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U.S. Commission on Civil Rights
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To Chair Lhamon and Commissioners:

Thank you for the opportunity to submit written comments for the public briefing *Subminimum Wages: Impacts on the Civil Rights of People with Disabilities* held on November 15, 2019. I applaud the Commission's focus on this critical civil rights and economic justice issue. Since 1938, workers with disabilities have faced the discriminatory policy of Section 14(c) of the Fair Labor Standards Act ("Section 14(c)") and have been subjected to subminimum wages, averaging an estimated \$2.50 an hour.¹ The antiquated policy of Section 14(c) is in direct conflict with modern disability policy, as embodied in the Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973, the Workforce Innovation and Opportunity Act (WIOA), the Individuals with Disabilities Education Act (IDEA), and the *Olmstead* Supreme Court case. Further, Section 14(c) limits future career opportunities for workers with disabilities, often leaving workers in the same job for life with no opportunity for advancement. Despite decades of research demonstrating people with disabilities succeed in competitive integrated employment (CIE), Section 14(c) continues to segregate and subject workers with disabilities to discrimination.

Section 14(c) is one of the last remaining discriminatory policies from a period of American history in which it was believed that people with disabilities were incapable of work. Enacted at a time when people with disabilities were primarily housed in institutions, Section 14(c) was initially created to incentivize employers to hire people with disabilities. To obtain clearance to pay workers with disabilities subminimum wages, employers apply to the Wage and Hour Division of the Department of Labor (DOL) for a Section 14(c) certificate and, if approved, are allowed to pay their workers with disabilities less than the minimum wage or the prevailing wage. There is no minimum for the subminimum wage; workers with disabilities employed under this certificate can be paid as little as a penny per hour. Most employers with Section 14(c) certificates ("certificate holders") offer employment opportunities to people with disabilities in community rehabilitation programs, or congregate settings.² These segregated, facility-based settings are commonly referred to as "sheltered workshops." Workers with disabilities employed under Section 14(c) are not only paid a subminimum wage, but are also often employed in a segregated environment. The presumption of this employment model is that workers with disabilities are incapable of equitable work to their counterparts without disabilities – a discriminatory theory that has been proven inaccurate and is counter to modern disability policy.

¹ GAO (2001). Special minimum wage program: Centers offer employment and support services to workers with disabilities, but labor should improve oversight.

² Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (2016)

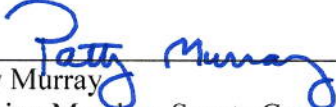
Despite the initial intent of the law to incentivize employers to hire more people with disabilities, this outdated and discriminatory policy prevents workers with disabilities from career advancement and economic self-sufficiency.³ In fact, prior to key changes in 2014 with the passage of WIOA, workers with disabilities were entering subminimum wage employment upon leaving high school and often staying there until retirement. We must immediately move away from Section 14(c) and toward CIE for all workers with disabilities. Research demonstrates that through supported employment, workers with disabilities can be placed in CIE that better matches their skills and interest in less time and in a more efficient manner than it takes to train a worker with a disability for a job in a sheltered workshop with skills that are unlikely to be used in a different setting.⁴ Additionally, CIE has many positive benefits outside of work, including more community engagement for the worker, higher job satisfaction, and greater independence.⁵ Our fundamental premise regarding workers with disabilities must shift to one that believes and expects that all people are capable of work, with appropriate accommodations and modifications, and deserve a uniform and nondiscriminatory minimum wage.

Today, students with disabilities are educated in more inclusive educational settings due to the IDEA. The passage of the ADA in 1990 and amendments in 2008 in addition to the Rehabilitation Act of 1973 make clear that people with disabilities have equal rights and must have equitable opportunities under the law in order to fully participate in society, and achieve economic self-sufficiency and independent living. The *Olmstead* Supreme Court opinion further emphasized that unjustified segregation of people with disabilities is a violation of the ADA. This decision has been used in two states, Rhode Island and Oregon, to challenge Section 14(c), and both states are moving toward phase out under court order. These policies demonstrate the country's—and Congress's—evolving vision of equity for people with disabilities.

Leaving this relic of our discriminatory past in law is in direct conflict with modern disability policy, our values, and what we know people with disabilities can accomplish and contribute to their communities and the economy. This is why I am a lead co-sponsor of the Raise the Wage Act, which would repeal Section 14(c), phasing it out by 2024.⁶ The bill's proposed timeline aligns with the recommendations of researchers, advocates, and those states that have completed a phase out⁷ in order to enable the transition of workers with disabilities to CIE. Now is the time we must act to support workers with disabilities and eliminate Section 14(c).

Thank you for holding the briefing on a critical civil rights issue and the opportunity to submit a written comment.

Sincerely,



Patty Murray
Ranking Member, Senate Committee on
Health, Education, Labor & Pensions

³ Fernandez Campbell, A. (2018). A loophole in federal law allows companies to pay disabled workers \$1 an hour

⁴ National Council on Disability (2018) From the New Deal to the Real Deal: Joining the industries of the future

⁵ National Core Indicators Data Brief (2011); National Core Indicators (2018) Adult Consumer Survey

⁶ S. 150 Raise the Wage Act (2019)

⁷ Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (2016)