

United States Senate
WASHINGTON, DC 20510

November 19, 2020

The Honorable Gene L. Dodaro
Comptroller General of the United States
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Dodaro:

We write to request that the Government Accountability Office (GAO) conduct an investigation into mandatory vocational requirements at drug and alcohol rehabilitation facilities that receive federal funding.

A recent investigation by the Center for Investigative Reporting found that individuals at some drug and alcohol rehabilitation facilities are being required to work, unpaid, as part of their treatment program, including for private employers like Walmart, Williams-Sonoma, and Tyson Foods, Inc. – creating a “huge, unpaid shadow workforce.”¹

This practice appears to be a violation of federal labor law, but has escaped federal enforcement

Some rehabilitation facilities have mandatory work requirements, described as vocational therapy, in which participants are sent to work for contractors of or directly at private companies, but receive little to no pay for their labor. Instead, rehabilitation facilities where they are receiving treatment and recovery services receive payment for these workers. *Reveal* from the Center for Investigative Reporting described the facilities as “little more than lucrative work camps for private industry.”² There are also rehabilitation facilities such as the Salvation Army where individuals work at a facility operated by the organization, but similarly receive little to no pay for their labor.³

Requiring individuals to work without compensation is a violation of the *Fair Labor Standards Act* (FLSA), which establishes standards for labor protections including minimum

¹ Reveal News, “American Rehab Chapter 8: Shadow Workforce,” Shoshana Walter, Laura Starecheski, Ike Sriskandarajah, August 8, 2020, <https://www.revealnews.org/episodes/american-rehab-chapter-8-shadow-workforce/>.

² Reveal News, “They thought they were going to rehab. They ended up in chicken plants,” Amy Julia Harris and Shoshana Walter, October 4, 2017, <https://www.revealnews.org/article/they-thought-they-were-going-to-rehab-they-ended-up-in-chicken-plants/>.

³ Washington Post, “Review finds many who work during rehab aren’t being paid,” Shoshana Walter, July 7, 2020, https://www.washingtonpost.com/business/review-finds-many-who-work-during-rehab-arent-being-paid/2020/07/07/fed8e2ae-c062-11ea-8908-68a2b9eae9e0_story.html.

wage and overtime pay.⁴ In 1990, the Department of Labor's (DOL) Wage and Hour division initiated enforcement against the Salvation Army for violating the FLSA by failing to pay participants in the organization's rehabilitation centers for their work.⁵ However, the DOL ended its enforcement efforts after the Salvation Army filed a lawsuit,⁶ and then, in 2016, fully backtracked by providing the Salvation Army special dispensation in the DOL's field operations manual.⁷ The "Salvation Army" section of the manual reads:

The Salvation Army's position is that individuals in its rehabilitation program, called beneficiaries, are not employees under the FLSA. Although the WHD may not agree with this position, do not initiate compliance actions until receiving clearance from both the regional administrator (RA) and the NO, OP, DEPP, FLSA/Child Labor Branch.⁸

Courts have affirmed that "an employee is not permitted to waive employee status," even if they signed a document stating otherwise.⁹ Despite this, some rehabilitation facilities reportedly justify this practice by requiring participants to sign a form attesting that they are not employees of the facility and will not be paid for labor. For example, the Christian Alcoholics & Addicts in Recovery (CAAIR) "Disclaimer of Employment Relationship" form requires program participants to sign a form acknowledging, among other things, that "there is no contract of employment between CAAIR, Inc. and myself;" "I do not receive wages and I am not paid for my stay at CAAIR, Inc.;" and "because I am not an employee of CAAIR, Inc., I understand that I have no right to worker's compensation or to any unemployment benefits."¹⁰

CAAIR program participants have reported serious injuries from their work at Simmons Foods, and *Reveal* found that "those who were hurt and could no longer work often were kicked out of CAAIR and sent to prison."¹¹ CAAIR program participants were not paid for their labor, but CAAIR received more than \$11 million in revenue over seven years from participants' work.¹²

⁴ 29 USC 201, et seq.

⁵ Washington Post, "U.S. Does Turnabout On Salvation Army," Robert F. Howe, September 27, 1990, <https://www.washingtonpost.com/archive/politics/1990/09/27/us-does-turnabout-on-salvation-army/be9b2ab6-7d1d-41d7-ae73-4e5d77cd0072/>.

⁶ Washington Post, "Salvation Army Sues Over Federal Wage Order," Robert F. Howe, September 20, 1990, <https://www.washingtonpost.com/archive/politics/1990/09/20/salvation-army-sues-over-federal-wage-order/100c5b67-ab2b-4fe1-bc2f-a4cdce102807/>; *Reveal* News, "American Rehab Chapter 8: Shadow Workforce," Shoshana Walter, Laura Starecheski, Ike Sriskandarajah, August 8, 2020, <https://www.revealnews.org/episodes/american-rehab-chapter-8-shadow-workforce/>.

⁷ Department of Labor, Field Operations Manual, Section 64c06, "The Salvation Army," https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch64.pdf.

⁸ Department of Labor, Field Operations Manual, Section 64c06, "The Salvation Army," https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch64.pdf.

⁹ See *Acosta v. Jani-King of Okla., Inc.*, 905 F.3d 1156 (10th Cir. 2018); *Robicheaux v. Radcliff Material, Inc.* 697 F.2d 662 (5th Cir. 1983).

¹⁰ CAAIR, Inc, "Disclaimed of Employment Relationship," <https://www.documentcloud.org/documents/3921710-Disclaimer-of-Employment-Relationship.html>.

¹¹ *Reveal* News, "They thought they were going to rehab. They ended up in chicken plants," Amy Julia Harris and Shoshana Walter, October 4, 2017, <https://www.revealnews.org/article/they-thought-they-were-going-to-rehab-they-ended-up-in-chicken-plants/>.

¹² *Id.*

Little Evidence that Uncompensated Work Therapy Programs Have Treatment Benefits

Substance Abuse and Mental Health Services Administration (SAMHSA) guidance affirms that “few studies have addressed the effectiveness of vocational services in substance abuse treatment settings,” and that programs investigated through those existing studies “did not demonstrate much long-term effect and did not decrease substance use.”¹³ It’s important to note that even this limited evidence pool primarily addresses “traditional vocational services” which “emphasize esteem building, adjustment to social conditions, comprehensive assessment, skill building, and basic education,”¹⁴ not near-to-full-time uncompensated employment requirements.

SAMHSA guidance does include information that suggests mandatory work assignments could be harmful to a participants’ treatment. The guidance warns that job-seeking and employment can “be stressful and present many potential triggers for relapse” and that, “the workplace will almost inevitably present challenges that could trigger renewed use.”¹⁵ And the guidance notes that any program related to employment should include “a treatment plan” including personalized goals for a program participant like “the attainment of good pay.”¹⁶

Individuals struggling with substance use disorder who attend rehabilitation programs should never be subjected to predatory conditions that threaten their recovery and violate their rights under the law. Federal funding dedicated to supporting individuals and communities navigating substance use disorder must be used in service of evidence-based prevention, treatment, and recovery. Therefore, we request that GAO undertake a review of this issue and address the following questions:

1. What is known about the extent to which individuals in rehabilitation facilities are subject to mandatory work requirements and do not receive payment for their work?
2. Is there evidence showing mandatory work requirements in rehabilitation facilities are beneficial or support addiction treatment and recovery?
 - a. Is there any evidence that working for no pay has any therapeutic outcome?
3. To what extent are federal grants, or any other federal funds, provided to rehabilitation facilities being used at facilities with mandatory work requirements?

¹³ SAMHSA, Treatment Improvement Protocol Series Number 38: Integrating Substance Abuse Treatment and Vocational Services,” 2000, Chapter 1—The Need for Vocational Services, <https://www.ncbi.nlm.nih.gov/books/NBK64320/>.

¹⁴ *Id.*


¹⁵ SAMHSA, “Treatment Improvement Protocol Series Number 38: Integrating Substance Abuse Treatment and Vocational Services,” 2000, Chapter 3—Clinical Issues Related to Integrating Vocational Services, <https://www.ncbi.nlm.nih.gov/books/NBK64306/>.

¹⁶ *Id.*


4. What federal oversight exists to ensure individuals in rehabilitation programs with work requirements are fairly compensated, and that programs are following relevant labor and employment law?

Thank you for your attention to this matter. If you have any questions about this request, please contact the following staff: Sara Kugler (Sara_Kugler@warren.senate.gov), Alex Davidson (Alex_Davidson@warren.senate.gov), and Michael Waske (Michael_Waske@help.senate.gov).

Sincerely,



Elizabeth Warren
United States Senator



Tammy Baldwin
Ranking Member
Subcommittee on Employment and
Workplace Safety
Senate Committee on Health, Education,
Labor, and Pensions