



May 10, 2023

U.S. Department of Labor
Office of the Secretary
200 Constitution Ave NW
Washington, DC 20210

“Looking back, I have to acknowledge that I was a bit of a barrier to assisting Kyle to become employed in an integrated setting. I was not knowledgeable about the true options or how to start the process of transitioning to competitive, integrated employment.”

- Bill Stumpf, father to 32-year-old Kyle Stumpf who has worked at Papa John’s Pizza since 2014 after leaving a sheltered workshop.

Dear Acting Secretary of Labor Julie A. Su,

The Collaboration to Promote Self-Determination (CPSD) writes to urge you to implement a moratorium on the issuance of new certificates under Section 14(c) of the Fair Labor Standards Act (FLSA). Founded in 2007, the Collaboration to Promote Self-Determination (CPSD) is a national advocacy coalition of organizations representing people with intellectual, developmental, and other disabilities and their families, disability service agencies, and other individuals with experience and expertise. The mission of CPSD is to push for major systemic reform of the nation’s disability laws and programs to advance economic security, enhance integrated community participation, and increase opportunities for people with disabilities so that they can lead self-determined lives. CPSD has also long called for the phase out of Section 14(c) and for accountability within the program during the phase out.

With the passage of The Americans with Disabilities Act (ADA) 33 year ago, Congress made clear that that the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and *economic self--sufficiency* [emphasis added] for such individuals¹. While Congress established this national goal, it simultaneously recognized that “historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious

¹ Pub. L. 101-336

and pervasive social problem”². In the U.S. Supreme Court’s decision in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), the Court further clarified that the ADA prohibits the unjustified segregation of individuals with disabilities. There is no question that the integration of people with disabilities to the greatest extent possible, including in employment, is enshrined in civil rights law and it is incumbent upon the Federal Government to do all it can to comply with this national mandate conceived over thirty years ago.

Relatedly, the bipartisan Workforce Innovation and Opportunity Act (WIOA), passed in 2014, states that the law should “maximize opportunities for individuals with disabilities, including individuals with significant disabilities, for competitive integrated employment; to ensure that the Federal Government plays a leadership role in promoting the employment of individuals with disabilities, especially individuals with significant disabilities, and in assisting States and providers of services in fulfilling the aspirations of such individuals with disabilities for meaningful and gainful employment and independent living”³. WIOA makes clear that competitive integrated employment (CIE) is the gold standard employment outcome and the Federal Government should play a leading role in its furtherance.

When viewed together, the ADA, *Olmstead*, WIOA, and the will of the broader disability community makes clear that Section 14(c) is incompatible with current law and with the expectations of people with disabilities, especially those with the most significant disabilities. Nowhere is this incompatibility more apparent than in the continued issuance of *new* 14(c) certificates to employers by the U.S. Department of Labor (DOL), which further entrenches this program.

We commend the Federal Government’s recent work and initiatives to further CIE, and we are also thankful for the 14 states that have passed legislation to eliminate subminimum wages for people with disabilities⁴ and the individual providers and employers that have eliminated subminimum wages for people with disabilities. A recent U.S. Government Accountability Office report found that from 2010 to 2019 the number of 14(c) workers also fell from about 296,000 to 122,000⁵ and we have data to show that the number has decreased even further since 2019⁶. These facts signify that this program is on the decline and, given that reality, we can find no compelling reason for DOL to continue to issue new certificates. A national phase out of Section 14(c) has already begun as states and providers continue to take it upon themselves to eliminate this discriminatory program. CPSP continues to work with Congress to pass legislation

² 42 U.S.C. § 12101(a)(2).

³ 29 U.S.C. 701

⁴ See: [https://apse.org/state-legislation/#:~:text=14\(c\)%2Fsubminimum%20wage%20legislation&text=Note%3A%20The%20following%20states%20have,%2C%20South%20Carolina%20%26%20Rhode%20Island.](https://apse.org/state-legislation/#:~:text=14(c)%2Fsubminimum%20wage%20legislation&text=Note%3A%20The%20following%20states%20have,%2C%20South%20Carolina%20%26%20Rhode%20Island.)

⁵ See: <https://www.gao.gov/assets/gao-23-105116.pdf>

⁶ See: https://sharesync.serverdata.net/us3/s/folder?public_share=4G0CE6ooAdaW8QkTGtJzwy003de098&id=Lw%3D%3D

ending Section 14(c) at the federal level⁷, which is what is ultimately needed to completely end the practice of paying people with disabilities subminimum wages.

The FLSA states with respect to subminimum wages for people with disabilities, **“The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury, at wages which are— (A) lower than the minimum wage...”**⁸.

As expressed in the FLSA statute, the entire idea of subminimum wages is predicated on the scarcity of opportunities for individuals with disabilities in the labor market. While there is absolutely no doubt that barriers to CIE continue to exist for people with disabilities, we have seen tremendous progress in this area since the passage of the FLSA. Millions of people with disabilities are in the labor market today, working alongside their non-disabled colleagues, and are paid at least the minimum wage. While more progress is needed, today we have developed the expertise needed to support individuals with all kinds of disabilities, including those with the most significant disabilities, to succeed in competitive integrated work. The most immediate factor in the curtailment of opportunities for employment for people with disabilities today is a lack of resources to build our capacity to assist those with the most significant disabilities to transition into CIE. Today the continuation of the 14(c) program is actually contributing to the curtailment of employment opportunities for those with intellectual and developmental disabilities (I/DD) by diverting resources from programs supporting individuals to secure CIE. In fact, many people with disabilities are funneled into 14(c) right after high school and remain for years. Research suggests that individuals who work under 14(c) need more support to succeed in CIE than individuals who have never worked at all, further curtailing their opportunities for employment⁹.

We believe the FLSA statute gives the Secretary full discretion to issue a moratorium on new 14(c) certificates without an act of Congress. Furthermore, this Administration has issued two Executive Orders (E.O.) both titled “On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,”¹⁰ and specifically identified persons with disabilities as an underserved community. In the first equity E.O. this Administration stated, **“Equal opportunity is the bedrock of American democracy, and our diversity is one of our country’s greatest strengths. But for too many, the American Dream remains out of reach. Entrenched disparities in our laws and public policies, and in our public and private institutions, have often denied that equal opportunity to individuals and communities.”** We wholeheartedly

⁷ See: [S.533 - Transformation to Competitive Integrated Employment Act](#)

⁸ 29 U.S.C. 201, et seq

⁹ Taylor, Joshua P. et al. ‘The Efficacy of Competitive Integrated Employment Versus Segregated Employment for Persons with Disabilities: A Systematic Review’. 1 Jan. 2023 : 63 – 78.

¹⁰ See: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>;
<https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/16/executive-order-on-further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

agree and would underscore that the continuance of new 14(c) certificates is at odds with the stated policy of both E.O.s and specifically that 14(c) contributes to entrenched disparities and denies equal opportunity to people with disabilities. In addition to the language of the FLSA statute referenced earlier, both equity E.O.s serve as an additional foundation and justification to issue a moratorium; in fact, the policy directives in the E.O.s necessitate a moratorium.

Again, we urge you to implement a moratorium on the issuance of new certificates under Section 14(c) of the Fair Labor Standards Act (FLSA). We believe the end of the 14(c) program is on the horizon and implementing a moratorium on new certificates is a concrete step DOL can take without the need for Congressional action to further the goal of economic self-sufficiency as established by the ADA and prevent further harm to individuals with disabilities in the waning days of this program. We thank you for your leadership in the employment of people with disabilities. Should you have any questions, please contact Cyrus Huncharek at cyrus@ndsccenter.org.

Sincerely,

Association of People Supporting Employment First
Association of University Centers on Disabilities
Autism Society of America
Autistic Self Advocacy Network
CareSource
Community Options, Inc
Marc Gold & Associates
National Association of State Directors of Developmental Disabilities Services
National Center for Learning Disabilities
National Disability Rights Network (NDRN)
National Down Syndrome Congress
TASH