

**REGULATIONS IMPLEMENTING THE  
REHABILITATION ACT OF 1973, AS AMENDED BY THE  
WORKFORCE INNOVATION AND OPPORTUNITY ACT**

**REGIONAL TRAINING SERIES**

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**REHABILITATION SERVICES ADMINISTRATION**

# EMPLOYMENT OUTCOMES, COMPETITIVE INTEGRATED EMPLOYMENT, AND LIMITATIONS ON USE OF SUBMINIMUM WAGE

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# 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 prior §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 — Basis for Change

- 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.
- Section 7(11) of the Act, as amended by WIOA, specifically includes customized employment as an “employment outcome.”



# Employment Outcome — Informed Choice

- Individuals with disabilities who are participating in the VR program are entitled to 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.

# 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, all of which must be geared toward assisting eligible individuals 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

- Once the final VR regulations take effect, VR agencies will no longer be able to open cases for individuals pursuing uncompensated employment outcomes.
- 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 the approved IPE.
- 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,” which is one of the types of employment outcomes permitted under the VR program, the employment must satisfy the requirements for all three components:

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

This means that 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.

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.)**

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 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— 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.



# Overview of Section 511 — Key Definitions

- An “entity” is an employer, or a contractor or subcontractor of that employer, that holds a special wage certificate described in section 14(c) of the Fair Labor Standards Act of 1938 (FLSA).
- “Special wage certificate” means a certificate issued to an employer under section 14(c) of the FLSA that authorizes payment of subminimum wages (i.e., wages less than the statutory minimum wage).
- “Federal minimum wage” means the rate applicable under section 6(A)(1) of the FLSA.



# Overview of Section 511— Purpose

Section 511—

- Prohibits an “entity” that holds a special wage certificate under section 14(c) of the FLSA from compensating an individual with a disability at a subminimum wage unless certain conditions are met; and
- Focuses on the payment of subminimum wage, not the nature of the work setting.

# Overview of Section 511— Purpose (cont.)

Section 511 does not—

- Change the purpose of the Rehabilitation Act;
- Promote subminimum wage employment;
- Eliminate sheltered workshops; or
- Eliminate subminimum wage and section 14(c) of the FLSA.



# Overview of Section 511's Provisions

Section 511—

- Requires youth with disabilities to satisfy certain service-related requirements prior to starting work at subminimum wage;
- Requires individuals of any age to satisfy certain service-related requirements in order to continue work at subminimum wage;
- Requires VR agencies and LEAs to document the provision of the requisite services; and
- Permits VR agencies to review whether entities holding special wage certificates are maintaining the required documentation.

# Overview of Implementing Regulations

The Department of Education's implementing regulations for section 511 of the Act:

- Will take effect 30 days after publication in the Federal Register;
- Will be found in 34 CFR part 397;
- Implement only those provisions of section 511 that fall under the purview of the Department of Education; and
- Must be read in concert with regulations in:
  - 34 CFR part 361 (VR program);
  - 34 CFR part 300 (IDEA); and
  - 29 CFR part 525 (FLSA).

# Requirements Related to Youth with Disabilities

- “Youth with a disability” is an individual aged 14 to 24 (section 7(42) of the Act and §361.5(c)(58)).
- Some of these youth may satisfy the definition of a “student with a disability” (section 7(37) of the Act and §361.5(c)(51)).
- Before an “entity” may begin compensating a youth with a disability at subminimum wage, the youth must complete certain service-related activities and produce documentation showing completion.

# Requirements Related to Youth with Disabilities (cont.)

Prior to beginning work at subminimum wage, a youth with a disability must demonstrate, through documentation, completion of the following (see section 511(a)(2) of the Act and §§397.20 and 397.30):

- Receipt, as applicable, of—
  - Pre-employment transition services under the VR program; or
  - Transition services under IDEA;
- Application for VR services that results in determination of—
  - Ineligibility; or
  - Eligibility.



## Requirements Related to Youth with Disabilities (cont.)

If the youth is determined eligible for the VR program, he or she must have:

- An approved IPE;
- Been working toward the employment outcome in the IPE, for a reasonable period of time and with appropriate supports without success;
- A closed VR service record; and
- Receipt of career counseling, and information and referral services.

# Requirements Related to Youth with Disabilities (cont.)

Career counseling and information and referrals must:

- Be provided by the DSU in a manner to facilitate informed choice and decision-making;
- Not be for subminimum wage employment by an entity holding a 14(c) certificate;
- Not be employment-related services compensated at a subminimum wage or that directly result in employment compensated at a subminimum wage provided by an entity; and
- Be provided within 30 calendar days of a determination for a youth known by the DSU to be seeking employment at subminimum wage.



# Requirements Related to Youth with Disabilities (cont.)

A determination of “reasonable period of time,” with respect to the youth’s inability to achieve an employment outcome, must be consistent with:

- Disability-related and vocational needs of the youth;
- Anticipated length of time to complete services in the IPE; and
- For supported employment goals, up to 24 months, or longer if the youth and counselor agree that an extension is needed to meet the goal.

# Requirements Related to Youth with Disabilities (cont.)

The youth with a disability seeking subminimum wage employment – not the DSU or LEA – must provide documentation proving completion of the above activities to the employer.

- The DSU must provide the documentation to the youth with a disability:
  - Within a reasonable period of time after the completion of each of the above activities; and
  - When the youth is “known” to the DSU as seeking subminimum wage employment.

# Documentation Process Related to Youth with Disabilities

- The DSU, in consultation with the SEA, must develop or use an existing process that ensures that youth with disabilities seeking subminimum wage employment receive documentation demonstrating completion of the required activities (section 511(d) of the Act and §397.10).
- Documentation must contain, at a minimum (§397.10):
  - Youth's name;
  - Determination made or activity/service completed;
  - Name of individual making the determination or providing the service/activity;
  - Applicable signatures and dates; and
  - Method via which documentation was transmitted to the youth.

# Documentation Process Related to Youth with Disabilities (cont.)

The documentation process must ensure—

- The DSU provides documentation to the youth of all activities completed, regardless of whether they were completed under the VR program or IDEA.
- The LEA provides documentation to the DSU, within a reasonable period of time, of all transition services completed by the youth under IDEA.
- Any documentation provided by the LEA to the DSU must comply with confidentiality requirements of the Family Education Rights and Privacy Act (FERPA).
- The DSU and LEA must retain copies of the documentation in a manner consistent with the requirements of 2 CFR 200.333.



# Documentation Process Related to Youth with Disabilities (cont.)

If a youth with a disability or, as applicable, the youth's parent or guardian, refuses, through informed choice, to participate in the activities required by section 511 or the implementing regulations in part 397, documentation must, at a minimum:

- Contain the information in §397.10(a)(2); and
- Be provided by the DSU to the youth within 10 calendar days of the youth's refusal to participate.

# Contracting Prohibition for Educational Agencies

- Section 511(b)(2) of the Act and §397.31 prohibit the LEA and SEA from entering into a contract, or other arrangement, with an “entity” that holds a special wage certificate under section 14(c) of the FLSA for the purpose of operating a program for a youth under which work is compensated at a subminimum wage.
- Neither section 511 nor part 397 of the implementing regulations prohibits a SEA or LEA from contracting with an entity that holds a special wage certificate under section 14(c) of the FLSA if the youth are paid at or above the minimum wage or if the purpose is for something other than the work at subminimum wage, such as assessments and pre-employment transition services.



# Overview of Requirements Related to Individuals of Any Age

- If an individual with a disability, regardless of age, wants to maintain his or her employment at subminimum wage with an entity holding a special wage certificate under the FLSA, he or she must obtain from the DSU:
  - Career counseling; and
  - Information and referral services.
- The DSU may provide these services directly or may contract with another provider of such services in the community.

# Requirements Related to Individuals of Any Age

The DSU, or its contractor, must provide the above services to individuals it knows are working at subminimum wage.

- An individual can be “known” to the DSU through:
  - Involvement in the VR process;
  - Self-referral; or
  - Referral from a third party, such as:
    - CAP;
    - Another service provider;
    - Another public or private agency; or
    - An entity holding a special wage certificate.

# Requirements Related to Individuals of Any Age (cont.)

The career counseling and information and referral services:

- Must be provided in a manner that facilitates independent decision-making and informed choice; and
- May include benefits counseling, particularly with regard to the interplay between earned income and income-based financial, medical, and other benefits.

# Requirements Related to Individuals of Any Age (cont.)

- Upon a referral of an individual with a disability employed at subminimum wage by an “entity” that has fewer than 15 employees, a DSU must inform the individual within 30 calendar days of that referral, of the following opportunities available in the community:
  - Self-advocacy;
  - Self-determination; and
  - Peer mentoring training.
- These services must not be provided by an “entity,” which may have a financial interest in the employment of the individual at subminimum wage.

# Requirements Related to Individuals of Any Age (cont.)

Required Intervals for the provision of career counseling and information and referral services and, as applicable, other services are as follows:

- For individuals with disabilities hired at subminimum wage on or after July 22, 2016, required services must be carried out every 6 months for the first year and annually thereafter for as long as the individual is employed at subminimum wage.
- For individuals employed at subminimum wage prior to July 22, 2016, the services must be carried out once before July 22, 2017, and annually thereafter.
- The applicable intervals will be calculated based upon the date the individual becomes known to the DSU.

# Requirements Related to Individuals of Any Age (cont.)

- The DSU must provide the individual with documentation once the services have been provided (§397.40).
- The documentation must:
  - Be provided as soon as possible;
  - Contain, at a minimum, the information in §397.40(d)(2); and
  - Be retained, as a copy, by the DSU in accordance with 2 CFR 200.333.

# Requirements Related to Individuals of Any Age (cont.)

- If an individual with a disability, or the individual's representative, refuses, through the exercise of informed choice, to participate in an activity by section 511 or §397.40, the DSU must provide documentation of such refusal.
- The documentation:
  - Must be provided to the individual within 10 calendar days of the individual's refusal to participate; and
  - Must contain, at a minimum, the information in §397.40(d)(3).



# Review of Documentation

- Section 511(e)(2)(B) of the Act permits a DSU, or a contractor working directly for the DSU, to engage in the review of individual documentation required under this part that is maintained by an “entity.”
- If the DSU (or contractor) finds any deficiencies while conducting a documentation review, the DSU should report the deficiency to the U.S. Department of Labor’s Wage and Hour Division.



# Questions

Send Questions on Today's Meeting to:

**[RSAQuestions@ed.gov](mailto:RSAQuestions@ed.gov)**

**Thank You!**