TASH

Equity, Opportunity, and Inclusion for People with Disabilities since 1975

TASH Testimony on Integrated Employment

Provided to the National Advisory Committee on Increasing Integrated Employment for Individuals with Disabilities

My name is Barb Trader, and I'm here today as the Executive Director of TASH. TASH, which is celebrating its 40th anniversary this year, was founded by researchers working with people with severe disabilities who believed that *research* should drive advocacy, and that all people with disabilities should have access to a full life – at school, at work and in their communities. The vision of a full life includes a WORKING life, and TASH members have developed practices, supported by research, which make integrated employment a possibility for all people, regardless of the perceived severity of disability, the attributes of the communities people live in, or the economic pressures of the times.

TASH is a strong proponent of Employment First, a national movement adopted by 46 states, which calls for integrated employment to be the priority outcome of publicly-funded services for youth and adults with disabilities. A critical and related priority is full implementation of the Olmstead Decision, which mandates that publicly funded services for people with disabilities are delivered in the most integrated setting possible. The recent Medicaid Home and Community Based (HCBS) Waiver rule released in January of 2014 is consistent with the Olmstead Decision and mandates a national transition from "settings that isolate" to settings that provide meaningful access to a full community life.

TASH urges this committee to address two systemic barriers to achieve the important goal of increased integrated employment. These barriers are *inconsistent* with the goals of Employment First and the Olmstead Decision, and include:

- The proliferation of day habilitation programs and other non-work day services. These types of services assume that people with disabilities are unable or do not want to work, are not organized with the end-goal of work in mind, and command the highest percentage of Medicaid HCBS funds. A rebalancing initiative is needed to reprioritize funds spent in non-work day programs which could otherwise be used to provide employment supports. The federal government should unite around a powerful message to states to prioritize Medicaid HCBS and other public funds to achieve

integrated employment outcomes for working age adults consistent with the goals of Employment First.

- Section 14(c) of the Fair Labor Standards Act (FLSA), which allows public and private employers, and Medicaid-funded disability service providers (sheltered workshops) to apply for and receive permission from the Department of Labor (DOL) to pay individuals with disabilities at rates below the current federal minimum wage. Section 14(c) was enacted in 1938 for reasons that are far different from the ones that sustain it today.

Concerns regarding the implementation and effectiveness of the sub-minimum wage provision in FLSA have been repeatedly expressed in the literature and to DOL over the past several decades.[1] These include:

***Implementation and enforcement*.** Years of efforts by DOL to increase and improve oversight of employers holding 14(c) sub-minimum wage certificates program have failed to ensure people with disabilities are adequately protected from exploitation, either intentional or as the result of incompetence on the part of 14(c) certificate holders.

***Effectiveness*.** It has become overwhelmingly clear that the intent of section 14(c) has not been realized despite seventy-four years of implementation. While section 14(c) was intended to prevent the curtailment of opportunities for people with disabilities to work in the mainstream workforce, the program has largely become a tool for Medicaid-funded habilitation service providers to maintain segregated work environments that have proven ineffective in enabling individuals with disabilities to gain competencies, skills and opportunities and transition to employment in the general workforce at competitive wages. These segregated environments also contradict the intent and spirit of the Americans with Disabilities Act and the Supreme Court's Olmstead decision.[2] Other public funding streams and proven rehabilitation strategies now exist for enabling individuals with disabilities, who might otherwise be paid sub-minimum wages, to obtain and maintain employment in the general workforce. There is no longer a need, nor a justification for the continuation of section 14(c).

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[1] Morris, M., Ritchie, H., and Clay, L. (2002). *Section 14(c) of the Fair Labor Standards Act: Framing Policy Issues*. Des Moines, IA: Law, Health Policy & Disability Center, University of Iowa College of Law.

[2] Civil Rights Division, U.S. Department of Justice (June 2011). Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*

Barrier to expanding integrated employment opportunities*.** Some argue that people with disabilities should have the ***choice to work at less than minimum wage when opportunities to pursue and obtain employment at minimum wage or higher are not available. Research suggests that, when offered an informed choice, individuals with intellectual disabilities overwhelmingly state that they would prefer to work in a community job (NLTS2, Migliore et al.). Despite this, only 12% of funds for day and employment supports are used for integrated employment. Such arguments for choice have no place in the public policy of our country, as they would advance the notion that individuals with disabilities should have ***the choice to be more reliant and dependent on publicly funded benefits and services than they otherwise need to be***. Such a policy position would bankrupt our country and deny people with disabilities the benefits of realizing their full potential as the result of being fully expected and supported to do so.

TASH supports the immediate need for federal policy that will result in a planned phase-out and elimination of section 14(c) of the FLSA. As part of this phase-out, no person with a disability who wishes to work should be denied the assistance they need to secure employment in the general workforce at minimum wage or higher.

The elimination of Section 14(c) should be done according to the following principles:

A. Sub-minimum wage should be eliminated through carefully planned phase out that ensures the desired outcomes are achieved for the vast majority of people with disabilities who are impacted. Some unintended, negative consequences may occur, but these should not be widespread. Most are predictable and therefore can be avoided.
B. Desired outcomes are wage equality and integration. No plan for elimination should be supported that inadvertently inhibits the achievement of one or both of the desired outcomes.
C. Results of the phase out of sub-minimum wage should include ***no ultimate decline in the employment rate*** among people with disabilities impacted by phase out (i.e., those working at sub-minimum wage immediately prior to phase out). This will require some states to evaluate and modify their employment service funding infrastructure to support integrated employment outcomes.

The time is long overdue for the United States to increase integrated employment outcomes, end the use of subminimum wage, and increase the economic self sufficiency of people with disabilities. TASH supports the immediate introduction and swift implementation of a carefully crafted *enforceable* plan to end sub-minimum wage employment for all citizens in our country.