

# **Report to Authorizing and Appropriations Committees on the U.S. Department of Labor’s Wage and Hour Division Section 14(c) Program**

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This U.S. Department of Labor (Department or DOL) Wage and Hour Division (WHD) report is submitted to the committees on appropriations and authorization<sup>1</sup> in response to the explanatory statement submitted by The Honorable Nita Lowey, Chairwoman of the House Committee on Appropriations, regarding H.R. 1865, Further Consolidated Appropriations Act, 2020. The statement provides that:

WHD shall collect data at the beginning of each fiscal year and submit in an electronic format yearly reports to the authorizing and appropriations Committees that shall include the following: (1) the name and address of each employer holding a certificate under 29 U.S.C. 214(c); (2) the starting date and ending date of each certificate for each employer under 29 U.S.C. 214(c); (3) information about the certificate for each employer under 29 U.S.C. 214(c), including if the certificate is an initial certificate or renewal and if the certificate is issued or pending; and (4) the current number of workers paid a subminimum wage by the employer holding the certificate under 29 U.S.C. 214(c) at the time of data collection. WHD is further directed to brief the authorizing and appropriations Committees, within 90 days of enactment of this Act, on its administration, monitoring, and enforcement of the subminimum wage program authorized under section 14(c) of the Fair Labor Standards Act.

## **Background on FLSA Section 14(c) and WHD’s Administration of the Program**

WHD administers and enforces a wide range of laws which cover private, state, and local government employment. Among them, the Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers.

The FLSA provides for the employment of certain individuals at wage rates below the generally applicable statutory minimum. FLSA section 14(c) authorizes employers, after receiving a certificate from the Department, to pay certain employees wages that are less than the Federal minimum wage if their earning or productive capacity is limited as a result of a disability. The purpose of section 14(c) is to prevent curtailment of opportunities for employment. Notably, the lower wage rate is permitted under limited conditions and only under certificates issued by the Department.

Responsibility for administering and enforcing section 14(c) of the FLSA has been delegated entirely to WHD.<sup>2</sup> The Department’s regulations governing the issuance and enforcement of section 14(c) certificates describe WHD’s role in enforcing and achieving compliance with the

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<sup>1</sup> Senate Appropriations Committee, Labor/HHS/Education Subcommittee; House Appropriations Committee, Labor/HHS/Education Subcommittee; Senate Health, Education, Labor and Pensions Committee; and House Education and Labor Committee

<sup>2</sup> See Sec’y of Labor’s Order No. 01-2014, Delegation of Authority and Assignment of Responsibility to the Administrator, Wage and Hour Division (Dec. 19, 2014), 79 Fed. Reg. 77,527, 2014 WL 7275751 (Dec. 24, 2014).

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section 14(c) requirements.<sup>3</sup> WHD enforces and ensures employers' compliance with the statutory and regulatory requirements of section 14(c) through the issuance of guidance materials, review of applications for 14(c) certificates, outreach to stakeholders, and the investigation of 14(c) certificate holders.

## *Certification*

Section 14(c) is a certificate-based program. The certificate application requires employers to provide WHD information about themselves and a snapshot of information about the way they use or seek to use the subminimum wage program. Each application is reviewed to determine whether WHD will issue or deny a certificate. Certificates are issued to an employer and are not issued to individual employees or groups of employees. The issuance of a certificate is not a statement by WHD that the employer is in compliance with section 14(c) or other provisions of applicable law. Neither does a certificate provide the employer with a good faith defense should violations of the law be found during an investigation.

Certificates issued by WHD have both an effective date and an expiration date. To remain authorized to pay subminimum wages, the employer must properly and timely file an application for renewal with WHD before the expiration of its certificate. Applicants submit renewal applications in the same manner as an initial application but are required to provide additional information. If an application for renewal has been properly and timely filed with WHD, an existing subminimum wage certificate remains in effect and the employer's authority to pay subminimum wages continues until the application for renewal has been granted or denied. When a certificate expires and no application for renewal has been properly and timely filed, an employer is required to pay all workers covered by the FLSA at least the full minimum wage for all work performed after the certificate expiration date. A certificate will not be issued retroactively to cover a time period prior to the receipt of the application.

## **Requested Data**

The data requested is provided, as of October 1, 2020, in the accompanying Excel file. The Excel file reflects the employers who currently hold or have applied for certificates issued under section 14(c). The file contains the following information: certificate type, employer name, employer address, whether the application for the certificate was an initial or renewal application, whether the employer indicated it held government contracts covered by either the Walsh-Healey Public Contracts Act (PCA) or the McNamara O'Hara Service Contract Act (SCA) at the time of application, and the number of workers with disabilities who were paid subminimum wages by the certificate holder during their most recently completed fiscal quarter. The list also includes the status of the certificate and certificate starting and ending dates. For

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<sup>3</sup> See 29 U.S.C. § 214(c) and 29 C.F.R. Part 525; *see, e.g.*, 29 C.F.R. 525.9 (identifying the criteria for the issuance of a section 14(c) certificate); 29 C.F.R. 525.12 (outlining the terms and conditions of the certificate); 29 C.F.R. 525.17 (setting forth the standard for WHD to revoke certificates); 29 C.F.R. 525.19 (authorizing WHD to investigate prior to taking any action regarding the certificate).

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certificates in “pending” status, some columns are blank. All data is displayed for issued certificates.

The list includes 762 employers with an issued certificate—who reported paying 54,572 workers at subminimum wages in their previously completed fiscal quarter—and 485 employers with a pending certificate application.

## ***Contextual Information on the Data***

WHD currently receives and processes certificate applications on a rolling basis and the length of the certificate authorization varies, generally, one or two years. An applicant seeking renewal of its certificate (renewing applicant) is required to provide certain sample data in its application. For example, renewing applicants are required to identify the total number of workers who were employed at the establishment/work site and paid a subminimum wage rate at any time during the most recently completed fiscal quarter.

The information collected by WHD on the certificate application form is thus a snapshot of the applicant’s workforce paid a subminimum wage at a specific point in time. The data provided with this report, as well as the list published on WHD’s website and regularly updated, is standardized to provide snapshots of section 14(c) certificate holders and the corresponding number of workers with disabilities listed on those applications where the issued certificate was active as of the date the list was revised. As with all certificate application data, the information reported is self-reported by employers and not independently verified by WHD.

WHD maintains and regularly updates its list of certificate holders, which can be found on the WHD website at: <https://www.dol.gov/whd/workerswithdisabilities/certificates.htm>. This list can be sorted by employer name, state, certificate dates, etc. and may be downloaded for further analysis.

## **Requested Congressional Briefing**

As requested, WHD conducted a briefing to both the authorizing and appropriations committees on its administration, monitoring, and enforcement of the section 14(c) subminimum wage program on March 11, 2020.