

Public Testimony

as presented to

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

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by

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On behalf of ACCSES, and the more than 1,200 disability service providers serving over 3 million people with disabilities we represent, I am writing to thank you for the opportunity to comment on the draft preliminary report of the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (ACICIEID). Specifically, our comments will be focused on the chapters relating to the Section 14(c) Special Minimum Wage Certificate Program and the AbilityOne Program. After reviewing the contents of the full report and the recommendations put forth by the Subcommittees, ACCSES' recommendations can be summed up in one word – restraint.

Section 14(c) Special Minimum Wage Certificate Program

The recurring theme that is repeated by each Subcommittee in its findings is a lack of data and understanding of how many participants are truly being paid a special minimum wage, the lack of data on where youth in sheltered workshops end up when those workshops close or downsize in a community, the lack of data on what happens to adult individuals with disabilities who are unable to transition to competitive integrated employment. Throughout the report there are continued references to the “most recent federal analysis” of the Section 14(c) certificate program from 2001. This dearth of information makes it inordinately difficult to make clear and present recommendations on the direction of the program until such data is collected and analyzed. Similarly, recommendations to “transform to proven transition models” is good in theory, but given the lack of data collected by the Departments of Labor, Education and Health and Human Services means that we do not truly know what the results of those models are. While states are in the process of determining how to transform their day support systems as part of the new Home and Community-Based Services Settings Rule, they are in such a preliminary stage, that this cannot be relied upon as a proven method for offering more opportunities for competitive integrated employment.

The Complexity and Needs Subcommittee correctly identifies that people with significant disabilities with access to needed supports can work in competitive integrated employment. However, it fails to address the corresponding increased costs associated with those needed supports or the costs of wraparound services for those who engage in competitive integrated employment for a few hours a week but not at a full time basis. The Subcommittee also neglects to address the absolute right afforded to all working-age

individuals, regardless of disability, to make their own choices about the type of work and environments in which they work. We find recommendation 10 by this subcommittee to be contradictory with recommendation 9. Allowing for the Wage and Hour Division to develop and enforce criteria to assure that a 14(c) certificate is only permitted when necessary to prevent the curtailment of opportunities for employment is incongruous with a phase out of the 14(c) program. While ACCSES fully supports competitive integrated employment as the first choice for all individuals, particularly youth, it should not be done at the exclusion of all other options.

The Marketplace Dynamics Subcommittee calls attention to a study that shows that restraint is necessary when making and implementing the recommendations included in this report. Specifically, the Butterworth study tracks the outcomes of policies focused on eliminating special minimum wages in Arizona, British Columbia, and New Zealand resulting in unintended consequences where, following the conversion, workers either lost employment altogether or were paid “training stipends” that were even less than the special minimum wages had been. That in order to most effectively eliminate the special minimum wage, there has to be simultaneous efforts to build capacity – not only in services in sheltered workshops, but also within the private business community.

ACCSES wholeheartedly supports the recommendations to implement mechanisms to provide for data collection, wages, work hours, down time and any other necessary information to better understand the participants and outcomes of Special Minimum Wage Certificate programs. Additionally, ACCSES fully supports increased funding for the Wage and Hour Division of the Department of Labor to fully staff and provide monitoring and oversight of the use of Special Minimum Wage Certificates. Consequently however, these recommendations and the findings of the Subcommittees themselves, render the recommendation of a phase out of the Section 14(c) certificate programs and timelines for cessation of referrals for individuals with disabilities at best premature and at worst, irreparably harmful to many individuals with significant disabilities.

AbilityOne

In addition to the concerns raised regarding the lack of information and data on transition outcomes and true employment and wage data within the 14(c) certificate program, there is a corresponding lack of data on the participants in the AbilityOne program. As noted, less than 10 percent of all participants working on AbilityOne contracts earn subminimum wage; combined with the acknowledged lack of data on special minimum wage, it is disingenuous to assert statistics on transitions into competitive integrated employment.

ACCSES concurs with the conclusions that much has changed in terms of federal policy regarding individuals with disabilities and that we have left behind an era of institutionalization in favor of an understanding about an individual’s ability to learn, contribute, and exercise self-determination. However, the Complexity and Needs and Marketplace Dynamics Subcommittees’ conclusions as to what is or is not a proper work environment for millions of individuals with disabilities is contrary to the Subcommittees’ premise of exercising self-determination. Instead, by stating that sheltered workshops or group supported employment is improper and should be eliminated, it places the Subcommittees in the same position of authority as an arbiter of what is right for a person with a disability and what is wrong instead of allowing individuals to make their own informed choices.

ACCSES specifically takes issue with the recommendation that Congress, as the authorizing body for both the AbilityOne program, the Americans with Disabilities Act (ADA), the Javits Wagner-O’Day (JWOD) Act, the Fair Labor Standards Act (FLSA) and the Workforce Innovation and Opportunities Act (WIOA)

be bypassed by Executive Order to execute the recommendations of this advisory committee. The Secretary of Labor should report back to Congress the outcomes of the final report and it should be for Congress to determine and implement changes to the underlying programs through proper order and debate once sufficient data has been recorded and analyzed so that the most effective change can be achieved.

While one day the need for these various programs may not exist; unfortunately, for the millions of individuals with a disability who wish to work and have the dignity of earning a paycheck – that day has not yet arrived. The pursuit of progress should not be done indiscriminately and at the expense of particularly those with the most significant disabilities.