The Ability Center

January 17th, 2025

The United States Department of Labor,
Wage and Hour Division
Washington D.C.

Submitted electronically through the online regulation's portal.

Re: Employment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act

RIN 1235-AA14

Dear Secretary:

Thank you for the opportunity to provide public comment. The Ability Center in Greater Toledo is a Center for Independent Living, currently serving 14 counties as the largest in our state, that has worked for the last century towards our mission: to make our community the most disability friendly in the nation by increasing independence for people with disabilities, discovering true passions, and changing the community's perception of disability.

In fulfillment of that mission, to increase the independence of those with disabilities, and to fight for the dignity of fellow Americans, we submit this comment in support of the proposed rule to phase out issuing 14(c) certificates. Subminimum wage is a form of pay discrimination on the basis of disability and has no place within our federal laws.

This discrimination threatens to impact the lives and wages of 28% of Americans with disabilities.[i] The fact that our country has a legal vehicle that allows employers to pay citizens with disabilities less than the minimum wage is a statement that their efforts are lesser than others, and that their contributions to our nation are lesser, on account of their

disability. It is not the disability that stops someone from integrating with society, but society that stops a person with a disability from integrating.

14(c) businesses are failing to fulfill their original function as a place to develop a worker's skills and provide training.

For as many Americans as could be affected by 14(c) certificates, the enforcement of the procedural protections around 14(c) certificates are lacking, and the original purpose of 14(c) certificates is not being followed through today. The fact that many businesses utilizing 14(c) certificates, "operate without satisfying its legislative goal to meet the needs of people with disabilities" has been reported on by the U.S. Commission on Civil Rights, with the congressional agency going as far as to call the practice "antiquated" and directly refer to it as "discriminatory."[ii]

Part of the process for a business to obtain a 14(c) certificate is to justify their reduced wages, either by showing that the work is classified as "job training" or that the employees have a lesser output than the average worker. Yet many14(c) businesses are sheltered workshops that do not provide job training. The tasks being done by most workers in sheltered settings are not forms of training, they are menial tasks that are contracted out to society's most vulnerable, disguised as services and a kindness to families looking to protect their loved ones. Job duties in 14(c) settings include organizing clothes hangers, sorting plastic bits, filling boxes, and other piecemeal work. None of these tasks will help increase the skills of its workers and do nothing to assist them in finding other employment.

In many cases, the individuals working in segregated warehouses can find themselves trapped in sheltered environments for decades. A report by the National Disability Rights Network found that "while sheltered workshops purport to offer pre-employment and pre-vocational skills, these programs most often only prepare people with disabilities for long term sheltered employment."[iii] Workers are moved from position to position, ensuring that they are never able to master their job function and remain ineffective, limiting their hourly pay as an intended result. A report by the Washington Post found that 2% of workers were able to successfully transition from a subminimum wage

position to a competitive role, showing the failure of these businesses to train and prepare employees for integrated positions in the community.[iv] Our organization is against the very idea of a subminimum wage from a civil rights perspective, but looking at the 14(c) landscape demonstrates that enforcement is also a major issue with this law. The report by the Commission of Civil Rights noted that "the program is rife with abuse…as reflected in over 80 percent of cases investigated."[v] If 14(c) businesses are not fulfilling their intended purpose, taking advantage of workers' labor instead of training them to find better work, then why would the federal government continue to allow this process to continue?

Most of the tenets of subminimum wage within the Fair Labor Standards Act have been rendered obsolete with the passage of the Americans with Disabilities Act (ADA).

The misguided thought process behind subminimum wage was that disabled workers would be unable to find traditional employment, yet reasonable accommodation has already created the pathway to ensure these workers are able to work effectively. The FLSA was signed in 1938, at a time when the labor market was fundamentally distinct from today's economy. For almost 35 years, the ADA has provided civil rights to employees with disabilities. Employers are prohibited from taking an adverse employment action, such as failing to hire or firing a person because of his or her disability. Additionally, employers must provide "reasonable accommodation," which requires employers to, make "existing facilities used by employees readily accessible to and usable by individuals with disabilities."[vi] These modifications can take a variety of forms, from job restructuring to providing assistive devices to altering company policies in a way that does not create undue burden for employers. Qualified applicants with disabilities are protected against discrimination during the hiring process, and reasonable accommodation protects these same workers by providing the modifications necessary to allow them to work at their most effective. In fact, it has been found that "a person with a disability would receive more individualized accommodations in a competitive work environment because of the protections set forth in the ADA," rather than in a sheltered setting, showing that these 14(c) workshops are failing their original purpose and creating atmospheres that are detrimental to the workers' civil rights.[vii]

Similarly, a study done by APSE found that employment rates for individuals with disabilities were higher after 14(c) certificates were phased out. Using data from the American Community Survey of 2022, 11 different states increased the employment rate of workers with disabilities, and specifically showed an increase for workers with a cognitive disability.[viii] The Washington Post found that employment rates for adults with cognitive disabilities in Vermont increased almost 30% in the six years since phasing out subminimum wage.[ix] More than 85 years after its signing, the Fair Labor and Standards Act is unintentionally harming the employment of the disabled community. One report noted that many "would like to explore options for competitive, integrated employment," confirming the statistics showing that many would rather not work at all than to do so for a lesser wage than their nondisabled peers.[x] With the changes to civil protections and to the labor market itself, the so-called "safeguards" that subminimum wage were meant to provide no longer support workers, but instead constrict them to a lifetime trapped within these segregated environments.

In summary, the federal government must provide equal rights to all its citizens, including those with disabilities. Phasing out subminimum wage increases the independence of disabled workers, while legally enshrining their dignity and showing that they have equal civil rights protections under the constitution.

It is disheartening that in 2025, two groups that the law allows to be paid less than the minimum wage are people with disabilities and prison inmates. One group has seen certain protections taken away in an attempt to punish within the justice system, the other makes up one in every four Americans. I hope that this example highlights the inherent discrimination present within the law. People with disabilities are a quarter of our country's population and are responsible for some of our nation's greatest moments. President Roosevelt was one of the most impactful men to hold his position and his disability did nothing to lower the quality of his contributions. Ending the practice of issuing 14(c) certificates has been the recommendation of economic experts and advocacy groups around the country for years,[xi] and it is long due for the nation to follow the numerous states that have already ended this government-sponsored discrimination.[xii] Unless we assume that Americans with disabilities are not equally up to the task, we ask that the

federal government commits to the civil rights promised by our constitution and phase out 14(c) certificates and promote a minimum wage for all workers.

Sincerely,

Jules Patalita, PhD
The Ability Center of Greater Toledo, Disability Rights Advocate
jpatalita@abilitycenter.org

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[i] Centers for Disease Control and Prevention. (2024, July 15). *Disability Impacts All of Us Infographic*. Centers for Disease Control and Prevention. https://www.cdc.gov/disability-and-health/articles-documents/disability-impacts-all-of-us-infographic.html?CDC_AAref_Val=https%3A%2F%2Fwww.cdc.gov%2Fncbddd%2Fdisabilityandhealth%2Finfographic-disability-impacts-all.html

[ii] U.S. Commission on Civil Rights, *Subminimum Wages: Impacts on the Civil Rights of People with Disabilities* (2020). Washington, DC.

[iii] National Disability Rights Network. (2011). *Segregated & Exploited: The Failure of the Disability Service System to Provide Quality Work*. Washington, DC.

[iv] Morris, A., Gilbert, C., & Alemany, J. (2024, August 30). Some Disabled Workers in the U.S. Make Pennies per Hour. It's Legal. *The Washington Post*. Retrieved from https://www.washingtonpost.com/wellness/2024/08/30/subminimum-wage-disabled-workers/

[v] U.S. Commission on Civil Rights, *Subminimum Wages: Impacts on the Civil Rights of People with Disabilities* (2020). Washington, DC.

[vi] *Americans with Disabilities Act of 1990, As Amended*. ADA.gov. https://www.ada.gov/law-and-regs/ada/#subchapter-i---employment-title-i

[vii] National Disability Rights Network. (2011). *Segregated & Exploited: The Failure of the Disability Service System to Provide Quality Work*. Washington, DC.

[viii] Association of People Supporting Employment First. (2024). *Trends and Current Status of 14(c)* . Retrieved from https://apse.org/wp-content/uploads/2024/08/APSE-14c-Update-REV-Jul24.pdf

[ix] Morris, A., Gilbert, C., & Alemany, J. (2024, August 30). Some Disabled Workers in the U.S. Make Pennies per Hour. It's Legal. *The Washington Post*. Retrieved from https://www.washingtonpost.com/wellness/2024/08/30/subminimum-wage-disabled-workers/

[x] Call to Phase Out 14(c) and Subminimum Wage by 2022. (2019, April 18). *Association of People Supporting Employment First*. Retrieved from https://apse.org/association-of-people-supporting-employment-first-apse/

[xi] *National Council on Disability: National Council on Disability Applauds U.S. Commission on Civil Rights' Call to Repeal 14(c) Subminimum Wages*. National Council on Disability. (2020, September 17). https://www.ncd.gov/2020/09/17/national-council-on-disability-applauds-u-s-commission-on-civil-rights-call-to-repeal-14-c-subminimum-wages/

[xii] Association of People Supporting Employment First. (2024). *Trends and Current Status of 14(c)* . Retrieved from https://apse.org/wp-content/uploads/2024/08/APSE-14c-Update-REV-Jul24.pdf