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January 17, 2025

The Honorable Julie A. Su
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: RIN 1235-AA14, Employment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act

Dear Acting Secretary Su:

We write in opposition to the Department of Labor’s (DOL) proposed rule entitled “Employment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act.”¹ DOL does not have the statutory authority to stop issuing 14(c) certificates. Moreover, as the Committee on Education and Workforce (Committee) has communicated to you in the past, the special minimum wages that DOL wants to eliminate with this proposed rule expand employment opportunities for individuals with disabilities to work and can broaden options to transition into other types of employment. Far from helping individuals with disabilities, this proposed rule eliminating these special minimum wages will only reduce options for them.

Many of these individuals—especially those with the most significant intellectual and developmental disabilities—may find employment opportunities more difficult without access to 14(c) certificate employers. These workers deserve to be able to choose the type of employment that works for them, and eliminating access to such a critical tool for employing individuals with disabilities will only further limit their options.

Eliminating access to 14(c) certificates will limit opportunities for workers who rely on their jobs not just for a paycheck but also to learn meaningful skills and to find personal fulfillment. For many workers, Community Rehabilitation Providers (CRPs) and other employers who utilize 14(c) provide a unique sense of purpose and community, and their closures would threaten to cut off potential workers from employment opportunities and the support services received through their operations. As President Biden has said himself, “a job is about a lot more than a paycheck.

¹ 89 Fed. Reg. 96,466 (proposed Dec. 4, 2024) [hereinafter Proposed Rule].

It's about your dignity. It's about respect. It's about your place in your community.”² While DOL has failed to respond to our previous request to extend the comment period outlined in the NPRM,³ we urge you to reconsider this dangerous effort and withdraw the proposed rule.

The Fair Labor Standards Act

The *Fair Labor Standards Act* (FLSA) directs the Secretary of Labor to issue certificates under section 14(c) for workers who would otherwise be unable to find employment.⁴ Nothing in the FLSA authorizes DOL to discontinue its issuance of 14(c) certificates and any attempt to curtail 14(c) employment must be authorized by Congress or state governments. While DOL claims that special minimum wages are “no longer necessary to prevent the curtailment of employment opportunities for workers with disabilities,”⁵ the preamble to the proposed rule fails to show that eliminating 14(c) certificates would benefit these workers, many of whom would be unable to find employment if the proposed rule went into effect. Indeed, at a Committee hearing in 2019, a witness invited by Committee Democrats admitted that 250 out of 415 workers were unable to find employment after one employer stopped employing workers under Section 14(c).⁶

Community Rehabilitation Providers

CRP are community-based organizations that employ workers with disabilities, provide employment services, and generally work to meet the needs of each individual worker. These services range from arranging recreational activities to volunteer work to career development opportunities. They play an important role in upskilling workers with disabilities and allowing them to participate in the workforce in a meaningful way.

Under Section 14(c) of the FLSA, the Secretary of Labor grants a qualified employer a certificate that allows the employer to compensate an individual below the federal minimum wage.⁷ This wage is referred to as a “commensurate” wage, which is based on a formula using the productivity of the employee weighted against the wages of others doing similar work.⁸ It is not a “subminimum wage,” as some have called it. Absent job opportunities at CRPs, individuals with disabilities may otherwise find it difficult to seek employment in traditional settings. One example of the potential effects came from the state of Maine, which phased out its 14(c)

² The White House, Remarks by Vice President Joe Biden to the Global Entrepreneurship Summit (Nov. 20, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/11/20/remarks-vice-president-joe-biden-global-entrepreneurship-summit>.

³ Letter from Committee Members to Acting Sec' of Lab. Julie Su (Dec. 31, 2024), https://edworkforce.house.gov/uploadedfiles/12.31.24_dol_14c_extension_request_letter.pdf.

⁴ 29 U.S.C. § 214(c).

⁵ Proposed Rule, *supra* note 1, at 96,468.

⁶ *Eliminating Barriers to Employment: Opening Doors to Opportunity: Hearing Before the Comm. on Educ. & Lab.*, 116th Cong. 25 (2019) (statement of Shayne Roos, Senior Vice President, Achieva Support).

⁷ 29 U.S.C. § 214(c).

⁸ DOL, Wage & Hour Div., 14(c) Certificate Holders, <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders>.

programs statewide in 2008.⁹ A study found that two thirds of workers with significant disabilities were unable to find other paid positions after Maine eliminated 14(c).¹⁰

Section 14(c) certificate-holding employers must receive authorization from DOL's Wage and Hour Division to pay special minimum wages. These special minimum wages allow workers with disabilities to receive compensation commensurate to their productivity, and the FLSA requires employers to adjust these wages periodically. The law also requires employers to provide written assurance to DOL that they will review 14(c) wages every six months. Finally, the FLSA allows any employee receiving a wage under a 14(c) certificate, or their family or guardian, to petition the Secretary of Labor to obtain a review of their wage rate.¹¹

Benefits of Continued Access to 14(c)

CRPs promote employment and provide a safe, supportive, and positive workplace setting that individuals with disabilities may not be able to find in traditional employment settings. Additionally, due to provisions within the FLSA, DOL regularly ensures that these centers comply with federal law. Individuals employed under 14(c) learn and maintain vocational skills, earn a paycheck, and benefit from socialization. In many cases, the goal for these workers is to reach their full potential, which may mean an eventual transition to competitive integrated employment should the individual decide to pursue it.

It is important to note that workers with disabilities vary widely in their skillsets, compensation, and their specific needs in the workplace. According to a 2023 study done by the Government Accountability Office (GAO) on DOL oversight of 14(c) programs, wages vary from below \$3.50 per hour to more than the federal minimum wage of \$7.25 per hour, depending on the worker's productivity.¹²

Rushed Rulemaking

The proposed rule allows for only 44 days of public comment and thereby fails to seek robust feedback from stakeholders.¹³ Moreover, the Committee has requested that GAO conduct a study on the effect of state governments eliminating the use of 14(c) certificates, which is pending and will provide useful information highly relevant to this rulemaking.¹⁴ DOL needs to receive and consider all relevant information and look before it leaps.

⁹ JANET A. PHOENIX & TYLER BYSSHE, GEORGE WASH. UNIV., TRANSITIONS: A CASE STUDY OF THE CONVERSION FROM SHELTERED WORKSHOPS TO INTEGRATED EMPLOYMENT IN MAINE (2015), https://www.moworkshops.org/newsFolder/shutdown/REPORT_Transitions_ConversionFromShelteredWorkshops_Maine_July2015.pdf.

¹⁰ *Id.* at 26.

¹¹ DOL, WAGE & HOUR DIV., FACT SHEET #39: THE EMPLOYMENT OF WORKERS WITH DISABILITIES AT SUBMINIMUM WAGES (revised July 2008), <https://www.dol.gov/agencies/whd/fact-sheets/39-14c-subminimum-wage>.

¹² GAO, SUBMINIMUM WAGE PROGRAM, DOL COULD DO MORE TO ENSURE TIMELY OVERSIGHT (Jan. 2023), <https://www.gao.gov/assets/gao-23-105116.pdf>.

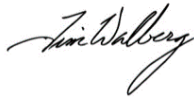
¹³ See Letter from Committee Members, *supra* note 3.

¹⁴ Letter from Reps. Virginia Foxx & Glenn Grothman to GAO (June 3, 2021) (on file).

Conclusion

We must protect and preserve employment opportunities and choices for individuals with disabilities. Ensuring that CRPs can continue to operate and employ workers is critical to achieving this goal. The proposed rule does none of these things, and we therefore urge you to withdraw the proposed rule.

Sincerely,



Tim Walberg
Chairman



Virginia Foxx
Member of Congress



Glenn "GT" Thompson
Member of Congress



Glenn Grothman
Member of Congress