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Advisory Committee on Increasing
Competitive Integrated Employment
for Individuals with Disabilities
U.S. Department of Labor
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Washington, DC 20210

Dear Committee Members:

As an organization with a long history of providing employment, services and supports to people with employment challenges, including those with disabilities, Goodwill Industries International, Inc. (GII), appreciates this opportunity to submit comments on the work of the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the Committee).

During the last meeting, the Committee acknowledged the 25th Anniversary of the Americans with Disabilities Act (ADA), and countless celebrations around the country touted one of our proudest civil rights triumphs. Yet in June 2015, the U.S. Bureau of Labor Statistics (BLS) reported only 20 percent of people with disabilities were participating in the labor force compared to 69.1 percent of persons without disabilities. Furthermore, the unemployment rate for people with disabilities was 9.3 percent compared with 5.3 percent for persons without disabilities, not seasonally adjusted. These statistics paint a bleak picture and highlight that we still have a long way to go. This unfortunate reality is why the work of the Committee is so important.

Over the past few years, we have seen an increase in the number of states implementing Employment First policies and a number of states have created blueprints for increasing competitive integrated employment by moving away from center-based programs. The Home and Community Based Services Medicaid waiver rules require service providers to create more integrated programs. President Obama's Executive Order to increase wages for certain federal contractors, extended to those individuals working under a special minimum wage certificate. The implementation of the Workforce Innovation and Opportunity Act will ensure that individuals, particularly youth, are aware of all of their employment options before considering work under a certificate. The Committee's recommendations will contribute to the progress that is being made and therefore should be thoughtful and spur innovation and further dialogue, and most importantly be based in the reality of the barriers faced by individuals with significant disabilities and their family members when trying to secure employment.

Transparency and Accountability of Process

We are disappointed that the public has not been provided ample time to review and comment on the subcommittees' specific recommendations included in the interim report to Congress. Materials for the July 13 – 14, 2015, Committee meeting materials, including draft chapters of the interim report, were not posted until after the deadline for public comments. During that meeting, the Committee reviewed draft recommendations proposed by each subcommittee. Many of the drafts were to be revised in advance of the August 10, 2015, meeting, yet they have not been made available to the public as of the date of this letter's submission. As such, the public will be commenting on previous versions of the subchapters and not the current drafts the Committee is considering.

Not posting materials for public review until **after** the deadline for comment submission is incongruent with the Administration's commitment to transparency and accountability. It gives the impression that public comment is not valued, and the report's content and recommendations were predetermined. This perception could undermine the Committee's opportunity to engage in authentic discussion and establish common shared aspirations.

Questions Regarding Committee Scope

According to its charge, the Committee was created to provide recommendations regarding:

- Ways to increase employment opportunities for individuals with intellectual or developmental disabilities or other individuals with significant disabilities in competitive integrated employment;
- The use of certificate program carried act under section 14(c) of the Fair Labor Standards Act (FLSA) 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.

GII believes a number of the proposed recommendations go beyond the Committee's scope. For example, the phase out of the use of the special minimum wage certificate is not a "way to improve oversight" nor will it result in increased employment opportunities. While some of the recommendations note that a thoughtful phase out needs to occur in order to ensure more people are not engaged in segregated day habilitation programs, the Committee does not offer specifics on how to prevent that outcome from occurring. Recommendations pertaining to the AbilityOne[®] program also go beyond the scope of the Committee. While this is a federal set-aside program designed to create employment opportunities, particularly for people with significant disabilities, the Committee spent a significant amount of time discussing the program while ignoring other public programs that create employment for people with disabilities and has experienced challenges.

Knowledge of Certificate Use is Inadequate

Committee members appear to not understand the full array of use and application of the special minimum wage certificate. At the July meeting, a Committee member noted surprise in learning that schools can utilize the certificate, and Committee members raised questions regarding how one can be paid higher than minimum wage under the certificate. These questions demonstrate the Committee's lack of understanding, even after four full committee meetings and numerous

sub-committee meetings, regarding the complexities and uses of the certificate. Clearly, further education is needed to build Committee member competency so they can collectively offer effective recommendations. Do references to “subminimum wage” really mean below the federal minimum wage or should it state “special minimum wage” meaning all use of the certificate? Do references to “sheltered work” really mean “center-based” or “facility-based programs” or employers using the special minimum wage certificate, as they are not always correlated? Or does “sheltered work” mean all non-integrated employment, including enclaves? The inconsistent application of terms and lack of specificity could result in ineffective policy and program transformation recommendations.

Department of Labor (DOL) staff noted during the July meeting that data had been revised regarding the number of certificates that have been issued and pending. The Committee neither reviewed this information nor engaged in examining why the number of certificates in use has declined 15 percent since November 2013 during that meeting. We are concerned that the Committee is making recommendations without considering available information on the certificate and maintains an incomplete understanding of the complexity of its use. Furthermore, the Committee has directly heard from only a select group of stakeholders. We are not aware of individuals currently working under a special minimum wage certificate or their family members being invited to speak with the Committee. During the July meeting, DOL staff noted that they were still compiling the public comments that were received prior to the meeting. This statement implies that Committee members were not given copies of the public comments in advance of the meeting and that those comments were not available to inform the discussion. If this is the case, it could reinforce the perception that the Committee’s report content and recommendations were predetermined and uninformed by public comment.

Special Minimum Wage Certificate Data is Outdated and Underutilized

Under Section 14(c) of the Fair Labor Standards Act (FLSA), any employer with a Special Minimum Wage Certificate from the U.S Department of Labor’s (DOL’s) Wage and Hour Division (WHD) can pay special minimum wages to employees with disabilities if those disabilities directly impact their ability to perform on the job. Based on April 2015 figures from DOL, there were 1,961 employers with issued certificates and 859 employers with pending certificates. In some cases, a single employer may have an issued certificate as well as a pending renewal. This new information represents a 15 percent (495) decrease in total certificates since the last available data was published in November 2013. Some Goodwill agencies contributed to this decline. The Committee should examine how these employers transitioned away from the certificate and more importantly, what happened to the individuals. Are more people with disabilities who want to work being placed into non-work activities, or are they still earning a paycheck and feeling sense of dignity that comes along with having a job?

As noted in previous comments, the most recent federal analysis of certificate use, a 2001 Government Accountability Office (GAO) report, indicated approximately 424,000 workers with disabilities were paid special minimum wages in 2000 by the more than 5,600 certificate holding employers. This nearly a decade and a half old study is informative but significantly outdated and should no longer be cited as a source for policy making or proposal development. GAO produced this report concurrent with the Rehabilitation Services Administration’s regulatory change related to special minimum wage employment as acceptable outcomes for State

Vocational Rehabilitation Agencies; the Social Security Administration was still struggling to issue regulations for the Ticket to Work program; and Medicaid Waiver demonstrations and Medicaid Infrastructure Grants related to integration had yet to begin in earnest.

Today's policy context is vastly different from 2001; there are new Medicaid Waiver expectations concerning integration, the rapid development of Employment First policy frameworks in 46 states, and an expanding State Employment Leadership Network. These changes, along with evolutions in both the economy and the workplace, have led to a reduction of individuals compensated for work via the certificate. At the first meeting of the Committee, DOL staff noted there were approximately 151,000 people working under a special minimum wage certificate.

We believe the Committee should examine the following questions pertaining to the data:

- What factors contributed to the significant decline in certificate holders since 2001? How can those factors be leveraged to support more individuals moving into competitive integrated employment?
- Have more people moved into competitive integrated work, been receiving day services, or a combination of the two?
- How do Community Rehabilitation Providers (CRPs), school work experience programs, business certificate holders, and employers of patient workers utilize the certificate differently?
- How did organizations transition away from the use of a certificate? What was the experience of the individuals who had been paid utilizing the certificate?
- How did nearly 500 employers transition away from the certificate since November 2013?

Expanding Research Base

While the Committee and its subcommittees have utilized research to support its work, the scope of cited research has been limited. Notably, none of the subcommittee chapters reference a recently published case study undertaken by the CHIMES Foundation and researchers from George Washington University regarding the impact of Maine Public Law Chapter 101. This law directed state agencies to increase supported and integrated employment opportunities for people with disabilities and close its center-based programs. This report, [Transitions: A Case Study of the Conversion from Sheltered Workshops to Integrated Employment in Maine](#), studied the experience of people with significant disabilities who were employed by sheltered workshops as well as providers who formerly operated center-based programs in Maine. The study found decreased employment and hours worked due to multiple factors including: challenges with job placements; a cap on the number of hours worked per week; difficulty keeping jobs in the community; long wait times for vocational rehabilitation assessments; the individual's age, and level of disability; among other factors. This report's authors make a number of substantive and thoughtful recommendations for policy makers to consider when crafting transition plans to move away from sheltered to competitive integrated employment. These recommendations can equip the Committee to develop recommendations with the most current knowledge informing its work.

As a taxpayer funded committee creating a public document, the report should be inclusive of available data and at a minimum be accurate in its citations and assertions. At least one of the

citations in the report from the Capacity Building Subcommittee does not accurately describe section 511 of the Workforce Innovation and Opportunity Act. The citation states, “It also prohibits schools from contracting with a subminimum wage provider.” The law actually states, “A local educational agency or a State educational agency cannot enter into a contract with an entity that employs individuals at subminimum wage *for the purpose of* operating a program under which a youth with a disability is engaged in subminimum wage employment.” (emphasis added). Further, this chapter cites Vermont’s statute prohibiting subminimum wages for people with disabilities. Unfortunately, the chapter chooses to highlight the prohibition for employers while ignoring the provisions allowing rehabilitation facilities to pay a subminimum wage rate or no wage for individuals with disabilities if they are in a practical experience/training program established by the commissioner. Inaccuracies or incomplete information erode the credibility of the Committee’s recommendations.

All People Can Work

Our collective aspirations for people with significant disabilities include opportunities for choice, to earn wages, to reach their potential, to experience improved quality of life, and to achieve social acceptance and integration. Goodwill services are customized with and for the individual, including his or her support system, leverage community resources, and are delivered recognizing that the individual is both the leader of his or her service plan and a customer of Goodwill.

Working in a center-based environment or using the certificate is not the default placement option for those seeking employment and services with Goodwill. In 2014, 63 Goodwill agencies utilized the certificate as an employment tool in varied means. Some place a time restriction on employment using the certificate; other agencies have a self-imposed wage floor; still others maintain a minimum productivity level for one to work using the certificate. Collectively, these agencies also provided nearly 630,000 instances of supported employment. While agencies may utilize the certificate in different manners, they share a common purpose of increasing employment opportunities and addressing the interests and needs of the individual.

The numbers of Goodwill agencies using the certificate and individuals working under the certificate have decreased over the years as agencies innovate new services and work with community partners. A group of 25 member Goodwill leaders meet regularly to discuss best practices and lessons learned as they transition away from the certificate and create additional integrated employment opportunities. Timing of transitions should be customized to address a number of factors including but not limited to buy-in from employees and family members and how a transition can take place that does not take away an opportunity for an individual to work.

Creating Solutions Together

Goodwill Industries[®] was supportive of the bi-partisan agreement put forth by members of the Senate Health, Education, Labor and Pensions (HELP) Committee in the Workforce Innovation and Opportunity Act (WIOA). This agreement, Section 511 of the bill, focuses on transition-age youth with disabilities. Goodwill is optimistic that Section 511 will result in an increase in the number of transition-aged youth entering and succeeding in competitive integrated employment. Goodwill also supports policies that would increase employment-first initiatives and supported employment programs.

Goodwill Industries is supportive of a number of the draft recommendations being considered by the Committee, particularly those offered by the Transitions to Careers Subcommittee and the issues raised regarding transportation and other supports needed as identified by the Marketplace Dynamics Subcommittee. We also agree with the Capacity Building Subcommittee in stating that in order to promote increased competitive integrated employment there needs to be new ways to pay for service and that states should be incentivized.

Given the focus of the Committee, Goodwill recommends the following:

- Increase penalties for those who misuse the special minimum wage certificate
- Provide increased funding to the Wage and Hour Division in order to increase enforcement of the use of the special minimum wage certificate
- Enhance data and record keeping
- Ensure self-determination and informed choice
- Develop career pathways/youth pathways
- Limit certificate holders to accredited nonprofit employers defined as community rehabilitation providers (CRPs)
- Refine eligibility criteria for those who can work under a certificate
- Examine the potential of a wage floor
- Examine limiting use of the certificate for a specified time
- Conduct a long-term study examining the impact to program participants following the closure of center-based programs

As the Committee moves forward with its work to craft recommendations on ways to increase integrated competitive employment opportunities for people with disabilities, Goodwill remains committed to being a valuable resource and partner. On behalf of Goodwill Industries International and its network of 158 community-based Goodwill agencies in the United States, thank you for the opportunity to comment. Should you have any questions pertaining to Goodwill Industries' comments, please contact me at jim.gibbons@goodwill.org or 240-333-5202, or Laura Walling, GII Director of Advocacy and Legislative Affairs, at laura.walling@goodwill.org or 240-333-5378.

Sincerely,

A handwritten signature in black ink that reads "Jim Gibbons". The signature is fluid and cursive, with a long horizontal line extending to the right.

Jim Gibbons
President and CEO