



Reviewing Your State's WIOA Unified or Combined State Plan from a Disability Perspective (Title IV- Vocational Rehabilitation Requirements)

Introduction

The purpose of this document is provide a guide for identifying the key provisions in Title IV of WIOA applicable to Unified or Combined State Plans from a **disability perspective** (i.e., those provisions in Title IV of WIOA applicable to the Unified or Combined State Plans pertaining to workforce development activities of particular applicability to individuals with disabilities and other individuals with multiple barriers to employment). The Guide includes strategic as well as operational elements of the Unified or Combined State Plan, from a disability perspective, with questions that can be asked when reviewing the State Plan.

Please note that areas in this document that are *italicized* represent examples of how certain requirements could be met. However these are not explicit requirements stated in the law or in developing regulations and formal policy. Thus, as you review your state plan, the information in this Guide can assist you in identifying areas to collaborate with appropriate state agencies to ensure effective service to youth and adults with disabilities.

WIOA Unified or Combined State Plans: Title IV

Under the [Workforce Innovation and Opportunity Act](#) (WIOA), the Governor of each State must submit a Unified or Combined State Plan to the U. S. Secretary of Labor that outlines a four-year workforce development strategy for the State's workforce development system. The publicly-funded workforce system provides a range of employment, education, training, and related services and supports to enable all job seekers, including individuals with disabilities and other individuals with barriers to employment, secure good jobs while providing businesses with the skilled workers they need to compete in the global economy.

Under WIOA, States must also submit, as part of the Unified or Combined State Plan, a Vocational Rehabilitation (VR) Services portion of the State Plan, which complies with all State plan requirements set forth in Section 101(a) of the Rehabilitation Act, as

amended by Title IV of WIOA. The Commissioner of the Rehabilitation Services Administration (RSA) of the Department of Education (ED) is responsible for approving the VR services portion of the Unified or Combined State Plan.

Most of the provisions of WIOA took effect on July 1, 2015, the first full program year after enactment. **The new State Plan provisions, however, take effect on July 1, 2016.** The purpose of this document is to provide an overview that identifies the key provisions in Title I of the Rehabilitation Act, as amended by Title IV of WIOA, applicable to the VR services portion of the Unified or Combined State Plan. The focus of this overview is on those provisions in Title I of the Rehabilitation Act that are new or were significantly changed by WIOA. Thus, this overview is not exhaustive of all the requirements regarding the State Plan set out in Section 101(a) of the Rehabilitation Act. For example, this document does not include many of the assurances and certifications that must be submitted. Questions that should be asked when reviewing the State Plan are outlined below.

As an additional resource we encourage interested stakeholders to review the [Training and Employment Guidance Letter \(TEGL\) No. 14-15](#) published on March 4th, 2016 by the Employment and Training Administration (ETA). The TEGL conveys the vision and content requirements for Unified and Combined State Plans under WIOA; the deadline and submission process for Unified and Combined State Plans under WIOA (Section 11); the requirements to have approved Unified or Combined State Plans in place for Program Year (PY) 2016 and beyond for the six core programs of WIOA; and the options for States to incorporate all or portions of partner programs into their State plan submissions if they choose to submit a Combined State Plan.

The overview addresses the following key provisions:

- Definitions of such terms as competitive integrated employment, customized employment, employment outcome, supported employment, supported employment services, pre-employment transition services, student with a disability, and youth with a disability (Section 7 of Title I the Rehabilitation Act)
- Eligibility for VR Services (Section 102(a) of the Rehabilitation Act)
- State VR Strategies, In General, including Customized Employment. (Sections 101(a)(15) and (18) of the Rehabilitation Act)
- Pre-Employment Transition Services (Section 113 of Title I of the Rehabilitation Act)
- Limitations on the Use of Subminimum Wages (Section 101(a)(14) of the Rehabilitation Act)
- State Supported Employment Programs (Section 603(d) of the Rehabilitation Act)
- Cooperative Agreements and Coordination (Section 101(a)(11) of the Rehabilitation Act)
- Order of Selection (Section 101(a)(5) of the Rehabilitation Act)



I. DEFINITIONS

Competitive integrated employment.

Section 7(5) of Title I of the Rehabilitation Act, as amended by Title IV of WIOA, adds a new term, “competitive integrated employment,” to the definition section. Competitive, integrated employment generally means work performed on a full or part-time basis (including self-employment) for which an individual is:

- 1) Compensated at not less than federal minimum wage requirements or State or local minimum wage law (whichever is higher) and not less than the customary rate paid by the employer for the same or similar work performed by other individuals without disabilities;
- 2) At a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and
- 3) Presented, as appropriate, with opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

Although this is a new statutory term, the term and its definition generally represent a consolidation of two separate definitions and their terms in current regulations—“competitive employment” and “integrated setting.” In addition, the new statutory definition incorporates a criterion related to advancement in employment that is not included in either of the two current regulatory definitions.

- 1. Does the VR services portion of the State Plan include and define the term “competitive integrated employment” consistent with WIOA Title IV amendments to the Rehabilitation Act?**

Customized employment.

Section 7(7) of the Rehabilitation Act, as amended by WIOA, adds and defines the term “customized employment.” The definition for the term “customized employment” means competitive, integrated employment for an individual with a significant disability that is based on: an individualized determination of the strengths, needs, and interests of the individual with a significant disability; is designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer; and is carried out through flexible strategies, such as:

1. Job exploration by the individual; and
2. Working with an employer to facilitate placement including:



- Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;
- Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;
- Representation by a professional chosen by the individual, or self-representation of the individual, in working with an employer to facilitate placement; and
- Providing services and supports at the job location.

2. Does the VR services portion of the State Plan include and define the term “customized employment” consistent with Title I of the Rehabilitation Act, as amended by WIOA?

Employment outcome.

Section 7(11) of the Rehabilitation Act, as amended by WIOA, revises the definition of “employment outcome” to include customized employment within its scope.

3. Does the VR services portion of the State Plan include and define the term “employment outcome” to include customized employment within its scope, consistent with Title I of the Rehabilitation Act, as amended by WIOA?

Supported employment.

Section 7(38) of the Rehabilitation 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.

4. Does the VR services portion of the State Plan include and define the term “supported employment” to reference competitive integrated employment and customized employment and require that an individual who is employed in an integrated setting, but not in competitive integrated employment, is working toward such an outcome on a short-term basis for such work to qualify as supported employment, consistent with Title I of the Rehabilitation Act, as amended by WIOA?



Supported employment services.

Section 7(39) of the Rehabilitation Act, as amended by WIOA, revises the definition of “supported employment services” to extend the allowable timeframe for the provision of these services from 18 months to 24 months.

- 5. Does the VR services portion of the State Plan include and define the term “supported employment services” to extend the allowable timeframe for the provision of these services from 18 to 24 months, consistent with Title I of the Rehabilitation Act, as amended by Title IV of WIOA?**

Pre-employment transition services.

Section 7(30) of the Rehabilitation Act, as amended by Title IV of WIOA, defines the term “pre-employment transition services” to mean those specific services specified in Section 113 of the Rehabilitation Act. [See below]

- 6. Does the VR services portion of the State Plan include and define the term “pre-employment transition services, consistent with Title I of the Rehabilitation Act, as amended by Title IV of WIOA?**

Student with a disability.

Section 7(37) of the Rehabilitation Act, as amended by Title IV of WIOA, defines the term “student with a disability” to mean an individual with a disability in school who is (1) at least 16 years old, unless the State elects to provide pre-employment transition services at a younger age, and no older than 21, unless the State provides transition services under the Individuals with Disabilities Education Act (IDEA) at an older age; and (2) receiving transition services pursuant to IDEA, or is a student who is an individual with a disability for the purposes of section 504 of the Rehabilitation Act.

- 7. Does the VR services portion of the State Plan include and define the term “student with a disability” consistent with Title I of the Rehabilitation Act, as amended by Title IV of WIOA?**

Youth with a disability.

Section 7(42) of the Rehabilitation Act, as amended by Title IV of WIOA, defines the term “youth with a disability” to mean an individual with a disability who is not younger than 14 years of age and not older than 24 years of age.

- 8. Does the VR services portion of the State Plan include and define the term “youth with a disability” consistent with Title I of the Rehabilitation Act, as amended by Title IV of WIOA?**



II. ELIGIBILITY FOR VR SERVICES

Section 102(a) of the Rehabilitation Act, as amended by Title IV of WIOA, includes several changes regarding eligibility for VR services:

- 1) An individual with a disability, whose physical or mental impairment constitutes a substantial impediment to employment, may be determined eligible for VR services if he or she requires services to advance in employment;
- 2) For purposes of an assessment for determining eligibility, an individual must be presumed to have a goal of an employment outcome.
- 3) Prior to determining that an applicant is unable to benefit due to the severity of the individual's disability or that the individual is ineligible for VR services, the State VR agency must explore the individual's abilities, capabilities and capacity to perform in work situations through the use of trial work experiences, with appropriate supports.
- 4) In providing trial work experiences, the State VR agency must provide the individual with the opportunity to try different employment experiences, including supported employment, and the opportunity to become employed in competitive integrated employment.
- 5) The ineligibility determination must be an individualized one, based on the available data, and must not be based on assumptions about broad categories of disabilities.
- 6) The individual, or as appropriate, the individual's representative, must be informed in writing of the ineligibility determination, including the clear and convincing evidence that forms the basis for the determination of ineligibility.

9. Does the VR services portion of the State Plan include policies regarding eligibility for VR services that are consistent with Title I of the Rehabilitation Act, as amended by Title IV of WIOA and the principle that individuals with disabilities, including those with the most significant disabilities, are capable of achieving competitive integrated employment when provided the necessary skills and supports?

III. STATE VR SERVICES STRATEGIES, IN GENERAL

Sections 101(a)(15) and (18) of the Rehabilitation Act describe required VR services strategies and how the VR agency will use these strategies to achieve its goals and priorities, support innovation and expansion activities, and overcome any barriers to accessing the VR and the Supported Employment programs. Section 101(a)(15) also provides that the comprehensive needs assessment include a review of the needs of youth and students, especially with regard to pre-employment transition services and the coordination of services with educational agencies and the methods to improve the provision of VR services, especially transition services. Section 106 of the Rehabilitation Act requires that the VR program comply with the common performance accountability



measures established under section 116 of WIOA, which apply to all core programs of the workforce development system.

10. Does the VR portion of the State Plan describe:

- a) **The methods to be used to expand and improve services to individuals with disabilities?**
- b) **How the comprehensive needs assessment includes a review of the needs of youth and students, especially with regard to pre-employment transition services and the coordination of services with educational agencies?**
- c) **How a broad range of assistive technology services and devices will be provided to individuals with disabilities at each stage of the rehabilitation process and on a statewide basis?**
- d) **The outreach procedures that will be used to identify and serve individuals with disabilities who are minorities, including those with the most significant disabilities, as well as those who have been unserved or underserved by the VR program?**
- e) **The methods to be used to improve and expand VR services for students with disabilities, including the coordination of services designed to facilitate the transition of such students from school to postsecondary life (including the receipt of VR services, postsecondary education, employment, and pre-employment transition services)?**
- f) **If applicable, plans for establishing, developing, or improving community rehabilitation programs within the State to promote competitive integrated employment, including customized and supported employment?**
- g) **Strategies to improve the performance of the State with respect to the performance accountability measures under section 116 of WIOA?**

The primary indicators of performance under section 116 of WIOA include:

- (I) the percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program;
- (II) the percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program;
- (III) the median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;
- (IV) the percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent (subject to clause (iii)), during participation in or within 1 year after exit from the program;



(V) the percentage of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment; and

(VI) the indicators of effectiveness in serving employers established pursuant to clause (iv).

11. Does the VR portion of the State Plan describe strategies for assisting other components of the statewide workforce development system in assisting individuals with disabilities?

12. Does the VR portion of the State Plan describe how the agency's strategies will be used to:

- **Achieve goals and priorities by the State, consistent with the comprehensive needs assessment;**
- **Support innovation and expansion activities; and**
- **Overcome identified barriers relating to equitable access to and participation of individuals with disabilities in the State VR Services Program and the State Supported Employment Services Program?**

IV. PRE-EMPLOYMENT TRANSITION SERVICES

Section 113 of Title I of the Rehabilitation Act, as amended by Title IV of WIOA, requires VR agencies to coordinate with local educational agencies in providing, or arranging for the provision of, pre-employment transition services to students with disabilities who are eligible or potentially eligible for VR services and in need of such services. Section 113(b) specifies required activities, such as job exploration counseling, work-based learning experiences, workplace readiness training, and instruction in self-advocacy. Section 113(c) specifies authorized activities to improve the transition of students with disabilities from school to postsecondary education or an employment outcome. The funds utilized for the required activities can be used for the purposes of providing “authorized” activities as well, however they do not alleviate the obligation to provide for the required activities. In addition, each local office of a State VR agency must carry out specified responsibilities, including working with local workforce development boards, one-stop centers, employers, and schools. Section 110(d) requires States to reserve 15 percent of their VR allotment to provide these services.

Required pre-employment transition activities include:

- (1) job exploration counseling;
- (2) work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment to the maximum extent possible;



- (3) counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;
- (4) workplace readiness training to develop social skills and independent living; and
- (5) instruction in self-advocacy, which may include peer mentoring.

Authorized pre-employment transition activities include:

- (1) implementing effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;
- (2) developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently, participate in postsecondary education experiences, and obtain and retain competitive integrated employment;
- (3) providing instruction to vocational rehabilitation counselors, school transition personnel, and other persons supporting students with disabilities;
- (4) disseminating information about innovative, effective, and efficient approaches to achieve the goals of this section;
- (5) coordinating activities with transition services provided by local educational agencies under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);
- (6) applying evidence-based findings to improve policy, procedure, practice, and the preparation of personnel, in order to better achieve the goals of this section;
- (7) developing model transition demonstration projects;
- (8) establishing or supporting multistate or regional partnerships involving States, local educational agencies, designated State units, developmental disability agencies, private businesses, or other participants to achieve the goals of this section; and
- (9) disseminating information and strategies to improve the transition to postsecondary activities of individuals who are members of traditionally unserved populations.

13. Does the VR portion of the State Plan describe how the State VR agency will coordinate with local educational agencies in providing or arranging for the provision of pre-employment transition services to students with disabilities who are eligible or potentially eligible for VR services and in need of such services?

14. Does the VR portion of the State Plan describe required pre-employment transition services activities and authorized pre-employment transition activities?



15. Does the VR portion of the State Plan describe how the local offices of the State VR agency carry out specified responsibilities, including working with local workforce development boards, one-stop centers, employers, and schools?

V. SUBMINIMUM WAGES

Review of Individuals in Extended Employment and Other Employment Under FLSA Special Certificates

Section 101(a)(14) of the Rehabilitation Act, as amended by Title IV of WIOA, increases the frequency of reviews that the VR agencies must conduct when individuals with disabilities, who have been served by the VR program, obtain subminimum wage employment or extended employment.

16. Does the VR services portion of the State Plan update the frequency of reviews that the State VR agency must conduct when individuals with disabilities, who have been served by the VR program, obtain subminimum wage employment or extended employment?

Limitations on the Use of Subminimum Wages

Section 511 of the Rehabilitation Act (Section 511), as added by Title IV of WIOA, imposes limitations on employers who hold special wage certificates under the Fair Labor Standards Act (FLSA) 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 subminimum wage. Section 511 also establishes the roles and responsibilities of the VR agencies and State and local educational agencies, in assisting individuals with disabilities, including youth with disabilities, who are considering employment, or who are already employed, at a subminimum wage, to maximize opportunities to achieve competitive integrated employment through services provided by the State VR agency and the local educational agencies. Section 511 takes effect on July 22, 2016.

More specifically, Section 511(d) requires the State VR agency and the State educational agency to develop a coordinated process, or use an existing process, for providing youth with disabilities documentation demonstrating completion of the various actions required by Section 511. Other relevant statutory provisions include section 511(a) regarding the actions that youth must complete prior to beginning subminimum wage employment and section 511(c) regarding the actions that individuals with disabilities of any age must complete in order to continue employment at subminimum wage. Furthermore, Section 511(e)(2)(B) permits State VR agencies, along with the Department of Labor, to review individual documentation held by entities holding special wage certificates under the FLSA to ensure the required documentation is maintained



for individuals with disabilities, including youth with disabilities, who are employed at the subminimum wage level.

- 17. Does the VR services portion of the State Plan specify the roles and responsibilities of the State VR agency regarding implementation of Section 511 (Limitations on the Use of Subminimum Wage), including the provision of career counseling and information and referral?**
- 18. Does the VR services portion of the State Plan include a description of the new process or existing process to document the completion of the various actions that must be taken by a youth with a disability who is an individual with a disability under Section 511 (Limitations on the Use of Subminimum Wage)?**
- 19. Does the VR services portion of the State Plan describe the process for reviewing individual documentation held by entities holding special wage certificates under the FLSA to ensure the required documentation is maintained for individuals with disabilities, including youth with disabilities, who are employed at the subminimum wage level?**

VI. STATE SUPPORTED EMPLOYMENT PROGRAM

Section 603(d) of the Rehabilitation Act, as amended by Title IV of WIOA, requires each State to reserve and use 50 percent of its allotment under the Supported Employment program to provide supported employment services, including extended services, to youth with the most significant disabilities. Other relevant statutory provisions are found in section 602, which highlights services to youth with the most significant disabilities in the purpose section of title VI; section 604, which authorizes services specifically for youth with the most significant disabilities; section 605, which identifies youth with the most significant disabilities as eligible for supported employment services; and section 606, which establishes certain State plan requirements specific for services to youth with the most significant disabilities. Section 7(39) of the Act, as amended by Title IV of WIOA, revises the definition of “supported employment services” to mean those on-going supports provided for a period of time not to exceed 24 months.

- 20. Does the VR portion of the State Plan describe the State's goals and priorities for funds received for the provision of supported employment services?**
- 21. Does the VR portion of the State Plan describe the activities to be conducted, with funds reserved for youth with the most significant disabilities, including the provision of extended services for a period not to exceed 4 years; and how the State will leverage other public and private funds to increase resources for extended services and expanded**



supported employment opportunities for youth with the most significant disabilities?

VII. COOPERATIVE AGREEMENTS AND COORDINATION

Section 101(a)(11) of the Rehabilitation Act, as amended by Title IV of WIOA, requires that the VR portion of the State Plan describe how the State VR agency will cooperate and coordinate with various entities and State agencies, including:

- State educational agency, including the provision of transition services and pre-employment transition services;
- State agency responsible for administering the State Medicaid program;
- State agency with primary responsibility for providing services and supports for individuals with intellectual and/or developmental disabilities;
- The State agency responsible for providing mental health services;
- Lead agency responsible for administering the Assistive Technology programs;
- State agencies functioning as an Employment Network under the Ticket to Work and Self-Sufficiency program;
- Agencies and programs that are not carrying out activities through the statewide workforce development system; and
- Employers, including working with employers to identify competitive integrated employment and career exploration opportunities.

In addition, Title I of the Rehabilitation Act, as amended by Title IV of WIOA, adds a new section 101(c) to the Act that makes clear that nothing in the Act is to be construed as reducing the responsibility of the local educational agencies or any other agencies under IDEA to provide or pay for any transition services that are also considered to be special education or related services necessary for providing a free appropriate public education to students with disabilities.

22. Does the VR portion of the State Plan describe how the State VR agency will cooperate and coordinate with various entities and State agencies, including:

- State educational agency, including the provision of transition services and pre-employment transition services?
- State agency responsible for administering the State Medicaid program?
- State agency with primary responsibility for providing services and supports for individuals with intellectual and/or developmental disabilities?
- The State agency responsible for providing mental health services?
- Lead agency responsible for administering the Assistive Technology programs;
- State agencies functioning as an Employment Network under the Ticket to Work and Self-Sufficiency program?



- Agencies and programs that are not carrying out activities through the statewide workforce development system?
- Employers, including working with employers to identify competitive integrated employment and career exploration opportunities?

23. Does the VR portion of the State Plan make it clear that nothing in the Act is to be construed as reducing the responsibility of the local educational agencies or any other agencies under IDEA to provide or pay for any transition services that are also considered to be special education or related services necessary for providing a free appropriate public education to students with disabilities?

VIII. ORDER OF SELECTION

Section 101(a)(5) of the Rehabilitation Act, as amended by Title IV of WIOA, permits State VR agencies to serve eligible individuals who require specific services or equipment to maintain employment, regardless of whether they are currently receiving VR services. The State VR agency may serve these individuals regardless of any order of selection the State has established.

24. Does the VR portion of the State Plan describe:

- **The order to be followed in selecting eligible individuals to be provided VR services?**
- **The justification for the order?**
- **The service and outcome goals?**
- **The time within which these goals may be achieved for individuals in each priority category within the order?**
- **How individuals with the most significant disabilities are selected for services before all other individuals with disabilities?**
- **If the State VR agency has elected to serve eligible individuals, regardless of any established order of selection, who require specific services or equipment to maintain employment?**

