

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

Minutes from Seventh Meeting  
January 27 – 28, 2016

The seventh meeting of the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (“ACICIEID” or “the Committee”) was called to order by ACICIEID Chairman David Mank at 1:07 p.m. on Wednesday, January 27, 2016.

The meeting took place on a virtual platform at <http://bit.ly/1PT4xjj>. Chairman Mank and a few members were present at the Office of Disability Employment Policy (ODEP) at the U.S. Department of Labor (DOL), 200 Constitution Ave NW, Washington, DC 20210. Through the virtual platform, the public was able to view the presentations and hear the discussion.

The following members were present:

Self-advocates for individuals with intellectual or developmental disabilities:

- Patrick Hendry, Mental Health America (by phone)
- Karen McCulloh, McCulloh and Associates
- Santa Perez, People First of Nevada

Providers of employment services, including those who employ individuals with intellectual or developmental disabilities in competitive integrated employment:

- Christine McMahon, Fedcap

Representatives of national disability advocacy organizations for adults with intellectual or developmental disabilities:

- Ruby Moore, National Disability Rights Network
- Ari Ne’eman, Autistic Self Advocacy Network
- Alison Barkoff, the Bazelon Center

Experts with a background in academia or research and expertise in employment and wage policy issues for individuals with intellectual or developmental disabilities:

- Valerie Brooke, Virginia Commonwealth University
- David Mank, Indiana Institute on Disability

Community representatives from the employer community or national employer organizations:

- Oswald (Oz) Mondejar, Partners Continuing Care
- Jim Brett, The New England Council
- Chris Averill (Proxy for Jim Brett), The New England Council

Other individuals or representatives of organizations with expertise on increasing opportunities for competitive integrated employment for individuals with disabilities:

- Cesilee Coulson, Washington Initiative for Supported Employment
- Sharyn Hancock, Workforce Essentials, Inc.
- Rita Landgraf, Delaware State Department of Health and Social Services
- Lisa Pugh, Disability Rights Wisconsin
- Fredric Schroeder, Interwork Institute at San Diego State University

In addition, the following Federal officials were present:

- Jennifer Sheehy, Acting Assistant Secretary of the Office of Disability Employment Policy, DOL
- Portia Wu, Assistant Secretary of the Employment and Training Administration, DOL
- David Weil, Administrator of the Wage and Hour Division, DOL
- John O'Brien, Director of the Centers for Medicare and Medicaid Services
- Mike Smith (Proxy for John O'Brien), Medicare and Medicaid Services
- Laura Fortman, (Proxy for David Weil), Wage and Hour Division, DOL
- Bob Williams, Deputy Commissioner, Administration on Disabilities, and Director, Independent Living Administration, U.S. Department of Health and Human Services
- Robert Pfaff, Deputy Associate Commissioner, Office of Research, Demonstration and Employment Support, U.S. Social Security Administration
- Janet LaBreck, Commissioner of the Rehabilitation Services Administration (RSA) at the U.S. Department of Education

Brian Itzkowitz, representing Goodwill Industries of Arkansas Inc., did not attend the meeting.

## Day One: Wednesday, January 27, 2016

### Welcome/Roll Call/Administrative Updates / David Mank, Chair

At 1:07 p.m., Chairman Mank called the meeting to order by welcoming and thanking Committee members and members of the public for their participation in the process. He asked for each Committee member to introduce themselves before introducing the newest member of the Committee, Robert Pfaff from the Social Security Administration (SSA).

Chairman Mank reminded the members of the Committee's charge and timeline for delivery of the Final Report to the Secretary of Labor and Congress on September 15, 2016. Then, he provided an overview of the meeting agenda and asked Alison Barkoff to report out on Complexity and Needs subcommittee work.

David Mank's presentation may be accessed on the meeting agenda webpage at:  
[http://www.dol.gov/odep/topics/date/David\\_Mank\\_PPT.pdf](http://www.dol.gov/odep/topics/date/David_Mank_PPT.pdf)

### Complexity Subcommittee report out and Committee discussion

At 1:17 p.m., Alison Barkoff provided the Complexity and Needs subcommittee report out. She noted that the Complexity subcommittee had identified four key areas of focus including: Funding, Employment Success, 14 (c) Reform and Enforcement, and AbilityOne Reform. Ms.

Barkoff also talked about possible recommendations on wraparound supports, to be developed with the Transition to Careers Subcommittee.

Ms. Barkoff then asked other subcommittee members to add additional comments regarding the Complexity Report out. Mike Smith of CMS mentioned how their subcommittee was trying to expand on and operationalize two recommendations under Employment Success area including working with transition aged individuals as well as frame name change to focus on achievements and not fear. Mr. Smith also noted their current efforts in identifying a broader federal group (possibly led by the Social Security Administration) to help coordinate R&D systems change strategy that would increase effectiveness of this work, a focus on peer mentoring, career coaching, apprenticeship, financial planning, and resiliency around skill building and healthcare planning. Ms. Barkoff explained how the subcommittee was building on recommendations 10 – 13 from the 14 (c) chapter in the Interim Report including a well-designed phase-out of 14 (c).

Chairman Mank asked Ms. Barkoff to clarify how their funding recommendation will increase competitive integrated employment (CIE). Ms. Barkoff remarked on how it is important to create systems that incentivize people to get jobs instead of services. Further, she noted that performance based funding would not be effective without clarity on the proper outcomes. Cesilee Coulson commented on a potential area of overlap with the Capacity Subcommittee on reimbursement methodology. Rita Landgraf discussed an example in healthcare at the state level and the Affordability Care Act. She noted the importance of accessing additional funding to bring best practices to all levels.

The Complexity and Needs Subcommittee presentation may be accessed on the meeting agenda webpage at:

[http://www.dol.gov/odep/topics/date/Complexity\\_Subcommittee\\_PPT.pdf](http://www.dol.gov/odep/topics/date/Complexity_Subcommittee_PPT.pdf).

### Transition Subcommittee report out and Committee discussion

At 1:46 p.m., Vicki Brooke and Lisa Pugh reported out on the work of the Transition to Careers subcommittee. Ms. Brooke discussed four interest areas including early work experiences, post-secondary education, access to general education, and family expectations. She noted that the Transition subcommittee needed to do more research around family expectations. Ms. Pugh talked about wraparound services and the possible overlap with the Complexity subcommittee on that topic, and in particular addressed what a full day should look like for individuals with disabilities. Ms. Brooke and Ms. Pugh proceeded to discuss specific recommendations under each interest area. Santa Perez mentioned how they were also working on an assistive technology piece so that individuals with disabilities could have access to that technology immediately after transitioning from school.

Chairman Mank asked Ms. Pugh and Ms. Brooke to discuss subminimum wage and wrap around supports further. Ms. Brooke said they were committed to both and discussed the importance of including SWEP certificates in the Committee's on-going 14 (c) conversation. Chairman Mank raised the question of ensuring that the Committee's recommendation ensure that the focus is

on employment first, as well ensuring people have community supports but not making non-employment services too accessible. Ms. Barkoff echoed this sentiment and noted the need to identify principles around wraparound services. John O'Brien talked about managed or fee for service and how to ensure providers know what they are doing. Ari Ne'eman noted the importance of offering clear guidance in the Final report on what they consider to be an integrated day.

The Transition to Careers Subcommittee presentation may be accessed on the meeting agenda webpage at: [http://www.dol.gov/odep/topics/date/Transition\\_Subcommittee\\_PPT.pdf](http://www.dol.gov/odep/topics/date/Transition_Subcommittee_PPT.pdf).

### Full Committee Discussion on use and oversight of 14 (c) certificates with Laura Fortman, Wage and Hour Division

After a short break, Chairman Mank introduced Laura Fortman from the Wage and Hour Division (WHD) at DOL. Ms. Fortman thanked the Committee for their work and introduced her colleagues, Becky Ogle and Helen Applewhaite. Ms. Fortman proceeded to update the Committee on WHD's recent work including a new Memorandum of Understanding with the National Disability Rights Network (NDRN). Ms. Fortman explained that the purpose of the MOU would be to promote compliance and information sharing. Ms. Fortman also noted that WHD updated their website with the goal of being more user-friendly and to improve transparency. The website includes a list of current certificate holders and other key information relating to Section 14(c) of the Fair Labor Standards Act. Ms. Fortman also discussed a recent meeting between WHD and the Complexity Subcommittee regarding 14(c) oversight and enforcement.

Chairman Mank thanked Ms. Fortman and WHD for their presentation. Chairman Mank asked about WHD's process for issuing 14 (c) certificates. Ms. Fortman explained how WHD receives an application, looks for accuracy and completeness as outlined in the 14(c) regulations. If the application meets regulatory requirements, WHD issues a certificate (Ms. Fortman provided the Committee with specific language related to the Regulations). Chairman Mank then asked about how they define the curtailment of employment opportunities. Ms. Fortman explained how the regulations provide guidance on the prevention of curtailment of employment opportunity from the 1938 law based on a calculation of an employee's productivity as compared to prevailing wages in the area. She noted that section 14 (c) of the FLSA has not been amended to reflect changes in disability rights law. Furthermore, there is no statutory or regulatory definition of curtailment of employment opportunity. The entire regulatory structure is focused on prevailing wages as opposed to definitions of what curtailment means.

Ms. Barkoff asked whether WHD has denied any certificates on grounds of curtailment (as opposed to procedurally). Ms. Fortman replied that WHD has not denied certificates on grounds of curtailment. Christine McMahon asked if there was any opportunity procedurally for WHD to tie jobs to career goals. Ms. Fortman replied that such an effort was not within WHD's legal mandate and scope. Mr. Ne'eman then asked two questions: What is the DOL's capacity to influence the question of curtailment through sub regulatory guidance; and what

capacity do you have – within your statutory authorization - to require those applying for 14 (c) certificates to include in the application or attestations from 3<sup>rd</sup> parties (ex. State government, Vocational Rehabilitation, and/or Medicaid) that such certificates would be necessary to prevent curtailment?

Ms. Fortman replied that based on the review of WHD's attorneys, WHD would require regulatory changes in order to amend the regulations. (As for attestations from 3<sup>rd</sup> parties, she stated that she would need to follow up on that question). Mr. Ne'eman asked a follow up question on WHD's capacity to involve other federal agencies in the review process. Ms. Fortman noted how there were two different tracks. WHD wants to work with partners in understanding these issues. However, at the end of the day, WHD is an enforcement agency and they need to use the same protocols as they use in enforcing other laws. Bob Williams asked if WHD believes that the current regulation meets the requirement of the law. Ms. Fortman replied that it needs to be updated.

Karen McCulloh noted the importance of talking to employers about skills assessment and updating the traditional understandings of productivity level. Chairman Mank remarked on how many of these issues fall outside the purview of WHD laws and regulations, and that the Committee's work is about what's necessary to make subminimum wages less necessary. Mr. Ne'eman asked Ms. Fortman to name anything that WHD has the power to do that is not currently being done for stronger oversight or enforcement through regulatory or sub regulatory work. Ms. Fortman talked about the recent the PRA package, working to align how they collect data with WIOA requirements, increasing outreach, and developing partnerships.

## Public Testimony

At 3:30 p.m., Chairman Mank introduced the individuals who submitted testimony to the ACICIEID Advisory Committee. They were allowed seven minutes to provide their testimony.

The full Committee listened to public testimony which can be accessed at:

<http://www.dol.gov/odep/topics/date/20160127-testimony.htm>

After the public comment, Chairman Mank introduced John Butterworth and Karen Flippo from the Institute for Community Inclusion at the University of Massachusetts, Boston. Mr. Butterworth then introduced Ms. Flippo who provided a brief overview of the Partnerships in Employment Transition Systems Change Technical Assistance Center. Ms. Flippo stated that eight states participated in the project and the role of the Higher Performing States Framework. Ms. Flippo also noted how every state approached the transition systems change work differently and how important it is for state agencies to look for leaders of particular organizations because often the most creative and biggest risk takers are four to five levels down from senior leadership. Mr. Butterworth supported the work of the Committee and the recommendations from the interim report. He asked the Committee to also consider Recommendations outlined in their testimony, pp. 4 – 7.

Chairman Mank thanked Mr. Butterworth and Ms. Flippo and noted the importance of creating sustainable change. He also asked how they could expand the program beyond eight states. Mr. Butterworth answered that creating lessons learned from states to be shared with others, bringing in other states while keeping current member states engaged, and a focus on policy and infrastructure were three ways to expand the work of the program to a national level. Ms. Flippo added that one of their tasks this year is to look at the framework and see how they can revise it to address transition systems change. In addition, she is working on a toolkit for other states to use, and she hopes that will be completed by September. Mr. Butterworth referred the Committee members to the website for the project:

<http://partnershipsinemployment.com/>.

Mr. Butterworth and Ms. Flippo's testimony can be found at:

[http://www.dol.gov/odep/topics/date/John\\_Butterworth\\_Testimony.pdf](http://www.dol.gov/odep/topics/date/John_Butterworth_Testimony.pdf).

### **Marketplace Subcommittee report out and Committee discussion**

Karen McCulloh provided the Marketplace Subcommittee report out and thanked the subcommittee members for participating in the meeting of the Committee. Ms. McCulloh outlined three key areas including: High growth industries (Health care), Office of Federal Contract Compliance Programs (OFCCP) 503 Rules, and Tax incentives. Ms. McCulloh also noted the possible addition of other recommendations on changing the narrative while creating a Sustainable Culture of Inclusion by Building Better Business Partnerships, Reduce Training & Pipeline Issues, and Transportation. She remarked on areas of overlap with the Capacity and Transition subcommittees on personnel development and people with IDD and other Significant Disabilities with the Transition Subcommittee.

Ms. Pugh asked Ms. McCulloh to explain why the Marketplace subcommittee focused on the healthcare industry as the only high growth industry. Ms. McCulloh explained how the Marketplace subcommittee looked at various industries and decided that healthcare would have the highest and greatest impact for people with disabilities. Oz Mondejar also discussed various opportunities within the healthcare field for individuals with disabilities seeking employment. Chairman Mank pointed out that the overarching phrase was 'high growth industries'. Mr. Ne'eman recalled this concern and encouraged the subcommittee to explicitly include language in the Final report that industry specific language is not intended to be exclusive. Sharyn Hancock noted how healthcare is a consortium of many industries, and Jim Brett agreed as well.

The Marketplace Dynamics Subcommittee presentation may be accessed on the meeting agenda webpage at:

[http://www.dol.gov/odep/topics/date/Marketplace\\_Subcommittee\\_PPT.pdf](http://www.dol.gov/odep/topics/date/Marketplace_Subcommittee_PPT.pdf)

### **Summary of Day One of Meeting; Adjournment**

After the Marketplace Dynamics Subcommittee report out, Chairman Mank reviewed the agenda for Day 2 which included the Building State and Local Capacity Subcommittee and 14(c)

and AbilityOne chapters report outs as well as a Full Committee discussion of subcommittee findings and conclusions. He thanked members of the public for their testimony as well as the members of the Committee for their participation and work. At 4:52 p.m., the meeting adjourned.

## Day Two: Thursday, January 28, 2016

### Call to Order

At 1:01 p.m., Chairman Mank welcomed members of the Committee and the public to Day Two of the Seventh ACICIEID meeting. After going over the roll call, Chairman Mank reviewed the Day's agenda.

### Building State and Local Capacity Subcommittee report out and Committee discussion

At 1:06 p.m., Cesilee Coulson provided the Building State and Local Capacity Subcommittee report out. Ms. Coulson explained how the subcommittee condensed the seven recommendations from the interim report into three key areas -- professional development, directing CMS to expand the use of the HCBS Waiver program funds, and data/outcomes. She added that there was an additional recommendation that they wanted to discuss with the Full Committee which would help them implement capacity building steps for all recommendations. Ms. Coulson discussed areas of overlap with several Subcommittees on data/outcomes and personnel development.

Chairman Mank asked the Committee to think more about a national implementation strategy for improving competitive integrated employment. Ms. Coulson commented on the importance of more conversation around state level activities. Rita Landgraf recalled a comment made during the Complexity report out on the benefits of a federal pilot to help practice transformation. Then, Chairman Mank noted how guidance around professional development and data could be useful for states. Ms. Landgraf replied that that guidance would be helpful but it should not be overly prescriptive -- common principles would be helpful. Mr. Ne'eman appreciated the focus on data collection and mentioned the importance of standard requirements to allow for comparability across states. He recommended that the Capacity subcommittee consider some requirements for unified data collection. Ms. Barkoff suggested thinking about how to best align data collection with other existing systems and that they are developing concrete recommendations around topic. Janet LaBreck clarified a point around data collection under WIOA and noted how types of data collected have and will change.

The Building State and Local Capacity Subcommittee presentation may be accessed on the meeting agenda webpage at:

[http://www.dol.gov/odep/topics/date/Capacity\\_Building\\_PPT.pdf](http://www.dol.gov/odep/topics/date/Capacity_Building_PPT.pdf).

## Report out on 14(c) and AbilityOne chapters; Full Committee discussion of subcommittee findings and conclusions

At 1:35 p.m., Ari Ne'eman provided the AbilityOne chapter report out and introduced the subgroup members. Mr. Ne'eman explained how the subgroup condensed the original seven recommendations from the Interim Report into four recommendations related to the Javits-Wagner-O'Day Act (JWOD). He stressed how the group felt strongly about aligning the AbilityOne program with the Workforce Innovation and Opportunity Act (WIOA), *Olmstead v. L.C.*, and the Americans with Disabilities Act of 1990 (ADA).

Chairman Mank remarked that Congress had recently passed some legislative changes to the AbilityOne program. Dave Berthiaume briefed the Committee on these changes, including the creation of an Inspector General within AbilityOne to oversee work of the Commission and Central Nonprofit Agencies (CNAs), quarterly reporting requirements, and increased transparency regarding SourceAmerica and NIB expenditures.

Mr. Ne'eman asked for feedback from the Committee regarding a proposed independent eligibility standard, opening up the AbilityOne program to for-profit companies, and changing the composition of the Commission. Ms. Barkoff cautioned against identifying a new eligibility standard or percentage of contract hours before further discussion due to possible unintended consequences. Ms. LaBreck suggested that the language that determined eligibility be focused on competitive integrated employment settings. Mary Lovely, special assistant to Ms. LaBreck at RSA, noted how individuals who are SSI/SSDI recipients are presumed eligible for AbilityOne employment as individuals with a disability. She added that if you include people who receive services from VR, those individuals are also presumed eligible. All of this is an issue because not all AbilityOne environments are CIE settings. Ms. Sheehy and Ms. McCulloh asked for more data on the AbilityOne program (number of workers, hours worked, level of disability, wages, etc.) and Chairman Mank offered to circulate data from the 2015 AbilityOne program report to Committee members. Mr. Schroeder expressed his support for expanding the program to for-profit companies which meets their integration goals.

Finally, the issue of a well-designed phase out of 14 (c) certificates was discussed briefly. Ms. Barkoff noted how the Complexity and Needs subcommittee felt strongly about that recommendation. Ms. Coulson commented on the significant amount of fear from people who work in 14 (c) settings and the need for the phase out to be tied to capacity building. Chairman Mank asked the Committee to think about what a long range build plan would look like. Ms. Landgraf talked about practice transformation and retooling that would not leave anyone behind.

The AbilityOne presentation may be accessed on the meeting agenda webpage at: [http://www.dol.gov/odep/topics/date/AbilityOne\\_PPT.pdf](http://www.dol.gov/odep/topics/date/AbilityOne_PPT.pdf).



## Full Committee discussion of subcommittee findings and conclusions; Discussion on Structure of Final Report; Establishment of Detailed Timeline for Final Report

After a short Break, the Committee reconvened at 3:20 p.m. Chairman Mank reminded the Committee of their charge and reviewed the timeline for the Final Report. He noted that the Committee has two in-person meetings on April 27 – 28, 2016 and July 20 – 21, 2016. The Final Report is due to the U.S. Secretary of Labor and Congress on September 15, 2016. Then, Chairman Mank provided a possible outline for the Final Report which included work done by the Committee from the Interim Report.

The Detailed Timeline for the Final Report presentation may be accessed on the meeting agenda webpage at: [http://www.dol.gov/odep/topics/date/David\\_Mank\\_PPT.pdf](http://www.dol.gov/odep/topics/date/David_Mank_PPT.pdf).

## Summary of Meeting/Overview of Upcoming Committee Activities (Jennifer Sheehy, DFO)

Jennifer Sheehy provided an update to the Committee regarding recent activities within DOL related to the Committee's work. She also noted that a formal briefing will be set up for the Final Report between Chairman Mank and Congress.

## Adjournment

Chairman Mank thanked the Committee members and members of the public for their participation in the process. The meeting was adjourned at 4:04 p.m.

## Certification

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.



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ACICIEID Chairman David Mank