

WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA), signed into law on July 22, 2014

Overview: Notice of Proposed Rulemaking

Presented by:
Office of Special Education and
Rehabilitative Services,
Rehabilitation Services Administration

Alignment

WIOA strengthens the alignment of the Vocational Rehabilitation (VR) program with other core programs of the workforce development system by imposing requirements related to:

- **Unified strategic planning;**
- **Common performance accountability measures; and**
- **One-stop delivery system.**

Core Programs of the Workforce Development System:

- **Adult, Dislocated Worker, and Youth programs (title I);**
- **Adult Education and Family Literacy Act programs (title II);**
- **Wagner-Peyser Employment Service program (title III); and**
- **VR program (title IV).**

NOTICES OF PROPOSED RULEMAKING (NPRMs)

The U.S. Departments of Education (ED) and Labor (DOL) have published five NPRMs.

- **Joint NPRM—ED and DOL developed a joint NPRM to implement jointly-administered activities under title I of WIOA regarding Unified and Combined State Plans, performance accountability, and the one-stop system. The joint NPRM applies to all core programs, including the VR program. [Docket No. ETA-2015-0002]**
- **DOL-only NPRM—This NPRM will implement changes made to titles II and III of WIOA, including changes made to the title I adult, dislocated worker, and youth formula programs; state and local workforce development boards; designation of regions and local areas; local plans; one-stop; national programs; and amends Wagner-Peyser Act under title III. [Docket No. ETA-2015-0001]**

NPRMs (continued)

Three ED-only NPRMs:

- **Rehabilitation Act of 1973—Two NPRMs will implement changes made to the programs authorized under the Rehabilitation Act, which is contained in title IV of WIOA, as well as a new statutory section added to the Rehabilitation Act:**
 - State VR Services program, State Supported Employment Services program, and provisions contained in new section 511 (Limitations on the Use of Subminimum Wages) that fall under the purview of ED [Docket ID ED-2015-OSERS-0001]; and
 - All other Rehabilitation Act programs administered by ED—Client Assistance, American Indian Vocational Rehabilitation Services, Protection and Advocacy of Individual Rights, Independent Living Services for Older Individuals Who Are Blind programs, and the discretionary grant programs authorized under title III of the Rehabilitation Act. [Docket No. 2015-ED-OSERS-0002]
- **Adult Education and Family Literacy Act (AEFLA)—This NPRM will implement changes to programs authorized under AEFLA, which is contained in title II of WIOA. [Docket ID ED-2015-OCTAE-0003]**

STRUCTURE OF NPRM

A NPRM is divided into two sections:

- **Preamble; and**
- **Proposed Regulations.**

The Preamble has several distinct components:

- **Executive Summary—This section summarizes the key changes proposed in the NPRM and provides the legal basis for the proposed changes.**
- **Significant Proposed Regulations—This section summarizes each of the proposed significant changes and provides the rationale for those changes. This section also puts the proposed changes in context by providing the statutory citation giving rise to the proposed change and the current regulatory provision, if any.**

STRUCTURE OF NPRM (continued)

- **Regulatory Impact Analysis (RIA)**—This section describes the need for the proposed regulations and the efforts that the Department undertook to ensure the proposed regulations were the least burdensome option for implementing the statutory requirements. The RIA also presents the Department’s analysis of the anticipated burden on States when implementing the proposed regulations.
- **Paperwork Reduction Act (PRA)**—This section describes the new reporting requirements in the proposed regulations. In this section, the Department also describes the anticipated burden on States when implementing these new proposed reporting requirements.

STRUCTURE OF NPRM (continued)

Proposed Regulations

- **The regulatory text appears at the end of the NPRM and sets forth the proposed regulations.**

In these NPRMs, the relevant Code of Federal Regulations (CFR) part is reprinted in its entirety for each program.

HOW TO COMMENT ON A NPRM

Comments should focus on:

- **Proposed regulations;**
- **The RIA—especially with regard to the Department’s burden estimates;**
- **The PRA—especially with regard to the Department’s burden analysis;**
- **Specific questions presented throughout the preamble in the Significant Proposed Regulations, RIA, and PRA sections; and**
- **Any other issues the commenter wishes to raise.**

Input from stakeholders will assist the Department in developing final regulations.

HOW TO COMMENT ON A NPRM (continued)

When submitting comments, be sure to:

- **Identify the docket number for the NPRM relevant to the comment;**
- **If commenting on multiple NPRMs, submit comments separately for each applicable NPRM;**
- **Please try to submit comments that are electronically searchable (not PDFs scanned as images);**
- **Organize comments based on the relevant proposed section numbers;**
- **Identify clearly the proposed regulation or specific question giving rise to the comment;**
- **Provide a complete discussion of the concern, including the basis for the concern, alternative suggestions for resolving the concern, and the rationale for suggested alternatives; and**
- **Indicate areas of agreement with the proposed regulations, especially those proposed changes that are likely to generate a significant number of comments.**

HOW TO COMMENT ON A NPRM (continued)

- You can submit your written comments online through [Regulations.gov](https://www.regulations.gov). At this website, you will also find instructions for accessing agency documents, submitting comments, and viewing the docket.
- **Postal Mail, Commercial Delivery, or Hand Delivery:** If you mail or deliver your comments about these proposed regulations, address them to Janet LaBreck, U.S. Department of Education, 400 Maryland Avenue SW., room 5086, Potomac Center Plaza (PCP), Washington, DC 20202-2800.

HOW TO COMMENT ON A NPRM (continued)

To provide additional opportunities for commenting, RSA will conduct two public meetings during the 60-day comment period:

Washington, DC

April 30, 2015

1:00 pm - 5:00 pm

Lyndon Baines Johnson Building

Barnard Auditorium

400 Maryland Avenue, SW

Washington, DC 20202

Sacramento, CA

May 20, 2015

1:00 pm - 5:00 pm

721 Capitol Mall

Room 242

Sacramento, CA 95814

REHABILITATION ACT OF 1973

Overview of NPRM for
Parts 361, 363, and 397

NPRM FOR PARTS 361, 363, AND 397—PREAMBLE

- **The preamble discussion for each part covered by this NPRM is organized according to topical areas. For example, the preamble discussion for part 361 includes, among others, the following topical areas: competitive integrated employment, transition, services to groups, and financial accountability.**
- **All provisions related to a specific topic will be presented together under a topical heading.**

SIGNIFICANT CHANGES...

WIOA makes significant changes to the Rehabilitation Act of 1973 (Act) by:

- **Strengthening the alignment of the VR program with other components of the workforce development system;**
- **Emphasizing the achievement of competitive integrated employment by individuals with disabilities; and**
- **Expanding services to support the transition of students and youth with disabilities to postsecondary education and employment.**

STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

34 CFR PART 361

Competitive Integrated Employment

The following principles are embedded throughout WIOA, including in the amendments to the Act:

- **“Individuals with disabilities, including individuals with the most significant disabilities, have demonstrated their ability to achieve gainful employment in competitive integrated employment if appropriate services and supports are provided.” (section 100(a)(1)(C) of the Act)**
- **“Individuals with disabilities must be provided the opportunities to obtain competitive integrated employment.” (section 100(a)(3)(B) of the Act)**

Competitive Integrated Employment (continued)

We propose to incorporate these principles throughout part 361 including in the following provisions:

- **Statement of program purpose in §361.1:**
 - **Replaces the term “gainful employment” with “competitive integrated employment.”**
- **Definition of “employment outcome” in proposed §361.5(c)(15):**
 - **Specifically identifies customized employment as an employment outcome under the VR program; and**
 - **Would require that all employment outcomes achieved through the VR program be in competitive integrated employment or supported employment, thereby eliminating uncompensated outcomes, such as homemakers and unpaid family workers, from the scope of the definition for purposes of the VR program.**

Competitive Integrated Employment (continued)

- **IPE Requirement in proposed §361.46(a):**
 - **Would require that the individualized plan for employment include a specific employment goal consistent with the general goal of competitive integrated employment.**

Competitive Integrated Employment (continued)

Definition of **COMPETITIVE INTEGRATED EMPLOYMENT** in proposed §361.5(c)(9) would mean work that—

- (i) Is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that—
 - (A) Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the rate required in the applicable State or local minimum wage law;
 - (B) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills;
 - (C) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills;
 - (D) Is eligible for the level of benefits provided to other employees; and

Competitive Integrated Employment (continued)

COMPETITIVE INTEGRATED EMPLOYMENT (continued)

(ii) Is at a location—

(A) Typically found in the community; and

(B) Where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g., customers and vendors), who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons; and

Competitive Integrated Employment (continued)

COMPETITIVE INTEGRATED EMPLOYMENT (continued)

(iii) Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

Competitive Integrated Employment (continued)

Definition of **EMPLOYMENT OUTCOME** in proposed §361.5(c)(15) would mean, with respect to an individual, entering, advancing in, or retaining full-time or, if appropriate, part-time competitive integrated employment, as defined in §361.5(c)(9) (including customized employment, self-employment, telecommuting, or business ownership), or supported employment, that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

- This definition would eliminate uncompensated outcomes, such as homemakers and unpaid family workers, from the scope of the definition for purposes of the VR program.
- To allow agencies to complete the VR process for these individuals, we are considering a transition period of six months following the effective date of the final regulations to implement the proposed definition. We are particularly interested in receiving comment on the proposed six-month transition period. (Federal Register 21068)

Additional Proposed Regulatory Changes...

We propose to:

- **Make additional regulatory changes in part 361 to ensure that individuals with disabilities are provided a full opportunity through the VR program to participate in job-driven training and pursue high-quality employment outcomes;**
- **Clarify in proposed §361.42(a)(1)(iii) that an applicant meeting all other eligibility criteria may be determined eligible if he or she requires services to advance in employment, not just obtain or maintain employment;**
- **Clarify in proposed §§361.48(b)(6) and 361.49, that VR services are available to assist individuals with disabilities to obtain graduate level education needed for this purpose;**

Additional Proposed Regulatory Changes...

- **Clarify in proposed §361.42(c)(1) the prohibition against a duration of residency requirement and in §361.42(c)(2) those factors that cannot be considered when determining the eligibility of VR program applicants;**
- **Remove the option to use extended evaluations, as a limited exception to trial work experiences, to explore an individual's abilities, capabilities, and capacity to perform in work situations;**
- **Require the individualized plan for employment to be developed within 90 days following the determination of eligibility;**
- **Provide a State VR agency operating under an order of selection for services, the option under proposed §361.36 to serve eligible individuals with disabilities outside that order who have an immediate need for equipment or services to maintain employment;**

Additional Proposed Regulatory Changes...

- **Emphasize VR agency coordination and collaboration with other entities, employers, non-educational agencies working with youth, AIVRS programs, and other agencies and programs providing services to individuals with disabilities in proposed §361.24; and**
- **Describe in proposed §361.32 the training and technical assistance services that can be provided to employers hiring, or interested in hiring, individuals with disabilities.**

Alignment *Proposed VR Services Portion of the Unified or Combined State Plan*

All requirements regarding the submission, approval, disapproval, and duration of the VR services portion of the Unified or Combined State Plan are governed by proposed joint regulations (Joint NPRM—ED and DOL), which, once final, will reside in subpart D of 34 CFR part 361. The joint NPRM can be found at: www.federalregister.gov

In the ED—only NPRM, we propose to:

- Amend current §361.10 to require that all assurance and descriptive information previously submitted through the VR State plan and supported employment supplement be submitted through the VR services portion of the Unified or Combined State Plan;**
- Clarify in proposed §361.20 when designated State agencies must conduct public hearings to obtain comment on substantive changes to policies and procedures governing the VR program;**

Alignment *Proposed VR Services Portion of the Unified or Combined State Plan (continued)*

- **Clarify in current §361.29 that States will report to the Secretary updates to the statewide needs assessment and goals and priorities, estimates of the numbers of individuals with disabilities served through the VR program and the costs of serving them, and reports of progress on goals and priorities at such time and in such manner determined by the Secretary, thereby resolving inconsistencies in reporting requirements within section 101(a) of the Act; and**
- **Amend current §361.29(a) to require that the comprehensive statewide needs assessment include the results of the needs of students and youth with disabilities for VR services, including pre-employment transition services.**

Alignment

Performance Accountability Measures

Section 116(b) of WIOA requires common performance accountability measures for the core programs of the workforce development system, including the VR program, which are set out in proposed joint regulations (Joint NPRM—Ed and DOL), which, once final, will reside in subpart E of 34 CFR 361. The joint NPRM can be found at: www.federalregister.gov

In the ED—only NPRM, we propose to:

- **Replace the current standards and indicators for the VR program under current §361.80 through §361.89 with a cross-reference in proposed §361.40 to the joint regulations for the common performance accountability measures.**

Alignment

One-stop Delivery System

As a required partner in the one-stop service delivery system, the designated State unit must satisfy all requirements set forth in proposed joint regulations (Joint NPRM—ED and DOL), which, once final, will reside in subpart F of 34 CFR 361.

The joint NPRM can be found at:

www.federalregister.gov

In the ED-only NPRM, we propose to:

- **Provide a cross-reference in current §361.23, regarding the roles and responsibilities of the VR program in the one-stop delivery system, to the joint regulations implementing requirements for the one-stop delivery system.**

Services to Students and Youth With Disabilities

The amendments to the Act made by WIOA place heightened emphasis on serving students and youth with disabilities. As a result, we propose many regulatory changes to part 361 to address this emphasis.

We propose to:

- Define “student with a disability” and “youth with a disability” in §361.5(c)(51) and (c)(59), respectively to assist VR agencies to determine the appropriate transition and other services that may be provided to each group;**
- Implement new sections 110(d) and 113 of the Act in proposed §361.48(a) by requiring VR agencies to reserve at least 15 percent of their VR allotment, to provide or arrange, in coordination with local educational agencies, for the provision of pre-employment transition services to students with disabilities;**

Services to Students and Youth With Disabilities (continued)

- **Permit in §361.46 the use of a projected or generally described vocational goal rather than a specific vocational goal to be listed on the IPE; and**
- **Clarify in proposed §361.22(c) that nothing in this part is to be construed as reducing the responsibility of the local educational agencies or any other agencies under the Individuals with Disabilities Education Act to provide or pay for transition services that are also considered to be special education or related services necessary for the provision of a free appropriate public education to children with disabilities.**

Services to Students and Youth With Disabilities (continued)

Definition of **STUDENT WITH A DISABILITY** in proposed §361.5(c)(51) would mean, in general, an individual with a disability who--

(A)(1) Is not younger than the earliest age for the provision of transition services under section 614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VIII)); or

(2) If the State involved elects to use a lower minimum age for receipt of pre-employment transition services under this Act, is not younger than that minimum age; and

(B)(1) Is not older than 21 years of age; or

(2) If the State law for the State provides for a higher maximum age for receipt of services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), is not older than that maximum age; and

(C)(1) Is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or

(2) Is a student who is an individual with a disability, for purposes of section 504.

(ii) Students with disabilities means more than one student with a disability.

Services to Students and Youth With Disabilities (continued)

The definition of **YOUTH WITH A DISABILITY** in proposed §361.5(c)(59) would mean an individual with a disability who is not--

(A) Younger than 14 years of age; and

(B) Older than 24 years of age.

Services to Students and Youth With Disabilities (continued)

PRE-EMPLOYMENT TRANSITION SERVICES

- **Required activities.** In coordination with local educational agencies, DSUs must provide, or arrange for the provision of, the following pre-employment transition services:
 - **Job exploration counseling;**
 - **Work-based learning experiences;**
 - **Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;**
 - **Workplace readiness training to develop social skills and independent living; and**
 - **Instruction in self-advocacy.**

Services to Students and Youth With Disabilities (continued)

PRE-EMPLOYMENT TRANSITION SERVICES

Authorized activities. Reserved funds available after the provision of required activities may be used for other specific authorized activities to improve the transition of students with disabilities from school to postsecondary education or an employment outcome. Reserved funds cannot be used for administrative costs.

- **Section 113 of the Act, as added by WIOA, requires VR agencies to provide pre-employment transition services to students with disabilities who are eligible or potentially eligible for VR services.**
- **We propose to interpret the term “potentially eligible” to mean all students with disabilities, as defined in proposed §361.5(c)(51), and we are particularly interested in receiving comment on this interpretation.**

Services to Students and Youth With Disabilities (continued)

SERVICES TO GROUPS

Transition Services. Section 103(b)(7) of the Act, as added by WIOA, permits VR agencies to provide transition services to groups of youth and students with disabilities. To that end, we propose to add §361.49(a)(7) to implement this authority.

ADDITIONAL PROPOSED CHANGES – 34 CFR PART 361

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

Section 101(a)(7) of the Act, as amended by WIOA, makes several changes to the comprehensive system of personnel development (CSPD) that each DSU must establish to ensure its personnel are adequately trained including:

- **Specific educational and experiential criteria that must be met by VR personnel; and**
- **A 21st-century understanding of the evolving labor force and needs of individuals with disabilities.**

The proposed regulations in §361.18 would establish minimum educational requirements and experience, and a description of what is meant by a 21st-century understanding of the evolving labor force and needs of individuals with disabilities.

ADDITIONAL PROPOSED CHANGES – 34 CFR PART 361

SERVICES TO GROUPS

Section 103(b) of the Act makes several changes with regard to the services to groups that VR agencies may provide.

We propose to:

- **Amend current §361.49(a)(1), regarding the establishment, development, or improvement of a community rehabilitation program, to clarify that services provided under this authority must be used to promote competitive integrated employment, including customized and supported employment;**
- **Amend current §361.49(a)(4) to incorporate statutory changes that expand a VR agency's authority to provide technical assistance to all businesses who are considering hiring individuals with disabilities, not just to those businesses that are not subject to title I of the Americans with Disabilities Act of 1990;**

ADDITIONAL PROPOSED CHANGES – 34 CFR PART 361

SERVICES TO GROUPS

- **Add new §361.49(a)(8) to provide assistive technology-related services for the benefit of groups of individuals with disabilities and allow VR agencies to establish, develop, or improve assistive technology programs, recognizing the critical role it plays in the vocational rehabilitation and employment of individuals with disabilities; and**
- **Add §361.49(a)(9) to implement a new authority for VR agencies to provide support for advanced training in a manner that benefits groups of eligible individuals who meet specific criteria and are pursuing advanced training in specific fields.**

ADDITIONAL PROPOSED CHANGES – 34 CFR PART 361

COMPARABLE BENEFITS

- **We propose to add language to §§361.53(a) and 361.53(d)(1) and (3) that would include accommodations and auxiliary aids and services among the VR services that would require the determination of the availability of comparable services and benefits prior to the provision of such services to an eligible individual.**
- **The proposed changes also would address interagency coordination of the provision of these services.**

ADDITIONAL PROPOSED CHANGES – 34 CFR PART 361

FISCAL ADMINISTRATION OF THE VR PROGRAM

We propose three changes to current §361.65 regarding the allotment of VR program funds to:

- **Require the State to reserve not less than 15 percent of its VR allotment for the provision of pre-employment transition services;**
- **Clarify that reallocation occurs in the fiscal year the funds were appropriated; however, States may obligate or expend such funds during the period of performance, provided that matching requirements are met; and**
- **Add a new paragraph (b)(3) to current §361.65 that would give the Secretary the authority to determine the criteria to be used to reallocate funds when the amount requested exceeds the amount of funds relinquished.**

ADDITIONAL PROPOSED CHANGES – 34 CFR PART 361

DEFINITIONS

We propose to:

- Amend Administrative Cost in proposed §361.5(c)(2)(viii) by clarifying that operating and maintenance expenses, for purposes of the definition of “administrative costs” for the VR program, do not include capital expenditures, as defined in 2 CFR 200.13;
- Amend Assessment for Determining Eligibility and Vocational Rehabilitation Needs in proposed §361.5(c)(5)(ii)(E) by adding language that would make clear that a comprehensive assessment, to the maximum extent possible, relies on information obtained from the eligible individual’s experiences in integrated employment settings in the community and other integrated settings in the community;

ADDITIONAL PROPOSED CHANGES – 34 CFR PART 361

DEFINITIONS

- Add the heading **Assistive Technology Terms** in proposed §361.5(c)(6), under which we would incorporate definitions for the new term “assistive technology” and for the existing terms “assistive technology device” and “assistive technology service”;
- Add §361.5(c)(11), to define **Customized Employment** to mirror the statutory language in section 7(7) of the Act, as amended by WIOA, which defines “customized employment,” in general, as competitive integrated employment designed to meet both the specific abilities of the individual with a significant disability and the business needs of an employer;

ADDITIONAL PROPOSED CHANGES – 34 CFR PART 361

DEFINITIONS

- Amend the definition of **Extended Services** in proposed §361.5(c)(19), to make clear that extended services may be provided to youth with the most significant disabilities for a period not to exceed four years by the designated State unit in accordance with requirements set forth in parts 361 and 363;
- In proposed §361.5(c)(25) combine the definitions of “American Indian” and “Indian tribe” in current regulations, respectively, to be consistent with the definition in section 7(19) of the Act, as amended by WIOA;

ADDITIONAL PROPOSED CHANGES – 34 CFR PART 361

DEFINITIONS

- Amend part 361 throughout, to reflect new terminology in WIOA, including the definitions for “**Local workforce development board**” in §361.5(c)(33), “**State workforce development board**” in §361.5(c)(49), and “**Statewide workforce development system**” in §361.5(c)(50); and

ADDITIONAL PROPOSED CHANGES – 34 CFR PART 361

DEFINITIONS

- Amend the definition of **Supported Employment** in proposed §361.5(c)(53), to require that supported employment means competitive integrated employment, including customized employment, or, employment in an integrated setting in which the individual is working on a short-term basis toward competitive integrated employment. We also propose, in this context, that an individual be considered to be working on a short-term basis toward competitive integrated employment if the individual reasonably expects achieving a competitive integrated employment outcome within six months of achieving an employment outcome of supported employment.

SUPPORTED EMPLOYMENT PROGRAM

34 CFR PART 363

SUPPORTED EMPLOYMENT

WIOA places heightened emphasis in the Supported Employment program on:

- The achievement of competitive integrated employment;
and
- The provision of services to youth with the most significant disabilities.

SUPPORTED EMPLOYMENT

Section 7(38) of the Act, as amended by WIOA, revises the definition of supported employment to, among other things, reference competitive integrated employment and customized employment, and requires that an individual who is employed in an integrated setting, but not in competitive integrated employment, must be working toward such an outcome on a short-term basis for such work to qualify as supported employment.

Therefore, we propose to:

- Amend the definition in proposed §361.5(c)(53), and referenced throughout part 363 to be consistent with the Act; and**
- Define that an individual be considered to be working on a “short-term basis” toward competitive integrated employment if the individual reasonably expects achieving a competitive integrated employment outcome within six months of achieving an employment outcome of supported employment.**

Competitive Integrated Employment

Consistent with the amendments to the Act made by WIOA, we propose to:

- **Amend current §363.1 to reflect the revised statutory definition of “supported employment”;**
- **Extend the time from 18 months to 24 months for the provision of supported employment services in proposed §363.50(b)(1) ; and**
- **Reduce the amount of supported employment funds that may be spent on administrative costs from 5 percent to 2.5 percent in proposed §363.51.**

Services to Youth With the Most Significant Disabilities

In accordance with the emphasis on serving youth with the most significant disabilities:

- **Proposed §363.22 would require a State to reserve 50 percent of its Supported Employment allotment for the provision of supported employment services, including extended services, to youth with the most significant disabilities; and**
- **Proposed §363.23 would require not less than a 10 percent match for the amount of funds reserved to serve youth with the most significant disabilities.**

Services to Youth With the Most Significant Disabilities (continued)

Extended services would mean ongoing support services and other appropriate services that are--

- **Needed to support and maintain an individual with a most significant disability including a youth with a most significant disability, in supported employment;**
- **Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment;**
- **Based on the needs of an eligible individual, as specified in an individualized plan for employment;**

Services to Youth With the Most Significant Disabilities (continued)

- **Provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the designated State unit; and**
- **Provided to youth with the most significant disabilities by the designated State unit in accordance with requirements set forth in part 361 and part 363 for a period not to exceed 4 years. NOTE: The designated State unit may not provide extended services to individuals with the most significant disabilities who are not youth with the most significant disabilities.**

LIMITATIONS ON USE OF SUBMINIMUM WAGE

34 CFR PART 397

TITLE V OF THE REHABILITATION ACT

WIOA amends title V of the Act by adding:

SECTION 511—LIMITATIONS ON USE OF SUBMINIMUM WAGE

- **The provisions in section 511 are effective 2 years after enactment, specifically, July 22, 2016.**
- **The addition of Section 511 demonstrates the intent that individuals with disabilities, especially youth with disabilities, must be afforded a full opportunity to prepare for, obtain, maintain, advance in, or re-enter competitive integrated employment.**
- **The Secretary of Education proposes to promulgate new regulations in part 397 to implement new requirements for designated State units and State and local educational agencies under the purview of the Department that are imposed by section 511 of the Act.**

34 CFR 397- Limitations On Use Of Subminimum Wage

- **Section 511 imposes limitations on employers who hold special wage certificates, commonly known as 14(c) certificates, under the Fair Labor Standards Act (FLSA) (29 U.S.C. 214(c)) that must be satisfied before the employers may hire youth with disabilities at subminimum wage or continue to employ individuals with disabilities of any age at the subminimum wage level.**
- **Proposed regulations in part 397 focus exclusively on the related roles and responsibilities of educational agencies and DSUs.**
- **Any requirements on employers imposed by section 511 are under the purview of the Department of Labor, which administers the FLSA. Such requirements are not addressed in part 397.**

Limitations On Use Of Subminimum Wage: *Proposed Definition of Terms...*

Special wage certificate means a certificate issued to an employer under section 14(c) of the FLSA and 29 CFR part 525 that authorizes payment of subminimum wages, wages less than the statutory minimum wage, to workers with disabilities for the work being performed.

Entity, for purposes of part 397, means an employer, or a contractor or subcontractor of that employer, that holds a special wage certificate described in section 14(c) of the FLSA.

Federal minimum wage has the meaning given to that term in section 6(a)(1) of the FLSA.

Limitations On Use Of Subminimum Wage: *DSUs / Educational Agencies*

- **The purpose of proposed part 397 is to set forth requirements that designated State units and State and local educational agencies must satisfy to ensure that individuals with disabilities, especially youth with disabilities, have a meaningful opportunity to prepare for, obtain, maintain, advance in, or regain competitive integrated employment, including supported or customized employment.**
- **This part would require a designated State unit to:**
 - **Provide youth with disabilities documentation demonstrating that they have completed certain requirements prior to starting subminimum wage employment with entities holding special wage certificates under section 14(c) of the FLSA;**

Limitations On Use Of Subminimum Wage: *DSU s / Educational Agencies (continued)*

- **Provide, at certain prescribed intervals, (every six months for the first year of the individual's subminimum wage employment and annually thereafter for the duration of such employment) career counseling and information and referral services, designed to promote opportunities for competitive integrated employment, to individuals with disabilities, regardless of age, who are known to be employed at a subminimum wage level for the duration of such employment; and**
- **In consultation with the State educational agency, to develop a, or utilize an existing, process to document completion of required activities under this part by a youth with a disability.**
- **A designated State unit, or a representative of a designated State unit, is authorized to engage in the review of individual documentation required to be maintained by entities holding special wage certificates under section 511 of the Act.**

Limitations On Use Of Subminimum Wage: *DSU Requirements—Youth*

- **A designated State unit must provide youth with disabilities documentation upon the completion of the following actions:**
 - **Pre-employment transition services that are available to the individual under 34 CFR §361.48;**
 - **Application for VR services, in accordance with 34 CFR §361.41(b), with the result that the individual was determined--**
 - **Ineligible for VR services, in accordance with 34 CFR §361.43; or**
 - **Eligible for VR services, in accordance with 34 CFR §361.42; and**

Limitations On Use Of Subminimum Wage: *DSU Requirements—Youth (continued)*

If eligible for VR services, the documentation would have to demonstrate the youth with a disability:

- **Had an approved individualized plan for employment, in accordance with 34 CFR 361.46;**
- **Was unable to achieve the employment outcome specified in the individualized plan for employment, as described in 34 CFR 361.5(c)(15) and 361.46, despite working toward the employment outcome with reasonable accommodations and appropriate supports and services, including supported employment services, for a reasonable period of time; and**
- **Had a closed case record meeting all of the requirements of 34 CFR 361.47; and**

Limitations On Use Of Subminimum Wage: *DSU Requirements—Youth (continued)*

- **Provision of career counseling, and information and referrals to Federal and State programs and other resources in the individual's geographic area that offer employment-related services and supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment:**
 - **In a manner that facilitates informed choice and decision-making by the youth, or the youth's representative as appropriate; and**
 - **Not be for subminimum wage employment by an entity defined in §397.5(d), and such employment-related services are not compensated at a subminimum wage and do not directly result in employment compensated at a subminimum wage provided by such an entity.**

Limitations On Use Of Subminimum Wage: *Proposed Educational Agencies* *Requirements*

- **Proposed §§ 397.30 and 397.31 describe the responsibilities of local and State educational agencies to youth with disabilities who are known to be seeking subminimum wage employment.**
- **Proposed §397.31 would prohibit a local educational agency or a State educational agency from entering into a contract with an entity that employs individuals at subminimum wage for the purpose of operating a program under which a youth with a disability is engaged in subminimum wage employment. With regard to this proposed provision, the Secretary specifically seeks comments regarding the Department's role and jurisdiction.**

END