

Revised 14c Recommendations

In light of the goals outlined for competitive, integrated employment within the Workforce Innovation & Opportunity Act, the Advisory Committee Charter (2014) specifies that the Committee evaluate the use of subminimum wages under Section 14(c) of the Fair Labor Standards Act (FLSA), and advise the Secretary of Labor on policies and practices that will lead to a significant and systematic reduction in the misuse of 14(c) certificate programs and the dependence on subminimum wages and segregated service placements. The Charter also specifies review of the use of the certificate programs and recommends ways to improve oversight and reduce reliance on such certificates.

To that end, each of the recommendations below represents the underlying need to amend Section 14(c) of the FLSA so that it reflects and aligns with modern federal disability policy and laws that presumes all individuals with disabilities are capable of, and have a right to, competitive, integrated employment.¹ The current wide spread practice of paying workers subminimum wage, based on the assumptions that individuals cannot perform work based solely on their disability or on assumptions about unavailability of alternative work opportunities, is antithetical to the intent of modern federal policy and law.

Addressing this disparity between policy intent and current practice through the amendment of Section 14(c) of FLSA will require three areas of activity and focus:

- Congress amending the FLSA to allow for a multi-year, well-planned phase out of Section 14(c). The plan should include measures to mitigate unintended consequences for individuals currently receiving services from organizations using 14(c) certificates as the basis for the wages paid them;
- The Wage and Hour Division of the Department of Labor engaging in stronger oversight of 14(c) certificates and using stricter standards for issuance of new certificates and renewals of existing certificates; and
- The federal government assisting states with building the capacity of their service systems to provide competitive integrated employment (CIE) services as alternatives to those provided under programs using a 14(c) certificate.

The original nine recommendations contained in the Interim Report² are presented here in these three main thematic areas, along with a brief summary of applicable details and principles.

¹ The Ticket to Work and Work Incentives Improvement Act of 1999, The Individuals with Disabilities Education Improvement Act of 2004, and the Workforce Opportunities Improvement Act of 2014 are each predicated on the expectation that services delivered through their respective mandates are available to and will benefit all individuals with disabilities to whom the services apply. The Americans with Disabilities Act provides people with disabilities a civil right to live, work, and receive services in the most integrated setting in the community.

² Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, Chapter Six: Section 14(c) Program, September 2015.

1. *Congress should amend Section 14(c) of FSLA to allow for a well-designed, multi-year phase-out of the Section 14(c) Program that results in people with disabilities entering Competitive Integrated Employment (CIE).*
 - a. Oversight of the phase out should include:
 - i. Enhanced data collection on, and analysis of, 14(c) certificate holders and individuals paid under the certificate, their earnings and hours worked
 - ii. Data collection and analysis of employment services received by individual paid under the certificate and employment outcomes achieved
 - iii. Increased penalties for misuse of the certificate
 - b. A federal interagency panel should be appointed, by the Secretary of Labor, to develop and oversee a detailed plan for the phase out that considers:
 - i. Mandates of WIOA
 - ii. Resources for technical assistance (see Recommendation # 3)
 - iii. Measures to mitigate unintended impact of service transformation on subminimum wage recipients
 - iv. Safeguards to ensure self-determination and that individuals are engaged and given the information and experiential opportunities necessary to understand the options and make an informed choice
 - v. Attention the long term development of career pathways for individuals
2. *The Wage and Hour Division (WHD) of the Department of Labor should engage in stronger enforcement of 14(c) certificates and should use a strict standard for issuance or renewal of 14(c) certificates “only when necessary... to prevent the curtailment of opportunities for employment.”*
 - a. Prior to issuing a new 14(c) certificate or renewing an existing one, WHD should require a state (through the state’s Medicaid agency, Department of Labor, or Department of Disability Services) to submit evidence that there is a current lack of employment opportunities for people with disabilities such that a time-limited 14(c) certificate is "necessary to prevent the curtailment of employment opportunities" for people with disabilities and plan to address the need. The submission must include, at a minimum, data on the existing rate of competitive integrated employment (CIE) within the state for the population proposed by the certificate applicant and articulate a plan, with specific timeframes and benchmarks, to expand access to competitive integrated employment for the purpose of making the use of 14(c) certificates unnecessary in the future.
 - b. Require 14(c) certificate applicants to provide information along with their application to substantiate their claim that the certificate is “necessary to prevent the curtailment of employment opportunities" for people with disabilities, including data on the availability of integrated employment and supported employment services. The 14(c) applicant must also describe the steps it will take to assist individuals under 14(c) to obtain competitive integrated employment.

- c. WHD should incorporate into its 14(c) application review process input from federal partners, including CMS, the Administration on Community Living, and the Rehabilitation Services Administration in order to adequately evaluate the information about employment opportunities and the adequacy of remedial plans to support the issuance or renewal of 14(c) certificates.
3. *In addition to technical assistance activities recommended in other sections of this report, federal agencies including Health and Human Services, Department of Labor, Department of Education and the Social Security Administration that have responsibility either through WIOA or other federal initiatives to increase CIE for people with severe disabilities should coordinate provision of technical assistance resources to states to encourage transformation of 14(c) certificate holders to employment agencies that offer CIE.*
- a. For maximum impact provision of technical assistance should focus on those states that are successfully transforming employment options from 14(c) to CIE either because of the work these states are doing to comply with the HCBS Settings Rule or the WIOA mandate. The results should be shared with all states.
 - b. The technical assistance resources should include, at a minimum:
 - i. Redesigning the business plans of non-profit employers with 14(c) certificates, typically defined as community rehabilitation providers (CRPs), to manage delivery strategies that lead to and support individuals with disabilities pursue and sustain competitive, integrated employment
 - ii. Methods of re-deployment of staff and restructuring staff roles
 - iii. Staff training on CIE strategies
 - iv. Service delivery by CRPs that ensure self-determination and informed choice, and career pathways
 - v. Data collection and management of CIE services
 - c. CMS should enforce guidance regarding the time-limited nature of pre-vocational services for the purpose of individuals moving into CIE, as opposed to moving to other non-vocational segregated services.