

November 21, 2019

U.S. Commission on Civil Rights
1331 Pennsylvania Ave. NW, Suite 1150
Washington, DC 20425

RE:OCRE/Public Comments

The Association of University Centers on Disabilities (AUCD) is a nonprofit membership association of 130 university centers and programs in each of the fifty States and six Territories. AUCD members conduct research, create innovative programs, prepare individuals to serve and support people with disabilities and their families, and disseminate information about best practices in disability systems. Employment plays a seminal role in AUCD's mission of advancing policies and practices that improve the health, education, social, and economic well-being of all people with disabilities, their families, and their communities. University Centers of Excellence on Developmental Disabilities (UCEDDs) are partnering with state and local efforts to improve employment opportunities and outcomes of people with disabilities across all age groups demonstrating deep expertise on employment and transition services, competitive integrated employment and Employment First through research, best and evidence-based practices, technical assistance, and direct service via its UCEDD members across the country.

AUCD commends the United States Commission on Civil Rights for its attention to sub-minimum wages and their impact on the civil rights of people with disabilities. We join the disability community at large in urging an end to this practice and stand ready to support - through research, technical assistance, and leadership - the national, state and local system transformations to increase workforce participation of people with disabilities.

The witness testimony offered in person at the recent public briefing held in Washington, DC on November 15th, 2019 raised critical information related to the state of research and lived experience. The Commission heard from three AUCD network members on the data, landscape, and scope of 14c certificates - Teresa Grossi, Director of Strategic Developments at the Indiana Institute on Disability and Community; John Butterworth, Director of Employment Systems Change and Evaluation at the Institute for Community Inclusion at the University of Massachusetts Boston; and Bryan Dague, Think College Vermont Program Coordinator and Research Assistant Professor at the Center on Disability and Community Inclusion at the University of Vermont. AUCD shares the following additional points for consideration.

As the Commission examines the policy of Section 14(c) of the Fair Labor Standards Act (FLSA), it is critical to center yourself on the definitions of work, disability and

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sub-minimum wage. Having this frame will assist you as you report your findings and recommendations to Congress and the Administration.

In the context of employment, workers are viewed based on their utility - what we offer to an employer. But, is work just our outputs? How do we value one's work? Having a clear sense of the value and expectations of work is critical in examining this policy issue. Yet, both politically and societally, are people with disabilities seen and treated as less capable in the work environment? There are overt assumptions that people with disabilities are "less than" and cannot produce the same amount and/or quality of work of people without disabilities. Because of time studies, people with disabilities are evaluated based solely on their outputs not including the other contributions workers offer and bring to a workplace. Through the allowance of sub-minimum wage, we as a society then are saying that what people with disabilities offer is not enough or to standard and should be compensated less because of it. These laws disregard people with disabilities as individuals completely undermining individual capabilities that should be valued in a workspace. We are stating that this population on Americans is not worthy to receive a standard wage.

The Americans with Disabilities Act (ADA) defines a person with a disability as a person who has a physical or mental impairment that substantially limits one or more major life activity. This includes people who have a record of such an impairment, even if they do not currently have a disability. It also includes individuals who do not have a disability but are regarded as having a disability. The ADA also makes it unlawful to discriminate against a person based on that person's association with a person with a disability. Relatedly, the Social Security Act defines the term disability as an inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months. Of concern, is that the FLSA does not define disability. If using these precedent-setting definitions from the ADA or SSA, it should be considered that **anyone with a disability** could be legally subjected to sub-minimum wage.

Through Section 14(c) of the FLSA, employers are able to pay workers with disabilities less than minimum wage deemed sub-minimum wage. "The certificates authorize the payment of subminimum wages, wages that are less than the federal minimum wage, to workers who have disabilities that impair their productivity for the work being performed" (Wage and Hour Division). It's important to note that the premise of sub-minimum wage means there is no minimum. No floor at which employers have to pay people with disabilities, resulting in people making pennies on the dollar or simply nothing at all. Devaluation of workers in the U.S. is a systemic issue that leaves people feeling disempowered. In spite of evidence that paying people fair wages and allowing them good working conditions and a good work-life balance is good for our economy and overall public health, economic power is consolidated for the few. And when workers with disabilities are pre-determined to make even less than the minimum wage, they are less likely to rise out of impoverished conditions. This is functionally devaluing their humanity and is a civil rights violation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rylin Rodgers', with a long horizontal flourish extending to the right.

Rylin Rodgers
Director of Public Policy