



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: Regulatory Information Number (RIN) 1235-AA14
Comments on Notice of Proposed Rulemaking (NPRM): Employment of Workers with Disabilities under Section 14(c) of the Fair Labor Standards Act

Dear Director Navarrete:

The undersigned members of the Consortium for Constituents with Disabilities (CCD) Employment and Training Task Force, the Rights Task Force, and fellow CCD members submit these comments in strong support of the proposed rule, *Employment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act*.

CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society, free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance. The Employment and Training Task Force concerns itself with policies and programs affecting the ability of people with disabilities to achieve economic self-sufficiency through competitive integrated employment (CIE). The Rights Task Force's work is driven by a commitment to diversity, equity, inclusion, and social justice, as well as the four key goals for people with disabilities set forth in the Americans with Disabilities Act (ADA): equality of opportunity, full participation, independent living, and economic self-sufficiency.

We are pleased that the Department of Labor has begun the process to phase out subminimum wage certificates issued under Section 14(c) of Fair Labor Standards Act (FLSA) through this rulemaking. Sunsetting the 14(c) program is a critical first step towards expanding opportunities for CIE for people with disabilities.

The Proposed Rule is timely, well-supported by the evidence, and consistent with the Department’s delegated authority to interpret the FLSA, based on the plain language of the statute,¹ legislative history,² and congressional intent.³ The administrative record supports the Department of Labor’s finding that the 14(c) exception to the federal minimum wage standard is not necessary to “prevent the curtailment of opportunities for employment”⁴ for people with disabilities. Since Section 14(c) of the FLSA was enacted more than 80 years ago, extensive changes have been made in federal law, employment programs, and State and Federal policy. These changes justify the Proposed Rule, which will:

- Further compliance with federal laws prohibiting disability discrimination in employment, including the Americans with Disabilities Act (ADA), which promotes equal employment opportunities for individuals with disabilities by prohibiting discrimination, including unjustified segregation under the U.S. Supreme Court decision in *Olmstead v. L.C.*, and requiring reasonable accommodations and modifications.⁵
- Make the FLSA regulations consistent with federal policy promoting CIE for people with disabilities, including the Workforce Innovation and Opportunity Act (WIOA),⁶ HHS’ Centers for Medicare and Medicaid Services’ Home and Community Based Settings (HCBS) “Settings Rule,”⁷ the U.S. AbilityOne Commission’s final rule prohibiting subminimum wages,⁸ and the U.S. Department of Education’s Rehabilitation Services Administration (RSA) Disability Innovation Fund (DIF) grant program,⁹ among others.
- Build upon State legislative and policy reforms that shift away from reliance on subminimum wages and towards increasing access to CIE for people with disabilities. Nearly half of the States have prohibited or limited the use of subminimum wages.¹⁰ States throughout the country are engaged in Employment First initiatives based on the premise that all individuals, including people with the most significant disabilities, are capable of fully participating in CIE.¹¹ Currently, 31 states have passed Employment First legislation, 16 states have Employment First Executive Orders, and 32 states have State Agency Administrative policies/regulations in place.¹²

¹ See <https://www.federalregister.gov/d/2024-27880/p-51>.

² See <https://www.federalregister.gov/d/2024-27880/p-53>.

³ See, <https://www.federalregister.gov/d/2024-27880/p-14> (citing *Walling v. Portland Terminal Co.*, 330 U.S. 148, 151 (1947)).

⁴ 29 U.S.C. §214(c)(1).

⁵ See <https://www.federalregister.gov/d/2024-27880/p-165> to <https://www.federalregister.gov/d/2024-27880/p-192>.

⁶ <https://www.federalregister.gov/d/2024-27880/p-205>.

⁷ <https://www.federalregister.gov/d/2024-27880/p-220>.

⁸ <https://www.federalregister.gov/d/2024-27880/p-223>.

⁹ <https://www.federalregister.gov/d/2024-27880/p-251>.

¹⁰ See <https://www.federalregister.gov/d/2024-27880/p-50>.

¹¹ See U.S. Dept. of Labor Office of Disability Employment Policy, *Employment First*, <https://www.dol.gov/agencies/odep/initiatives/employment-first> (last visited December 17, 2024).

¹² See Association of People Supporting Employment First (APSE), *Employment First Map*, <https://apse.org/home-v2-2/employment-first/> (last visited December 16, 2024); see also, <https://www.federalregister.gov/d/2024-27880/p-232>.

- Recognize that phasing out 14(c) certificates and expanding access to CIE results in improved employment outcomes for people with disabilities, as indicated by professional research,¹³ national reports,¹⁴ and the Department’s own data.¹⁵ 14(c) certificates are not necessary for people with disabilities to be employed, as indicated by the dramatic decrease in their utilization over the last fifteen years. Based on Government Accountability Office (GAO) reports, between 2001 and May 1, 2024, the number of workers with disabilities who were paid subminimum wage for employers holding section 14(c) certificates dropped by around 90 percent, and the number of employers who still held or were seeking section 14(c) certificates dropped by almost 86 percent.¹⁶

Thank you for your leadership and work on this important rulemaking. Finalizing this Proposed Rule is a critical step to recognizing and honoring the value of people with disabilities in the work force and their contributions to society.

Sincerely,

Access Ready, Inc.

Allies for Independence

American Association of People with Disabilities

American Civil Liberties Union (ACLU)

American Foundation for the Blind

American Therapeutic Recreation Association

Association of People Supporting Employment First (APSE)

Association of University Centers on Disabilities

Autism Society of America

¹³ See <https://www.federalregister.gov/d/2024-27880/p-586> (citing studies highlighting the benefits of integrated, community employment for persons with disabilities, including higher wages, better career prospects than individuals in sheltered workshops or non-work activities, and positive health outcomes such as quality of life, self-determination, personal independence, locus of control, autonomy, and reduced support needs).

¹⁴ See, e.g., <https://www.federalregister.gov/d/2024-27880/p-444> (Referencing National Council on Disability (NCD) and U.S. Commission on Civil Rights (USCCR) reports concluding that “the payment of subminimum wages is unnecessary to create employment opportunities for individuals with disabilities, including individuals with I/DD, and that section 14(c) certificates may actually be detrimental to the population they are intended to help.”)

¹⁵ See U.S. Dep’t. of Labor, Bureau of Labor Statistics, “Economic News Release: Persons with a Disability: Labor Force Characteristics Summary,” Feb. 22, 2024; <https://www.bls.gov/news.release/pdf/disabl.pdf> (noting that the unemployment rate for individuals with a disability was 7.2 percent in 2023, and also stating that “[i]n 2023, 22.5 percent of people with a disability were employed—the highest recorded ratio since comparable data were first collected in 2008;” see also, <https://www.federalregister.gov/d/2024-27880/p-155>).

¹⁶ See <https://www.federalregister.gov/d/2024-27880/p-535>.

Autistic Self Advocacy Network (ASAN)
Autistic Women & Nonbinary Network
Bazelon Center for Mental Health Law
Caring Across Generations
Center for Public Representation
CommunicationFIRST
Council of Parent Attorneys and Advocates (COPAA)
Council of State Administrators of Vocational Rehabilitation (CSAVR)
Disability Belongs
Disability Rights Education and Defense Fund (DREDF)
Epilepsy Foundation of America
Justice in Aging
Muscular Dystrophy Association
National Association of Councils on Developmental Disabilities
National Association of the Deaf
National Center for Learning Disabilities
National Disability Institute
National Disability Rights Network (NDRN)
National Down Syndrome Congress
National Down Syndrome Society
National Partnership for Women & Families
National Women's Law Center
Paralyzed Veterans of America
Perkins School for the Blind
The Advocacy Institute
The Partnership for Inclusive Disaster Strategies
The Quality Trust for Individuals with Disabilities
United Spinal Association
World Institute on Disability