



2019 Issue Statements
National Rehabilitation Association
Disability Employment Summit

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National Rehabilitation Association
Issue Statement
Support the Transformation to Competitive Employment Act

The National Rehabilitation Association calls on Congress to pass the Transformation to Competitive Employment Act.

Committees of Jurisdiction: H. R. 873 (Scott/ McMorris Rodgers), House Committee on Education and Labor
S. 260 (Casey/ Van Hollen), Senate Health, Education, Labor and Pensions

Statement of the Problem: The Workforce Innovation and Opportunity Act (WIOA) of 2014 established competitive integrated employment (CIE) as a priority for people with disabilities. Despite the clear national priority for CIE, hundreds of thousands of people with disabilities are legally paid subminimum wages under Section 14(c) of the FLSA. For too long, allowing people with disabilities to be paid a subminimum wage has created and reinforced a life of poverty, segregation, and dependency on public support.

The Transformation to Competitive Employment Act represents a thoughtful approach to ending the outdated and unfair payment of workers with disabilities who receive subminimum wages under Section 14(c) of the Fair Labor Standards Act (FLSA) of 1938 while expanding capacity for competitive integrated employment. The bill phases out Section 14(c) and includes funding to help states and providers transform business models to support individuals with disabilities to transition to competitive integrated employment and tracks outcomes over the six year phase-out period.

It is time to end the outdated and unfair Section 14(c) program. But ending subminimum wage alone is not enough. People with disabilities must have the opportunity to work at fair wages, alongside co-workers without disabilities. If passed, the capacity-building component included in the Transformation to Competitive Employment Act will be a game-changer in expanding opportunities for CIE.

Background: The congressionally-created federal Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (“the Committee”), established under WIOA submitted a report to Congress and the Labor Secretary regarding 14(c) in September 2016. Importantly, the Committee recommended that “Congress should amend Section 14(c) of 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.” The Committee’s recommendations focused on pairing the elimination of Section 14(c) with expanding the capacity of CIE, including through funding and technical assistance to help providers transform their business model. The Committee also recommended improved data collection and focus on employment outcomes. The Transformation to Competitive Employment Act would make these recommendations a reality.

National Rehabilitation Association
Issue Statement
Pass the Disability Employment Incentive Act

The National Rehabilitation Association calls on Congress to pass the Disability Employment Incentive Act.

Committees of Jurisdiction: S. 255 (Casey), Senate Finance

Statement of the Problem: While many factors affect the employment of people with disabilities, a persistent barrier is the reluctance of employers to hire people with disabilities. The Disability Employment Incentive Act (DEIA) would increase three existing tax credits for employers who hire individuals with disabilities and make their workplaces more accessible.

- **Work Opportunity Tax Credit**—The DEIA would increase the tax credit for employers who hire a person with a disability referred to them through a state Vocational Rehabilitation agency, a person who is receiving Supplemental Security Income (SSI) benefits or a person who is receiving Social Security Disability Insurance (SSDI) benefits. The credit would continue to be 40 percent of the individual's salary for the first year of employment but would raise the amount of the salary considered for credit from \$6,000 to \$12,500, raising the maximum available tax credit from \$2,400 to \$5,000. The DEIA also provides a tax credit for any business that retains an employee for a second year of employment and permits the business to take a credit on 20 percent of the employee's salary up to \$12,500, which is a \$2,500 credit.
- **Disability Access Expenditures Tax Credit**—The DEIA would increase this credit, available to small businesses with gross receipts of less than \$3 million annually or with no more than 60 full-time employees. The maximum tax credit would be raised from \$5,000 to \$10,000.
- **Architectural and Transportation Barrier Tax Credit**—The DEIA would increase this tax credit to \$30,000 for expenses incurred during a single year by a business in removing existing physical barriers in qualified facilities or transportation vehicles. Businesses would also be able to take the credit for expenses for making their telecommunications and on-line business operations accessible. This tax credit has been available since 1976 and the current limit is \$15,000. The credit may not be used for new structures, only for existing structures where the expenses are used to create accessible spaces to the standards of the U.S. Access Board.

Background: The need to increase disability employment is great. The tax credits will provide incentives to small and large employers and will encourage them to hire and retain individuals with disabilities.

For more information, please contact:

Fredric K. Schroeder, Executive Director
National Rehabilitation Association
(703) 836-0850 ext. 303
fschroeder@nationalrehab.org

National Rehabilitation Association
Issue Statement
Pass the Disability Integration Act

The National Rehabilitation Association calls on Congress to pass the Disability Integration Act.

Committees of Jurisdiction: H. R. 555 (Sensenbrenner), House Energy and Commerce and House Judiciary
S. 117 (Schumer), Senate Health, Education, Labor and Pensions

Statement of the Problem: While the ADA requires states to provide services in the most integrated setting appropriate, Medicaid makes a distinction between mandatory and optional coverage. Under Medicaid, services provided to adults with disabilities in nursing homes are mandatory, while most home and community-based services are not. Mary Crossley from the University of Pittsburgh School of Law (2017) put it succinctly, albeit chillingly: “As long as states participate in Medicaid, they must cover care in nursing homes. In Medicaid, integration is optional, but segregation is mandatory.”

Background: Medicaid provides health coverage for over 10 million people with disabilities. Tragically, many people with disabilities find themselves forced into nursing homes or other institutional settings because of the way Medicaid funds personal assistance services. Recent tax cuts will put additional pressure on Medicaid funding, which will have an immediate and devastating impact on the lives of people with disabilities and their access to home and community-based services.

It is essential that Congress pass the Disability Integration Act of 2017 to give people with disabilities the opportunity to live in integrated settings in their communities. The Disability Integration Act of 2017 “prohibits states or local governments that provide institutional placements for individuals with disabilities who need long-term assistance with daily living activities or health-related tasks, and prohibits insurance providers that fund such long-term services, from denying community-based services that would enable such individuals to live in the community and lead an independent life.”

States and insurance companies must no longer be allowed to decide for people with disabilities whether they may live at home or be forced into nursing homes. The Congress must take action to guarantee the right of people with disabilities to live where and as they please; it must adopt the Disability Integration Act.

For more information, please contact:

Fredric K. Schroeder, Executive Director

National Rehabilitation Association

(703) 836-0850 ext. 303

fschroeder@nationalrehab.org

National Rehabilitation Association
Issue Statement

Do not open the Regulations Implementing the Workforce Innovation and Opportunity Act

The National Rehabilitation Association calls on Congress to direct the U.S. Department of Education to abandon its plan to open the regulations implementing the Workforce Innovation and Opportunity Act.

Committees of Jurisdiction: House Education and Labor; and
Senate Health, Education, Labor and Pensions

Statement of the Problem: The Secretary's Fall Unified Agenda indicated that the Department of Education intends to open the Workforce Innovation and Opportunity Act (WIOA) regulations (34 CFR part 361) for regulatory action. The current WIOA regulations codify longstanding policy and are consistent with intent and language in WIOA defining competitive integrated employment (CIE).

Those who advocate opening the regulations argue that the Department erred in its regulatory definitions related to CIE and claim that, as a result, state vocational rehabilitation agencies do not refer consumers to AbilityOne and other segregated or congregated work settings. They are advocating that the Department change the definition of CIE in a manner that is at odds with the law and longstanding policy, action that would introduce confusion and additional controversy. Instead, the Department should address the applicability of CIE to vocational rehabilitation services through technical assistance and other sub-regulatory guidance.

Background: In 2014, WIOA established CIE as a national goal. The WIOA regulations codify long-standing Department of Education policy and align WIOA with the Americans with Disabilities Act and the Individuals with Disabilities Education Act. Opening the regulations is unwarranted and unwise and would interrupt the implementation of WIOA. Two recent federal reports found that opening the WIOA regulations would be unnecessary and counterproductive. Rather than opening the WIOA regulations, both reports recommend that the Department provide technical assistance.

On October 11, 2018, the National Council on Disability (NCD), the independent federal agency charged with advising the President, Congress, and other federal agencies regarding policies, programs, practices, and procedures that affect people with disabilities, issued "From the New Deal to the Real Deal: Joining Industries of the Future." The report discussed the definition of CIE in WIOA and its implementing regulations and found that they reflect long-standing law and policy of the Rehabilitation Act and regulations and align with the requirements of the ADA and the Supreme Court's decision in *Olmstead v. L.C.* The NCD found that confusion or misunderstandings by state vocational rehabilitation agencies about how to apply the CIE definition are not a result of the regulations – which clearly call for VR counselors to consider employment settings on a case-by-case basis – but indicate a need for more technical assistance to state VR agencies. "NCD recommends to the Department of Education, including the Office of Special Education and Rehabilitative Services, that the WIOA regulations – specifically the

definition of competitive, integrated employment – not be reopened for public comment or amendment because the consensus of the disability, business, and employment service provider communities is that the current regulations are of vital importance to the modernization of employment service systems and efforts to on-board people with disabilities into jobs in the economic mainstream.”

Additionally, on October 29, 2018, the Senate Health, Education, Labor and Pensions (HELP) Committee issued a report containing similar recommendations titled “Disability Employment: Outdated Laws Leave People with Disabilities Behind in Today’s Economy, Minority Staff Report.” The HELP Committee collected information from all 79 state vocational rehabilitation agencies on how they were applying the new definition of CIE, particularly with respect to AbilityOne settings. With a 100% response rate, state VR agencies reported that they do refer clients to AbilityOne settings that meet the CIE definition, conduct case-by-case analyses of all employment settings to determine whether they meet the definition of CIE, and make consumers aware of segregated work options so consumers may make an informed choice in selecting a work setting, regardless of whether it meets the definition of CIE. The report concludes that “The regulations promulgated by the U.S. Department of Education should not be changed at this time. Technical assistance should be provided by the Rehabilitative Services Administration to support state-level implementation of the law and existing regulation.”

For more information, please contact:

Fredric K. Schroeder, Executive Director

National Rehabilitation Association

(703) 836-0850 ext. 303

fschroeder@nationalrehab.org

National Rehabilitation Association
Issue Statement
Support the Master's Level Requirement for Qualified Rehabilitation Counselors

The National Rehabilitation Association calls on Congress to amend the Workforce Innovation and Opportunity Act to require that rehabilitation counselors possess a master's degree in rehabilitation counseling.

Committees of Jurisdiction: House Education and the Workforce; and Senate Health, Education, Labor and Pensions

Statement of the Problem: The 2014 Workforce Innovation and Opportunity Act (WIOA) weakened the standard for qualified rehabilitation personnel. Prior to WIOA, state vocational rehabilitation (VR) agencies were required to hire rehabilitation counselors who held a master's degree in rehabilitation counseling or a related field.

While the Congress amended Sec. 101(a)(7) of WIOA to ensure that state VR personnel have a 21st century understanding of the labor market and the employment needs of individuals with disabilities, Congress chose to support this goal by downgrading the education and experience requirements, allowing individuals who have a baccalaureate degree plus one year of relevant job experience to work as VR counselors. The weakened standard denies people with disabilities the guarantee of access to VR counselors who are professionally trained and equipped to provide state-of-the-art rehabilitation services.

Within the rehabilitation counseling profession, there is a well-established national certification (Certified Rehabilitation Counselor), and many states have counselor licensure laws. Both the national certification and state licensure laws require a master's degree as the minimum qualification for rehabilitation counselors.

In addition to comprehensive professional preparation supported by continuing education, Certified Rehabilitation Counselors must abide by an established code of professional ethics to guarantee high quality, culturally appropriate services to individuals with disabilities. The National Rehabilitation Association calls on the Congress to correct this misguided weakening of the standard in the next reauthorization of the WIOA, and require states to hire professionally trained master's level VR counselors.

Background: The Commission on Rehabilitation Counselor Certification (CRCC) administers the Certified Rehabilitation Counselor (CRC) certification program. The CRC is the nationally and internationally recognized credential designed specifically for rehabilitation counselors.

CRCs must meet stringent eligibility requirements, including advanced education, supervised work experience specific to serving individuals with disabilities and must pass the CRC Examination. Once certified, CRCs must adhere to a rigid Code of Professional Ethics for Rehabilitation Counselors and must renew their certification every 5 years through continuing education or re-examination. Continuing education ensures that CRCs stay current on leading

edge changes within the field such as medical advancements, assistive technology applications, changes in employment law, and workplace and communications advancements.

For more information, please contact:

Fredric K. Schroeder, Executive Director

National Rehabilitation Association

(703) 836-0850 ext. 303

fschroeder@nationalrehab.org

National Rehabilitation Association
Issue Statement
Support the Raise the Wage Act

The National Rehabilitation Association calls on Congress to pass the Raise the Wage Act of 2019.

Committees of Jurisdiction: H. R. 582 (Scott), House Committee on Education and Labor
S. 150 (Sanders), Senate Health, Education, Labor and Pensions

Statement of the Problem: People with disabilities are not guaranteed the federal minimum wage due to an outdated exception in law. The Raise the Wage Act would correct this longstanding injustice by phasing out the subminimum wage provisions of the Fair Labor Standards Act.

Hundreds of thousands of workers with disabilities in the United States are being paid less than the minimum wage, some earning as little as 4 cents an hour. The Raise the Wage Act would phase out the subminimum wage system, enabling Americans with disabilities to achieve financial independence and social equality.

The Raise the Wage Act would gradually increase the federal minimum wage for all workers to \$15 an hour over a five-year period, and, importantly, it would begin a six year phase-out of subminimum wages for people with disabilities authorized under Section 14(c) of the Fair Labor Standards Act. The phase-out would include prohibiting the Secretary of Labor from issuing new 14(c) subminimum wage certificates to employers that are not currently certificate holders.

Background: Lifting Americans out of poverty is the right thing to do, and it is especially urgent for Americans with disabilities who, today, are not guaranteed the federal minimum wage.

In 1938, as part of President Roosevelt's New Deal, the Congress adopted the Fair Labor Standards Act (FLSA). The Act included numerous reforms; however, it is best remembered for establishing the federal minimum wage. But the minimum wage was not for everyone. The FLSA permitted people with disabilities to be paid less than the minimum wage. The FLSA, with its subminimum wage provision, reflected society's beliefs and assumptions about the impact of disability on an individual's productivity. While others were guaranteed the minimum wage, people with disabilities had to prove their worth. That was the thinking in 1938, and, given the attitudes of the day, it is not surprising. What is surprising is that today—eighty-one years later--the law continues to countenance subminimum wages for people with disabilities. The Raise the Wage Act would end this shameful practice and guarantee people with disabilities the same wages as all other Americans.

For more information, please contact:

Fredric K. Schroeder, Executive Director
National Rehabilitation Association
(703) 836-0850 ext. 303
fschroeder@nationalrehab.org

Similarly, the National Council on Disability, an independent federal agency charged with advising the President, Congress, and other federal agencies regarding policies that impact people with disabilities, has repeatedly called for the elimination of subminimum wages under Section 14(c), including in its recent report, “National Disability Employment Policy, From the New Deal to the Real Deal: Joining the Industries of the Future.”

The Transformation to Competitive Employment Act addresses these recommendations by providing states and employers that hold 14(c) certificates the funding, supports and training necessary to change the infrastructure of outdated business models, while ensuring that individuals with disabilities have opportunities for CIE and are supported throughout the process. In short, this bill signifies a critical and responsible paradigm shift for the employment of individuals with disabilities.

For more information, please contact:

Fredric K. Schroeder, Executive Director

National Rehabilitation Association

(703) 836-0850 ext. 303

fschroeder@nationalrehab.org