



APSE's Public Testimony to the Advisory Committee in Increasing Competitive Integrated Employment for Individuals with Disabilities

APSE would like to congratulate the members of the members of the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities that was created by the Workforce Innovation and Opportunity Act. We applaud the Committee's commitment to increasing the workforce participation of people with disabilities. Throughout the Workforce Investment and Opportunity Act (WIOA), there is language that significantly strengthens the ability of people with disabilities to get the necessary supports and assistance that will allow them to fully participate in the nation's workforce and escape lives characterized by chronic poverty and isolation. APSE also praises efforts within WIOA to address issues related to sub-minimum wage and segregated employment. There have been chronic and ongoing issues in the oversight and administration of the 14c program.

APSE has clearly and emphatically stated its position on sub-minimum wage and segregated employment and the need to phase it out. Continued reliance on the 14c program is in clear violation of the ADA, Olmstead and of civil rights statutes that apply to other Americans. It is an outdated program rooted in low expectations that that people with disabilities are not capable workers; this policy is discriminatory and exploitative.

In APSE's view, the appropriate legislative vehicle for addressing sub-minimum wage would be the Fair Labor Standards Act (FLSA), under which payment of sub-minimum wage is permitted.

APSE is supportive of legislative and policy actions regarding sub-minimum that contain any of the following elements:

- Placing a time limit on the use of prevocational services on an individual basis
- Ending the placement in a job at sub-minimum wage as an acceptable outcome for transition services under IDEA
- Eliminating the use of sub-minimum wage by new entrants into the adult service system
- Ending the issuance of new special wage certificates for organizations
- Creating an end date by which sub-minimum wage would be discontinued.
- Prohibiting the use of sheltered employment settings as part of transition services prior to age 24.

In addition to these elements, APSE would also be supportive of any legislative or policy actions that ensure proper monitoring of use of sub-minimum wage, and that the rights of individuals with disabilities are fully respected. Sufficient resources for proper oversight and monitoring of use of sub-minimum wage by the Wage and Hour Division of USDOL, or creation of an alternative entity to do so (possibly including delegating part of this responsibility to individual states) should also be considered.



Rationale for a Phase-Out of 14c Programs

APSE has clearly stated that its view that sub-minimum wage is unnecessary to promote employment opportunities for people with disabilities. As detailed in its 2009 policy statement on sub-minimum wage:

- **Bad job matches are the real issue:** For every individual, there are jobs and tasks we are good at and those we are ill-suited for. People with disabilities are no different. The work that individuals are required to perform at sub-minimum wage is nothing more than simply a bad match for their skills, abilities, and interests - and in fact the sub-minimum regulations reinforce this. Per DOL, in order for an individual with a disability to be paid sub-minimum wage, the individual's disability must impair their capacity to earn wages or productivity *for the specific work being performed* (not every job). Furthermore, *a blanket assumption of sub-minimum wage for all types of work is not permitted*, and the regulations specifically note that there may be other types of work or other employment settings where the individual is entitled to the minimum wage.
- **Productivity rate is not a fair basis for wages:** Sub-minimum wage is based on the concept that production rate is the sole or primary criteria on which a business bases compensation and values a worker. This is a simplistic notion, not at all based on the realities of operating a business and managing employees, particularly in the 21st century economy. Individuals are valued as employees for a wide range of abilities, gifts and talents: their customer service skills, their ability to get along with co-workers, their reliability, the quality of work, etc. The argument that the value of an employee should be solely based on a "production rate" is an outdated concept.
- **The productivity standard is discriminatory towards people with disabilities:** People with disabilities are among the few groups whose pay is based strictly on a productivity rate. It is discriminatory that individuals with disabilities are subjected to such a standard, while most workers are not.
- **Sub-minimum wage is at odds with national disability policy:** The existence and use of sub-minimum wage is a reflection of viewing people with significant disabilities as incapable of being fully integrated into the general labor force, a view that is at odds with the national disability policies that have developed over the past 40 years.
- **Sub-minimum wage is being used to support a more costly service delivery model:** Research indicates that over time, supported employment is cost efficient - for every \$1 of costs taxpayers and workers invest into supported employment, more than \$1 is returned in the form of monetary benefits. A study of all 231,000 individual supported employment cases closed by public Vocational Rehabilitation between 2002 and 2007 found that the average supported employee generated a net monthly benefit to taxpayers of \$251 per individual, and a benefit-cost ration of 1.46. Further, supported employees were cost-efficient regardless of their primary disability or presence of secondary conditions. Additionally, studies indicate that supported employment is significantly less expensive than sheltered workshops.



Employment First as the Primary Service Option

Employment in the general workforce must be the first and preferred outcome in the provision of publicly-funded services for all working age citizens with disabilities, regardless of level of disability.

Underlying Principles

- The current low participation rate of citizens with disabilities in the workforce is unacceptable.
- Access to “real jobs with real wages” is essential if citizens with disabilities are to avoid lives of poverty, dependence, and isolation.
- It is presumed that all working age adults and youths with disabilities can work in jobs fully integrated within the general workforce, working side-by-side with co-workers without disabilities, earning minimum wage or higher.
- As with all other individuals, employees with disabilities require assistance and support to ensure job success and should have access to those supports necessary to succeed in the workplace.
- All citizens, regardless of disability, have the right to pursue the full range of available employment opportunities, and to earn a living wage in a job of their choosing, based on their talents, skills, and interests.
- Implementation of Employment First principles must be based on clear public policies and practices that ensure employment of citizens with disabilities within the general workforce is the priority for public funding and service delivery.
- Inclusion or exclusion of the specific term “Employment First” does not determine whether a public system or agency has adopted Employment First principles. Such a determination can only be made in examining whether the underlying policies, procedures and infrastructure are designed for and ultimately result in increased integrated employment in the general workforce for citizens with disabilities.

Characteristics of Successful Employment First Implementation

- Measurable increases in employment of citizens with disabilities within the general workforce, earning minimum wage or higher with benefits.
- Greater opportunities exist for citizens with disabilities to pursue self-employment and the development of microenterprises.
- Employment is the first and preferred option when exploring goals and a life path for citizens with disabilities.
- Citizens with disabilities are employed within the general workforce, regardless of the severity of disability and assistance required.
- Young people with disabilities have work experiences that are typical of other teenagers and young adults.
- Employers universally value individuals with disabilities as an integral part of their workforce, and include people with disabilities within general recruitment and hiring efforts as standard practice.

451 Hungerford Drive Suite 700 | Rockville, MD 20850

Phone: 301.279.0060 | Fax: 301.251.3762

www.apse.org



- Individuals with disabilities have increased incomes, financial assets, and economic wealth.
- Citizens with disabilities have greater opportunities to advance in their careers, by taking full advantage of their individual strengths and talents.
- Funding is sufficient so that quality services and supports are available as needed for long-term employment success.
- A decision not to consider employment in the community for an individual is re-evaluated on a regular basis; the reasons and rationale for this decision are fully documented and addressed in service provision.

We thank the committee for your time and would like to offer our organization as a resource at any time.