

January 17, 2025

Submitted via Regulations.gov

Daniel Navarrete, Director
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
Room S-3502
200 Constitution Avenue NW
Washington, DC 20210

**Re: RIN 1235-AA14
Comments on Notice of Proposed Rulemaking: “Employment of Workers With
Disabilities Under Section 14(c) of the Fair Labor Standards Act”**

Dear Director Navarrete,

Thank you for the opportunity to provide comments to the Department of Labor’s Wage and Hour Division on its Notice of Proposed Rulemaking on “Employment of Workers With Disabilities Under Section 14(c) of the Fair Labor Standards Act” (Proposed Rule).

The Judge David L. Bazelon Center for Mental Health Law writes in strong support of the Department’s proposed rule to stop the issuance of new section 14(c) certificates and phase out existing section 14(c) certificates.¹ Employment helps all people, including people with disabilities, to live independently, build relationships, and contribute to their communities.

The Bazelon Center is a national organization that works to protect and advance the civil rights of adults and children with mental health and developmental disabilities, including fighting against the exploitation and segregation of workers with disabilities. Central to our work is promoting the community integration of people with mental disabilities in all areas of life, including employment, education, housing, healthcare, and supportive services.

There is broad consensus within the disability rights community and major employers such as Microsoft and JP Morgan Chase against the continuation of 14(c) certificates.

For the following reasons, the Bazelon Center supports the Proposed Rule and encourages the Department to finalize the Proposed Rule to stop the issuance of new section 14(c) certificates and phase out existing section 14(c) certificates.

¹ Wage and Hour Division, Department of Labor, [Employment of Workers with Disabilities Under Section 14\(c\) of the Fair Labor Standards Act](#), 29 CFR Part 525, RIN 1235-AA14 (proposed Dec. 4, 2024) [hereinafter “Proposed Rule”].

I. Subminimum Wages are Not Necessary to Prevent the Curtailment of Employment Opportunities

Not only are subminimum wages not necessary to prevent the curtailment of employment opportunities for people with disabilities – in fact, extensive evidence from recent decades shows that the continued availability of 14(c) certificates actually curtails opportunities for people with disabilities to enter into competitive integrated employment.

There is bipartisan recognition that subminimum wages and sheltered workshops are premised on outdated and paternalistic assumptions about people with disabilities.² In fact, people with disabilities can and do succeed in competitive integrated employment. And leading employers, including Microsoft, recognize that ending subminimum wage furthers business interests.³

A. States That Have Eliminated or Limited Subminimum Wages Have Demonstrated Increased Labor Force Participation and Employment Rates

Numerous states have already eliminated, started to phase out, or restricted employers' authority to pay people with disabilities subminimum wages.⁴ As the Proposed Rule notes, the landscape has changed dramatically from 2001 to 2024. In that time, the number of workers being paid subminimum wages under section 14(c) certificates has reduced by approximately 90 percent and the number of employers holding or pursuing a section 14(c) certificate has dropped by nearly 86 percent. Now, very few employers seek new section 14(c) certificates.⁵

Meaningfully, in states that have eliminated 14(c) certificates, labor force participation and employment of people with disabilities has increased. In a recent study of over 450,000 individuals across two states, the repeal of section 14(c) was found to lead to increased labor force participation and employment rates for people with cognitive disabilities. Compared to control states, states that repealed section 14(c) demonstrated a “statistically significant 4.7-percentage point” increase in labor force participation and 4.3 percent increase in employment rates among people with cognitive disabilities.⁶

B. The Continued Availability of 14(c) Certificates Curtails Competitive Integrated Employment Opportunities

Once someone enters into a sheltered workshop, they are stuck. A recent investigation of Rehabilitation Services Administration data across 35 state agencies found that, in 2022, only 0.5 percent of 14(c) workers were referred by their employers to vocational rehabilitation services to

² See The Thread, [Issue spotlight. Women-centered. Reliable facts. Edition 11](#), ENGAGE (Nov. 29, 2023).

³ See *id.* and Jessica Rafuse, [How Microsoft is working with partners and policymakers to advance accessibility as a fundamental right through technology](#), Microsoft (July 26, 2024).

⁴ Lillie Heigl, Kimberly Knackstedt, Elena Silva, [Pennies on the Dollar: The Use of Subminimum Wage for Disabled Workers across the United States](#), New America (Feb. 14, 2024).

⁵ Proposed Rule print page 96473.

⁶ See Kakara M, Bair EF, Venkataramani AS, [Repeal of Subminimum Wages and Social Determinants of Health Among People with Disabilities](#), JAMA Health Forum (Nov. 15, 2024).

transition to higher-paying jobs.⁷ As the Proposed Rule notes, over 97 percent of 14(c) certificate applications received annually are applications to renew an existing 14(c) certificate.⁸ What’s more, workers and their families may not know that other options are available.

The traditional “train and place” model – which placed people with disabilities in sheltered workshops or other non-work settings as a prerequisite to entering the paid workforce – has been debunked. Over the past several decades, evidence has consistently demonstrated that, in practice, a “place and train” approach – placing people with disabilities in a job and supporting them with on-the-job training – was more successful.⁹

Our vocational rehabilitation and developmental disability systems pay to support people with disabilities. To continue to funnel limited resources into subminimum wage sheltered workshops means to keep those resources from other options, including supporting people pursuing competitive integrated employment.

C. Ending 14(c) Certificates Will Not Negatively Impact Benefits

Many proponents of 14(c) argue that workers cannot earn more because they will lose access to needed benefits. This is not true. Resources exist that enable workers with disabilities to earn an income without losing their benefits. These resources include ABLE accounts and Medicaid buy-in programs.

ABLE accounts enable individuals with disabilities to save up substantial sums without their Supplemental Security Income (SSI) or other benefits being affected. Medicaid buy-in programs allow workers with disabilities who receive Medicaid to continue working. While each state’s program differs, some states like Maryland have removed any income limits on their state’s buy-in program.

II. Subminimum Wages and Segregated Workplaces Run Afoul of Federal Law

In the time since the establishment of 14(c) certificates, Congress has passed Section 504 of the Rehabilitation Act of 1973, the Developmental Disabilities Act, the Americans with Disabilities Act, and the Workforce Innovation and Opportunity Act, all of which establish civil rights and employment protections for people with disabilities.

A. Paying Workers with Disabilities Subminimum Wages is Discrimination

The Americans with Disabilities Act (ADA) has been the law of the land for over 30 years, and forbids disability-based discrimination in employment. Upon passing the ADA in 1990, Congress found that “the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-

⁷ Amanda Morris, Caitlin Gilbert, and Jacqueline Alemany, [Some disabled workers in the U.S. make pennies per hour. It’s legal.](#), The Washington Post (Aug. 30, 2024).

⁸ Proposed Rule print page 96473.

⁹ Bazelon Center for Mental Health Law, [Advances in Employment Policy for Individuals with Serious Mental Illness](#) (Oct. 2018).

sufficiency.”¹⁰ Continuing to allow workers with disabilities to be paid below the federal minimum wage in effect carves out an exception to these federal laws.

The federal minimum wage is currently set at \$7.25 per hour. However, as noted in the Proposed Rule, the U.S. Government Accountability Office (GAO)’s recent analysis of section 14(c) data found that more than 50 percent of workers were paid less than \$3.50 per hour, 14 percent were paid \$1.00 per hour or less, and nearly 5 percent of workers were paid \$0.25 per hour or less.¹¹

Paying workers with disabilities less than what is the bare minimum for everyone else is straightforward discrimination and sends the message that people with disabilities are second-class citizens, less deserving of equal pay, equal rights, and equal opportunities.

B. Segregating Workers with Disabilities Violates Federal Law

The ADA requires states and local governments to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”¹² In 1999, the Supreme Court held in *Olmstead v. L.C.* (Lois Curtis) that needless segregation of people with disabilities violates the ADA.¹³ Offering only “sheltered workshops” to people who could be employed in competitive, integrated settings is discriminatory.¹⁴

Courts and the U.S. Department of Justice have long confirmed that the ADA’s integration mandate applies to activities that promote employment.¹⁵ Under the ADA, it is discrimination to offer “sheltered workshops” to individuals who could be competitively employed if they were to receive supported employment services.

It is inconsistent with federal policy to promote economic self-sufficiency, independent living, and community inclusion for people with disabilities. The ongoing availability of 14(c) certificates incentivizes and enables segregated employment settings to persist, in violation of federal law.

III. The Department Should Not Grant Extensions to Existing 14(c) Certificate Holders

If this Proposed Rule is finalized, it would be inappropriate and burdensome to grant an extension for existing section 14(c) certificate holders.

A. There is No Need for an Extension

The Department is generously granting three years to 14(c) certificate holders for phase-out, recognizing that impacted entities may need time to transition.¹⁶ This is plenty of time. We share

¹⁰ 42 U.S.C. § 12101(a)(7).

¹¹ Proposed Rule print page 96473.

¹² 28 C.F.R. § 35.130(d).

¹³ See *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999).

¹⁴ See, e.g., U.S. Department of Justice, [Questions and Answers on the Application of the ADA's Integration Mandate and *Olmstead v. L.C.* to Employment and Day Services for People with Disabilities](#) (Oct. 31, 2023).

¹⁵ See, e.g., U.S. Dep’t of Justice, [Justice Department Announces Conclusion of Landmark Agreement Addressing Segregated Work Settings for People with Disabilities](#) (Aug. 15, 2022).

¹⁶ Proposed Rule print page 96495.

the Department’s concern that a phase-out period of longer than three years, or an option to extend, may incentivize delaying efficient, timely, and effective processes for phasing out subminimum wages.¹⁷

B. Lifting Regulatory Burden

Finalizing this Proposed Rule will mean that impacted entities will no longer need to submit application forms with detailed supplemental information in order to get a certificate, nor will they need to participate in the various operational and administrative tasks required to maintain a certificate.¹⁸

To allow entities to apply for an extension would create an administrative burden on the Department to review and process requests. A more efficient and effective use of the Department’s resources would be to focus on supporting 14(c) certificate holders in the transition.

IV. Conclusion

People with disabilities can work and succeed in competitive jobs, and deserve equal pay and opportunities. Eliminating 14(c) certificates simply means that everyone has access to the federal minimum wage and the opportunity to enter into the labor market.

We thank the Department for the opportunity to comment on this important Proposed Rule and encourage the Department to finalize this rule to stop the issuance of new section 14(c) certificates and phase out existing section 14(c) certificates.

Please contact Monica Porter Gilbert (monicag@bazelon.org) with any questions, or for additional information regarding these comments.

Sincerely,

Bazelon Center for Mental Health Law

¹⁷ Proposed Rule print pages 96495-96.

¹⁸ Proposed Rule print pages 96502-03.