



September 2016

Dear ACCSES Members:

On September 15, 2016, the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the ACICIEID “Committee”) delivered its Final Report to Secretary of Labor Thomas E. Perez (“Final Report”). We have reviewed the Final Report and provide a summary below.

While the Final Report contains numerous recommendations that might be considered positive were they intended to be applied neutrally, these recommendations are offset by the Committee’s refusal to recognize (a) the significant costs involved, (b) the government as it exists today and the massive change required to accomplish the amount of cross-agency and federal/state collaboration that would be needed to achieve the Committee’s goals, and (c) the number of people who would be left behind if the bulk of these recommendations were to be adopted and implemented. The Committee’s recommendations would undercut many programs that currently employ large numbers of people with disabilities. We will begin, however, with a brief rundown of some of the positive ideas expressed in the Committee’s report, followed by a breakdown of the numerous negatives, and finally a summary of the Committee’s point-by-point recommendations. The list of positive suggestions includes the following:

1. Increased data collection at the federal and state levels as to employment statistics of people with disabilities.
2. Increased funding at the federal level, particularly to states.
3. Increased cooperation across federal agencies and between the federal and state governments.
4. Increased, positive communication and collaboration between DOL and federal contractors.
5. Common definitions for terms used across federal agencies.
6. New programs to encourage people with disabilities to enter the workforce or to expand job opportunities (with some, although not nearly enough attention paid to legitimate concerns about the effect on individual benefits).
7. More focus on and funding for assistive technology.
8. Professional development programs for people working with people with disabilities (this would also appear in the “negative” category, as the intent here clearly is to eliminate the roles of people who have dedicated their lives to

working with people with disabilities, but may not have a related degree or certificate).

9. Increased focus on family participation, and self-advocacy and self-determination training.
10. Recognition that culturally diverse families may have specific needs in respect to transitioning a person with significant disabilities into competitive integrated employment (CIE).
11. A purported desire to see current Section 14(c) certificate holders transitioned to employment agencies that offer CIE.
12. Ideas for encouraging members of the business community to recognize people with disabilities as an untapped resource (citing PepsiCo, AMC Theaters, and Walgreens as good examples of companies that have changed their corporate policies in ways that increase employment opportunities).
13. Recognition that transportation concerns must be addressed in any broad-based plan.
14. Recognition of the concerns many people have with respect to losing their public benefits when transitioning to CIE and ideas for how to resolve those concerns.
15. Recognition that people with disabilities may not be comfortable self-disclosing their disability.
16. Continued encouragement of reaching a seven percent hiring goal for people with disabilities under federal contracts.

As expected, however, the Final Report is based on a conclusion that all people with disabilities, no matter how significant, can work in high-quality jobs, given the right supports. As such, the Committee couches its recommendations in language intended to significantly modify or eliminate programs that the Committee believes “segregate,” “congregate,” or “shelter” people with disabilities, including jobs that pay good wages and benefits in ratio-based programs, including AbilityOne. The Committee furthermore drops in recommendations, such as to make sure the “employer” is a CIE-based entity and not a CRP on several occasions as a further means of achieving its ultimate ends. It is clear that the recommendations in the Final Report would be too costly, too time-consuming, and require a cultural shift across federal and state agencies that would take a generation to accomplish. If implemented even on a piecemeal basis, however, the Committee’s recommendations would leave a percentage of people with disabilities in a position of having no job whatsoever.

“Center-based employment,” for example, is discussed in several sections, but the Committee notes initially that:

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). 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). 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.

(Final Report at 6.)

The Committee describes it as crucial to include consideration of the “current and future role and impact of the Section 14(c) program” in determining effective strategies for increasing participation in competitive integrated employment. The Committee also describes as a backdrop to the Final Report the “evolving federal disability employment policy, which presumes that all individuals with disabilities are employable when opportunity and support are available.” It notes that the “presumption of employability is a prominent underpinning of current ‘Employment First’ initiatives,” which it describes as “grassroots initiatives advocating for states to make CIE the first option for day services for youth and adults with significant disabilities. (Final Report at 6.) The Committee adds that while Employment First initiatives have not resulted in a mandate about CIE, the 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.” (Final Report at 6.) “Models,” the Committee states, “have shown repeatedly that people previously considered unemployable *can* work, *can* be productive and *can* achieve independence.” (Final Report at 6.) (Notably, throughout its Final Report, the Committee often cites to publications and data that are several years old.)

To achieve its goals, the Committee makes a number of suggestions, which effectively would place people out of work, and fails to recognize the reality of how much time or cost would be involved in their ideas. Among their suggestions and failures that could result in significant loss of employment or other detrimental changes to the lives of people with disabilities are the following:

1. Phase out Section 14(c).
2. Immediately eliminate the use of Section 14(c) certificates for all contractors providing products or services under AbilityOne contracts. (Note that the Committee ignores entirely that many people working under AbilityOne contracts make good wages and benefits and ignores the federal \$10.10 mandate, and artificially suggests a construct under which more people without disabilities would be hired *without eliminating any jobs* for people with disabilities. With

respect to AbilityOne, the Committee during a meeting suggested strongly that it might be difficult to encourage people who are working at high pay with benefits to transition to a minimum-wage job without benefits in CIE, but that they should be encouraged to do so.) The Committee also wants to combine people with disabilities and the blind into a single category, open the AbilityOne program to for-profit entities, and encourage placing contracts with small businesses owned by people with disabilities. The Committee has additional suggestions for oversight and change that would effectively dismantle the AbilityOne program.

3. Incentivize states based on the number of people who transition to competitive integrated employment (intended to encourage states to eliminate CRPs).
4. Although encouraging a broad-based transportation plan to encompass even very rural areas, there is no recognition of the associated costs of building out such a transportation network.
5. While providing ways in which federal contractors may encourage current employees or applicants to self-disclose a disability, there is no discussion or recognition of why a current employee or applicant may wish to maintain their privacy as to a disability.
6. No discussion of the time lag that necessarily would occur with respect to phasing out Section 14(c) or forging changes in the AbilityOne program and any marked improvement in CIE.
7. The Committee provides no recognition or acknowledgement that people should have a choice of where to work unless it is in CIE.
8. While encouraging day habilitation programs to also be community- and even CIE-focused, there is no recognition of the dignity of work or that people with disabilities who are currently employed already have a choice of day habilitation and choose to work under Section 14(c) certificates.
9. There is no acknowledgment that if the Committee's primary ideas were put into practice, certain people would be left without work, and with nowhere to go but home.
10. There is no acknowledgment of the monetary costs of the Committee's ideas, how the ideas would be paid for (beyond, in some instances, the federal government providing funding for states), or what offsets could be implemented.
11. The Committee fails to provide any type of benchmarks or timelines as to how many people might be employed in CIE as a result of any or all of the suggestions contained in the report.

The Committee's plan involves Congress, the federal agencies, state governments, the business community, and myriad other stakeholders. It is their intent to work hard at the state level to eliminate 14(c) and related programs state-by-state. It is vital that we focus a two-

pronged effort to educate legislators, stakeholders, and everyone in our community and protect the interests of the people we serve.

Our summary follows. In order to avoid unintentionally changing the meaning or intent of the language chosen by the Committee, much of this summary is in the Committee's own words. As you are reading through this (or the full Final Report), please give some thought as to how you would respond to the ideas presented. We would like to know.

Purpose of the Committee

The Committee was formed pursuant to Section 461 of the Workforce Innovation and Opportunity Act (WIOA) for the purpose of advising the Secretary of Labor with respect to studying and preparing "findings, conclusions, and recommendations" on:

- Ways to increase the employment opportunities for individuals with intellectual or developmental disabilities or other individuals with significant disabilities in competitive integrated employment;
- The use of the certificate program carried out under section 14(c) of the Fair Labor Standards Act of 1938 for the employment of individuals with intellectual or developmental disabilities, or other individuals with significant disabilities; and
- Ways to improve oversight of the use of such certificates.

The Committee states its intended purpose is to "address the pervasive unemployment and low workforce participation among individuals with significant disabilities in the United States today." (Final Report at 5.) Twenty-five people sit on the Committee, which effectively was disbanded upon delivery of the Final Report to Secretary Perez on September 15, including 18 non-governmental members (three self-advocates, two academics, three employer representatives, two providers of employment services, and three representatives of national disability advocacy organizations, and five people working with organizations focused on increasing competitive integrated employment opportunities) and seven government officials. The full list of members may be found here: <https://www.dol.gov/odep/topics/WIOA.htm>.

Competitive Integrated Employment Defined

The Committee notes to begin with that competitive integrated employment within the context of WIOA means:

- Full or part time work (including self-employment) for which an individual is compensated at not less than the higher of federal, state, or local minimum wage requirements and not less than the customary rate paid by an employer for the same work performed by persons without disabilities;
- 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 person; and

- 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.

Format of the Final Report

The Final Report is broken down into six sections: (1) Increasing Competitive Integrated Employment will require Capacity Building; (2) Capacity Building for Youth; (3) Capacity Building through Changes in the Use and Oversight of 14(c) Certificates; (4) Capacity Building in the Marketplace; (5) Capacity Building in Specific Federal Agencies; (6) Increasing Competitive Integrated Employment in the AbilityOne Program.

Chapter 1: Capacity Building (Final Report pages 9-20.)

The Committee wants to see an alignment of priorities across federal, state, and local governments, including with respect to funding, in order to “broadly build capacity for CIE.” Specifically, the Committee states, “service in segregated settings is funded 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. (Final Report at 9.) “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.” (Final Report at 9.) The Committee claims, “the way in which most states fund services incentivizes segregation over integration.” (Final Report at 9.) The Committee then discusses local and state funding sources and a failure to include an expectation that services, such as day services and supported employment allowable under the CMS Medicaid Waiver program among others, will result in “specific quantifiable employment outcomes.” (Final Report at 9.) The Committee also notes that the manner in which CMS collects data differs from state to state, and is not compatible with the RSA guidelines for data collection. “Without good data, services end up being driven by suppositions and myths about what works and what does not.” (Final Report at 9.)

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 support 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.

(Final Report at 10.)

The Committee describes “work-readiness training” in sheltered workshops as being among the ineffective strategies employed. (Final Report at 10-11.) The Committee points to what it describes as “an obvious need for elevating the skills of practitioners in the field who are supporting individuals with significant disabilities in seeking and obtaining CIE.” (Final Report

at 11.) The Committee also points to a need for service delivery systems available to help individuals with disabilities obtain CIE to be expanded beyond disability services systems, but also to include public workforce development systems through American Job Centers, mainstream education and higher education systems, the U.S. Department of Commerce, and the Small Business Administration. (Final Report at 11.)

In pursuit of its goals, the Committee makes six detailed recommendations to increase capacity:

Recommendation No. 1: The Department of Labor 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 (and identifies agencies). In order to accomplish this, the Committee recommends the following:

- (a) To inform the recommended collaboration effort, federal agencies should:
 - Identify states and state programs that “are currently most effective in delivering services that result in CIE outcomes” and describe the funding strategies being used;
 - Develop guidance on how to braid, blend, and fully leverage available federal funding” in order to improve employment outcomes and advance economic self-sufficiency (noting that this recommendation also applies to RSA “since WIOA requires a focus on CIE and development of strategies that avoid use of center-based, group or other segregated employment settings”);
 - Through its use of existing demonstration authorities or by seeking Congressional authorization for new authorities, CMS and other federal agencies should provide additional financial support and incentives to states, providers and /or participants beneficiaries to support increased CIE outcomes “over other segregated employment or day services,” and to “help transition people from segregated employment settings to CIE;
 - Develop demonstration or other pilot efforts with robust data collection requirements to determine what is effective in assisting states to improve CIE outcomes;
 - Support existing strategies and encourage new pay-for-performance strategies; and
 - Provide technical assistance to states, similar to ODEP’s Employment First State Leadership Mentor Program and/or funding for 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 the best use of funding that leads to improved CIE outcomes:

- OSEP should require all youth with disabilities to begin transition or pre-employment transition services at or prior to age 14; have opportunities for integrated work experiences, including access to assistive technology and assistive technology assessments conducted by a qualified entity, job coaching, and other supports for a period of not less than 24 months; coordinate with VR if students are considering center-based or segregated employment;
- RSA should ensure that youth with disabilities first apply for VR services in order to receive transition or other VR services; students and youth in supported employment should have an individual employment plan and be permitted to work toward an identified CIE a reasonable period of time of not more than 24 months, with that period extended as necessary in order to achieve the identified employment outcome; funds for extended services for youth with the most significant disabilities may be used to provided extended services to youth for up to four years or until the individual no longer meets the definition of “youth with a disability”; eligibility for VR services should be presumed for anyone in 14(c) employment who expresses an interest in CIE and for anyone considering center-based or segregated employment (and RSA should take regulatory action and/or seek statutory changes as necessary to fully implement the recommendation); and

(c) OSEP and RSA should develop a close working arrangement, including at the state and local level, that would encourage (i) students with disabilities to leave school either employed or with a post-school employment plan that will lead to employment; (ii) participation in transition programs including integrated work experience, internships, apprenticeships, or similar job experiences; and (iii) State Education Agencies and VR agencies to report results of state and local efforts to their federal agencies.

(Final Report at 11-14.)

Recommendation No 2: Congress should provide CMS with capacity-building funding and 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 settings and “not in settings that have the effect of isolating individuals from the broader community.” This funding should be modeled after state Medicaid Infrastructure Grant initiatives.

(a) Congress should provide CMS with authority to issue guidance as to how Medicaid claims could financially support training, development and ongoing technical assistance for direct support staff and providers to help increase capacity for providing supported employment and customized employment that lead to improved CIE outcomes; and

(b) CMS and RSA should issue joint guidance directing 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 funded by Medicaid authorities.

(Final Report at 14-15.)

Recommendation No. 3: DHS (CMS, ACL, SAMHSA) and RSA, DOL, and the designated I/DD, Mental Health, and VR agencies in each state agencies 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 other segregated day services and into CIE.

(a) State I/DD, VR, and education agencies and their partners should become familiar with the Olmstead settlement agreements between the U.S. Department of Justice 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 *Olmstead* guidance court decisions related to CIE.”

(b) State labor, VR, I/DD, and MH agencies should collaborate to establish statewide public and private sector employer initiatives that encourage innovation 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 startups, (ii) school-to-work transition plans, and (iii) training and technical assistance for pilots and start-ups.

(c) CMS, VR, and partnering federal agencies, through their state agency entities, should provide short-term funding to give providers offering sheltered, non-integrated employment services technical assistance to transform those services, particularly (i) business models including reimbursement strategies that effectively support CIE, (ii) deployment of staff to provide services that lead to CIE, and (iii) training, supporting, and managing staff that provide CIE supports.

(Final Report at 15-16.)

Recommendation No. 4: Federal agencies providing 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.

(a) The common working definition of CIE should be derived from the WIOA and HCBS definitions and be consistent with goals of WIOA, ADA, and *Olmstead*; the definition should require that the “employer of record” be the same as for people without disabilities and not the service provider.

(b) DOL should take the lead in defining CIE, with help from DOE, HHS, and SSA.

(c) CMS should take the lead in developing outcome data points, with help from DOE, HHS, and SSA.

(d) States should regularly report, at a minimum, the (i) number of people employed in CIE, (ii) wages earned, (iii) hours worked, (iv) length of time employed in CIE, and (v) benefits (such as paid days off). (Note: In order to qualify as CIE, the data should include that the “employer of record” is the same as for people without disabilities and not the service provider.)

(e) Consideration should be given to collecting data on income level over time, taxes paid, and the reductions of public income support (SSA, TANF, SNAP) and medical coverage (as a result of primary coverage coming through an employer).

(f) Recognizing the link between employment and other social and health benefits, federal agencies should undertake a study of the impacts of employment on all people with significant disabilities, including (i) the utilization of health care services, (ii) “housing economic and stability,” (iii) use of public benefits and supports; and (iv) employer-based health benefits that offset public health benefits.

(g) Federal agencies funding CIE should provide guidance, technical assistance, and resources to states for implementing data systems that will collect the minimum individual CIE data (number of people employed in CIE, wages received, hours worked, and paid days off). Congress should provide funding to States for funding data collection infrastructure.

(h) DOL (with HHS, ED, and SSA) should lead a review as to how data currently collected through programs such as TANF, SSA, and VR could be used to contribute to building the state data collection data process.

(i) Federal agencies should ensure that the data collected be made public 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 pathways to employment.”

(Final Report at 16-17.)

Recommendation No. 5: State agencies (Medicaid, Labor, VR, Mental Health, I/DD, SEA) should encourage the development of state and local standards (or adopt national standards) of professional competence in providing services to support CIE, and support professional development for organization leaders, program managers, and professional employment staff responsible for delivering services to support CIE.

(a) CIE capacity building for service provider staff should be driven by a common standard by which performance can be developed, supported, and measured. This includes certification standards, training, licensing, etc. This would apply at all levels of service including workforce development/employment and education/training service staff and key partners at all levels of employment, state agency workforce development/employment and education/training vendors, teachers at all levels of learning, and medical professionals. Pay scales for disability

support professionals should take certification standards into account (thereby enhancing the return on the federal investment in services).

(b) CMS and RSA should collaborate with DOL, SAMHSA, ACL, and OSEP to develop new tools for assessing capabilities and new supports for CIE.

(c) DOE should make personnel preparation grants to post-secondary institutions for the development of the next generation of employment professional staff who will be implementing CIE.

(d) HHS and other agencies must prioritize research and development on CIE so that contemporary evidence is established for what constitutes effective delivery of CIE in order that it be translated into curricula and practice.

(Final Report at 18-19.)

Recommendation No. 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. Such plan should set a definite time frame, and establish a framework for implementing these steps. The agencies at a minimum should include DOL (ETA and ODEP), DOE (RSA and OSEP), HHS (SAMHSA, CMS, ACL), and SSA.

(Final Report at 19.)

Chapter 2: Capacity Building For Youth (Final Report pages 21-27.)

Chapter 2 begins by discussing the use of Section 14(c) certificates, and references back to the Interim report in which the challenges students and youth with intellectual and developmental disabilities face are discussed more fully, resulting in what the Committee describes as “continuing poor adult employment outcomes.” (Final Report at 21.) The Committee encourages more paid work experience in “integrated environments” for youth beginning in secondary school. It notes that this will require changing the family mindset to one of employment and collaboration among multiple services so that a student can exit school already employed, thereby making services seamless from school to work to adult life. The recommendations made in this section are those the Committee believes will mitigate these continuing challenges. To show the likelihood of success, the Committee points to demonstration models that show such collaboration leading to “high levels (60-70%) of CIE outcomes for students with I/DD and other significant disabilities.” (Final Report at 21.)

Recommendations to Bolster Early Work Experiences

Recommendation No. 1: DOE, OSEP/IDEA, should encourage the use of Indicator 14 to strengthen opportunities for youth with disabilities to gain integrated work experiences.

(a) Annual Idea Indicator 14 reporting on all students leaving school that will track post-secondary education and/or CIE, including data on the type of employment, hours worked, and wages earned.

(b) SEAs working with LEAs to develop improvement plans for lower-performing schools as evidenced by IDEA Indicator 14 data.

(c) SEAs establishing policies for technical assistance to lower-performing schools.

Recommendation No. 2: DOE should invest in high-quality correlational research to document new models and transition assessment methods and/or tools to move youth from school to careers.

Recommendation No. 3: Congress should reauthorize IDEA and the Carl Perkins Career and Technical Education Improvement Act to align with WIOA and expand the responsibilities of programs funded through the Act in order to support early paid work experiences. Specifically, Congress should amend IDEA (a) to set CIE as a transition goal and presume employability of all persons, (b) to require a minimum of one competitive job prior to high school exit that is documented as a transition service, (d) require State VR and State I/DD and other agencies responsible for providing or funding transition services at IEP meetings of transition-age youth, (d) prohibit Section 14(c) subminimum wage employment or services as an allowable transition service or post-school outcome, and (e) require that concentrated transition planning begin by age 14.

(Final Report at 22-23.)

Recommendations for Family Expectations and Support

Recommendation No. 4: DOE/OSEP should require 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.

Recommendation No. 5: DOE, HHS, and SSA should incorporate into grant priorities, training requirements and activities, stronger guidance on post-school predictors of obtaining CIE, and resources for families. Indicators of post-school success to include “paid, community-based, integrated work experiences prior to school exit.” Family engagement strategies should be increased, including a clear role for family participation, career exploration opportunities, building self-advocacy and self-determination skills, progress monitoring, and sensitivity to cultural diversity.

(Final Report at 23-24.)

Recommendations for Professional Development and Training

Recommendation No. 6: DOE/OSEP should improve professional support and training to help students make meaningful progress toward CIE, by updating personnel and professional development grant programs to incorporate provisions related to predictors of post-school success, including strategies to address the specific needs of culturally diverse families, incorporating assessments of teacher trainee ability within special education teacher preparation programs, and disseminating information about predictors of post-school success in teacher preparation programs.

Recommendation No. 7: Congress should reauthorize the Higher Education Act to reflect predictors of post-school success for youth with significant disabilities and update professional development evaluation monitoring components to ensure general and special education educators are prepared to facilitate high-quality post-school outcomes for youth with disabilities.

(Final Report at 24-25.)

Recommendations for Systems Integration and Seamless Transition

Recommendation No. 8: Congress should provide limited authority to DOE, HHS, DOL, and SSA (and their sub-agencies) to waive requirements that make it difficult for states to use and braid funds targeted at transition age students with significant disabilities.

Recommendation No. 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. This would include authority for (a) waiving statutory or regulatory challenges to the states' ability to braid funds, (b) structuring a program that would allow more flexible use of funds to encourage CIE outcomes, especially for youth, (c) supporting alignment of outcomes and reporting across relevant federal agencies, (d) supporting presumptive eligibility process across programs participating in pilots, and (e) ensuring access to supports and services for maintaining CIE (assistive technology, transportation, financial education, and coaching). The Committee includes detail on what pilot projects should include, including what it describes as scalable models showing that students with significant disabilities can have improved outcomes.

(Final Report at 25-26.)

Recommendations for Assistive Technology

Recommendation No. 10: DOJ and DOE should collaborate to issue specific joint agency guidance regarding Assistive Technology and quality Assistive Technology assessments as connected to the interpretation of IDEA's Free Appropriate Public Education and Least Restrictive Environment, WIOA Section 511, the ADA, and *Olmstead*. This guidance should include (a) evidence-based practices requiring supplementary aids and services be provided in a CIE setting, (b) strategies to support education personnel and employment service organizations, (c) local and state entities to develop joint policies to fund assistive technologies, (d) regular review of an individual's assistive technology needs, and (e) increased review of access to assistive technology for students with significant disabilities as part of state oversight, monitoring, and enforcement strategies.

(Final Report at 26-27.)

Chapter Three: Capacity Building through Changes In the Use and Oversight of 14(c) Certificates (Final Report pages 28-31.)

Relying on information gathered for its Interim Report, the Committee states that an estimated 228,600 people with I/DD and other significant disabilities work for subminimum wage under Section 14(c) certificates, with a majority working in congregate work centers or “congregate working situations such as work crews comprised of other individuals with disabilities.” (Final Report at 28.) Citing April 2015 data from WHD, the Committee states that there are 2,820 entities in the U.S. that hold Section 14(c) certificates, with 89% being CRPs serving individuals in congregate settings. It goes on to state:

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 environment 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.

(Final Report at 28.)

The Committee goes on to discuss Section 511 of the Rehabilitation Act, as added by WIOA, and its focus on limiting the use of Section 14(c) certificates for youth transitioning from secondary education and prohibitions on schools contracting with Section 14(c) certificate holders. The Committee, relying on its congressional charge to consider Section 14(c), states that the “current widespread practice of paying workers subminimum wages, based on the assumptions that individuals with disabilities cannot work in typical jobs, or on assumptions about the unavailability of alternative work opportunities, is antithetical to the intent of modern federal policy and law.” (Final Report at 29.) It therefore states that amending Section 14(c) will require three areas of activity and focus:

1. Congress amending the FLSA to allow for a multi-year, well-planned phase out of Section 14(c), which would include measures to mitigate unintended consequences for individuals currently being served.
2. WHD engaging in stronger oversight of 14(c) certificates and using stricter standards for issuance of new and renewal of existing certificates.
3. 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.

(Final Report at 29.)

Recommendation No. 1: Congress should amend Section 14(c) of the 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 should include enhanced data collection analysis of certificate holders and individuals paid under the certificate, including wages and hours worked, analysis of employment services received by individuals paid under the certificate and employment outcomes achieved, and increased penalties for misuse of the certificate.

(b) The Secretary of Labor should appoint a federal interagency panel to develop a detailed plan for the phase out, taking into consideration the mandates of WIOA and new WIOA requirements for Section 14(c) certificate holders, resources for technical assistance, and measures to mitigate any unintended impact of service transformation on subminimum wage recipients. The plan should include safeguards to ensure self-determination and that individuals are engaged and equipped with information and the opportunities necessary for understanding the options and making an informed choice. The plan also should pay attention to the long-term development of career pathways for individuals.

(Final Report at 29-30.)

Recommendation No. 2: The DOL Wage & Hour Division should engage in stronger enforcement of Section 14(c) certificates and use a strict standard for issuing or renewing certificates “only when necessary” to “prevent the curtailment of opportunities for employment.”

(a) Prior to issuing or renewing a certificate, DOL should require the state to submit evidence that there is a current lack of employment opportunities for people with disabilities and to develop a plan for addressing the lack of opportunities. The data the states deliver should include the existing rate of CIE within the State and a plan, with specific timeframes and benchmarks, to expand access to CIE. DOL should take regulatory action to implement this recommendation.

(b) Require certificate applicants to provide information along with their application showing the availability of integrated employment and supported employment services within the region they serve. The applicant must also describe the steps it will take to assist individuals working under a 14(c) certificate to obtain CIE. WHD should evaluate the progress made towards meeting the timeframes and benchmarks for expanding access to CIE in determining whether to renew a certificate. DOL should take regulatory action to implement this recommendation.

(c) WHD should incorporate input from federal partners into its 14(c) application and recertification review processes 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.

(Final Report at 30.)

Recommendation No. 3: Federal agencies (including DOL, HHS, and SSA) should coordinate provision of technical assistance resources for states to encourage transforming 14(c) certificate holders to employment agencies that offer CIE.

(a) The provision of technical assistance should focus on states that are successfully transforming employment options from 14(c) to CIE either because of work they are doing to comply with the HCBS settings rule or the WIOA mandate. The results should then be shared with all States.

(b) Technical assistance should include (i) redesigning the business plans of CRPs to develop strategies that lead to and support individuals in pursuing and sustaining CIE; (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; and (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.

(Final Report at 30-31.)

Chapter Four: Capacity Building in the Marketplace (Final Report pages 33-45.)

Chapter Four discusses ways to change the mindset of employers in the business community from either a patriarchal “it’s the right thing to do” reason for hiring people with disabilities to recognizing people with disabilities as a largely untapped resource of talent. The Committee identified eight key areas for organizing its recommendations for building capacity in the marketplace: (1) communication and outreach to businesses, (2) public workforce employment services personnel education, (3) the public workforce system’s approach to increasing training opportunities for individuals with I/DD or significant disabilities, (4) the expansion of the Benefits Counselor certification through the Work Incentives Planning and Assistance (WIPA) project grant program, (5) transportation, (6) high-growth industries with a focus on healthcare, (7) the OFCCP Section 502 regulations, and (8) tax incentives.

Recommendation No. 1: Congress should fund a DOL-led 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. The campaign should be developed in collaboration with businesses and organizations that have successful disability inclusion initiatives and should spotlight model businesses that have built a more inclusive workforce through the development of outreach and recruitment strategies. The marketing campaign public service announcements and other media resources should be directly disseminated nationwide to chambers of commerce, business councils, trade associations, etc. with a request to position the PSAs and other media on their websites.

(Final Report at 36.)

Recommendation No. 2: Congress should provide mandates and funding to DOL and DOE to develop web-based training (with certification requirements) for all employment services personnel who work within the public workforce system with businesses and with individuals with I/DD and other significant disabilities. This would include American Job Centers management and staff, business service representatives, Workforce Development Board members and staff, state workforce executives, and VR staff. The education modules would include how to communicate and work with individuals with disabilities; strategies for assisting AJC customers with significant disabilities to pursue and achieve CIE; specific business-related conduct, including guidance from businesses that have successfully included individuals with significant disabilities into their workforces; funding, including the blending and braiding of funds; ways to address physical, communication, and programmatic barriers to employment that may exist in AJCs; universal access; assistive technology; the SSA's Ticket to Work program; work incentives and benefits counseling; guidance on making referrals to outside agencies; ADA education on the Provision of Employment Services; and WIOA Section 188. The modules should permit employment services personnel to re-enter the modules at will to find resource information. Funding for the online education initiative should include funding for on-going updates.

(Final Report at 36-38.)

Recommendation No. 3: Congress should mandate that a certain percentage of local Adult and Dislocated Worker and VR formula funds to 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.

(Final Report at 38-39.)

Recommendation No. 4: Congress should increase funding of the Social Security Work Incentives Planning Assistance Project grant program and provide opportunities for more benefit counselors to be certified. Congress should also fund the DOL and SSA collaboration to promote and encourage the onboarding of SSA Ticket to Work Employment Networks (EN) into AJC sites. WIPA grant programs should also provide information on Achieving a Better Life Experience (ABLE) accounts to advance CIE and economic self-sufficiency objectives. This would include (a) increasing the funding of WIPA grant programs, (b) increasing the funding for SSA benefits counseling training to service providers working directly with individuals receiving SSI and/or SSDI benefits, and (c) funding DOL and SSA to collaborate to promote and encourage the onboarding of AJC sites as SSA Ticket to Work ENs.

(Final Report at 39-40.)

Recommendation No. 5: Congress should direct the Secretary of Transportation 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 U.S., and utilizing the latest technological and digital strategies to address the most glaring deficits, especially in rural areas. DOT should create incentives for employers who demonstrate a commitment to hiring people with disabilities by incorporating transportation solutions into their business practices, including giving priority status on grant applications.

DOT should develop grant opportunities aimed at providing additional funding for travel training, etc. and identify strategies for nationwide dissemination of grant opportunities. DOT also 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.

(Final Report at 40-41.)

Recommendation No. 6: Congress should fund DOE and DOL to develop initiatives that will educate employers within healthcare industries about the abilities of people with I/DD and significant disabilities and create opportunities for individuals to participate in educational training, apprenticeships, and certification programs in healthcare and other high-growth fields. These initiatives should highlight success stories, including stories from the healthcare field and higher education.

(Final Report at 41.)

Recommendation No. 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 and should fund DOL to develop and implement projects that (a) provide training on the rules, (b) direct federal contractors to identify themselves on the state job database systems, (c) identify effective strategies for federal contractors to use in the outreach, recruitment, and hiring of people with disabilities, (d) monitor federal contractors to ensure that they provide information about the Invitation to Self-Identify as people with disabilities, (e) ensure that all electronic job applications include a statement as to self-disclosure; (f) develop outreach materials that provide compelling reasons for individuals to self-disclose their disabilities; and (g) implement regional federal contractor roundtable discussions to establish better relationships between DOL and federal contractors.

(Final Report at 42-43.)

Recommendation No. 8: Congress should update and amend the Work Opportunity Tax Credit, the Disabled Access Credit, and the Architectural and Transportation Barrier Removal deduction to expand eligibility criteria, increase financial benefits to eligible employers, and heighten programmatic oversight.

(Final Report at 44-45.)

Chapter 5: Capacity Building in Specific Federal Agencies (Final Report pages 46-55.)

Federal agencies should work together to recognize that people with disabilities bring competency and contribution to the workforce. SSA should emphasize employment as a goal for working age SSI and SSDI beneficiaries and help dispel the fears of losing cash, health benefits, financial stability, and personal security. CMS must provide detailed advice on how to use Medicaid authorities to promote CIE for working age people who use mental health and physical disabilities supports. Non-work programs and services, including integrated day services and non-residential Long Term Services and Supports, must complement work lives and not be used as a substitute for work. For individuals with significant disabilities who have not yet obtained

CIE, non-residential Long-Term Services and Supports should focus on activities aimed at increasing the person’s chances of achieving CIE (networking, career planning, job development). For people who have achieved CIE, non-residential LTSS should focus on activities aimed at expanding and sustaining CIE outcomes (increased hours, wages, and benefits; opportunities for advancement, expanded financial capability, and maximum community integration). This should include career planning/exploration, transportation, financial literacy training, benefits planning, and community-based recreation and skills-building activities).

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

Recommendation No. 1: DHS, DOL, DOE, DOT, HUD, and SSA should convene a cross-agency working group to provide policy guidance and provide technical assistance on integrated day services and other wrap-around supports that can help people access CIE. This should include:

(a) Clarification that the purpose of integrated day services and wrap-around supports are to maximize (not displace or limit) CIE, improve socioeconomic status, “and facilitate authentic community involvement for people with significant disabilities.”

(b) Identification of the key components and examples of effective practices, and suggestions for methods and metrics for collecting and using data on integrated day services to improve accountability and outcomes over time.

(c) Clarification that integrated day options include regular opportunities for community-based recreational, social, educational, cultural, and athletic activities, including community volunteer activities and training activities; such services should not include an overall facility or program schedule for the individuals receiving such services.

(d) Clarification of the allowable uses of federal funds for promoting natural (i.e. non-professional) supports that can help achieve the desired outcomes of CIE and socioeconomic advancement.

(e) Descriptions of 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.

(Final Report at 47-49.)

Recommendation: Ticket to Work Model for Transition-age Youth

Recommendation No. 2: Congress should authorize the creation of a Ticket to Work demonstration focused on youth with disabilities in transition. The purpose is to expand the Ticket to Work model to include and support transition-age youth and younger adults in order to improve employment outcomes for individuals with significant disabilities. The recommendation is for a pilot program that would permit youth ages 14-16 to participate and allow continued participation in the demonstration up to age 30 (or the cessation of the

demonstration, whichever comes first). The demonstration should include (a) assistance with developing a career plan; (b) career coaching; (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; (f) use of “pay for success” payments; (g) a “race to the top” approach to incentivize high performing States. The focus also would be on expanding capacity beyond VR through new entities dedicated to serving youth.

(Final Report at 49-51.)

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

Recommendation No. 3: SSA, in collaboration with federal partners, state governments, and other stakeholders should develop a comprehensive new initiative designed to increase the number of SSI/SSDI beneficiaries that become optimally employed 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. This recommendation is made in light of the concerns many individuals with disabilities have with respect to losing benefits as a result of becoming employed. This would include a review of the way in which disability is defined.

(Final Report at 51-55.)

Chapter 6: Increasing Competitive Integrated Employment in the AbilityOne Program

(Final Report pages 56-61.)

The Committee notes that 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.” The Committee makes clear its mindset from the beginning of this section:

Currently the program enables the federal government to purchase products or 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 . . . 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*.”

(Final Report at 56.)

The Committee goes on to note that AbilityOne currently represents a national network of 600 nonprofit agencies that sell products and services to the federal government. During fiscal year 2014, there were 46,630 workers across 565 agencies engaged in contract work under the program. The AbilityOne program awarded approximately \$2.8 billion in noncompetitive federal contracts to qualified nonprofit agencies (NPA). NPAs ensure that 75% of the labor hours necessary to complete AbilityOne contracts are completed by people who are blind or have 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.” (Final Report at 57.)

The Committee asserts that the AbilityOne program may inhibit increasing CIE (1) because of potential conflicts of interests in determining who is eligible to participate as the participating NPAs serve as both the employer and the employment support service; (2) the 75% contract hour requirement essentially segregates workers from the mainstream workforce; (3) 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 (4) the AbilityOne 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. 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 Committee’s recommendations express a “need to identify and test new methods of federal contract operation and oversight for the program, and the need to evaluation the implementation of these new methods.” (Final Report at 57.)

Recommendation No.1: Congress should amend JWOD to fully align the Act with modern federal disability law and policy goals, including the ADA, *Olmstead*, and WIOA. The amendment should include provisions requiring that CIE be a goal of participation in the program. Key features of the revised Act should include:

- (a) New criteria and processes for procurement selection that consider the following:
 - The process for selecting the NPA for a contract should be outside the purview of the Central Nonprofit Agencies (SourceAmerica and National

Industries for the Blind). 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.

- There should be a selection process allowing at least two qualified vendors to be referred to the Commission for each contract. Contracts should be re-competed at prescribed intervals.
- There should be expanded opportunities for contractor selection to nonprofit organizations not associated with NIB or SourceAmerica and for-profit companies. An independent study should be conducted to evaluate this and other potential vendor selection criteria, including vendor preferences that might be given to small businesses owned by individuals with disabilities.
- Additional preference should be given to vendors who can document they have assisted AbilityOne employees' transition to CIE.
- The Inspector General staff should be involved in the development of new selection criteria and process.
- The AbilityOne Commission should represent its constituents, and 50% of the Commission should be individuals with disabilities and experts in disability employment policy and workforce development.

(b) The 75% contract-hours mandate should be considered. Thought should be given to feasibility of other program participation thresholds or eligibility criteria, including:

- The feasibility of measuring the 75% ratio or any similar ratio including recommendations for other program participation thresholds or eligibility criteria.
- 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.
- 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 be test the awarding of AbilityOne contracts from federal customers to private industries that would be allowed to meet the minimum work hour requirements with CIE opportunities elsewhere in their businesses outside the contract. All pilots should be subject to independent evaluation to inform future decisions about contract hour requirements.
- Any changes in the 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) 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 recommended reforms, establish new criteria for who is eligible to work on AbilityOne contracts that reflect the following principles:

- 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.
- Eligibility for AbilityOne, i.e., the documentation of a significant disability, should be determined independently and not by the NPAs that compete for 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 VR agency or another agency, etc.

(Final Report at 59-60.)

Recommendation No. 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, and recommendations to increase the participation of these individuals.

(b) Methods to ensure compliance with any current or newly established participation threshold.

(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 on 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.

(Final Report at 60.)

Recommendation No.3: Congress should authorize an independent third-party evaluation tasked with studying the implementation of the recommendations submitted by the Committee, and submit a report that identifies and recommends additional policies that may be required to implement the changes necessary to reform JWOD. This evaluation should be informed by research, completed within a required timeframe 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, and (b) advocates for these individuals (subject matter experts on CIE, government and private sector economists, representatives from relevant federal agencies, current or potential AbilityOne vendors, representatives with in-depth knowledge of the AbilityOne Program, and policy experts on federal policy including the ADA, *Olmstead*, and WIOA).

(Final Report at 60-61.)

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