the state’s Medicaid agency, Department of Labor, or Department of Disability Services) to submit evidence that there is a current lack of employment opportunities for people with disabilities such that a time-limited 14(c) certificate is "necessary to prevent the curtailment of employment opportunities" for people with disabilities, and to develop a plan for addressing the lack of opportunities. The submission must include, at a minimum, data on the existing rate of CIE within the state for the population proposed by the certificate applicant and articulate a plan, with specific timeframes and benchmarks, to expand access to CIE for the purpose of making the use of 14(c) certificates unnecessary in the future. To the extent necessary, DOL should take regulatory action to implement this recommendation.
 - b. Require 14(c) certificate applicants to provide information along with their application to substantiate their claim that the certificate is “necessary to prevent the curtailment of employment opportunities" for people with disabilities, including data on the availability of integrated employment and supported employment services within the region they serve. The 14(c) applicant must also describe the steps it will take to assist individuals under 14(c) to obtain CIE, including the steps it is taking as required by Section 511 of WIOA. WHD should evaluate the progress made towards meeting the timeframes and benchmarks for expanding access to CIE in determining whether to renew a 14(c) certificate. To the extent necessary, DOL should take regulatory action to implement this recommendation.
 - c. WHD should incorporate input from federal partners into its 14(c) application and re-certification review processes, including the Centers for Medicare & Medicaid Services (CMS), the Administration on Community Living, and the Rehabilitation Services Administration in order to adequately evaluate the information about employment opportunities and the adequacy of remedial plans to support the issuance or renewal of 14(c) certificates.
3. *In addition to technical assistance activities recommended in other sections of this report, federal agencies that have responsibility either through WIOA or other federal initiatives to increase CIE for people with significant disabilities – including the DOL, the U.S. Departments of Health and Human Services and Education, and the Social Security*

Administration -- should coordinate provision of technical assistance resources for states to encourage transforming 14(c) certificate holders to employment agencies that offer CIE.

- a. For maximum impact, provision of technical assistance should focus on those states that are successfully transforming employment options from 14(c) to CIE either because of the work these states are doing to comply with the Home & Community Based Services (HCBS) Settings Rule or the WIOA mandate. The results should be shared with all states.
- b. The technical assistance resources should include, at a minimum:
 - i. Redesigning the business plans of non-profit employers with 14(c) certificates, typically defined as CRPs, to develop strategies that lead to and support individuals with disabilities pursue and sustain competitive, integrated employment
 - ii. Methods of re-deploying staff and restructuring staff roles
 - iii. Staff training on CIE strategies
 - iv. Service delivery by CRPs that ensure self-determination and informed choice, and career pathways
 - v. Data collection and management of CIE services
 - vi. Repurposing of facilities/spaces
- c. CMS should enforce guidance regarding the time-limited nature of pre-vocational services for the purpose of individuals moving into CIE, as opposed to moving to other non-vocational segregated services.

³¹ U.S. Department of Labor Wage and Hour Division Presentation to the Committee. January 22, 2015

³² Verified by U.S. Department of Labor Wage and Hour Division.

³³ 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.

³⁴ The Ticket to Work and Work Incentives Improvement Act of 1999, The Individuals with Disabilities Education Improvement Act of 2004, and the Workforce Innovation and Opportunity Act (signed into law on July 22, 2014) are each predicated on the expectation that services delivered through their respective mandates are available to and will benefit all individuals with disabilities to whom the services apply. The Americans with Disabilities Act provides people with disabilities a civil right to live, work, and receive services in the most integrated setting in the community.

³⁵ Advisor Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, Chapter Six: Section 14(c) Program, September 2015.

Chapter Four: Capacity Building in the Marketplace

Introduction

There are many contributors to the low employment participation of people with disabilities in general, and to the low participation of people with intellectual or developmental disabilities (I/DD) and other significant disabilities in particular. Employer engagement is an often overlooked explanation, which results in major barriers to employment opportunities. However, there are organizations such as the U.S. Business Leadership Network[®] (USBLN), that helps businesses drive performance by leveraging disability inclusion in the workplace, supply chain, and marketplace. USBLN serves as the collective voice of nearly 50 Business Leadership Network affiliates across the United States, representing over 5,000 businesses that are raising awareness and opening doors to the employment of people with disabilities (www.usbln.org). In addition, the National Organization on Disability's (NOD), Bridges to Business program also works with employers to increase the employment of people with disabilities (www.nod.org). Still, the high demand for work by people with disabilities is not as yet being met by businesses. Employers that do have diversity and inclusion initiatives recognize that hiring persons with disabilities is a cost-effective way to build an inclusive workforce that is representative of the business's customer base, and that individuals with significant disabilities must be perceived and portrayed as an asset to the company – not a risk.

The predominant business narrative for hiring individuals with disabilities in America in the recent past has been that it is “the right thing to do,” thus appearing to have been a patriarchal appeal, rather than an identification of the opportunities and benefits associated with developing an inclusive workforce and ways to accordingly improve the bottom line. Further, this pervasive message has perpetuated inaccurate and negative perceptions, but also fails to provide meaningful guidance on effectively building a more diverse and productive workforce that includes employees with I/DD and other significant disabilities.

Although presumptive employability is regarded as a desirable philosophical underpinning to disability employment policy, the concept does not necessarily correspond to employer perspectives nor is it expressed in employer-centric terms. Employers' hiring activity is mostly related to operational or revenue objectives. However, appeals to employers have historically been cast in disability-centric terminology, such as “Hire the Handicapped” campaigns in the past, as opposed to the current appeals for employers to hire people with disabilities as an untapped resource of talent.^{36,37} It is not surprising, then, that there has been a longstanding struggle with crafting the right message to employers about hiring people with disabilities. Contemporary messaging would be stronger if it showcased specific outreach and recruitment strategies used by such companies that have worked to change corporate policies directed to the

employment of people with disabilities such as AMC Theaters’ “Focus Program,” PepsiCo’s “Pepsi ACT Program,” and Walgreens’s Distribution Center and its retail store “REDI Program” which have been successful in expanding disability hiring.³⁸

In addition to better messaging and outreach, and as detailed in the Committee’s Interim Report,³⁹ businesses also need support from competent and well-educated employment services personnel directed to both the outside to independent service provider organizations that provide employment services and a “pipeline” of candidates to businesses but also to personnel that work within the public workforce system. Employment services personnel must not only be educated to understand how businesses work but also to identify and address employment needs. Personnel also must be educated on how to appropriately assess the job seeker’s career interests, skill sets, and abilities that result in appropriate job matches. Employers who actively seek to affirmatively hire individuals with disabilities report that finding qualified job candidates as a major barrier.⁴⁰ Thus, there is a need to establish partnerships with business in order to ensure that disability employment organizations and employment service personnel, including those in the public workforce system that includes the American Job Centers (AJCs), receive preparation and training on how to effectively engage businesses by using better messaging, and translating effective methodology such as supported and customized employment into benefits for prospective employers of individuals with significant disabilities.

In addition, individuals with I/DD and significant disabilities need education on how employment may impact their Social Security or other benefits so that they may make informed choices about returning to or seeking employment while also learning more about what other resources may be available. Benefits counseling is an asset to employers in recruiting talent when individuals with disabilities have received this counseling and have decided that they are ready to enter the workforce.

Individuals with I/DD and significant disabilities also need more opportunities to enter training programs so that they may be better qualified to meet the needs of businesses. Another factor in employer engagement is the lack of access across the U.S. to public and para-transit system transportation by individuals with significant disabilities, and in particular in rural America.⁴¹ This impacts businesses in their ability to recruit talent and access to competitive integrated employment (CIE) by individuals with disabilities.

Regardless of these barriers, opportunities exist to take advantage of employment prospects in high-growth industries, notably in healthcare, although none of these industries, including healthcare, have completely opened their doors to people with I/DD or significant disabilities other than for lower-skilled entry-level jobs. Employment in healthcare occupations is expected to add up to 2.3 million new jobs by 2024.⁴² To attract new employees and build a more stable workforce, health care employers are focused on recruiting from non-traditional labor pools,

increasing the diversity of workers, and reducing turnover rates. However, to take advantage of this opportunity, specific attention and initiatives, similar to those underway at healthcare institutions such as Rush University Medical Center in Chicago and Spaulding Rehabilitation Network in Boston,^{43,44} will be necessary to elevate expectations that individuals with I/DD and other significant disabilities can fill this need and develop a track record of success. Other examples of initiatives to foster careers in the healthcare industry include institutions of higher education such as Onodaga Community College in New York, which offers a transition program for youth with I/DD and other significant disabilities in healthcare information technology. As well, Metro North Employment, Inc. and two affiliate AJCs located near Boston, offer training in healthcare careers that are open to qualified people with disabilities, which can result in licenses or certification.⁴⁵ In addition, the National Organization of Nurses with Disabilities also reports that there are individuals with disabilities - many with I/DD and significant disabilities – that have graduated from nursing programs and are employed in the workforce or, are currently enrolled in nursing-schools across the U.S.⁴⁶

Two other areas related to employer and business engagement are important to highlight. First, in the fall of 2013, the U.S. Department of Labor's (DOL) Office of Federal Contract Compliance Programs (OFCCP) finalized regulations implementing section 503 of the Rehabilitation Act with an effective date of March 24, 2014.⁴⁷ Since the spring of 2014, federal contractors have been working to meet the seven percent goal of including people with disabilities into their workforce by developing and submitting their outreach and recruitment plans to OFCCP and encouraging current and newly-hired employees with disabilities to self-disclose. In spite of efforts to reassure employees that there is no threat of negative consequences, businesses seeking to meet the seven percent goal report that people with disabilities are hesitant to self-disclose.⁴⁸ Although the benefits of disclosure are clear on the employer side of the equation, the benefits of self-disclosure for employees with disabilities still have not yet been effectively articulated. The Section 503 rules task OFCCP to work closely with Federal contractors as they work towards compliance and as this initiative potentially opens wider employment opportunities for individuals with I/DD and other significant disabilities.

Finally, federal tax policies provide incentives to employers that hire people with disabilities and encourage businesses to make worksites more accessible for both employees and customers. The current tax incentives, including the Work Opportunity Tax Credit, the Disabled Access Credit, and the Architectural and Transportation Barrier Removal Deduction, which are directed to people with disabilities, have been reported as underutilized.⁴⁹ Reasons for this include a general lack of awareness by businesses that the incentives exist and that the financial incentives are not sufficiently motivating for employers to participate. Thus, there is a need to update the associated legislation.

Given these realities, the Committee has identified eight key areas for organizing its recommendations for building capacity in the marketplace: Communication and outreach to businesses, public workforce employment services personnel education, the public workforce system's approach to increasing training opportunities for individuals with I/DD or significant disabilities, the expansion of the Benefits Counselor certification through the Work Incentives Planning and Assistance Project (WIPA) grant program, transportation, high-growth industries with a focus on healthcare, the OFCCP Section 503 regulations, and tax incentives. Recommendations in each of these areas are presented below with accompanying additional detail.

Recommendations

1. *Congress should provide funding to DOL to develop and disseminate public service announcements and other media resources in order to conduct a dynamic and impactful national marketing campaign directed to businesses. The campaign must target employers of all sizes that promote business-to-business communication, highlight the impact and benefits to business, and highlight the accomplishments of people with I/DD and significant disabilities working in CIE.*
 - a. This marketing campaign should be developed in collaboration with business representatives that have successful disability inclusion initiatives and with business leadership organizations, such as, but not limited to USBLN, NOD, and the Society for Human Resource Management (SHRM) as appropriate. The campaign should spotlight model businesses that have effectively built a more inclusive workforce through the development of outreach and recruitment strategies resulting in policies and practices specifically aimed at recruiting, hiring, and retaining employees with I/DD and other significant disabilities such as those mentioned in the introduction.
 - b. The marketing campaign public service announcements (PSA) and other media resources should be directly disseminated nationwide to organizations, including, but not limited to: chambers of commerce at the state and local level, business councils, trade associations, Small Business Administration offices, and other entities. DOL should authorize and encourage these business-directed organizations to link the PSA and/or other media resources on their websites in order to educate their members about hiring people with I/DD and significant disabilities and how to connect with businesses that have successful diversity initiatives.
2. *Congress should provide funding and mandates to the U.S. Department of Education (ED) and DOL to develop training that includes certification requirements that will be presented in a web-based centralized format for all employment services personnel who work within*

the public workforce system with businesses and individuals with I/DD and other significant disabilities.

- a. Nationwide web-based, centralized instruction must be developed and implemented in order to mandate that all public workforce system employment services personnel become certified to ensure the continuity of the provision of quality services to businesses and people with disabilities, in particular to people with I/DD and significant disabilities.
- b. Educational online initiatives should include, but not be limited to: all employment services personnel within the public workforce system and directed to AJC management and staff, business service representatives, Workforce Development Board members and staff, state workforce Executives, and Vocational Rehabilitation staff.
- c. Leads to a certification credential for both current and new employment services personnel working within the public workforce system
- d. Certification requirements should build on existing standards, such as those established by the Association for Persons Supporting Employment First (APSE) Certified Employment Support Professional (CESP) exam, and augment any other existing professional standard requirements, e.g., Certified Rehabilitation Counselor
- e. Designed to provide education through individual online modules that include, but are not limited, the following:
 - i. Disability Awareness Module that includes how to communicate and work with individuals with disabilities, with a focus directed to people with I/DD and other significant disabilities
 - ii. Detailed strategies for assisting AJC customers with significant disabilities to pursue and achieve CIE
 - iii. Specific business-related content, including general market and industry information and specific recommendations and guidance from businesses that have successfully included individuals with significant disabilities in their workforce
 - iv. Funding including the blending and braiding of funds and their utilization
 - v. Ways to address physical, communication, and programmatic barriers to employment that may exist in AJCs
 - vi. Universal access
 - vii. Assistive technology

- viii. The Social Security Administration’s (SSA) Ticket to Work Program
 - ix. Work incentives and benefits counseling
 - x. Guidance on making referrals to outside agencies in order to reduce duplication
 - xi. ADA education on the “Provision of Employment Services,” ADA standards that address those relating to both provision of services (e.g., ADA Title II, Section 504) and employment (e.g., ADA Title I, and specific parts of Section 504 regulations (29 CFR part 32 subparts B and C), and on
 - xii. WIOA Section 188
- f. Once the online education and certification requirements are developed, the online modules should be designed so that employment services personnel may re-enter the modules so that they may access information at-will to immediately find resource information included in any module. This will ensure that personnel will be better prepared on how to communicate with businesses and to guide them through a customized approach to recruiting, hiring, retaining, advancing, and supporting employees with I/DD and significant disabilities into CIE
 - g. Funding for the online education initiative should include a budget for ongoing updates to keep the education on target with changing federal policies and any additional information
3. *Congress should mandate that within the public workforce system a percentage of local Adult and Dislocated Worker and Vocational Rehabilitation (VR) formula funds be set-aside to support work experiences, including internships, apprenticeships, on-the-job training, and paid work experiences for individuals with I/DD or other significant disabilities.*
- a. AJCs and state VR agencies must further divide the mandated percentage of work-based learning funding across the customer groups of individuals with I/DD and other significant disabilities they serve. AJCs, for example, should ensure funding is divided between adults, dislocated workers, and youth with I/DD and other significant disabilities. State VR agencies must ensure funds are allocated for both adult and youth populations that have I/DD or other significant disabilities.
 - b. WIOA emphasizes engaging employers across the workforce system to align training with needed skills and match employers with qualified workers. The law also emphasizes training that leads to industry-recognized postsecondary credentials. To further support WIOA’s focus on competitive, integrated employment as the priority outcome, a percentage of all work-based learning funding must be specifically set aside and earmarked exclusively for use with youth and adults with I/DD and other

significant disabilities. The amount of set-aside funding should be individually determined for each local workforce area contingent on the local workforce needs.

- 4. In order to insure that businesses have qualified workers that are educated on the impact that employment may have on their state or federal benefits, Congress should increase funding of the Social Security Work Incentives Planning and Assistance Project (WIPA) grant program to expand and provide opportunities for more benefit counselors to be certified, and fund the U.S. Department of Labor and Social Security Administration collaboration to promote and encourage the onboarding of Social Security Administration Ticket to Work Employment Networks (ENs) into AJC sites.*

Rationale/Details

Social Security Work Incentive and Planning Assistance Program (WIPA) provides work incentive planning and assistance, benefits counseling, and guidance for planning for a more economically self-sufficient future. WIPA certified benefits counselors offer advice and guidance to SSDI and SSI beneficiaries about obtaining and maintaining employment and building more independent and productive lives while also providing information on obtaining vocational rehabilitation and employment related services including referrals to Employment Networks. The WIPA Program is an integral part to educating individuals with disabilities on the use of Social Security work incentives and the benefits of employment.

Funding for the WIPA program is based on a formula with a maximum cap established in the Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170) and has remained at this level since 2001. As a result, and in spite of increased demand for services, the number of WIPA projects has decreased from 107 in 2006 to 83 currently nationwide.

SSA currently allows community service providers to receive this training for free as part of the training and technical assistance contract to train Community Work Incentive Coordinators (CWICS) to become benefits counselors as part of the WIPA grant. However demand for this training is very high and the capacity to meet the demand for certification classes is very limited.

There are approximately 2,500 AJCs nationwide providing assistance with career counseling, job training, job placement, and other services. In many instances, these AJCs provide employment support services to SSA disabled beneficiaries seeking employment. Currently, approximately 120 of these AJCs serve as SSA ENs. By becoming an EN, the AJCs can receive payment from SSA by placing beneficiaries into jobs. Part of these funds can be used by the AJC to establish or facilitate participation in an administrative structure needed to manage the administrative and other logistical aspects surrounding this effort.

Given these circumstances:

- a. Congress should increase funding of WIPA grant program to support the expanding population of Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) disability beneficiaries seeking to enter the workforce.
 - b. In order to improve employment outcomes for individuals with disabilities, Congress should provide expanded funding for SSA benefits counseling training to service providers working directly with individuals with disabilities and receiving SSI and/or SSDI benefits. This funding would be utilized to expand the number of classes to better meet the need. Eligible service providers who would receive this training include VR, ENs, appropriate job support staff from employers of SSA beneficiaries, and other entities engaged in employment support services for this population.
 - i. Employer personnel may receive this training as they are engaged in job coaching or other roles designed to support people with disabilities. Expanded training should be facilitated through existing, accredited programs and should result in the certification of the trainee as a benefits counselor. This will improve employment outcomes for individuals with disabilities as they will understand about how working will allow them to make informed decisions about employment, earnings and investment.
 - c. In order to increase CIE for individuals with disabilities, Congress should fund the DOL and SSA to collaborate to promote and encourage the onboarding of AJC sites as SSA Ticket to Work ENs.
5. *Congress should direct the Secretary of the U.S. Department of Transportation (DOT) to ensure that safe, seamless, cross-jurisdictional, accessible transportation is available for people with disabilities, including but not limited to establishing Para-transit Systems in urban and rural areas across the United States, and utilizing the latest technological and digital strategies to address the most glaring deficits, especially in rural areas.*
- a. DOT should build on existing new technological and digital strategies to better address transportation issues for people with disabilities. For example, the National Center for Transit Research (NTR) provided funding to researchers at the University of Illinois (Chicago) Urban Transportation Center to develop an online tool that permits experts to evaluate accessibility by different transportation modes and use that information to improve livability.⁵⁰ DOT should consider a grant program to fund this effort on a national scale.
 - b. DOT should develop additional grant opportunities aimed at providing additional funding for travel training, updating safety mandate requirements, and training for transportation vendors on appropriate and respectful communication with and treatment of people with I/DD and significant disabilities. DOT should identify strategies for broad nationwide dissemination of all grant opportunities.

- c. DOT should create incentives, including priority status on grant applications, for employers who demonstrate commitment to hiring and sustaining CIE of individuals with disabilities by incorporating transportation solutions and supports into their business practices.
 - d. DOT must ensure that businesses providing their own transportation services for customers and/or employees with their own transportation vendors be included in all training and educational opportunities.
6. *Recognizing that healthcare is the fastest growing sector in the American economy, Congress should fund ED and DOL to develop initiatives that will educate employers within healthcare industries about the abilities of people with I/DD and significant disabilities and to create opportunities for people with I/DD and significant disabilities to participate in educational training, apprenticeships, and certification programs in healthcare and other high-growth fields.*
- a. These initiatives should highlight success stories, including those from healthcare companies and institutions of higher of education, as well as showcase examples of effective partnerships between healthcare businesses and the public workforce system such as those listed in the introduction to this chapter.
 - b. Because the perception may be that people with I/DD or those that have significant disabilities cannot work in healthcare careers and because some people with disabilities have been told they cannot pursue those careers, DOL and ED should provide outreach and education to individuals with significant disabilities to promote the idea that healthcare careers are an option.
7. *Congress should direct DOL to develop and implement strategies to provide additional outreach and guidance to Federal contractors working to comply with OFCCP Section 503 Rules during the ongoing “rollout” period and should fund the U.S. Department of Labor to develop and implement projects that-*
- a. Provide training on the 503 Rules to VR and AJC staff and direct the Employment and Training Administration (ETA) to disseminate guidance to regional and local workforce development boards and directors that emphasize the importance of the training and promote the participation of AJC and VR staff.
 - b. Direct federal contractors to identify themselves on the state job database systems. Identifying as a contractor allows job seekers, AJC and VR staff to see the status of Federal contractor job opportunities and ultimately enhances efforts to recruit job seekers with disabilities.
 - c. Create pilot programs to research and identify effective strategies for federal contractors to use in outreach, recruitment, and hiring of people with disabilities since

- hundreds of federal contractors and subcontractors have never before included people with disabilities in their workforce. Once the studies are completed, DOL should disseminate best practices to other federal contractors to assist their development of outreach and recruitment plans directed at job seekers with disabilities. This guidance also must create employer awareness of the real fears individuals may have about disclosure and provide strategies businesses can use to proactively alleviate these fears.
- d. DOL should monitor federal contractors to ensure that they provide information about the Invitation to Self-Identify which is included in the new 503 regulations in order to invite applicants to self-identify as individuals with disabilities at both the pre-offer and post-offer phases of the application process, using language prescribed by the OFCCP. The new regulations also require that contractors invite their employees to self-identify as people with disabilities every five years, using the prescribed language. In addition, incorporation of the EO Clause language is to be used when incorporating the equal opportunity clause into a subcontract by reference. The mandated language, though brief, will alert subcontractors to their responsibilities as Federal contractors.
 - e. Ensure that all electronic job applications provided by federal contractors include a statement directed to self-disclosure as in OFCCP form CC-335, OMB Control Number 1250-0005, Voluntary Self-Identification of Disability. As directed to candidates applying for a job, the form states,
“Because we do business with the government, we must reach out to hire and provide equal opportunity to qualified people with disabilities. To help us measure how well we are doing, we are asking you to tell us if you have a disability or if you ever had a disability. Completing this form is voluntary, ...Any answer you give us will be kept private and will not be used against you in any way.”
 - f. Develop outreach materials that provide compelling reasons for individuals to disclose their disabilities to potential employers and raise employer awareness of potential self-disclosure concerns. Materials must highlight the specific benefits of disclosure as well as address the most commonly identified fears: confidentiality, possible “labeling,” and negative impact on career growth. Dissemination efforts must target individuals with disabilities as well as business organizations
 - g. Implement regional federal contractor roundtable discussions to establish better relationships between DOL and federal contractors. Also, SSA and/or local Ticket to Work Program Employment Network representatives and VR business services staff can act as resources to businesses during the discussions. Goals for the roundtables must include: fostering open communication, enhancing trust and collaboration,

improving understanding of different perspectives, and increasing support for the mutual goals of increasing integrated competitive employment for people with disabilities.

8. *Congress should update and amend the Work Opportunity Tax Credit (WOTC), the Disabled Access Credit (DAC) and the Architectural and Transportation Barrier Removal deduction to expand eligibility criteria, increase financial benefits to eligible employers, and heighten programmatic oversight.*
 - a. Efforts to increase WOTC utilization and to evaluate its effectiveness should include the following:
 - i. Expand WOTC to include recipients SSDI benefits under Title II of the Social Security Act as a new target group.
 - ii. Monitor the new online WOTC application process to ensure that employer applications are processed in a timely fashion.
 - iii. Simplify the WOTC application process.
 - iv. Both at the federal and state level, WOTC websites should provide business-friendly information on WOTC, using language that is consistent with the federal WOTC site. The websites should include an ongoing feedback loop with employers to gather data on the efficacy of the application process, including ease of use, overall satisfaction, and suggested site improvements. The outcome of employer feedback/surveys should result in WOTC federal and state website changes based on employer suggestions that improve their access and address employer need for additional information.
 - v. Fund DOL to conduct an empirical longitudinal study examining the impact and effectiveness of the WOTC tax credit. In particular, the study should explore retention rates, opportunities for advancement, and the role of the WOTC in the decision to hire employees with disabilities. If possible, the study also should collect data on how many people with I/DD or other significant disabilities are hired under WOTC.
 - b. Considering the number of small businesses that are present in the American economy, Congress should revise the standards for the Disabled Access Credit (DAC) to:
 - i. Expand eligibility criteria beyond the current limits of businesses with \$1 million or less in gross receipts or with 30 or fewer full time employees for the previous year, and
 - ii. Include annual indexation for inflation.

- iii. Additionally, Congress should require the Internal Revenue Service (IRS) to develop and disseminate materials providing regulatory guidance on DAC eligibility and applicability. Materials should target employers, accountants or tax preparation professionals and should clarify what expenses the law is intended to cover, in order to reduce the confusion small business employers have about the Disabled Access Credit.
- c. Amend the Architectural and Transportation Barrier Removal Deduction to the Architectural, Transportation, Communication and Technology Barrier Removal:
- i. Make it a tax credit instead of a tax deduction.
 - ii. Increase the allowable amount for any size business beyond the current \$15,000 limit per year to \$35,000 a year, while taking into account inflation and the increased cost of products, construction and services;
 - iii. Expand “barrier” categories to better reflect those of the modern workplace and to explicitly include both “communications” and “technology” barriers. For example, the applicability of the current deduction should be expanded to cover technological-based expenses such as software, assistive technology, and Section 508 website compliance. This will better address accessibility barriers experienced by today’s employees, potential employees, and customers. Accessible websites will improve the ability of job seekers with I/DD and significant disabilities to access online job opportunities by improving visibility, navigation, and downloading of job applications. Businesses using this tax (credit) to improve communications or technology might include retailers that provide monitors for customers to access catalogue items, product information, prices and more. A tax (credit) could be used to offset the expenses associated with equipping these computer-monitors with assistive technology that would allow customers with vision loss to access the information as well.
 - iv. Clarify the law to ensure that accessible transportation is included in any business subsidized employee or customer transportation so that the transportation barrier removal deduction (credit) extends not merely to the physical accessibility of vehicles but to their use on behalf of people with disabilities.
- d. Considering the underutilization of tax incentives by businesses, provide funding to the IRS and DOL to develop a public campaign publicizing and explaining the tax incentives available to businesses to support the hiring and retention of employees with disabilities and/or to provide better access for employees and customers with disabilities.

³⁶ Luecking, R. (2008). Emerging employer views of people with disabilities and the future of job development. *Journal of Vocational Rehabilitation*, 29, 3-13.

³⁷ Luecking, R. (2011). Connecting employers with people who have intellectual disability. *Intellectual and Developmental Disabilities*, 49, 261-273.

³⁸ Katz, E., O'Connell, M., & Nicholas, R. (2012). *Strategies to support employer driven initiatives to recruit and retain employees with disabilities*. Retrieved on June 12, 2015 from <http://kesslerfoundation.org/media/Kessler%20Foundation%20and%20Heldrich%20Center%20Issue%20Brief%20on%20Strategies%20for%20Hiring%20Employees%20with%20Disabilities>

³⁹ Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, Chapter Four: Marketplace Dynamics, September 2015.

⁴⁰ Kessler Foundation and National Organization on Disability. (2010). *Kessler Foundation/NOD survey of employment of Americans with disabilities*. New York, NY: Harris Interactive.

⁴¹ National Council on Disability. (2015). *Transportation update: Where we've gone and what we've learned*. Washington, DC: National Council on Disability.

⁴² U.S. Department of Labor, Bureau of Labor Statistics (2014). *Persons with a Disability: Labor Force Characteristics Summary*. Retrieved June 16, 2015 from <http://www.dol.gov/odep/newsletter/>

⁴³ Need citation

⁴⁴ Need citation

⁴⁵ Need citation

⁴⁶ *STEM Careers for People with Disabilities*, American Chemical Society (ACS) "Science & the Congress Project," November 2015, Congressional Staff Briefing, Russell Senate Building.

⁴⁷ U.S. Department of Labor, OFCCP (2014) New regulations: Section 503 of the Rehabilitation Act. Retrieved on May 28, 2016 from <https://www.dol.gov/ofccp/regs/compliance/section503.htm>

⁴⁸ The United States Business Leadership Network, www.usbln.org

⁴⁹ U.S. General Accounting Office (2002). Business tax incentives: Incentive to employ workers with disabilities receive limited use and have uncertain impact. GAO 03-39, Washington, DC.

⁵⁰ Need citation

Chapter Five: Capacity Building in Specific Federal Agencies

Introduction

Current policies in federal government programs reflect years of attempts to find the best ways for supporting people with disabilities. Each agency has approached this task with a different understanding of the needs and as a consequence policies are sometimes in conflict and become barriers to a goal of increasing competitive integrated employment (CIE). We have moved from seeing people with disabilities as unable to work to recognizing they bring competency and contribution to the workforce. To fully capitalize on this vital segment of the workforce, however, policies must be aligned to support and achieve CIE. In order to ensure that people with disabilities have access to CIE, federal agencies must work together to support that option for everyone and to eliminate or work around conflicting purposes and mandates.

Notably, the Social Security Administration (SSA) should emphasize employment as a goal for working age Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) beneficiaries and help dispel the fears of losing cash, health benefits, financial stability and personal security. Likewise, the Centers for Medicare & Medicaid Services (CMS), which provide detailed guidance to states on how to promote CIE under 1915(c) Waivers that cover people with developmental disabilities, must provide similar detailed advice on how to use other Medicaid authorities to promote CIE for working age people who use mental health and physical disabilities supports.

Thus, in the context of expanding CIE for working age individuals with disabilities federal agencies must determine how to ensure that non-work programs and services complement programs and services designed to promote employment complement working age people's work lives and not substituting for or replacing that important role. These services may include integrated day services and non-residential Long Term Supports and Services (LTSS), that is, activities that enable individuals eligible for HCBS waivers to be served in a variety of community-based settings to learn activities of daily living and participate in community recreation opportunities. In the context of CIE, integrated day services should consist of community-based pursuits determined by individual choice that complement and help maximize CIE and that provide a meaningful set of activities outside of scheduled work hours. Additionally, in order to fully access and succeed in CIE individuals will require "wraparound supports," that is, complementary services that enable individuals to find and sustain employment such as affordable housing, transportation, and other supports necessary to facilitate individual availability to pursue CIE. The lack of complementary integrated day services and wraparound supports often constitute major barriers to CIE.⁵¹

Significant obstacles to CIE also include the rules, processes, and perceptions associated with SSA programs including SSI and SSDI. These obstacles and their impact have been well documented.^{52,53} Recent initiatives by SSA, including the Ticket to Work program and major research initiatives such as the National Youth Transition Demonstration,⁵⁴ represent a recognition that changes need to be made to these programs in order for recipients to achieve employment, while still maintaining eligibility for income maintenance and essential health benefits so as to have stability in their lives as they pursue CIE. In order to promote CIE for SSI and SSDI beneficiaries, changes to program rules need to be made so that people may maintain access to income maintenance and health benefits as needed in order to risk a chance to seek out CIE.

This chapter provides three specific recommendations to address these issues. Each recommendation is accompanied by additional rationale and detail to further illustrate the recommendation's focus and intended impact.

Recommendation: Cross Agency Working Group Regarding Integrated Day Services and Wrap-around Supports

1. *The U.S. Department of Health and Human Services, in collaboration with the U.S. Departments of Labor (DOL), Education (ED), Transportation (DOT), and Housing and Urban Development (HUD), and SSA, should convene a cross-agency working group to provide policy guidance and provide technical assistance on integrated day services and other wraparound supports⁵⁵ that can help people with significant disabilities access CIE. At a minimum, the policy guidance should:*
 - a. Clarify that the purpose of integrated day and wraparound supports is to maximize (as opposed to displace or limit) CIE, improve socioeconomic status, and facilitate authentic community involvement for people with significant disabilities.
 - b. Identify the key components, and examples, of effective practices in integrated day services; describe funding strategies available to expanded integrated day services (including opportunities for using self-directed services); and suggest methods and metrics for collecting and using data on integrated day services to improve accountability and outcomes over time.
 - c. Clarify that integrated day options include, but are not limited to, services that include regular opportunities for community-based recreational, social, educational, cultural, and athletic activities, including community volunteer activities and training activities, as well as other regularly occurring non-facility based activities of a person's choosing that are provided in settings which allow individuals with disabilities to interact with individuals without disabilities in a community setting to

- the fullest extent possible for the individual, and that such services should not include an overall facility or program schedule for the individuals receiving such services.
- d. Clarify allowable uses of federal funds for promoting natural (i.e., non-professional), supports that help achieve the desired outcomes of CIE and socioeconomic advancement.
 - e. Describe how funding sources and service mandates can be coalesced across systems to ensure continuity in the provision of seamless wrap-around supports needed to maximize the employment and earning potential of individuals with significant disabilities.

Rationale/Detail

Assisting people with significant disabilities to obtain CIE and improve their socioeconomic status requires that public funding for integrated day services (also called non-residential LTSS) and wraparound supports be used to augment the person's experience while not replacing employment as the desired outcome.

For individuals with significant disabilities who have not yet obtained CIE, non-residential LTSS should focus on activities aimed at increasing the person's chances of achieving CIE (including integrated work-based learning experiences, networking to develop contacts for career advancement, career planning, and job development).

For individuals with significant disabilities who have achieved CIE, non-residential LTSS should continue to focus on activities aimed at expanding and sustaining CIE outcomes and at socioeconomic advancement, including but not limited to increased hours, wages, and benefits, opportunities for career advancement, and expanded financial capability, and maximum community integration. Examples of priority service areas that could be linked to furthering the desired outcomes of CIE and socioeconomic advancement may include career planning/exploration, transportation, financial literacy training, benefits planning, and community-based recreation or skills-building activities.

Targeting funding across systems at these desired outcomes requires leveraging resources, coordinating services, and aligning the various processes across systems that help determine an individual's eligibility for receiving supports. Such a vision is predicated on the creation of a holistic, comprehensive, and unified person-centered planning process that transcends systems for providing long-term services and supports to individuals with significant disabilities, with a priority focus on CIE and optimal socioeconomic advancement.

Performance measurement and cross-system accountability protocols must be established to assure that data on supports being provided to supplement and advance CIE outcomes is being

collected. Such data should include metrics aimed at measuring the impact of various non-residential LTSS services, wrap-around, and natural supports in yielding optimal integration, maximum number of work hours desired, highest earning potential, and long-term socioeconomic security.

Recommendation: Ticket to Work Model for Transition-age Youth

- 2. Congress should authorize the creation of a Ticket to Work demonstration focused on youth with disabilities in transition, to be co-managed by the Administration on Community Living and the Social Security Administration, in partnership with DOL, HHS, and ED. With Congressional approval, the Office of Management and Budget should provide authority for SSA and the other federal partners engaged to waive certain eligibility requirements for participants in the Ticket to Work youth demonstration so they can access services across systems with the goal of maximizing the potential of these transition-age youth with disabilities to achieve CIE and financial independence.*

Rationale/Detail

Transition is the period of time when adolescents (irrespective of disability) need focused support to plan for postsecondary education, careers, health care, financial benefits, housing and movement to adulthood.

Based on lessons learned from SSA's Youth Transitions Demonstration, as well as results from other youth-focused employment systems-change initiatives led by other federal agencies, research shows that there is a need to provide continuity of support for youth as they transition from youth-specific systems to adult service delivery systems.⁵⁶

Expanding the Ticket to Work model to include and support transition-age youth and younger adults could substantially improve employment outcomes for young people with the most significant disabilities.

Access to supports that advance CIE outcomes (including but not limited to pre-employment transition services, integrated work-based learning experiences, career planning and job placement services, benefits counseling, and financial capability) for youth with disabilities in transition could increase the probability that youth receiving SSI benefits will eventually transition out of SSI as opposed to remaining enrolled for a lifetime.

The pilot should permit youth ages 14-16 to participate and allow continued participation in the demonstration for the duration of the pilots or up to age 30. The demonstration should also evaluate the age range of youth to be included in the expanded Ticket to Work program based on

lessons learned from the pilots regarding what works best for youth both when starting to work and supports needed after transition.

Participating Employment Networks (EN) serving youth in the children's SSI program will have the opportunity to receive bonus payments based on their success in working collaboratively with schools to place students in part-time and/or summer jobs prior to leaving school and on successful transition to CIE after leaving school. Payments should be calculated based on the achievement of milestones calculated by SSA specifically for transitioning youth. Schools will be allowed to participate as ENs under the proposed program.

Youth who are eligible only for the children's SSI program and will never enter the adult SSI program will be eligible for this youth-focused Ticket to Work.

In addition to the requirements already set forth for all Ticket to Work ENs, entities wishing to participate as a transition EN under the pilot must demonstrate both expertise in providing integrated work-based learning experiences and pre-employment transition services as defined under WIOA for youth with the most significant disabilities, as well as be youth-based organizations or entities that possess established relationships and cooperative agreements with youth-based organizations, local school districts and/or institutions of higher education. As Vocational Rehabilitation (VR) agencies possess an existing statutory obligation under WIOA to serve transitioning youth, an emphasis will be placed on establishing additional entities beyond the VR system as transition ENs to help expand capacity beyond VR to serve youth with the most significant disabilities within the children's SSI program who are participating in the youth-focused Ticket to Work program.

Allowing youth-serving organizations, with adequate employment support experience, to become employment networks may help reach a new and critical youth population.

The expanded Ticket to Work demonstration for youth should, at a minimum, include:

- a. Assistance with developing an Individualized Career Plan that focuses on CIE
- b. Career coaching to assist in exploring career options and making good decisions about the best career plan for each individual
- c. Counseling and guidance on navigating adult systems such as employment supports and healthcare
- d. Successful career planning to include education on work incentives and financial capability strategies to help youth learn about financial independence and workforce participation

- e. Waivers of certain federal program requirements as necessary (such as the provision of stipends to offset SSI benefit changes during pilot participation)
- f. Use of “pay-for-success” payments or other financial incentive models if the right conditions exist
- g. Consider a “race to the top” approach for states with graduated payments for high performing sites.

Recommendation: Going the Distance from Fear to the Freedom to Succeed

3. *Informed by the findings of previous SSA demonstration projects pertaining to employment and loss of benefits and using the ACCESS (Autonomy, Confidence, Connection, Equality, Status/Skilled, and Safety) framework, SSA should collaborate with federal partners, state governments, and other key stakeholders (advocates, researchers, disability service providers, employment networks, and foundations) to develop and coordinate the implementation of a comprehensive, longitudinal research, systems-change, and policy reform initiative designed to increase the number of SSI/SSDI beneficiaries that become optimally employed⁵⁷ in CIE while simultaneously maintaining eligibility for income maintenance and essential health benefits as well as preserving access to LTSS necessary for self-sufficiency, and maximum socioeconomic advancement. The initiative would include the following components:*
 - a. SSA and its federal partners should develop and institute policy reforms to better clarify, strengthen, and expand upon work incentives so that SSI/SSDI recipients and other stakeholders can more readily utilize them to promote and support CIE goals. This expansion should also be accompanied by funding to increase the number of benefits counselors and service providers who have benefits counseling certification.
 - b. With oversight from persons with disabilities and their families to ensure user-friendly language and materials, SSA, in partnership with ED, HHS, and DOL should launch a national education campaign that focuses on distributing informational resources/activities and specific examples of how SSI/SSDI recipients can work and still maintain eligibility needed to access cash and health benefits and/or publicly-financed LTSS necessary to achieving partial independence.
 - c. Through the development and dissemination of technical assistance, SSA and its federal partners should improve and sustain the capacity of localities, states, and employment networks to bring to scale and sustain the provision of effective practices (peer mentoring career coaching, apprenticeship, professional development opportunities, financial planning, self-determination, self-advocacy, resource

- leveraging and systems navigation support) that assist SSI/SSDI recipients in seeking optimal employment while simultaneously preserving access to any needed ongoing public benefits and LTSS necessary to move toward partial or full self-sufficiency.
- d. SSA and its federal partners should review the results of the provision of technical assistance to determine if effective support practices can divert working age people with disabilities from needing long-term access to SSI/SSDI.
 - e. Congress should direct the Social Security Advisory Board [42 U.S.C. § 903] to review the eligibility requirements for SSA eligibility; recommend changes to align with the expectations in the Workforce Innovation and Opportunity Act (WIOA); and remove unnecessary barriers. The Social Security Advisory Board should then report to Congress on recommended statutory changes needed to ensure that individuals with disabilities continue to have access to supplemental income but are encouraged and incentivized to maximize their productivity and optimal self-sufficiency with the goal being to reduce overall reliance on SSI or SSDI.
 - f. Through additional research, SSA and its federal partners should develop additional recommendations on establishing incentives that offset the cash security value of SSDI or SSI. Examples of potential incentive strategies include but are not limited to an enhanced earned income tax credit, a guaranteed on-ramp to cash benefits as needed for eligible beneficiaries, or the establishment of a guaranteed benchmark to ensure ongoing access to health care coverage and LTSS.

Rationale/Detail

Research indicates that even among individuals receiving SSDI or SSI who express a desire to become employed and perhaps become self-sufficient someday, many of their decisions and actions related to if and to what extent they work and earn money are heavily influenced by their fear of the real or perceived consequences of employment. Typically, the fears individuals experience is described as solely that of fearing the loss of cash and health coverage benefits. While this is a major factor, it is far from the only one.⁵⁸ These can include:

- Losing cash and health benefits, financial stability and personal security.⁵⁹
- Falling deeper into poverty, debt, dependency, depression, etc.⁶⁰
- Complexity and misunderstanding of SSA rules surrounding work and earnings that are seen as arbitrary and punitive.⁶¹
- Scarcity of Resources, or having “less than” adequate money, time, health and wellbeing, education, skills, work history, options, supports, accessibility, fair chances, friends and other resources.⁶²

- Unpredictability and instability in terms of having little control over one’s life and no room for taking risks.⁶³
- Nonconformity, or going against the cultural norms of what it means to be “disabled”.⁶⁴
- Success, and as a result, leaving the familiar behind and exposing oneself to new pressures and demands.⁶⁵
- Failing, or not measuring up or achieving a goal and being ridiculed and humiliated.⁶⁶

In certain instances, an individual’s disability can cause/exacerbate these responses. SSA and in some cases VR, Medicaid, and others fund Work Incentives Planning and Assistance Project (WIPA) grant programs and related activities that help individuals better understand and use provisions meant to incent their employment and reduce their reliance on cash benefits. When evaluated, WIPAs have proven modestly effective at dispelling fears surrounding loss of benefits.⁶⁷ For the most part, however, current efforts address such fears in a circuitous manner by providing information on work incentives. While providing information is necessary, information sharing alone is insufficient in effectively helping address the legitimate and at times perceived fears and barriers experienced by individuals with significant disabilities

If we want individuals to be free of living in fear of what might happen if they work and earn “too much,” however, we must equip them with the knowledge, skills, abilities and tools they need to succeed at doing so. This starts with working with individuals to develop, master, nurture and sustain essential attributes and building blocks to ACCESS⁶⁸ Success, including:

- **Autonomy:** Exercising the power to make sound decisions and improve your life
- **Confidence:** Believing and trusting you have what it takes to succeed
- **Connection:** Belonging to and valued as an integral part of a larger whole
- **Equality** Having the fair chance of succeeding at what you work hard to achieve
- **Status/Skilled:** Possessing the knowledge, skills and abilities that others demand
- **Safety:** Free of fear and free to take acceptable risks, change, grow and thrive

Steps that could move us in this direction include tasking SSA to work with federal partners, States, the disability community, researchers, foundations and others to develop and coordinate the implementation of a comprehensive, longer-term research and development system change/capacity strategy (5-10 years) that will increase knowledge about, access to and the effectiveness of:

- Peer mentoring and support offered by a peer who has successfully navigated returning to, or beginning CIE.⁶⁹

- Increasing access to information to youth with disabilities and families about the importance of pursuing employment and employment incentives built into SSI/SSDI, as well as alternatives to SSI/SSDI prior to transition years.
- Career coaching, apprenticeship and development opportunities (including but not limited to accessing apprenticeship programs offered through America's Job Centers).
- Financial planning, self-determination, self-advocacy, supported decision making, confidence development and resiliency skill-building activities.
- Assuring ongoing continual access if/as needed to support navigation through rough patches, relapses and other barriers that may impede optimal self-sufficiency.
- Clarifying through increased public messaging to the public, applicants and beneficiaries that receiving SSDI or SSI does not need and should not become a lifetime occupation for those able to earn a better living.
- Demonstrating that the government consistently supports, rewards and protects those who earn their way off the SSI/SSDI public rolls.
- Conducting research and pilots to identify barriers and promising practices for equipping individuals with the abilities, skills, accessible resources and resilience to anticipate, prepare for, adapt to and effectively manage a range of minor and major shocks, changes and events.
- Gaining a better understanding and accentuating the positive effects that access to health coverage through the Affordable Care Act can have on the employment, independence, health and economic well-being of individuals with significant disabilities.
- Supporting and requiring VR agencies, Employment Networks (ENs), Work Incentives Planning Assistants (WIPAs), Protection and Advocacy for Beneficiaries of Social Security (PABSS) and others to explicitly focus on building the self-confidence, reliance and capabilities of current and former working beneficiaries to take control of their lives, careers and financial independence over the long haul.
- Tracking the employment and economic status of these workers via a longitudinal survey and using the findings and insights to improve their long-term career prospects.
- Identifying alternatives to guardianship and evaluating the impacts of supported decision making.
- Engaging federal, state, business, philanthropic and disability community stakeholders in framing and carrying out these efforts.

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- ⁵¹ Murphy, S., Easterbrook, E., Bendetson, s., Lieberman, S. A new day for day services. *Journal of Vocational Rehabilitation*, vol. 40, no. 2, pp. 125-130, 2014
- ⁵² SSA, National Beneficiary Survey Fact Sheet 4: Reasons SSA beneficiaries with disabilities reported for not working in 2004. 2009.
- ⁵³ Wittenburg, D.C., & Loprest, P.J. (2007). Early transition experiences of transition-age child SSI recipients: New evidence from the national survey of children and families. *Journal of Disability Policy Studies*, 18, 176-187.
- ⁵⁴ Fraker, T., & Rangarajan, A. (2009). The Social Security Administration's youth transition demonstration projects. *Journal of Vocational Rehabilitation*, 30, 223–240.
- ⁵⁵ Integrated day services refers to community-based pursuits determined by individual choice that complement CIE and that provide a meaningful set of activities outside of scheduled work hours. Wrap-around supports refers to those complementary services that enable individual to find and sustain employment such as affordable housing, transportation, and other supports necessary to facilitate individual availability to pursue CIE.
- ⁵⁶ Altschuler, 2005, Davis, n.d.; Davis & Sondheimer, 2005; Hoffman, Heflinger, Athay, & Davis 2009, Manteuffel, Stephens, Sondheimer, & Fisher, 2008, Stewart et.al, 2010
- ⁵⁷ Optimally employed means being employed at the maximum number of hours an individual is able to work and at the highest possible wages he or she can attain.
- ⁵⁸ SSA, National Beneficiary Survey Fact Sheet 4: Reasons SSA beneficiaries with disabilities reported for not working in 2004. 2009.
- ⁵⁹ John Kregel, [Making SSDI Work Better for Beneficiaries -- Testimony before the U.S. House of Representatives' Ways and Means Committee, July 9, 2015.](#)
- ⁶⁰ Ibid.
- ⁶¹ Ibid.
- ⁶² Sendhil Mullainathan and Eldar Shafir (2013), [Scarcity: Why Having Too Little Means So Much](#). Also see: Boston Globe Review. Eldar Shafir, Sendhil Mullainathan, Christopher Bryan, Crystal Hall, Anandi Mani and Anuj Shah. [On the Psychology of Scarcity](#), Columbia Business School and the Robin Hood Foundation, 2012. Morgan Kelly, [Poor concentration: Poverty reduces brainpower needed for navigating other areas of life](#), Princeton News, August 29, 2013. See study: Anandi Mani, Sendhil Mullainathan, Eldar Shafir and Jiaying Zhao, [Poverty Impedes Cognitive Function](#). Science, August 30, 2013.
- ⁶³ Ibid. Also see: Seligman, M. E. (2006). *Learned Helplessness*. Random House: Vintage Books; and, (2011). *Learned Optimism*. Vintage Books; Random House; and Richard H. Thaler and Cass R. Sunstein, [Nudge](#). Penguin Books, 2009.
- ⁶⁴ NBS Fact Sheet 4, op cited. See also: Jennifer Engle, ["Fear of Success" Revisited: A Replication of Matina Horner's Study 30 Years Later](#). ERIC, 2003.
- ⁶⁵ Engle, op cited.
- ⁶⁶ Timothy A Pychyl Ph.D., [Fear of Failure](#). Psychology Today, February 13, 2009.
- ⁶⁷ See Kregel, op cited.
- ⁶⁸ Kristen Hansen, Presentation to the SSA Senior Staff on the Neuroscience on Leadership. November 6, 2015.
- ⁶⁹ Shery Mead & Mary Ellen Copeland (2000), [What Recovery Means to Us](#) , Plenum Publishers, New York, NY; Helene L. Povencher, Robin Gregg, Shery Mead & Kim T. Mueser (2002) [The Role of Work in the Recovery of Persons with Psychiatric Disabilities](#), *Psychiatric Rehabilitation Journal* 26 (2).; Oscar Jimenez, Peggy Swarbrick,

Mathew Mathai, Lara Wojcik and Jay Yudof, [Building A Cross Disability Peer Employment Support Model – Report to the New York State Medicaid Infrastructure Grant](#), Office of Mental Health 2009.

Chapter Six: Increasing Competitive Integrated Employment in the AbilityOne® Program

Introduction

The AbilityOne® Program, if reformed as recommended, has the potential to create employment opportunities on a broad scale for individuals who are blind or have significant disabilities. Currently, the program enables the federal government to purchase products and services from organizations that employ individuals with disabilities. It is authorized by the Javits-Wagner-O'Day (JWOD) Act, 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. The roots of JWOD go back 77 years to the Wagner-O'Day Act of 1938, the same year that the Fair Labor Standards Act (FLSA) was passed, with provisions that allow people with disabilities to be paid subminimum wages under Section 14(c) of the FLSA. This was done because it was thought to be the only way to create any employment opportunities at all in the midst of the Great Depression.

Much has changed since that time in terms of federal policy regarding individuals with disabilities. Our country has largely left behind this era when children with significant disabilities were barred from public schools, people with significant disabilities were institutionalized for life, and society assumed that people with significant disabilities were unable to learn, contribute to society, work and make decisions about their lives. Modern disability policy – as reflected in the Americans with Disabilities Act (ADA) and other federal laws – embraces high expectations, including that of full inclusion of people with disabilities in all aspects of life including the workplace. Competitive integrated employment (CIE), as part of the mainstream workforce, is now the expected and priority outcome that the federal government and many states are embracing. However, AbilityOne has not evolved to fully reflect modern disability policy goals, including those enshrined in the ADA and the Supreme Court's decision in *Olmstead v. L.C.*

AbilityOne currently represents a national network of over 600 nonprofit agencies that sell products and services to the U.S. government. 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 the program. 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.

The AbilityOne Program permits only a limited pool of federal contractors to compete for contracts. In Fiscal Year 2014, AbilityOne awarded approximately \$2.8 billion in noncompetitive federal contracts to Qualified Nonprofit Agencies (NPAs) that employ people who are blind or have other significant disabilities. Those eligible for these contracts must be NPAs formally affiliated with the AbilityOne Program. The specified supplies and services provided by NPAs are determined by the AbilityOne Commission. The qualified NPAs must ensure that at least 75 percent of the labor hours necessary to complete AbilityOne contracts are completed 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, although a recent declaration by AbilityOne signaled the intent to end this practice.

Although AbilityOne represents a longstanding initiative that offers employment to a large number of individuals who are blind or have other significant disabilities, there are several aspects of the current program that the Committee examined that may inhibit increasing CIE. These include: potential conflicts of interests in determining who is eligible to participate as this determination is made by the participating NPAs who function as both the employer and the employment support service; the 75 percent contract hour requirement, which essentially segregates workers from the mainstream workforce; the lack of requirement or expectation that AbilityOne contract work will offer a path to CIE opportunities in typical private and public sector businesses and employers; and the fact that the Commission, as an oversight body, was not designed to ensure that the AbilityOne Program is aligned with federal disability policy as it has evolved over time. The Committee's Interim Report (September 2015) provides additional review of the program and its impact and effect.⁷⁰

Despite several changes to the program's oversight and processes, and despite notable expansion in contracts and the numbers of individuals employed, the 77-year-old program does not fully reflect contemporary disability employment policy direction and goals. In light of the ADA, the Supreme Court *Olmstead* decision, and the Workforce Innovation and Opportunity Act (WIOA), there is a need to reform the current structure and operation of AbilityOne, identifying alternatives for program participation eligibility, ratios of program participants with and without disabilities, and the business models of the program contractors who hire the workers. The primary recommendations below address the need for program reform, the need to identify and test new methods of federal contract operation and oversight for the program, and the need to evaluate the implementation of these new methods.

Recommendations

1. *Congress should amend JWOD to fully align the Act with modern federal disability law and policy goals, including the Americans with Disabilities Act, the Supreme Court's Olmstead decision, and WIOA. This amendment should include provisions requiring that CIE be a goal*

of participation in the AbilityOne® Program. Key features of an amended JWOD Act should include:

- a. *New criteria and processes for procurement selection that consider the following:*
 - i. The process for selecting the NPA for a contract should be outside of the purview of the Central Nonprofit Agencies (CNAs), i.e., National Industries for the Blind (NIB) and Source America. Additionally, the role and function of the Commission and the CNAs should reflect revisions to the procurement selection processes and to ensure the avoidance of any conflict of interest.
 - ii. A selection process that allows at least two qualified vendors to be referred to the Commission for each contract in order to enable greater opportunity, transparency, and competition for contracts. Contracts should also be re-competed at prescribed intervals.
 - iii. Expand opportunities for contractor selection to nonprofit organizations not associated with NIB or SourceAmerica, as well as for-profit companies. An independent study, per Recommendation Number 3 below, should evaluate this and other potential vendor selection criteria, including vendor preferences that might be given to small businesses owned by individuals with disabilities.
 - iv. A selection process that awards additional preference to vendors who can document they have assisted AbilityOne employees' transition into CIE.
 - v. The Inspector General staff located at AbilityOne provides oversight and is involved in the development of a new selection criteria and process.
 - vi. The composition of the AbilityOne Commission should reflect the diversity of its constituents: At least 50 percent of its members should be individuals with disabilities and experts in disability employment policy and workforce development for people who are blind or have significant disabilities.
- b. In conjunction with the independent research under Recommendation Number 2 below, the current requirement that 75 percent of the contract hours under AbilityOne be completed by individuals who are blind or have significant disabilities should be considered, and the following be taken into account:
 - i. The feasibility of measuring the ratio above or any similar ratio including recommendations for other program participation thresholds or eligibility criteria.
 - ii. Changing the ratio of individuals who are blind or have a significant disability to non-disabled individuals working on contracts to avoid congregation of

people with disabilities in the workplace and to meet the goal of CIE without reducing the number of jobs available to people with disabilities.

- iii. Introducing pilot projects that substantially reduce the contract hour percentage as well as authorizing NPAs to increase the percentage of work that may be subcontracted to for-profit companies where there is an obligation for subcontractors to hire AbilityOne participants. New pilots should also test the awarding of AbilityOne contracts from federal customers to private industries who would be allowed to meet the minimum work hour requirements with CIE opportunities elsewhere in their business outside the contract. All pilots should be subject to independent evaluation to inform future decisions about contract hour requirements.
 - iv. Any changes in contract hour percentages or the ratio of workers with disabilities working on AbilityOne contracts or other recommendations for establishing new program participation criteria or measures should be planned in a manner to mitigate unintended harm to current AbilityOne workers -- where career interests and skills are assessed, additional training is provided, opportunities are provided for some employees to experience CIE prior to placement, and employees are updated on their employment options and support services available to them.
- c. *Consistent with the intent of the March 2016 AbilityOne Declaration, immediately eliminate the use of the FLSA Section 14(c) certificates for all contractors providing products or services to Federal customers under the AbilityOne Program in order to ensure that all employees receive at least the greater of the federal minimum wage, the state minimum wage or the prevailing wage and receive the benefit of relevant labor law coverage, including the National Labor Relations Act and the full scope of FLSA protections.*
- d. *Based on the above mentioned reforms, establish new criteria for who is eligible to work on AbilityOne contracts that reflect the following principles:*
- i. All individuals with disabilities are presumed employable. Participating in AbilityOne should not be predicated on the belief that employment is not possible for certain individuals except through congregate work conditions and “set aside” federal contracts.
 - ii. Eligibility for AbilityOne, that is, the documentation of a significant disability, should be determined independently and not by the NPAs who compete for the federal contracts. Criteria could include, for example: receipt of public disability benefits that require the identification of a significant disability such as SSI/SSDI; receipt of employment services through a state

vocational rehabilitation (VR), Intellectual/Developmental Disabilities (I/DD), or Mental Health (MH) agency; and/or through designation by the Veterans Administration of a significant disability. A working group, per Recommendation Number 3 below, should evaluate these and other potential eligibility criteria, particularly in light of any reforms to the program.

2. *Congress should direct and facilitate, through any necessary funding, research on current use of AbilityOne in order to identify:*
 - a. The extent to which the program is currently servicing the intended, targeted population of individuals who are blind or have significant disabilities and recommendations to increase participation of this population if necessary.
 - b. Methods to ensure compliance with any current or newly-established participation threshold in Recommendation 1.c. above, including sources of available data at the state and/or federal level and the feasibility of establishing an internal AbilityOne data-driven or other tracking/verification process.
 - c. The extent to which the continued separation between the target populations of individuals who are blind and individuals who have significant disabilities is consistent with modern disability policy, and recommendations to unify the two target populations into a single eligibility category, should Congress determine this is more consistent with current disability policy goals.
 - d. Resources of available data at the state and federal level to determine AbilityOne's compliance to established hiring thresholds. Congress should direct the state and/or local entities possessing this data to share it with AbilityOne for these purposes. Where necessary, these agencies should amend or modify their internal rules for data sharing for this specific purpose, as long as the data transfer is compliant with established state and/or federal disclosure laws.
3. *Congress should authorize an independent third-party evaluation tasked with studying the implementation of the recommendations as submitted herein, and submit a report that identifies and recommends additional policies that may be required to implement the changes necessary to reform the JWOD Act as indicated above. This evaluation should be informed by research, completed within a required frame, and should solicit input from various AbilityOne stakeholders and knowledgeable experts such as:*
 - a. Individuals who are current or potential employees under the AbilityOne Program
 - b. Advocates for these individuals
 - c. Subject matter experts on CIE
 - d. Government and private sector economists

- e. Representatives from relevant federal agencies
 - f. Current or potential AbilityOne vendors
 - g. Representatives with in-depth knowledge of the AbilityOne Program
 - h. Policy experts on federal policy, including the ADA, *Olmstead*, and WIOA
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⁷⁰ Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, Chapter Seven: AbilityOne® Program, September 2015.