



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

December 10<sup>th</sup>, 2021

The U.S. AbilityOne Commission  
The Committee for Purchase from People Who Are Blind or Severely Disabled (CITA)  
*Via electronic submission at <http://www.regulations.gov>*

Re: RIN 3037-AA16

The following comments are submitted by the co-chairs of the Consortium for Citizens with Disabilities (CCD) Employment and Training Task Force.

In this letter, we submit the following comments in response to the notice of proposed rulemaking (NPRM) promulgated on October 12, 2021 in the Federal Register. The proposed rule (RIN 3037-AA16) would require that each nonprofit agency (“NPA”) that seeks to qualify or maintain its qualifications under the AbilityOne Program would have to certify that it will not pay subminimum wages using special wage certificates authorized under section 14(c) of the Fair Labor Standards Act of 1938 to employees on all contracts or subcontracts awarded, extended or renewed under the program.

The CCD is a coalition of more than 100 national disability organizations working together to advocate for national public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. There is no greater manifestation of inclusion than empowering more people with disabilities to enter the workforce. As such, the Employment and Training Task Force strives to review, understand, comment on, and influence those policy issues affecting the 21 million working-age people with disabilities.

Many of our Task Force members have worked hard over the years to move away from 14(c) certificates, to pay workers with disabilities fair wages, and to expand competitive integrated employment outcomes. Alone this proposed rule would be a significant step forward for those workers with disabilities currently working for 14(c) certificate holders and set them on a pathway to increasing their ability to earn an income, just like anyone else. At the same time, it is worth noting that among the expansive legislative funding priorities of the Build Back Better Act are state grants to support providers that are intent in moving away from using 14(c) certificates. This creates a synergy between both legislative priorities and regulatory imperatives that will directly support workers with disabilities. Lastly, this proposed rule helps lay the groundwork

for future passage of the bipartisan Transformation to Competitive Integrated Employment Act (TCIEA).

The economy, the labor force, and the technological landscape of 2021 is vastly different from the era in which 14(c) certificates were first proposed as a disability employment strategy under the Fair Labor and Standards Act of 1938. No longer are people with disabilities seen only for what they cannot do. Instead, people with disabilities are valued participants in wider society, active citizens engaged with the wider nation, and critical contributors at some of the most dynamic, innovative employers in today's economy. The time for providers, agencies, and organizations to move beyond 14(c) and subminimum wages has come.

It is clear that the AbilityOne Program remains deeply committed to serving workers with significant disabilities. To fulfil that commitment now, the Program should phase-out certificates on all subcontracts and contracts. On this point, it is also worth noting that members of the NIB network who are part of the AbilityOne program are currently paid minimum wage and above as part of their contracts and their valued work as part of the Program.

However, ensuring the success of workers with disabilities and promoting competitive, integrated employment (CIE) outcomes requires intentional thought, serious planning, and resource investment. This proposed rule is the necessary first step in such a process and the AbilityOne program can do much to support NPAs by looking at providers in states that have led the way on transition to CIE. The Office of Disability Employment Policy (ODEP) has achieved significant results through the Communities of Practice (CoP) focused on provider transformation: <https://www.dol.gov/sites/dolgov/files/odep/topics/Provider-Transformation-Efforts-disclaimer.pdf>

Additionally, through RIN 3037-AA16, the Commission is also soliciting comments and feedback on 4 key implementation questions related to the proposed rule. Our Task Force offers the following comments in direct response to those questions.

*Question (1) Should the requirement that a qualified NPA not use section 14(c) certificates to pay subminimum wages on AbilityOne contracts apply to the renewal or extensions of contracts once they expire or only to new contracts? The Commission is interested in receiving data in support of any comment on this question.*

A: The purpose of the proposed rule is to support NPAs as they accelerate their movement away from the use of 14(c) certificates under FLSA. As such, the rule should apply to the extension of contracts and new contracts.

*Question (2) Should the requirement that a qualified NPA not use section 14(c) certificates to pay subminimum wages on AbilityOne contracts apply to the exercise of an option on an existing contract? The Commission is interested in receiving data in support of any comment on this question.*

A: The purpose of the proposed rule is to phase out existing 14(c) certificates while ensure that new waivers are not provided to new agencies. The exercise of an option on an existing contract would contradict both the letter and spirit of this phase out approach. We recommend that the requirement should apply to contracts and any existing options.

*Question (3) What impact, if any, would the proposed regulatory change make to the receipt of social security benefits, such as Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) and attendant government health insurance, such as Medicare and Medicaid, to employees with disabilities? The Commission is also interested in receiving suggestions on how to address any possible adverse impacts that may be identified.*

A: The CCD Employment and Training Task Force recognizes the very real concern that raising wages to a higher standard may result in workers on SSDI reaching their earnings limit sooner and those on SSI may be affected by that program's asset and earnings limits as well. The correct response for the Commission to take is to ensure that these workers are fully informed about existing work incentives in SSI and SSDI. This includes programs such as Ticket to Work, expedited reentry, impairment related work expenses, 1619(a) and (b) work incentives for SSI recipients. Each of these programs is intended to help people with disabilities who are earning an income to mitigate the effect of higher wages on the benefits eligibility.

*Question (4) How much time, if any, would be necessary for NPAs to meet the new requirements?*

A: The lack of concrete timelines for NPAs to meet the new requirements of the proposed rule could undo the good work and noble intentions of RIN 3037-AA16. To answer this question, we reiterate the recommendations originally [made in 2012](#) by the National Council on Disability (NCD) when they first recommended strategies for moving beyond 14(c). In their 2012 report, NCD recommended that DOL, via rulemaking, phase out 14(c) certificate on the following basis:

- All individuals in certificate settings for ten years or less shall be transitioned within two years.
- All individuals in certificate settings for ten to twenty years shall be transitioned within in four years.
- All certificates shall expire in six years, and all individuals in certificate settings longer than twenty years shall be transitioned within six years.

NCD's recommendations remain valid even 9 years after they were first submitted. As such, the Task Force reiterates the above timetable for supporting NPAs to meet the new requirements of RIN 3037-AA16.

Thank you for the opportunity to provide feedback on this guidance. The CCD Employment and Training Task Force co-chairs look forward to continued partnership as we work together to address the labor participation gap and promote competitive integrated employment opportunities for people with disabilities.