

January 17, 2025

Daniel Navarrete

Division of Regulations, Legislation, and Interpretation

Wage and Hour Division

US Department of Labor

200 Constitution Avenue NW, Room S-3502

Washington, DC 20210

Comments on: **Employment of Workers with Disabilities under Section 14(c) of the Fair Labor Standards Act**

Submitted At: <https://www.regulations.gov/commenton/WHD-2024-0001-0001>

Dear Director Navarrete,

On behalf of the Center for Law and Social Policy (CLASP), I submit these comments in support of the Wage and Hour Division's (WHD) proposed rulemaking to phase out Section 14(c) certificates, ending the inequitable practice of paying disabled workers a subminimum wage. CLASP is a national, nonpartisan, nonprofit advancing anti-poverty solutions that disrupt structural and systemic racism and sexism and remove barriers blocking people from economic security. We work at both the federal and state levels, supporting policy and practice that makes a difference in the lives of people living in conditions of poverty. CLASP works to develop and implement policies (in legislation, regulation, and implementation) that reduce poverty, improve the lives of people with low incomes, and create pathways to economic security for everyone. This includes directly addressing the barriers people face because of race, ethnicity, gender, immigration status, and disability. Eliminating Section 14(c) from the Fair Labor Standards Act (FLSA) is a critical step toward ending the occupational segregation of workers with disabilities and moving to a standard of competitive integrated employment (CIE) where all workers can thrive.

14(c) certificates create occupational segregation and inequality

All workers, including those with disabilities, deserve to be paid a living wage. While up to 1 in 4 adults has some type of disability¹, disabled workers are overrepresented in low-wage and poor quality jobs.² This is not by accident. The carving out of disabled workers from the minimum wage requirements of the Fair Labor Standards Act of 1938 through the use of 14(c) certificates built a form of occupational segregation into our labor market. This happens in a literal sense, in that the majority of 14(c) certificate employers are “sheltered workshops” that segregate disabled workers from those without disabilities. Segregation also occurs occupationally: disabled workers are more likely than nondisabled workers to be employed in the service, retail, and maintenance industries – industries well-known for their poor job quality, precarious access to hours, and low pay.³ Already at a disadvantage because of these industries, disabled workers are then subject to subminimum wages – 2023 to 2024 data of 14(c) certificates showed that almost half of disabled workers earned just \$3.50 per hour or less.⁴ On top of low pay and job quality, disabled workers are employed part-time at almost double the rate of non-disabled workers.⁵ This leaves disabled workers underpaid, underemployed, and on unequal footing.

CLASP supports the end of 14(c) certificate issuance

We strongly support the proposed rule to end the issuing of 14(c) certificates. It is well beyond time for the Department of Labor (DOL) to end the archaic use of the subminimum wage – and the Department has already come to the same conclusion. DOL’s 2023 comprehensive review of the Section 14(c) program showed that the program is not necessary, especially considering the “significant legal and policy developments that have dramatically expanded employment opportunities and rights for individuals with disabilities,” such as the Americans with Disabilities Act of 1990.⁶ Assistive technology, the development of gold standard workforce support systems like Employment First, and the tireless efforts of disability and civil rights advocates have led to

¹“Disability Impacts All of Us,” National Center on Birth Defects and Disabilities (NCBDDD), Center for Disease Control, July 15, 2024. Infographic, https://www.cdc.gov/disability-and-health/articles-documents/disability-impacts-all-of-us-infographic.html?CDC_AAref_Val=https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html.

² Kennedy Andara, Anona Neal, and Rose Khattar, “Disabled Workers Saw Record Employment Gains in 2023, But Gaps Remain,” Center for American Progress, February 22, 2024, <https://www.americanprogress.org/article/disabled-workers-saw-record-employment-gains-in-2023-but-gaps-remain/>

³ L.M. Maroto and D. Pettinicchio, “Disability, Structural Inequality, and Work: The Influence of Occupational Segregation on Earnings for People with Different Disabilities.” *Research in Social Stratification and Mobility* 38:76–92.

⁴ “Frequently Asked Questions: Notice of Proposed Rulemaking: Employment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act, Wage and Hour Division, Department of Labor, <https://www.dol.gov/agencies/whd/workers-with-disabilities/nprm-employment-of-workers-with-disabilities-14c/faqs#:~:text=The%20Department%20also%20reviewed%20a,%241.00%20per%20hour%20or%20less..>

⁵ Labor Force Statistics from the Current Population Survey, data extracted Jan 15, 2025, <https://data.bls.gov/dataViewer/view/timeseries/LNU02674597>

⁶ Justin R. Barnes, “Proposed Rule Would End Subminimum Wage for Employees with Disabilities,” *The National Law Review*, December 6, 2024, <https://natlawreview.com/article/proposed-rule-would-end-subminimum-wage-employees-disabilities>

a marked decrease in the usage of 14(c) certificates and an increase in comprehensive support for workers with disabilities within a competitive labor market.

States are often the proving ground for progressive, equity-based program changes. Since 2015, 16 states have phased out their subminimum wages, and others have transitioned to Employment First models, where disabled workers are given support and opportunities within the integrated workforce.⁷ In all states where 14(c) has been eliminated, employment of disabled people has increased.⁸ This serves as strong evidence for the efficacy of the elimination of the program.

CLASP supports the end of 14(c) renewals *without extensions*

We believe that a three-year period is reasonable and adequate to allow employers time to phase out their 14(c) usage and strongly advise the Department to not allow extensions. States like Illinois and Colorado implemented their 14(c) phase-outs on a five-year timeline – in Colorado’s case, their phase-out was accomplished 2 years early.⁹ However, we also recognize that implementing such a transition can be laborious for state agencies and businesses in terms of culture and administration. States are successful when they have clear guidelines, funding avenues, and technical assistance. As much of the country has already phased out of 14(c), and numerous alternative methods of creating successful pathways to competitive employment for disabled workers exist, we believe that states already have a strong framework to transition out of their 14(c) certificates within a three-year timeline.¹⁰ The Department can further assist states by using legislation to provide assistance funds to states and creating a robust education and outreach program to state agencies and current 14(c) employers on how to implement competitive integrated employment models.

Seeing the success of state and local transitions away from 14(c) certificates, we do not foresee the need for extensions to certificate holders. Especially considering the documented evidence of wage theft and abuse¹¹ by 14(c) segregated employers, allowing for extensions could lead to direct harm for disabled workers. If the Department does choose to allow for extensions, we strongly suggest the following robust guardrails:

- Extensions should be limited to two years maximum, bringing the transition period in line with the longest of state phase-outs.

⁷ Lillie Heigl, Kimberly Knackstedt, and Elena Silva, “Pennies on the Dollar: The Use of Subminimum Wage for Disabled Workers across the United States,” *New America*, February 14, 2024, <https://www.newamerica.org/education-policy/reports/the-use-of-subminimum-wage-for-disabled-workers-across-the-us/momentum-to-change-the-subminimum-wage>

⁸ Mihir Kakara, Elizabeth Bair, and Atheendar Venkataramani, “Repeal of Subminimum Wages and Social Determinants of Health Among People With Disabilities,” *JAMA Health Forum*, November 2024, <https://pmc.ncbi.nlm.nih.gov/articles/PMC11568457/#:~:text=Question,for%20people%20with%20cognitive%20disability>

⁹ The Colorado Department of Health Care Policy & Financing, 23/24, “Colorado Elimination of Subminimum Wage-Annual Report to the Public,” March 2024, <https://hcpf.colorado.gov/sites/hcpf/files/Elimination%20of%20Subminimum%20Wage-Annual%20Report-March%202024.pdf>

¹⁰ “Working While Disabled: How We Can Help,” Social Security Administration, 2025, <https://www.ssa.gov/pubs/EN-05-10095.pdf>

¹¹ “Subminimum Wage Program: DOL Could Do More to Ensure Timely Oversight,” Feb 2023, <https://www.gao.gov/products/gao-23-105116>

- Grantees must show significant hardship and submit a detailed plan for transitioning out of subminimum wages and into a strong competitive integrated employment model.
- Grantees must be allowed only one single extension.
- The agency should plan for strict enforcement of these rules, including audits, data collection, and worksite visits.

The Department has the regulatory authority, the precedent from states and other government programs, the tools, and the resources of strong advocates and community partners to overhaul an archaic and unfair wage model from our workforce. We urge the Department to implement the proposed rule without exemptions to help create a workforce where workers of all abilities can thrive.

If you have any questions, please contact Nat Baldino, Policy Analyst, at nbaldino@clasp.org.

Sincerely,

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The Center for Law and Social Policy