



The National Landscape of Subminimum Wage, Implications and Recommendations to Elevate Competitive Integrated Employment

By: National Disability Rights Network
June 2023
DETAC-2023-GEN-2

Introduction

Segregated or “sheltered” workshops existed in the United States as early as 1840. The Perkins Institute for the Blind, an institution in Massachusetts, created jobs for people who were blind that were protected, or sheltered, from competition to create permanent job opportunities for them.¹ The origin of subminimum wages for people with disabilities stems from the National Industrial Recovery Act, one of the early pieces of President Franklin Roosevelt’s New Deal. Roosevelt issued an Executive Order on February 17, 1934 that permitted payment of individuals with disabilities below the minimum wage.²

In 1938, Congress passed the Fair Labor Standards Act (FLSA)³. It specified standards for basic minimum wage rates and overtime pay. It also created a special exemption under 14(c) authorizing employers to pay wages much lower than the minimum wage to workers with disabilities. These wage provisions were originally created to encourage the employment of veterans with disabilities in a manufacturing-centered economy.⁴

The FLSA allows the United States Department of Labor (U.S. DOL) to issue “14(c) special minimum wage certificates...to the extent necessary to prevent curtailment of opportunities for individuals with disabilities.”⁵ These certificates are also called subminimum wage certificates because they allow payment below established minimum wages. Once in possession of a 14(c) certificate, an employer must calculate a commensurate wage for the worker with a disability based on 1) the prevailing wage paid to workers without disabilities doing similar work and 2) the productivity of the worker with a disability compared with workers without disabilities.⁶ Many, but not all, employers that use these certificates are called community rehabilitation programs (CRPs)

¹ National Disability Rights Network (NDRN). (n.d.) *Segregated & Exploited The Failure of the Disability Service System to Provide Quality Work*, [Segregated & Exploited \(ndrn.org\)](https://www.ndrn.org)

² Whittaker, W. G. (2005). *Treatment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act*. <https://ecommons.cornell.edu/handle/1813/78685>

³ <https://www.govinfo.gov/content/pkg/COMPS-1514/pdf/COMPS-1514.pdf>. U.S.C. Title 29—LABOR. (n.d.). Retrieved June 20, 2023, from <https://www.govinfo.gov/content/pkg/USCODE-2011-title29/html/USCODE-2011-title29-chap8.htm>

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*



or sheltered workshops, where all or nearly all employees have disabilities.⁷ Some CRPs depend on these certificates while a growing number of CRPs emphasize models of competitive integrated employment (CIE).⁸

Between 1940 and 2000, there have been ongoing critiques and sporadic congressional attention to the use of 14(c) programs.⁹ Additionally, following the U.S. Supreme Court’s decision in *Olmstead v. L.C.*,¹⁰ which prioritized integrated community settings for persons with disabilities, there has been more scrutiny of government funding that fosters and perpetuates segregation.¹¹ A main example of private litigation under the *Olmstead* integration mandate as applied to segregated workshops is *Lane v. Brown*.¹²

As of 2001, state vocational rehabilitation (VR) programs cannot count placements in segregated work as an employment outcome under the Rehabilitation Act of 1973, which authorizes public funding for employment services for individuals with disabilities.¹³ In 2014, the Workforce Innovation and Opportunity Act (WIOA) amended the Rehabilitation Act to “maximize opportunities for individuals with disabilities, including individuals with the most significant disabilities, for CIE.”¹⁴ The WIOA amendments included a host of requirements around career counseling, informed choice and, among others, promoting self-advocacy and self-determination.¹⁵

The number of subminimum workers is steadily declining. The United States Governmental Accounting Office (GAO) in 2001 estimated that there were appropriately 424,000 workers with disabilities receiving a subminimum wage from 5,612 certificate holders.¹⁶ By 2019, GAO estimated these numbers dropped to approximately 120,000 workers with disabilities employed by 1,567 certificate holders.¹⁷ In May 2023, the U.S. DOL’s listing of certificate holders indicates

⁷ 14(C) certificate holders. DOL. (n.d.).

<https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders>

⁸ Lulinski, A., Timmons, J., Leblois, S. (2017) From Sheltered Work to Competitive Integrated Employment: Lessons From the Field. Bringing Employment First to Scale, Issue 11. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion

⁹ For an instructive history of the 14c program from the 1930s to the early 2000’s, see Whittaker, supra, note 2.

¹⁰ *Olmstead v. L.C.*, 527 U.S. 581, 593 (1999). For a summary of the *Olmstead* decision, see [Justice Department Commemorates the Anniversary of *Olmstead v. L.C.* | OPA | Department of Justice](#)

¹¹ Disability Employment Technical Assistance Center (DETAC). (2021) *Ending Segregated Workshops and Promoting Competitive Integrated Employment (CIE)*. https://aoddisabilityemploymenttcenter.com/wp-content/uploads/2021/07/DETAC_BY_Resource_PA_Legal_Foundations_Pt_1_Final_508.pdf

¹² The Center for Public Representation and Disability Rights Oregon (Oregon’s Protection and Advocacy System) were co-counsel, along with others, on this 2012 case. For a detailed description of this case see *Lane v. Brown – Center for Public Representation*. (n.d.). Retrieved June 20, 2023, from https://www.centerforpublicrep.org/court_case/lane-v-brown/

¹³ Final Regulations for State VR Services Program, 66 Fed. Reg. 7249 (January 22, 2001); see definition of “employment outcome” at 34 CFR 361.5(b)(16)

¹⁴ Pub. L. No. 113-128, § 402(b)(3), 128 Stat. 1425, 1631-32 (2014), codified at 29 U.S.C. § 701(b)(2).

¹⁵ *Id.*

¹⁶ Special Minimum Wage Program: Centers Offer Employment and Support Services to Workers With Disabilities, But Labor Should Improve Oversight | U.S. GAO. (n.d.). Retrieved June 20, 2023, from <https://www.gao.gov/products/gao-01-886>

¹⁷ *Subminimum Wage Program: Factors Influencing the Transition of Individuals with Disabilities to Competitive Integrated Employment* | U.S. GAO. (n.d.). Retrieved June 20, 2023, from <https://www.gao.gov/products/gao-21-260>



there are over 40,000 workers employed under *active* certificates for 954 employers and there are another 200 *pending* certificates, for which the number of workers is not available.¹⁸

In the last several years, a range of developments further question the integrity, original purposes, implementation, and future utility of the 14(c) program.

Modern Developments: The Real Dangers of Exploitation

Low Wages, Little Advancement, and Missing Health Care

A 2001 GAO survey of the 14(c) program found that 23% of sheltered workshop participants paid under a certificate were paid less than \$1.00 an hour while 54% were paid less than \$2.50 an hour.¹⁹ The VR Longitudinal Study reviewed 8,500 recipients of VR services from 1994 to 2000 and confirmed that people placed in sheltered work earned far below the minimum wage and failed to make gains in earnings over time.²⁰ This study found:

- Of the 7,765 people placed in sheltered work in 1998, 89.3% earned less than the minimum wage of \$5.15 an hour.
- The average hourly earnings for people placed in sheltered work was \$3.03.
- One year later, average hourly wages dropped to \$2.64 an hour.

Two years later, average hourly wages rose slightly to \$2.84.²¹ The problem of low wages is compounded by limited work hours and limited access to government health insurance.²² People placed in sheltered work averaged 27.6 hours per week. One year later, the average work week was 28.1 hours and the following year, 29.1 hours per week.²³ Lastly, according to the study, only 16% of people in sheltered work had health insurance. One year later, the number dropped to 12%. As of 2020, the USSCR reported that data showed workers with disabilities earned on average \$3.34 per hour.²⁴

¹⁸ *14(c) Certificate Holders*. (n.d.). DOL. Retrieved June 20, 2023, from <http://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders>

¹⁹ See GAO, *Special Minimum Wage Program: Centers Offer Employment and Support Services to Workers with Disabilities, But Labor Should Improve Oversight*, GAO-01-886 at 22 (September 2001).

²⁰ B.J. Hayward & H.S. Davis, Research Triangle Institute, *Longitudinal Study of the Vocational Rehabilitation Services Program, 3rd Final Report: The Content of VR Services* (2005), <http://www2.ed.gov/rschstat/eval/rehab/vr-final-report-3.pdf>.

²¹ *Changing Patterns in the Rehabilitation System*. (n.d.). Retrieved June 20, 2023, from <https://nfb.org/sites/nfb.org/files/images/nfb/publications/bm/bm00/bm0008/bm000805.htm>

²² Institute for Community Inclusion, *StateData: The National Report on Employment Services and Outcomes* (2009), available at <http://statedata.info/datanotes/pdf/Statedata2009.pdf> citing H. Boeltzig, J.C. Timmons, J. Marrone, (2008). Maximizing potential: innovative collaborative strategies between One-stops and mental health systems of care. *Work: A Journal of Prevention, Assessment, and Rehabilitation*, 31(2), 181-193

²³ Schroeder, *supra* note 21

²⁴ U.S. Commission on Civil Rights (USSCR), *Subminimum Wages: Impacts on the Civil Rights of People with Disabilities*. Available at [2020-09-17-Subminimum-Wages-Report.pdf \(usccr.gov\)](https://www.usccr.gov/2020-09-17-Subminimum-Wages-Report.pdf). This report, with comprehensive appendices, examined applicable law, policy considerations, data and analysis, the federal government's role and responsibility, state laws as well as issued findings and recommendations.



In contrast, for people with disabilities in integrated employment, the wages started at \$7.56 an hour, and rose to \$13.48 an hour, with 58.8% of individuals having access to health insurance three years after receiving VR funded services.²⁵

In February 2023, GAO’s examination of the 14(c) program between 2010 and 2019 concluded that:

- During this period, the number of 14(c) workers fell from about 296,000 to 122,000.
- Certificate holders dropped from 3,117 to 1,567.
- About 14% of workers earned at or above the federal minimum of \$7.25.
- Workers who earned higher wages tended to work in integrated community settings and were paid on an hourly basis.
- An estimated 34% of workers worked 1 to 10 hours per week, 31% worked 11 to 20 hours per week, and 33% worked 21 to 34 hours per week.
- About 12% of workers engaged in competitive employment but typically for not more than 10 hours per week.²⁶

Abuse and Financial Exploitation

In February 2009, local and state officials discovered 21 men with intellectual and cognitive disabilities living in deplorable conditions in a bunk house in Atalissa, Iowa.²⁷ These men who were employed, housed, and under the control of their employer, Henry’s Turkey Service, had been transported from Texas to Iowa some 20 to 30 years earlier and were working for about \$0.41 per hour at an entity known as West Liberty Foods.²⁸ The U.S. Equal Employment Opportunity Commission (EEOC) and state agencies investigated the case,²⁹ and the U.S. DOL filed suit for wage, overtime, and records violations under the FLSA for 38 men eventually found to have worked for Henry’s Turkey Service since 2006.³⁰ The EEOC determined Henry’s Turkey Service was in violation of Title I of the Americans with Disabilities Act,³¹ having underpaid the workers with disabilities at least \$1 million over a three-year period and subjected the men to a hostile work environment. The U.S. DOL previously investigated Henry’s, and as far back as 1974, an Iowa Department of Human Services social worker wrote that a worker with disability once employed by Henry’s “for all practical purposes, loses most of his basic human rights.”³²

²⁵ Id.

²⁶ GAO, Subminimum Wage Program: DOL Could Do More to Ensure Timely Oversight, GAO-23-105116, (2023).

²⁷ Clark Kauffman, State Closes Bunkhouse that Housed Mentally Retarded Workers, DESMOINES REGISTER.COM, Feb. 8, 2009.

²⁸ Associated Press, Report: Texas Firm Cheated Disabled Iowa Workers, BLOOMBURG BUSINESSWEEK, May 7, 2010.

²⁹ Id.; see also Clark Kauffmann, State Agency Appeals Cut in Penalty for Henry’s Turkey Service, DESMOINES REGISTER.COM, Nov. 1, 2010.

³⁰ Complaint, Solis v. Hills Country Farms d/b/a as Henry’s Turkey Service and Kenneth Henry, No. 3:09-cv-162 filed Nov. 11, 2009 (S.D. Iowa). DOL alleged that Henry’s paid each worker \$65 a month regardless of the hours worked.

³¹ Associated Press, *supra* note 28

³² Id. at 5. Clark Kauffman, Henry’s Turkey Service Once Praised, Now Condemned, DESMOINES REGISTER.COM, MAY 25, 2009.



The Atalissa incident brought national attention to the treatment and potential exploitation of employees with disabilities as well as migrant workers,³³ and more specifically on section 14(c) of the FLSA.³⁴

Non-Compliance, Back Pay, and Dwindling Numbers

In addition to low wages, minimal advancement, gaps in health care, abuse and financial exploitation, there is a clear and unmistakable pattern of non-compliance with existing law. The GAO's 2023 report concluded that the U.S. DOL found FLSA special minimum wage law violations in about two-thirds of its investigations into 14(c) employers over nearly the course of 10 years (FY 2012-FY 2021) and concluded that this equated to over \$15 million in back wages owed to more than 73,500 workers.³⁵ One example of private litigation efforts to address back pay issues, among a number of other interrelated issues, is *Steward v. Roppe*.³⁶

Further, the number of certificate holders declined from 5,612 to 954 in just over 20 years, and the number of workers receiving subminimum wage declined from nearly 425,000 to approximately 50,000.³⁷

Calls to Eliminate the 14(c) Program

This challenging history led to calls to eliminate the 14(c) program. In a more than 300-page report, a majority of the United States Commission on Civil Rights (USCCR) recommended “that Congress should repeal section 14(c) with a planned phase-out period to allow transition among service providers and people with disabilities to alternative service models prioritizing CIE.”³⁸ The National Council on Disability³⁹ and other groups joined this call to eliminate subminimum wage certificates.⁴⁰

³³ Preventing Worker Exploitation: Protecting Individuals with Disabilities and Other Vulnerable Populations Before the Comm. on Health, Education, Labor, and Pensions of the U.S. Senate, 111th Cong. (2009) [hereinafter Senate Hearing].

³⁴ Fair Labor Standards Act of 1938, as amended § 14(c); 29 U.S.C. § 214(c) (2010).

³⁵ Subminimum Wage Program: Factors Influencing the Transition of Individuals with Disabilities to Competitive Integrated Employment | U.S. GAO. (n.d.). Retrieved June 20, 2023, from <https://www.gao.gov/products/gao-21-260>

³⁶ For more information see <http://www.disabilityrightsohio.org>. (n.d.). Three workers with disabilities previously paid subminimum wage sue Roppe Industries for employment discrimination. <http://www.disabilityrightsohio.org>. Retrieved June 20, 2023, from <https://www.disabilityrightsohio.org/news/three-workers-with-disabilities-previously-paid-subminimum-wage-sue-multinational>

³⁷ U.S. DOL, supra note 18.

³⁸ USCCR, supra note 24.

³⁹ National Council on Disability, (NCD) National Disability Employment Policy, From the New Deal to the Real Deal: Joining the Industries of the Future pp. 61-98 (2018). [From the New Deal to the Real Deal: Joining the Industries of the Future \(ncd.gov\)](https://www.ncd.gov)

⁴⁰ See e.g., National Disability Rights Network (NDRN). (n.d.) Segregated & Exploited The Failure of the Disability Service System to Provide Quality Work, [Segregated & Exploited \(ndrn.org\)](https://www.ndrn.org); dcard. (n.d.). Reports. NDRN. Retrieved June 20, 2023, from <https://www.ndrn.org/reports/>; Association of People Supporting Employment First. Retrieved June 20, 2023, from <https://apse.org/state-legislation/>



Despite the clear failures of the certificate program and the calls for its phase out or full elimination, there remain proponents of retaining the subminimum wage option.⁴¹ These proponents include but are not limited to CRPs and in some cases the families of workers with disabilities who receive a subminimum wage in segregated sites.⁴²

The GAO in 2021 identified factors that could help or hinder the transition.⁴³ Among the considerations hindering the transition away from 14(c) options were the actual or feared loss of public health care benefits, protection of a perceived safe environment and social community, and long histories of working inside segregated sites.⁴⁴ These are crucial factors to be addressed for the remaining workers with disabilities in the certificate program across the states.⁴⁵

The travesty at Atallisa combined with the significant critiques of the effectiveness and utility of the certificate program prompted many states to end or phase out permissible use of the certificates.

The USCCR recommended that, “Congress should expand funding for supported employment services and prioritize capacity building in states transitioning from 14(c) programs. Now and during the transition period of the Section 14(c) program, Congress should assign civil rights oversight responsibility and jurisdiction, with necessary associated fiscal appropriations to conduct the enforcement, either to the Department of Labor or to the Department of Justice Civil Rights Division. Congress should also require that the designated civil rights agency issue an annual report on investigations and findings regarding the 14(c) program. During the phase-out period, Congress should require more stringent reporting and accountability for 14(c) certificate holders, and following the phase out should continue to collect data on employment outcomes of former 14(c) employees.”

State Actions to Phase Out or Eliminate the 14(c) Program

States can opt out of the 14(c) program by requiring payment of a state or local minimum wage even if an employer possesses the 14(c) certificate.⁴⁶ Over the last two decades, states ended or limited certificate use in a number of ways. Vermont ended state funding for segregated workshops in 2002.⁴⁷ In 2013, the United States Department of Justice settled a lawsuit with the state of

⁴¹ Coalition for the Preservation of Employment Choice (n.d.). About Us. *Coalition for the Preservation of 14C*. Retrieved June 20, 2023, from <https://employmentchoice.org/about/> and for a summary of testimony supporting and opposing the elimination of the certificate program, see USCCR report, supra note 24

⁴² For list of factors see GAO, Subminimum Wage Program: *Subminimum Wage Program: Factors Influencing the Transition of Individuals with Disabilities to Competitive Integrated Employment* | U.S. GAO. (n.d.). Retrieved June 20, 2023, from <https://www.gao.gov/products/gao-21-260>

⁴³ GAO, supra note 17.

⁴⁴ Id.

⁴⁵ For an example of evidence based practices to support workers in segregated work settings move towards CIE, see Disability Employment Technical Assistance Center (DETAC). (2021). *Advancing CIE through Legal Advocacy Systems* https://aoddisabilityemploymentcenter.com/wp-content/uploads/2021/10/DETAC-2021-PA-2_Final_508.pdf

⁴⁶ See 29 C.F.R. § 525.20 (“No provisions of these regulations, or of any special minimum wage certificate . . . , shall excuse noncompliance with any other Federal or State law or municipal ordinance establishing higher standards.”).

⁴⁷ For a review of Vermont’s efforts, see *Working with Disability: Toward a truly inclusive Vermont labor force. | Disabilities Aging and Independent Living*. (n.d.). Retrieved June 20, 2023, from <https://dail.vermont.gov/vcil-working-with-disability>



Rhode Island and the city of Providence to end the segregation of individuals, including students, with intellectual and developmental disabilities (I/DD) in a sheltered workshop and day program.⁴⁸

Other states used legislation or Governors' Executive Orders to eliminate or phase out the option of employers to pay subminimum wages. As of May 2023, there were 16 states that have taken these approaches.⁴⁹

In 2015, New Hampshire was the first state to enact a law to prohibit employers from employing individuals with disabilities at an hourly rate lower than the state minimum wage. Next, in 2016, Maryland state law was changed to require the state Departments on Economic Competitiveness and Commerce, Education, Disabilities, Division of Rehabilitation Services and Developmental Disabilities Administration to phase out the use of 14(c) certificates by 2020. The plan included annual reports with benchmarks and desired outcomes including the tracking of the outcomes of individuals including wages, unemployment rates, numbers of individuals who move from subminimum to CIE, and the number of individuals who move from subminimum wage positions to non-paying activities.

In 2018, Alaska moved to repeal the minimum wage exemption for persons with disabilities and enacted legislation to the same effect in 2022. In 2019, Texas enacted a narrow law that requires the state workforce commission to assist community rehabilitation programs to develop a plan to increase wages paid to its workers to the federal minimum wage in 2022.

Three states enacted laws to eliminate or phase out special certificates in 2020.

- Maine ended the issuance of special certificates authorizing an employer to pay a person with a disability less the minimum wage based on the ability of the person to perform duties for that employment in comparison to the ability of a person who does not have a disability to perform the same duties.
- Washington state took a phased approach that affected different entities on different dates. State agencies were prohibited from using subminimum wages in 2020 and in 2023, no new special certificates permitting employment at less the minimum wage of individuals with disabilities could be issued to any employers. Existing certificates could be renewed only once. The state law also requires notice to employers, employees, and their representatives when a certificate expires, or an extension is requested and notice about supportive services available to individuals with disabilities.

⁴⁸ Department of Justice Reaches Landmark Settlement Agreement with Rhode Island and City of Providence Under the ADA. (2013, June 13). <https://www.justice.gov/opa/pr/departments-justice-reaches-landmark-settlement-agreement-rhode-island-and-city-providence>

⁴⁹ State Legislative Watch. (n.d.). *Association of People Supporting Employment First*. Retrieved June 20, 2023, from <https://apse.org/state-legislation/>; see also Selyukh, A. (2020, September 17). Workers With Disabilities Can Earn Just \$3.34 An Hour. Agency Says Law Needs Change. *NPR*. <https://www.npr.org/2020/09/17/912840482/u-s-agency-urges-end-to-below-minimum-wage-for-workers-with-disabilities>



- Oregon’s law provided phased increases in the minimum wages paid to employees receiving a subminimum wage. Oregon also entered into a settlement agreement that includes a comprehensive range of steps to resolve federal litigation.⁵⁰

Five more states enacted legislation in 2021 to address and examine concerns related to the use of subminimum wages.

- Hawaii enacted a law that removed a provision in its labor law that permitted the payment of a special minimum wage to “handicapped workers.”
- Colorado enacted a law prohibiting the payment of less than the highest applicable state minimum wage for any new employees, requiring data reporting, and mandating employers that use subminimum wages to create a transition plan.
- California enacted a law that prohibits the issuance of new licenses to pay a subminimum wage to workers with disabilities after January 1, 2022 and that licenses end in 2025. The law also has a phase out plan similar to Maryland’s.
- Delaware enacted legislation requiring the state’s *Employment First Oversight Commission* to develop and implement a plan to phase out the payment to individuals with disabilities less than the state’s minimum wage on or before July 1, 2023. The plan requires data collection, setting of benchmarks and expected outcomes and a list of resources to assist each individual to be employed in an integrated setting or to participate in a meaningful alternative program.
- Minnesota enacted legislation that created a Legislative Task Force to develop a plan and make recommendations to phase out the payment of subminimum wages to people with disabilities on or before August 1, 2025.⁵¹

Illinois took a different approach in 2021 when its Governor signed an executive order that all current and future state use contracts with not-for-profit organizations and any subcontractors would have to pay its employees the state or local minimum wage, whichever is higher.

In 2022, Tennessee enacted a state law banning use of subminimum wages. Also in 2022, South Carolina enacted legislation to create a plan to phase out the use of the subminimum wage by August 1, 2024. The law also established the South Carolina *Employment First Oversight Commission* to establish evidence-based measurable goals and objectives to encourage implementation of the law and track the measurable progress of state agencies in implementation.

In the spring of 2023, the Virginia legislature enacted legislation that will stop the employment of new workers who can be paid less than the federal minimum wage effective July 1, 2023. The law will also end the use of certificates in 2030.

⁵⁰ For a summary of the settlement agreement, see supra note 11

⁵¹ Minnesota did not enact a subminimum wage ban in its 2023 legislative session.



Additionally, absent legislation or Executive Order, Rhode Island, the District of Columbia, Wyoming, and Vermont do not have any active or pending certificates.⁵²

Federal Legislation

Not all policy discussions on subminimum wages occurred at the state level. In 2001, then-Representative Johnny Isakson (R-GA) introduced H.R. 881⁵³ to eliminate 14(c) certificates for subminimum wages for individuals with impaired vision or blindness and twenty years later, additional federal legislation was introduced to all eliminate 14(c) certificates.⁵⁴ Rep. Gregg Harper (R-MS) introduced the Fair Wages for People with Disabilities Act, which was designed to phase out the certificate program in 2013⁵⁵ as well as the Transitioning to Integrated and Meaningful Employment Act which intended to prevent the DOL from issuing any new certificates in 2017.⁵⁶ The Transformation to Competitive Integrated Employment Act, authored by Rep. Bobby Scott (D-VA) and Rep. McMorris Rodgers (R-WA) with 63 House co-sponsors, sought to stop the issuance of new certificates, begin a four-year phase out plan for existing certificates, and fund grant awards designed to support employers to move away from using certificates and as well as advance CIE efforts. This bill was reintroduced in the 118th session of the U.S. Congress in February 2023.⁵⁷

Federal Agency Efforts

While the 14(c) program has not been eliminated, federal agencies have taken steps to increase awareness of the program's parameters, promote compliance, and identify limits on funding segregated employment programs.

For example, the U.S. DOL Wage and Hour Division has issued multiple detailed guidance documents since 2016 to promote compliance with the program's parameters. Field Assistance Bulletin 2016-2 (July 2016) provides general information about the WIOA and Section 511 as well as the Wage and Hour Division's (WHD) authority and jurisdiction to enforce their requirements related to the certificate program.⁵⁸ Field Assistance Bulletin 2019-1 (February 2019) defines the term "subminimum wages" and discusses the limitations on paying these wages to people with

⁵² State Legislative Watch. (n.d.). *Association of People Supporting Employment First*. Retrieved June 20, 2023, from <https://apse.org/state-legislation/>

⁵³ *Text of H.R. 881 (107th): To amend the Fair Labor Standards Act of 1938 to prohibit the issuance ... (Introduced version)*. (n.d.). GovTrack.U.S. Retrieved June 20, 2023, from <https://www.govtrack.us/congress/bills/107/hr881/text/ih>

⁵⁴ Rep. Scott, R. C. "Bobby" [D-V.-3. (2021, April 5). *Text - H.R.2373 - 117th Congress (2021-2022): Transformation to Competitive Integrated Employment Act (2021-04-05)* [Legislation]. <http://www.congress.gov/bill/117th-congress/house-bill/2373/text>

⁵⁵ Rep. Harper, G. [R-M.-3. (2013, April 23). *All Info - H.R.831 - 113th Congress (2013-2014): Fair Wages for Workers with Disabilities Act of 2013 (2013-02-26)* [Legislation]. <http://www.congress.gov/bill/113th-congress/house-bill/831/all-info>

⁵⁶ Rep. Harper, G. [R-M.-3. (2017, March 7). *H.R.1377 - 115th Congress (2017-2018): Transitioning to Integrated and Meaningful Employment Act of 2017 (2017-03-07)* [Legislation]. <http://www.congress.gov/bill/115th-congress/house-bill/1377>

⁵⁷ Rep. Scott, R. C. "Bobby" [D-V.-3. (2023, February 28). *Text - H.R.1263 - 118th Congress (2023-2024): Transformation to Competitive Integrated Employment Act (2023-02-28)* [Legislation]. <http://www.congress.gov/bill/118th-congress/house-bill/1263/text>

⁵⁸ *FIELD ASSISTANCE BULLETIN NO. 2016-2*. (n.d.). DOL. Retrieved June 20, 2023, from <http://www.dol.gov/agencies/whd/field-assistance-bulletins/2016-2>



disabilities, including applicability to the Service Contract Act and under Executive Order 13658 (Establishing a Minimum Wage for Federal Contractors).⁵⁹

More recently, the U.S. DOL issued a Q&A on Section 511 and “Limitations on the Use of Sub-Minimum Wages” in April 2021 that addresses the purpose of Section 511, when it took effect, the requirements of Section 511 for both adults and youth with disabilities and how Section 511 fits in with the other changes made under WIOA.⁶⁰ In June 2022, the U.S. DOL issued Field Assistance Bulletin 2022-4 that provides details on timing of services, required documentation, provisions on youth with disabilities, career counseling/information and referral services, and self-advocacy, self-determination and peer mentoring opportunities for individuals who are being paid sub-minimum wages.⁶¹

Fact Sheet #39(H) from July 2022 provides an overview of the rationale behind Section 511, the requirements for youth with disabilities (individuals aged 24 or younger) to participate in the program, and the ability of the WHD enforce Section 511.⁶² The U.S. DOL’s website provides additional information on program compliance.⁶³

Additionally, the Centers for Medicare & Medicaid Services (CMS) promulgated the Final Settings Rule in January 2014 to again emphasize the need for employment settings to be integrated to be eligible for funding under its home and community-based services provisions.⁶⁴ CMS published guidance stating that Medicaid should not make funding available for the provision of segregated vocational services (e.g., sheltered work performed in a facility) where individuals are supervised producing in goods or performing services under contract to third parties.⁶⁵ This guidance would appear to prevent employers that use 14(c) certificates and receive Medicaid funding from utilizing segregated employment settings.

⁵⁹ *FIELD ASSISTANCE BULLETIN NO. 2019-1*. (n.d.). DOL. Retrieved June 20, 2023, from <http://www.dol.gov/agencies/whd/field-assistance-bulletins/2019-1>

⁶⁰ *Questions and Answers*. (n.d.). DOL. Retrieved June 20, 2023, from <http://www.dol.gov/agencies/whd/workers-with-disabilities/questions-and-answers>

⁶¹ *Field Assistance Bulletins*. (n.d.). DOL. Retrieved June 20, 2023, from <https://www.dol.gov/sites/dolgov/files/WHD/fab/2022-4.pdf>

⁶² *Fact Sheet #39H: Limitations on the Payment of Subminimum Wages under Rehabilitation Act Section 511*. (n.d.). DOL. Retrieved June 20, 2023, from <http://www.dol.gov/agencies/whd/fact-sheets/39H-Limitations-on-the-Payment-of-Subminimum-Wages>

⁶³ *Employment of Workers with Disabilities*. (n.d.). DOL. Retrieved June 20, 2023, from <http://www.dol.gov/agencies/whd/workers-with-disabilities>

⁶⁴ 42 CFR 441.301(c)(4)(5) and 441.710(a)(1)(2). This rule, often called the settings rule, reviews characteristics of residential and non-residential settings that can be funded pursuant to a HCBS waiver or 1915(i) state plan amendment. See also the Center for Public Representation [CMS guidance on non-residential settings and employment CPR feb 2015.pdf \(tasnow.com\)](https://www.cpr.org/wp-content/uploads/2015/02/CMS-guidance-on-non-residential-settings-and-employment-CPR-feb-2015.pdf)

⁶⁵ CMS Instructions, Technical Guide and Review Criteria (January 2008) page 132e,



Other federal agencies also promote, in different and broader ways, CIE.⁶⁶ One example is an EEOC rule on affirmative action for workers with disabilities in federal employment.⁶⁷ Another is a U.S. DOL rule, 41 CFR Part 60-0741, that establishes a nationwide goal that 7% of workers hired under federal contracts are people with disabilities.⁶⁸ Moreover, the federal government has funded multiple grant opportunities to promote CIE.⁶⁹ There is also research showing the benefits of CIE.⁷⁰

Uncertain Future Holds Opportunities

The history of widespread programmatic challenges in the implementation of the 14(c) program led to lawsuits, bans, and phase out attempts at the state and federal levels in the past several decades.⁷¹ State legislative action to eliminate the certificate program, in particular, rapidly increased over the past several years.

Next Steps

The COVID-19 pandemic altered traditional work options, including the significant increase in individuals working remotely from home and the use of technology to perform or assist work. This represents an important opportunity for workers with disabilities to be more fully and competitively employed in integrated settings. The employment gap between workers with disabilities and workers without disabilities, while still significant and troubling, is shrinking. Among people with disabilities nationally, 21.3% had a job in 2022, up from 19.1% the previous year and represents the highest rate on record since the government began tracking such data in 2008. These trends present promise for more workers with disabilities to transition to CIE.

There are multiple strategies available that can assist workers with disabilities to engage in CIE while preserving access to safe and reliable, integrated day programs. Some of these strategies center around prohibitions or phase out of subminimum wages and others can be accomplished even if a state or federal law still permits the payment of sub-minimum wages.

⁶⁶ Education Department Awards \$177 Million in New Grants to Increase Competitive Integrated Employment for People with Disabilities | U.S. Department of Education. (n.d.). Retrieved June 20, 2023, from <https://www.ed.gov/news/press-releases/education-department-awards-177-million-new-grants-increase-competitive-employment-people-disabilities>; Employment First. (n.d.). DOL. Retrieved June 20, 2023, from <http://www.dol.gov/agencies/odep/initiatives/employment-first>

⁶⁷ Questions & Answers: The EEOC's Final Rule on Affirmative Action for People with Disabilities in Federal Employment. (2017, January 3). US EEOC. <https://www.eeoc.gov/laws/guidance/questions-answers-eeocs-final-rule-affirmative-action-people-disabilities-federal>

⁶⁸ 41 CFR Part 60-741—Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors Regarding Individuals with Disabilities. (n.d.). Retrieved June 20, 2023, from <https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-741>; Section 503 Regulations Frequently Asked Questions. (n.d.). DOL. Retrieved June 20, 2023, from <http://www.dol.gov/agencies/ofccp/faqs/section-503>

⁶⁹ See, e.g., Competitive Integrated Employment (CIE). (n.d.). DOL. Retrieved June 20, 2023, from <http://www.dol.gov/agencies/odep/featured/bbs>

⁷⁰ See e.g. [Research Supporting Competitive, Integrated Employment \(acl.gov\)](https://www.acl.gov/research-supporting-competitive-integrated-employment)

⁷¹ See NDRN, Writing on the Wall available at: dcard. (n.d.). Reports. NDRN. Retrieved June 20, 2023, from <https://www.ndrn.org/reports/>



Strategies and Recommendations

There has been considerable attention given to the strategies of how to effectively transition from 14(c) programs through prohibitions, bans, and phase out plans as well as other approaches that can occur if a state (and federal law) still permit use of subminimum wages.⁷² These recommended strategies center around elements such as:

- Appropriately sequencing the transformation of state 14(c) programs to a focus on CIE, including revising operative definitions, developing incentives, having available resources and expertise, and among other factors, having plans, accountability, tracking and oversight⁷³
- Engaging with relevant agencies and cross-agency coordination⁷⁴
- Identifying the essential elements necessary to support effective CIE systems⁷⁵
- Encouraging high-school based transition programs to focus on work-based experiences in integrated settings, preventing the flow of high-school youth to segregated work settings, setting expectations for CIE at an early age, and developing a range of competitive job opportunities for youth⁷⁶
- Building capacity and infrastructure to promote CIE, including having appropriate and accessible technology, equipment, and facilities⁷⁷
- Fostering new organizations that use supported employment and assisting sheltered workshop providers to transform their approaches⁷⁸
- Supporting workers with benefits counseling and planning and promoting strategies to facilitate self-sufficiency and self-determination⁷⁹
- Addressing the availability of state and federal governmental service and health insurance benefits⁸⁰
- Using capacity building strategies for employers and federal agencies⁸¹

⁷² Ball, P., Brown, S. S., Durocher, J. M., Grubb, L., Lewis, N., Nicholas, A., Sabula, N., Soliman, A., Sommers, A., Torres-Davis, A., & Woods, K. (n.d.). *From the New Deal to the Real Deal: Joining the Industries of the Future.*; Advisory Committee. (n.d.). DOL. Retrieved June 20, 2023, from <http://www.dol.gov/agencies/odep/about/advisory-committee>

⁷³ Kathryn Rucker, Center for Public Representation, Employment System Transformation Strategies (January 2023)

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Ball, P., Brown, S. S., Durocher, J. M., Grubb, L., Lewis, N., Nicholas, A., Sabula, N., Soliman, A., Sommers, A., Torres-Davis, A., & Woods, K. (n.d.). *From the New Deal to the Real Deal: Joining the Industries of the Future.*

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Rucker, *supra* note 67



- Promoting and sharing stories of educating families, self-advocacy and examples of individuals moving to CIE⁸²
- Developing evidence-based strategies including “Discovery,” Job Development, Job Coaching, Customized Employment, and Employment-Related Services.⁸³
- Implementing state policies to encourage the employment of individuals with disabilities in integrated employment environments at comparable wages in state government positions⁸⁴
- Strengthening existing and create new incentives through the state tax code to employ individuals with disabilities in integrated employment environments at comparable wages⁸⁵
- Using Medicaid funds for *Employment First* initiatives to help individuals with disabilities find work in integrated employment environments at comparable wages⁸⁶

Additionally, states that have more comprehensive approaches to making the transition to CIE include elements that are designed to ensure that the actual transition goes smoothly for both workers and employers. For example, California, Colorado, Delaware, Maryland, Oregon, and South Carolina, to different extents, track wages, unemployment rates, plans, and goals surrounding the transition to CIE. The tracking of individual outcomes is extremely critical to secure the success of this approach.

Final Thoughts

Individuals with disabilities have significant value to this nation’s work force and there should be a concerted effort to use this resource in CIE. There should be a presumption of employment for all. For those individuals with disabilities who are not in the workforce, there should be options to engage in safe and well-funded integrated day activities just like their non-disabled peers and they should be able to choose how they spend their time just as other adults.

As this report shows, there are many governmental and non-governmental options to promote integrated employment and integrated day activities. Beginning as early as the mid-1980’s, it was recognized that individuals with disabilities were capable of community employment, but that a different approach to job placement may need to be implemented. Some individuals – particularly those with the most significant disabilities -- did not fare well using the traditional

⁸² Disability Employment Technical Assistance Center (DETAC). (2021). *From the Sheltered Workshop to Musical Mentor: A Conversation with Sunny Cefaratti*. <https://aoddisabilityemploymenttcenter.com/from-the-sheltered-workshop-to-musical-mentor-a-conversation-with-sunny-cefaratti/>; Disability Employment Technical Assistance Center (DETAC). (2021). *"Am I Not?" A Conversation with Angela Greene on Leaving the Sheltered Workshop for Competitive Integrated Employment*: <https://aoddisabilityemploymenttcenter.com/am-i-not-a-conversation-with-angela-greene-on-leaving-the-sheltered-workshop-for-competitive-integrated-employment/>; Lead Center. (2016). *Provider Transformation Issue Brief: Transforming Employment Services from Sheltered Work to Competitive, Integrated Employment for all Job Seekers with Disabilities*. [Provider Transformation Issue Brief: Transforming Employment Services from Sheltered Work to Competitive, Integrated Employment for all Job Seekers with Disabilities \(leadcenter.org\)](https://leadcenter.org/provider-transformation-issue-brief-transforming-employment-services-from-sheltered-work-to-competitive-integrated-employment-for-all-job-seekers-with-disabilities/)

⁸³ DETAC, supra footnote 65

⁸⁴ Rucker, supra note 67 and DETAC, supra footnote 65

⁸⁵ Id.

⁸⁶ Id.



“train and place” model.⁸⁷ Despite the obstacles encountered with the typical approach, individuals with cognitive and other intellectual disabilities showed great promise in competitive employment positions if they were given appropriate, on-the-job support that allowed them to learn the tasks step by step with the assistance of a job coach. Supported employment and customized, personalized employment options are designed to match the specific skills and interests of a client to the needs of the employer, using evidenced-based practices. And, *Employment First* has advanced the concept of CIE, especially for individuals receiving services through publicly financed systems.⁸⁸ As discussed above, VR Services, Medicaid and the Ticket to Work program are viable and important options for workers with disabilities to obtain benefits counseling, remove barriers to employment, obtain the information they need to understand the impact work would have on their income and benefits and to develop skills and experience necessary for CIE. Further, this report discussed the system, policy, planning, and funding strategies that are critical to effectively advance CIE. States can focus on revising and re-prioritizing their established *Employment First* Policies to more strongly focus on CIE as the first option for individuals with disabilities. These policies require cross-agency commitment to abide by a set of guiding principles, policies, funding, and practices disseminated through state statute, regulation or operational procedures that identify employment in integrated, community-based businesses as the priority.

More globally, society also needs to continue addressing the stigma that many people including employers – have about hiring people with disabilities, especially those individuals with the most significant disabilities. Many diversity, equity and inclusion efforts integrate strategies to identify and support disability related approaches to address stereotyping and stigma based on disability. Employers should be encouraged to make hiring people with disabilities an essential part of creating a diverse workforce and emphasize the unique perspectives and experiences that employees with disabilities bring to the table.

⁸⁷ Vornholt, K., Villotti, P., Muschalla, B., Bauer, J., Colella, A., Zijlstra, F., Van Ruitenbeek, G., Uitdewilligen, S., & Corbière, M. (2018). Disability and employment – overview and highlights. *European Journal of Work and Organizational Psychology*, 27(1), 40–55. <https://doi.org/10.1080/1359432X.2017.1387536>

⁸⁸ APSE - Association of People Supporting Employment First. (n.d.). Retrieved June 20, 2023, from <https://apse.org/>

