

# **Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities**

Interim Report to:

The Honorable Thomas E. Perez  
United States Secretary of Labor

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

The United States House of Representatives  
Committee on Education and the Workforce

September 15, 2015

## 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) of 2014, to advise the Secretary of Labor in three areas:

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

The Committee was established in September 2014 according to the provisions of the Federal Advisory Committee Act (FACA), which helps ensure the independent nature of the Committee in providing advice and recommendations to the Administration. The full interim report represents the collaborative work of the Committee as a whole.

The primary purpose of the work of the Committee is to address issues, and make recommendations, to improve the employment participation of people with intellectual and developmental disabilities and others with significant disabilities by ensuring opportunities for competitive integrated employment (CIE). WIOA<sup>1</sup> defines “competitive integrated employment” as:

Work performed on a full or part time basis 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 are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and
- (3) Presented, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

The Committee is 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 competitive integrated employment.

In the subsequent Committee Charter (See Appendix B), the charge to the Committee was further clarified to include:

- Review existing Federal policy and make recommendations to break down barriers to competitive integrated employment;
- Provide recommendations to modernizing the service delivery system and expanding strategies for increasing competitive integrated employment;
- Recommend system-change strategies to ensure that competitive integrated employment is the first option for people with significant disabilities; and
- Review the use of the certificate program under Section 14(c) (use of subminimum wages) and recommend ways to improve oversight and reduce reliance on such certificates.

### **Highlights of Preliminary Recommendations**

The work of the Committee began with its first meeting in January 2015, followed by full committee meetings in March, May, and July 2015. The work of the Committee includes formation of four sub-committees. In addition, two ad-hoc committees were formed. These committees are: Transition to Careers; Complexity and Needs in Delivering Competitive Integrated Employment; Marketplace Dynamics; Building State and Local Capacity; Section 14(c) Subminimum Wage Certificate Program; and AbilityOne® Program. Following are highlights of the Preliminary Recommendations of the Committee.

The primary focus of the work of the Committee and the formation of preliminary recommendations is: (1) to increase opportunities for competitive integrated employment; (2) to ensure competitive integrated employment is the first option for people with significant disabilities in order to increase the employment participation rate; and (3) to significantly reduce the use of FLSA Section 14(c) and the dependence on subminimum wages and segregated service placements.

### **Transition to Careers Sub-Committee**

The Preliminary Recommendations of the Transition to Careers Sub-Committee emphasize:

- Increasing opportunities for early work experiences for all youth with disabilities, including beginning transition at age 14, and conducting research of effective transition practices resulting in CIE for youth;
- Increasing nationwide opportunities for post-secondary education for youth with significant disabilities which includes competitive integrated work experiences;
- Addressing family expectations for CIE at early ages;
- Creating seamless transition and systems integration in policy and funding for transition across related federal agencies; and
- Improving professional supports and incentives by improving school and provider competencies and providing technical assistance to states.

### **Complexity and Needs in Delivering Competitive Integrated Employment Sub-Committee**

The Preliminary Recommendations of the Complexity and Needs Sub-Committee emphasize:

- Aligning policy and practices to prioritize competitive integrated employment across federal agencies, “including the U.S. Department of Labor, U.S. Department of Health and Human Services (including the Centers for Medicare & Medicaid Services), U.S. Department of Education (including the Rehabilitation Services Administration), and Social Security Administration.”
- Aligning across federal agencies the funding rules and payment methodologies to prioritize and incentivize CIE and help provide opportunities for CIE to people currently in segregated work and non-work day programs;
- Addressing real and perceived disincentives to employment caused by concerns about loss of healthcare benefits (Medicaid and/or Medicare) and/or cash benefits (Supplemental Security Income and/or Social Security Disability Insurance).
- Addressing systemic low expectations around employment by increasing knowledge of, and capacity to provide, effective practices for achieving CIE for people with significant disabilities.
- Improving accountability for achieving CIE and ensuring quality through the development of a uniform definition for CIE and requirements for collecting data and outcome measures at the federal and state levels.

### **Marketplace Dynamics Sub-Committee**

The Preliminary Recommendations of the Marketplace Dynamics Sub-Committee are focused on employer and business model issues for increasing CIE. These emphasize:

- Changing the narrative about hiring people with significant disabilities to promote hiring people with disabilities as good for business outcomes through a national education campaign;
- Creating a sustainable culture of inclusion and diversity through business to business communications and marketing to businesses of all sizes;
- Building better business partnerships between businesses, providers of employment services and government programs;
- Addressing training issues by improving provider competencies and developing national training requirements; and
- Addressing the complex issues of transportation in urban, sub-urban and rural America.

### **Building State and Local Capacity Sub-Committee**

The Preliminary Recommendations of the Building State and Local Capacity Sub-Committee emphasize:

- Expanded use of Home and Community-Based Services (HCBS) Waiver programs for CIE by changing the federal match requirements to states to incentivize CIE;
- Aligning and improving data systems on CIE outcomes;
- Promoting and funding innovations in new and existing provider organizations;
- Creating and funding professional development to improve provider competencies; and
- Providing funding for provider transformation.

### **Section 14(c) Subminimum Wage Certificate Program**

Each of the four initial sub-committees worked on the development of Preliminary Recommendations related to the FLSA Section 14(c) certificate program. These Preliminary Recommendations include attention to:

- The need for better data on the use of this program and its outcomes;
- Improving monitoring and oversight of the program;
- Aligning use of the program with modern federal disability policies, including the ADA and the Supreme Court's *Olmstead* decision, WIOA, and recent rules and guidance from the Centers for Medicare & Medicaid services;
- Considering a well-designed phase out of the program as a result of increasing CIE;
- Providing technical assistance to states and providers to reduce the use of the program; and

- Addressing concerns of unintended consequences by ensuring quality alternatives.

### **AbilityOne® Program**

Two of the initial sub-committees addressed issues of the AbilityOne Program. The Preliminary Recommendations emphasize:

- Amending the Javits-Wagner-O'Day (JWOD) Act to align with modern federal disability policies, including the Americans with Disabilities Act (ADA), and change the program to emphasize inclusion of people with significant disabilities alongside nondisabled peers in CIE workplaces instead of congregating and segregating people with significant disabilities.
- Creating an expectation that AbilityOne Programs establish CIE as the expected and priority outcomes;
- Improving oversight of the program; and
- Creating improved data systems on the use and the outcomes of the program.

### **Conclusion**

The primary focus of the work of the Committee, and the formation of preliminary recommendations, is to increase opportunities for competitive integrated employment for individuals with I/DD or other significant disabilities. Ensuring that competitive integrated employment 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. The work of the Committee will continue as it prepares its Final Report to be delivered to the Secretary of Labor and Congress by September 15, 2016.