

***Overview and Discussion of Federal
Regulations on
Employment Outcomes and Competitive
Integrated Employment***

**U.S. Department of Education
Office of Special Education and Rehabilitative Services
Rehabilitation Services Administration**



Employment Outcome—Definition

“Employment Outcome” means:

- Competitive integrated employment; or
- Supported employment.



Employment Outcome—Changes from Prior Definition

The definition, as implemented by § 361.5(c)(15), differs from the prior definition, as implemented by § 361.5(b)(16), by:

- Adding a specific reference to customized employment as a form of competitive integrated employment; and
- Eliminating uncompensated outcomes, such as homemaker and unpaid family workers, from the scope of the definition for purposes of the Vocational Rehabilitation (VR) program.



Employment Outcome—Customized Employment

Customized employment:

- Should be tailored to meet the unique strengths, needs, interests, and informed choice of the individual, so that he or she can achieve an employment outcome in competitive integrated employment.
- Enables individuals with disabilities and employers the opportunity to negotiate job tasks and/or reassign basic job duties to improve overall production in the workplace.
- Allows an employer to examine its specific workforce needs and fulfill those needs with a well-matched employee.



Employment Outcome—Basis for Elimination of Uncompensated Outcomes

- The extensive emphasis on competitive integrated employment throughout the Act as amended by WIOA.
- Section 102(b)(4) of the Act, as amended by WIOA, and § 361.46(a)(1) of the implementing regulations require that the IPE include a specific employment goal consistent with the general goal of competitive integrated employment.



Employment Outcome—Informed Choice

Individuals with disabilities who are participating in the VR program may exercise informed choice with respect to those employment outcomes allowed under the VR program.

If an individual with a disability wants to pursue uncompensated employment, after exercising informed choice, he or she may still do so, but not under the VR program.

VR agencies must refer individuals who choose to pursue uncompensated outcomes to other Federal, State, and local programs and providers that can best meet their needs to achieve such outcomes.



Employment Outcome—Availability of Homemaker Services

- Changes to the definition of “employment outcome,” as implemented by § 361.5(c)(15), affect only the types of employment outcomes an eligible individual with a disability may pursue under the VR program, not the types of services he or she may receive.
- The full range of services available under section 103(a) of the Act, as amended by WIOA, are available to the extent those services are necessary for the individual to achieve an employment outcome under the VR program.



Employment Outcome—Availability of Homemaker Services (cont.)

- Services previously provided as “homemaker” services, including Braille and mobility training for individuals who are blind, are, and always have been, available to individuals pursuing competitive integrated employment or supported employment through the VR program.
- Independent living skills training (specifically, training that is not necessary to assist an individual with a disability to achieve an employment outcome) is also available through the OIB and other independent living programs authorized under title VII of the Act, as has always been true.



Employment Outcome—Resources for Services

- VR program funds must be used solely for the provision of allowable VR services or the administration of the VR program, whose purpose is to assist individuals with disabilities to achieve “employment outcomes.”
- VR program funds cannot be used to alleviate deficiencies in funding for other programs that can more appropriately serve individuals seeking independent living skills that are not necessary for the achievement of an employment outcome.

Employment Outcome—Transition Period for Implementation

- As of the effective date of the final regulations (September 19, 2016), VR agencies may no longer open cases for individuals pursuing uncompensated employment outcomes.
- However, VR agencies can continue to serve individuals who are pursuing uncompensated employment outcomes under IPEs that were approved prior to the effective date of the final regulations when such an employment outcome is specified on those approved IPEs.



Employment Outcome—Transition Period for Implementation (cont.)

- Under such circumstances, VR agencies may continue to assist those individuals to achieve uncompensated outcomes through June 30, 2017, or for a longer period of time based on the needs of the individual as documented in the service record.



Competitive Integrated Employment— Components of Definition

To satisfy the definition of “competitive integrated employment,” the employment must satisfy the requirements for all three components:

- Competitive earnings;
- Integrated Location; and
- Opportunities for advancement.

If an individual’s employment fails to satisfy any one of the above components, the employment will not meet the definition of “competitive integrated employment.”



Competitive Integrated Employment— Competitive Earnings Component

Under the definition of “competitive integrated employment,” earnings must be:

- Equal to or greater than the Federal, State, or local minimum wage rate, whichever is higher, where the place of employment is located; and
- Comparable to the customary rate paid by the employer to employees without disabilities in similar positions with comparable skills, experience, and training.

The employee with the disability also must receive benefits comparable to those of employees without disabilities in similar positions.



Competitive Integrated Employment— Competitive Earnings Component (cont.)

A self-employed individual with a disability in the start-up phase of a business venture who is making less than the applicable minimum wage can meet the definition of “competitive integrated employment.”

VR agencies may use supplemental wage information for individuals who achieve self-employment outcomes when calculating levels of performance on the performance accountability measures under section 116 of title 1 of WIOA.



Competitive Integrated Employment— Integrated Location Component

VR agencies must determine on a case-by-case basis whether the employment satisfies two criteria:

- A. It is in a setting typically found in the community; and
- B. It is in a setting in which the individual with the disability interacts while performing his or her job duties with employees without disabilities in the work unit and the entire employment site, and other persons (e.g., vendors and customers) without disabilities to the same extent that employees without disabilities in similar positions interact with these persons.



Competitive Integrated Employment— Integrated Location Component (cont.)

“Typically Found in the Community” means a setting in the competitive labor market.

It is the Department’s long-standing position that settings established by CRPs specifically for the purpose of employing individuals with disabilities are not integrated settings because they are not in the competitive labor market.



Competitive Integrated Employment— Integrated Location Component (cont.)

Under the second criterion—level of interaction among employees with and without disabilities—the primary consideration is the interaction among employees with disabilities and their coworkers without disabilities in the work unit and across the employment site.

A VR agency should not make a determination of integrated location on the basis of an individual's interaction with customers and vendors alone.



Competitive Integrated Employment— Integrated Location Component (cont.)

“Work unit” as used in the definition of “competitive integrated employment” is dependent on the employer’s organizational structure and may refer to a group of employees in a particular job category or who perform a specific task.



Competitive Integrated Employment— Integrated Location Component (cont.)

Some employment opportunities offered by community rehabilitation programs may be considered to be in “integrated locations,” and thus satisfy the definition of “competitive integrated employment,” while others may not.



Competitive Integrated Employment— Integrated Location Component (cont.)

The VR agency must consider the interaction of the individual with the disability with employees without disabilities that occurs during the performance of the individual's job responsibilities, and not the casual and social contact that takes place in the work place.



Competitive Integrated Employment— Integrated Location Component (cont.)

Group and enclave settings in which the interaction of the individuals with disabilities with persons without disabilities is with persons working at or visiting the work site, rather than with co-workers, do not satisfy the integrated location component of the definition of “competitive integrated employment.”



Competitive Integrated Employment— Integrated Location Component (cont.)

The integrated location criteria in the definition of “competitive integrated employment” do not restrict the informed choice of individuals with disabilities.

VR agencies must refer individuals with disabilities to local providers of non-integrated employment (e.g., community rehabilitation programs) when they make an informed choice to pursue non-integrated employment.



Competitive Integrated Employment— Opportunities for Advancement Component

The employee with the disability must be eligible for the same opportunities for advancement as are available to employees without disabilities in similar positions.

Questions

Please refer questions to your RSA State Liaison

Thank You!