VOR
A Voice Of Reason
Speaking out for people with
Intellectual & Developmental Disabilities

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VOR – A Voice of Reason –
Letter of Opposition to Department of Labor / Wage and Hour Division's Proposed Rule to overturn Section 14(c) of the Fair Labor Standards Act of 1938

VOR strongly opposes the Department of Labor, Wage and Hour Division's proposed rule that would eliminate *compensatory* wages for people with intellectual and developmental disabilities and autism (ID/A) as regulated under Section 14(c) or the Fair Labor Standards Act.

Introduction

VOR – A Voice of Reason – is a national non-profit organization that advocates on behalf of individuals with intellectual and developmental disabilities (I/DD) and autism. We acknowledge the diversity of people on this spectrum, and support the idea that each individual deserves a lifetime of access to programs that are most appropriate to their needs as well as their aspirations.

We support **Choice** - for individuals when they have the capacity to make their own decisions, and for their families and guardians when individuals lack the capacity to determine their own best outcomes. We advocate for a full continuum of residential care options, therapeutic services, and employment opportunities. We believe that 14(c) programs and competitive integrated employment should coexist in order to serve different cohorts within this community.

We respectfully request that the Wage and Hour Division withdraw this proposed rule, for the following reasons:

Section 14(c) Programs Fill an Important Need

The spectrum of intellectual disabilities and autism (ID/A) is wide, and the programs and services that are designed to work with these individuals should be just as far-reaching. Sheltered workshops, also known as 14(c) programs, offer employment opportunities to individuals who, for any number of reasons, are unlikely to meet the standards required for competitive employment. Sheltered workshops offer these individuals a safe environment in which to develop their skills, be part of their community, and engage in productive, meaningful daily activities. According to most polls, sheltered workshops have a 98% approval rating among those who work there. Without 14(c) programs, these individuals would not be able to be part of the work force. They would be left in their homes.

All 14(c) programs are voluntary. People who work in these programs are regularly tested on the tasks they perform to gauge their productivity against that of non-disabled individuals, and they are paid a *compensatory* wage based on their productivity. While this wage may be below the minimum wage, there are cases where the individual's *compensatory* wage is actually higher than the minimum wage. According to the law, these programs are required to be strictly regulated by a government agency, the Wage and Hour Division of the Department of Labor, to ensure that the

individuals who volunteer to work in these programs are being paid appropriate to their productivity and that no one is abusing them or taking advantage of them.

While many individuals at one end of the ID/A spectrum can work in competitive integrated employment and deserve to be paid a fair wage, sheltered workshops play an important role by providing an opportunity for people on a different part of that spectrum. Sheltered workshops do not take away opportunities for competitive integrated employment. Indeed, many workshops offer both 14(c) opportunities and competitive opportunities, and some of their participants engage in work suitable to their needs and abilities in both arenas.

The reality is that the competitive environment simply cannot accommodate some individuals with severe intellectual limitations and/or behavioral and medical issues. These individuals may need help with hygiene or toileting, or treatment for seizures or self-injurious behaviors, to name just a few such issues. Companies or organizations that offer competitive employment can rarely accommodate employees with such challenges.

Sheltered workshops, however, are designed to meet the needs of individuals like these. They have staff who are trained to work as job coaches who have also been trained to address the specific challenges of these individuals. They both nurture and protect people their clients. Their goal is to improve their quality of life.

These programs have worked well for specific populations since enacted in 1938 – more than eight decades. While originally enacted to aid people with physical or sensory disabilities during a different era, they now are mostly populated by the ID/A community. Times change, but the need for these opportunities remains. The programs should be protected, well-funded, and supported by the people tasked with overseeing them.

The Role of Families

Sheltered workshops are not only important to the lives and the happiness of the people who participate in these programs, they are strongly supported by their families. They know their children and their siblings best. They see the long arc of their loved ones' challenges, their abilities, and they know best which opportunities that have been available to them. And when they find something that works, they want to keep it. The families of these individuals strongly support these programs. And their voices should matter.

From a more practical perspective, the time spent working at a 14(c) program often allows family members the opportunity to pursue their own career in the competitive workforce. The stability of the 14(c) work and the supervision provided for these workers is critical for these family members to be successfully maintain jobs. In the midst of a nationwide workforce shortage the positive impact this has on economies and the tax base is not to be overlooked.

Understanding the Role that Sheltered Workshops Play

It is wrong to merely look at 14(c) programs as jobs. 14(c) programs exist in a space between day programs that provide non-compensated activities for individuals with more profound ID/A and the employment programs that offer opportunities to work for standardized wages in competitive integrated employment to individuals at the other end of the spectrum.

Sheltered workshops offer people more than just money; they provide dignity and respect. They provide vulnerable individuals with ID/A a safe place in their community.

What is a "job"? Usually, it's an arrangement where an individual is paid to work at tasks that benefit the company that employs them. Why is a sheltered workshop different? Because the facility exists for the benefit of the individuals who work there, not the other way around. In a job, the company need provide no more than a paycheck in compensation, and a worker can be fired if his or her productivity falls below expected standards. In a workshop, participants cannot be fired for low productivity or for needing extra attention, and their *compensatory* wages are not the only compensation that these individuals receive. In addition to the job coaches and the safe environment, there are often alternative activities if individuals don't feel like working during their shift. There are often evening or weekend activities that include their families, and there are often events that engage the non-disabled community in which they exist. This is far more than just a paycheck. It's a life.

The Negative Consequences of Eliminating 14(c)

While the projected outcome of the proposed rule is that more people will transition to competitive integrated employment, the fact remains that some people will not transition during the allocated phase-out period, and others will not transition at all.

These individuals are currently engaged in programs offer meaningful daily activities that meet many of their needs, provide stability to their lives, and give them a sense of dignity and self-worth. People working in sheltered workshops are participating in their communities, and doing so in a safe environment and in the company of their peers.

For those who lose these programs, and who cannot find an appropriate opportunity in competitive integrated employment, there are few good options.

The most likely scenario is that they will be reassigned to a day program, and being moved into an environment of people with more severe intellectual disabilities. This may lead to regressions in behaviors, socialization, and intellectual engagement. The rule proposed by the Wage and Hour Division offers no alternatives to sheltered workshops other than day programs or competitive integrated employment. That is unacceptable.

Facts and Figures

To no one's surprise, far fewer people with disabilities are employed than those without and those with higher degrees of disability are employed even less:

> Cornell University's online resource for disability statistics, disabilitystatistics.org provides data showing that in 2022, persons at all levels of disability at all levels of education had a national employment rate of 45.0%. That rate varied according to different states, of course. As we dial in to data on people at all levels of disability with less than a high school education, we see the number dropped to 26.3%. If we look further to people with a cognitive disability with less than a high school education, the number dropped further, to 19.5%. When we look at statistics for people with a self-care disability, the number decreased to 9.6%.

> According to mydisabilityjobs.com, "about 6.5 million people in the United States have an intellectual or developmental disability. Only 19.1% of people in? that population are employed in the United States, compared to the employment rate of people without disabilities, which is 61.8%. Less than one out of every two working-age adults with ID is in the labor force, and 28% have never held a job. The unemployment rate is 17%, which is more than double the unemployment rate for people with other disabilities and almost 4 times the unemployment rate for the general population. Women with intellectual disabilities face bigger challenges in employment than men and when they are employed, they earn lower wages. The median annual earnings for people with intellectual disabilities were $11,400, compared to $31,100 for people without disabilities."

The relevant question here is what would happen to people in sheltered workshops if 14© were eliminated? A report from George Washington University entitled *Transitions: A case study of the conversion from sheltered workshops to integrated employment in Maine*, the elimination of sheltered workshops in Maine was "undertaken with the goal of putting more people with intellectual and developmental disabilities to work in community settings, where they could work side by side with non-disabled people and receive the same wages*. Many of the people who were working in sheltered workshops at the time the policy was implemented are no longer working, are working fewer hours, or doing volunteer work instead of paid work (emphasis added).*"

To summarize, the above data indicate that people with disabilities have lower rates of employment than non-disabled people, and people with intellectual disabilities have even lower rates of employment. It is not difficult to surmise that the people with the most severe intellectual disabilities and autism will have more difficulty entering the non-disabled competitive integrated workforce than those with milder disabilities, better education, and better communication and social skills. These are the people who are currently benefiting from their participation in sheltered workshops.

We acknowledge that organizations that oppose 14(c) can cite different figures from different sources. But that only indicates that there is not sufficient research on these outcomes, and many of the reports reflect biases toward the positions of those responsible for conducting the research. *The fact remains that the Wage and Hour Division has not presented its own research on this matter, and has relied on that of entities that share their opposition to these programs.*

Legal Authority

Regardless of the substance of the debate, the legal question is whether the Department of Labor can, by rule, overturn the federal law that established the 14 (c) program.

The answer is no.

The Fair Labor Standards Act of 1938 created the 14 (c) program and only Congress has the legal authority to eliminate it. The Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* clearly states that federal agencies do not have the authority to re-interpret the laws they administer. The Court overruled the previous decision in *Chevron,* on the grounds that *Chevron*[1] rested on "a presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows."[2]

We contend that there is no such ambiguity in Section 14(c) of the Fair Labor Standards Act of 1938, nor, according to the decision in *Loper Bright*, would the Department of Labor have the legal authority to overturn this law or any part of it. We further contend that the proposed rule, which was issued after the Supreme Court's ruling, will not stand up in court. The power to amend or overturn this law clearly belongs to Congress, not the agency tasked with administering it. To that point, Senator Tom Cotton of Arkansas has already voiced opposition to the proposed rule to overturn Section 14(c).

Follow the Facts, not the Propaganda

While VOR believes the Department of Labor has no legal authority to eliminate the program, should the new administration decide otherwise, for the reasons cited above, we still believe that elimination of the 14 (c) program would be bad policy. We would urge you not to be fooled by an ideological campaign that not only ignores the benefits of the program but is deliberately misleading.

The so-called "sub-minimum wage" is, in fact the *compensatory* wage that is regulated according the Fair Labor Standards Act. It is tailored to fit the work that can actually be accomplished by people who cannot be served in the regular workplace Moreover, these are voluntary programs, and the individuals and their families are equally supportive of the programs.

Also, some advocates continue to use isolated incidents as examples of exploitation, presenting these outlying cases as if they were the norm. For example, opponents of 14(c) programs have pointed to the "Boys in the Bunkhouse" articles about a group of men with intellectual disabilities who were taken advantage of and abused for 30 years by the owners of Henry's Turkey Service, a turkey processing farm in Iowa. This should never have gone on, unexamined, for three decades. As guilty of abuse as the owners and operators of Henry's Turkey Service were, this was also a matter of neglect, and a failure on the part of those tasked with overseeing 14(c) programs, including the state of Iowa's Department of Human Services, its protection and advocacy agency (Disability Rights Iowa), and the Department of Labor's Wage and Hour Division.

Sadly, misleading campaigns such as these have been very successful. Where once there were over 300,000 people working in 14(c) programs, there are now about 40,000. Fourteen states have eliminated, or are in the process of phasing out, their 14(c) programs, but contrary to the campaigns that promise people who lose these opportunities will get competitive integrated employment, the numbers of people with ID/A working in the mainstream have not borne that out.

Conclusion

While VOR applauds efforts to strengthen the competitive workforce and to ensure employees receive fair wages, this proposed rule does not align with those goals. It is possible to do two things at a time – to assure that people with ID/A who can meet work standards receive at least the minimum wage while those who cannot meet those standards continue to benefit from 14 (c) plans designed to meet their needs. Robust research and data point directly to the overwhelming success of this program for both the voluntary employers and the voluntary employees. VOR strongly urges you to withdraw this proposed rule and protect the opportunities the 14(c) program provides our community.

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[1] *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837

[2] *Loper Bright Enterprises v. Raimondo 603 U.S. 369 (2024)*, p. 4