



LEAD CENTER

POLICY BRIEF

Summary Description of Title IV of the Workforce Innovation and Opportunity Act (State Vocational Rehabilitation Program) Notice of Proposed Rulemaking

APRIL 16, 2015

The purpose of this Policy Brief is to provide a summary description of the April 16, 2015 Notice of Proposed Rulemaking (NPRM) regarding Title IV of the Workforce Innovation and Opportunity Act (State Vocational Rehabilitation Program). This policy brief does not include an analysis or recommendations regarding the content of the NPRM.

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SUMMARY DESCRIPTION
TITLE IV OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT
(STATE VOCATIONAL REHABILITATION PROGRAM)
NOTICE OF PROPOSED RULEMAKING

INTRODUCTION AND OVERVIEW

Title IV of the Workforce Innovation and Opportunity Act (WIOA) (P.L. 113-128), enacted July 22, 2014, makes significant changes to the Rehabilitation Act of 1973 (hereafter referred to as the Rehab Act). As a result, on April 16, 2015 the Secretary of Education (ED) published in the Federal Register a [Notice of Proposed Rulemaking \(NPRM\) “State Vocational Rehabilitation Services program; State Supported Employment Services program; Limitations on Use of Subminimum Wage.”](#) The NPRM proposes to amend parts 361 and 363 of title 34 of the Code of Federal Regulations (CFR). These parts, respectively, implement the:

- State Vocational Rehabilitation (VR) Services program; and
- State Supported Employment Services program.

In addition, WIOA added section 511 to title V of the Rehab Act. Section 511 limits the payment of subminimum wages to individuals with disabilities by employers holding special wage certificates under the Fair Labor Standards Act (FLSA). Although the Department of Labor administers the FLSA, some requirements of section 511 fall under the purview of the Secretary of Education. Therefore, the Secretary of Education proposes to add a new part 397 to title 34 of the CFR to implement those particular provisions. [80 FR column 2 at page 21061]

More specifically, title IV of WIOA makes three significant changes to title I of the Rehab Act that affect the State VR program. First, WIOA strengthens the alignment of the VR program with other components of the workforce development system by imposing unified strategic planning requirements, common performance accountability measures, and requirements governing the one-stop delivery system. In so doing, WIOA places heightened emphasis on coordination and collaboration at the Federal, State, and local levels to ensure a streamlined and coordinated service delivery system for job-seekers, including those with disabilities, and employers. [80 FR column 3 at pages 21059 to 21060]

The National Center on Leadership for the Employment and Economic Advancement of People with Disabilities (LEAD) is a collaborative of disability, workforce and economic empowerment organizations led by National Disability Institute with funding from the U.S. Department of Labor's Office of Disability Employment Policy, Grant No. #OD-23863-12-75-4-11. This document does not necessarily reflect the views or policies of the Office of Disability Employment Policy, U.S. Department of Labor, nor does the mention of trade names, commercial products or organizations imply endorsement by the U.S. Government.

Consistent with the congressional intent to align core programs, the Department of Education and the Department of Labor issued a [joint NPRM to implement jointly administered activities under title I of WIOA](#) (e.g., those related to Unified or Combined State Plans, performance accountability, and the one-stop delivery system), applicable to the workforce development system's core programs (Adult, Dislocated Worker and Youth programs; Adult Education and Literacy programs; Wagner-Peyser Employment Service program; and the Vocational Rehabilitation program). These joint proposed regulations are set forth in a separate NPRM also published in the Federal Register on April 16, 2015. WIOA also makes corresponding changes to title I of the Rehab Act. Consequently, ED proposes to make conforming changes throughout part 361 and align the VR program-specific regulations with the joint proposed regulations to ensure consistency among all core programs. [80 FR column 1 at page 21060]

Second, WIOA places heightened emphasis throughout the Rehab Act on the achievement of competitive integrated employment. The foundation of the VR program is the principle that individuals with disabilities, including those with the most significant disabilities, are capable of achieving high quality, competitive integrated employment when provided the necessary skills and supports. To increase the employment of individuals with disabilities in the competitive labor market, the workforce system must provide the opportunity for such individuals to participate in job-driven training and pursue high-quality employment outcomes. [80 FR columns 1 to 2 at page 21060]

Third, WIOA places heightened emphasis on the provision of services to students and youth with disabilities to ensure that they have meaningful opportunities to receive the training and other services they need to achieve employment outcomes in competitive integrated employment. The Rehab Act, as amended by WIOA, expands not only the population of students with disabilities who may receive services but also the kinds of services that the VR agencies provide to youth and students with disabilities who are transitioning from school to postsecondary education and employment. [80 FR column 2 at page 21060]

WIOA also makes several significant changes to title VI of the Rehab Act, which governs the Supported Employment program. All of the amendments to title VI of the Rehab Act are consistent with those made throughout the Rehab Act, namely to maximize the potential of individuals with disabilities, especially those with the most significant disabilities, to achieve competitive integrated employment and to expand services for youth with the most significant disabilities. [80 FR column 3 at page 21060]

First, WIOA amends the definition of "supported employment" to make clear that supported employment outcomes must be in competitive integrated employment or, if in an integrated setting that is not competitive integrated employment, then in an integrated setting in which the individual is working on a short-term basis toward competitive integrated employment. [80 FR column 3 at page 21060]

Second, WIOA requires States to reserve at least 50 percent of their supported employment program allotment for the provision of supported employment services to

youth with the most significant disabilities. With these reserved funds, States may provide extended services, for a period up to four years, to youth with the most significant disabilities. Prior to the enactment of WIOA, extended services were not permitted under either the VR program or the Supported Employment program. By requiring that States use half of their supported employment program funds and provide a match for these reserved funds, Congress reinforces the heightened emphasis on the provision of services to youth with disabilities. In addition, States must provide a non-Federal share of 10 percent of the funds reserved for the provision of supported employment services to youth with the most significant disabilities. [80 FR column 3 at page 21060]

Section 511 of the Rehab Act, as added by WIOA, imposes requirements 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 the subminimum wage level. Section 511 also establishes the roles and responsibilities of the Designated State Units (DSU) for the VR program and State and local educational agencies in assisting individuals with disabilities, including youth with disabilities, to maximize opportunities to achieve competitive integrated employment through services provided by VR and the local educational agencies. [80 FR column 1 at page 21061]

The purpose of this policy brief is to describe some of the most significant changes to the Rehab Act made by WIOA and the proposed regulations issued by ED to implement these statutory changes. The following symbol is used to reference a particular section in the proposed and current regulations (e.g., §361.5) This policy brief is not intended to be comprehensive but rather to highlight select provisions in order to assist people with disabilities and other interested stakeholders to access proposed policies included in the lengthy NPRM.

EFFECTIVE DATES

The WIOA amendments to title I of the Rehab Act were effective on the date of enactment (July 22, 2014). The WIOA amendments that added Section 511 (Limitation on the Use of Subminimum Wage) go into effect two years after the date of enactment (July 22, 2016).

STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

DEFINITIONS [§361.5]

Competitive integrated employment.

WIOA adds a new term, “competitive integrated employment,” to the definition section of the Rehab Act (Section 7(5)). 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, 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. [80 FR column 3 at pages 21065 to 21066]

The proposed definition of “competitive integrated employment” would mirror the statutory definition in section 7(5) of the Rehab Act, as amended by WIOA, as well as provide two clarifications with respect to the criteria for integrated work locations. [80 FR column 1 at page 21066]

First, proposed §361.5(c)(9)(ii)(A) would clarify that the employment location must be in “a setting typically found in the community.” [80 FR column 1 at page 21066]

Second, proposed §361.5(c)(9)(ii)(B) would clarify that the employee with a disability’s interaction with other employees and others, as appropriate (e.g., customers and vendors), who are not persons with disabilities (other than supervisors and service providers) must be to the same extent that employees without disabilities in similar positions interact with these same persons. This interaction must occur as part of the individual’s performance of work duties and must occur both in the particular work unit and the entire work site, as applicable. [80 FR column 1 at page 21066]

ED further proposes to amend the definition of “integrated setting” in proposed §361.5(c)(32)(ii) to conform to the clarifications provided in the proposed definition of “competitive integrated employment” in proposed §361.5(c)(9)(ii) to ensure consistency between the two terms. [80 FR column 1 at page 21066]

- ED continues to maintain the longstanding Department policy that settings established by community rehabilitation programs specifically for the purpose of employing individuals with disabilities (e.g., sheltered workshops) do not

constitute integrated settings because these settings are not typically found in the competitive labor market. [80 FR column 3 at page 21066]

- ED believes the focus of whether the setting is integrated should be on the interaction between employees with and without disabilities, and not solely on the interaction of employees with disabilities with people outside of the work unit. For example, the interaction of individuals with disabilities employed in a customer service center with other persons over the telephone, regardless of whether these persons have disabilities, would be insufficient by itself to satisfy the definition. Instead, the interaction of primary consideration should be that between the employee with the disability and his or her colleagues without disabilities in similar positions.
- Nonetheless, ED recognizes that individuals who are self-employed or who telecommute may interact more frequently with persons such as vendors and customers than with other employees. Since these persons often work alone from their own homes rather than together in a single location, and may have little contact with fellow employees, ED has long maintained that self-employment and telecommuting are considered to meet the criteria for an integrated location, so long as the employee with the disability interacts with employees in similar positions and other persons without disabilities to the same extent that these persons without disabilities interact with others, though this interaction need not be face-to-face. [80 FR column 1 at page 21067]
- ED states that the Designated State Unit (DSU), which is responsible for administering the State VR program, is to consider the interaction between employees with disabilities and those without disabilities that is specific to the performance of the employee's job duties, and not the casual, conversational, and social interaction that takes place in the workplace. As a result, it would not be pertinent to its determination of an integrated setting for a DSU to consider interactions in the lunchrooms and other common areas of the work site in which employees with disabilities and those without disabilities are not engaged in performing work responsibilities. This determination, particularly with regard to the level of interaction, would be applicable regardless of whether the individual with a disability is an employee of the work site or a community rehabilitation program hires the individual with a disability under a service contract for that work site. Specifically, individuals with disabilities hired by community rehabilitation programs to perform work under service contracts, either alone or in groups (e.g., landscaping or janitorial crews), whose interaction with persons without disabilities (other than their supervisors and service providers) is with persons working in or visiting the work locations (and not with employees of the community rehabilitation programs without disabilities in similar positions) would not be performing work in an integrated setting. In summary, the DSU must determine, on a case-by-case basis, that a work location is in an integrated setting if it both is typically found in the community, and is one in which the employee with the disability interacts with employees and other persons, as appropriate to the position, who do not have disabilities to the same extent that employees without disabilities interact with these persons. Finally, the DSU is to consider the interaction between the employee with the disabilities and these

other persons that takes place for the purpose of performing his or her job duties, not mere casual and social interaction. [80 FR column 2 at page 21067]

In addition, ED proposes to replace the terms “competitive employment” and “employment in an integrated setting,” as appropriate, with “competitive integrated employment” throughout this part. [80 FR column 1 at page 21066]

Finally, to ensure that the employment of persons with disabilities is equivalent in all respects to that of persons without disabilities, section 7(5) of the Rehab Act, as amended by WIOA, establishes a new criterion not contained in current regulations. Proposed §361.5(c)(9)(iii) mirrors the language in section 7(5) of the Rehab Act and would require that the employee with the disability have the same opportunities for advancement as employees without disabilities in similar positions.

Customized employment.

Section 7(7) of the Rehab 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.

The proposed definition, §361.5(c)(11), mirrors the statute. [80 FR column 3 at page 21067]

Employment outcome.

Section 7(11) of the Rehab Act, as amended by WIOA, revises the definition of “employment outcome” to include customized employment within its scope. ED proposes to amend the definition of “employment outcome” in §361.5(c)(15) to specifically identify customized employment as an employment outcome under the VR

program. ED also proposes to amend the definition to require that all employment outcomes achieved through the VR program be in competitive integrated employment or supported employment, thereby eliminating uncompensated outcomes from the scope of the definition for purposes of the VR program. [80 FR column 1 at page 21068]

Supported employment.

Section 7(38) of the Rehab 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. ED proposes, 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. By limiting the timeframe, ED ensures that individuals do not remain in subminimum wage employment for the purpose of achieving supported employment outcomes. [80 FR column 3 at pages 21069 to 21070]

Supported employment services.

Section 7(39) of the Rehab 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. ED proposes to revise the definition in §361.5(c)(54) to extend the allowable timeframe for the delivery of these services from 18 months to 24 months. ED also proposes to make changes that clarify the individualized and customized nature of supported employment services. [80 FR column 1 at page 21070]

Pre-employment transition services.

Section 7(30) of the Rehab Act, as amended by WIOA, defines the term “pre-employment transition services” to mean those specific services specified in section 113 of the Rehab Act and implemented in proposed §361.48(a). The term is implemented in §361.5(c)(42).

Student with a disability.

Section 7(37) of the Rehab Act, as amended by WIOA, defines the term “student with a disability” to mean an individual with a disability in school who is (1) 16 years old, or younger, if determined appropriate under the Individuals with Disabilities Education Act (IDEA), 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 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 Act (29 U.S.C. 794). The term is implemented in the proposed §361.5(c)(51). It is important

to note that ED interprets a student with a disability, given the plain meaning of the statutory definition, as not including an individual with a disability in postsecondary education. [80 FR column 2 at page 21077]

Youth with a disability.

Section 7(42) of the Rehab Act, as amended by 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. The term is implemented in §361.5(c)(59).

STATE PLAN

Coordination [§361.22; §361.24]

Section 101(a)(11)(D) of the Rehab Act, as amended by WIOA, clarifies two points: 1) interagency coordination between the DSUs and educational agencies must include coordination regarding the provision of pre-employment transition services; and 2) DSUs may provide consultation and technical assistance to education officials through alternative means, such as conference calls and video conferences. In addition, 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. Finally, section 511 of the Act, as amended by WIOA, imposes several requirements that are particularly related to documentation of services for DSUs and State and local educational agencies with regard to youth with disabilities seeking subminimum wage employment. [80 FR column 1 at page 21078]

ED proposes to amend current §361.22(a) to incorporate reference to pre-employment transition services as an area that must be included during inter-agency coordination of transition services. [80 FR column 1 at page 21078]

ED proposes to amend current §361.22(b)(1) to clarify that VR agencies may use alternative means, such as video conferences and conference calls, for providing consultation and technical assistance to education officials. ED also proposes to amend current §361.22(b) by adding new clauses (5) and (6) to incorporate, by reference, certain requirements from section 511 into the formal interagency agreement between the DSU and the State educational agency. Finally, ED proposes to add a new paragraph (c) under §361.22 to incorporate the construction clause in section 101(c) of the Act. [80 FR columns 1 to 2 at page 21078]

Section 101(a)(11) of the Rehab Act makes several changes that highlight the importance of transition and other matters affecting students and youth with disabilities with regard to the coordination of services between the VR program and other non-educational programs. [80 FR column 2 at page 21079]

Proposed §361.24(a) would incorporate non-educational agencies serving out-of-school youth as another entity with which the VR agency must coordinate. ED also proposes to amend current §361.24(c) and (d), which govern coordination between the DSUs and employers and section 121 projects, respectively, to include transition services among the matters that must be included in coordination efforts. [80 FR column 2 at page 21079]

Order of Selection [§361.36]

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

ED proposes to amend current §361.36(a)(3) by adding a new paragraph (v) that would require DSUs implementing an order of selection to indicate in the VR services portion of the Unified or Combined State Plan if they have elected to serve eligible individuals in need of specific services or equipment for the purpose of maintaining employment, regardless of their assignment to a priority category in the State's order of selection. This statutory change, as well as the proposed regulatory change, is significant because, in effect, it creates an exemption from order of selection for eligible individuals who need a specific service or equipment in order to maintain employment. [80 FR column 3 at page 21073]

EVALUATION STANDARDS AND PERFORMANCE INDICATORS [§361.40]

The VR program will no longer be subject to its own set of performance standards and indicators established by the Department of Education. Section 106 of the Rehab 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. To that end, the Departments of Labor and Education have developed proposed joint regulations to implement these requirements. The proposed joint regulations regarding the performance accountability system, which will be incorporated in subpart E of this regulation, is presented in a separate NPRM published elsewhere in the April 16, 2015 issue of the Federal Register. [80 FR column 3 at page 21074]

ELIGIBILITY [§361.42]

Section 102(a)(1) of the Rehab Act, as amended by WIOA, makes clear that 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. [80 FR column 3 at pages 21074 to 21075]

ED proposes to amend current §361.42(a)(1)(iii) to clarify that an applicant, who meets all other eligibility criteria, may be determined eligible if he or she requires VR services to advance in employment. ED also proposes to clarify in current §361.42(c)(2) that a DSU must not consider an applicant's employment history, current employment status, level of education or educational credentials when determining eligibility for services. [80 FR column 1 at page 21075]

EXTENDED EVALUATION. [§361.41 AND §361.42]

WIOA amends section 102(a)(2)(B) of the Rehab Act by removing the limited exception to trial work experiences, whereby VR agencies made extended evaluations available to applicants, prior to determining that an individual is unable to benefit from VR services due to the severity of the individual's disability and, thus, is ineligible for VR services.

Although the term "extended evaluation" was not referenced in the Act, this is the term used in current regulation to describe the process by which the DSUs assess an individual's ability to benefit from VR services due to the severity of disability, when the individual, under limited circumstances, is unable to participate in trial work experiences. ED proposes to remove paragraph (f) from current §361.42 and redesignate (g) as (f). Proposed §361.41(b)(1)(ii) would remove reference to extended evaluation and only permit an exploration of the individual's abilities, capabilities, and capacity to perform in work situations carried out in accordance with current §361.42(e). [80 FR columns 2 and 3 at page 21075]

PRE-EMPLOYMENT TRANSITION SERVICES. [§361.48]

WIOA amends the Rehab Act by including a new section 113 that 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 110(d) requires States to reserve 15 percent of their VR allotment to provide these services.

ED proposes to add regulations implementing the provision of pre-employment transition services in a new paragraph in proposed §361.48(a).

Proposed §361.48(a)(1) would permit pre-employment transition services to be provided to all students with disabilities regardless of whether they have applied for VR services and would clarify that similar transition services are available to youth with disabilities under proposed §361.48(b) when specified in an individualized plan for employment.

Proposed §361.48(a)(2) specifies the required pre-employment transition services that are provided directly to students with disabilities. The designated State unit must provide the following pre-employment transition services:

- (i) Job exploration counseling;

- (ii) 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 in the community to the maximum extent possible;
- (iii) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;
- (iv) Workplace readiness training to develop social skills and independent living; and
- (v) Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment).

Proposed §361.48(a)(3) describes the authorized activities that the State may provide, if sufficient funds are available, to improve the transition of students with disabilities from school to postsecondary education or an employment outcome. Funds available and remaining after the provision of the required activities described in paragraph (a)(2) of this section may be used to improve the transition of students with disabilities from school to postsecondary education or an employment outcome by:

- (i) Implementing effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;
- (ii) Developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently; participate in postsecondary education experiences; and obtain, advance in and retain competitive integrated employment;
- (iii) Providing instruction to vocational rehabilitation counselors, school transition personnel, and other persons supporting students with disabilities;
- (iv) Disseminating information about innovative, effective, and efficient approaches to achieve the goals of this section;
- (v) Coordinating activities with transition services provided by local educational agencies under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);
- (vi) Applying evidence-based findings to improve policy, procedure, practice, and the preparation of personnel, in order to better achieve the goals of this section;
- (vii) Developing model transition demonstration projects;
- (viii) 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
- (ix) Disseminating information and strategies to improve the transition to postsecondary activities of individuals who are members of traditionally unserved and underserved populations.

Proposed §361.48(a)(4) describes the responsibilities for pre-employment transition coordination to be carried out by VR agencies. Each local office of a designated State unit must carry out responsibilities consisting of:

- (i) Attending individualized education program meetings for students with disabilities, when invited;
- (ii) Working with the local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities, including internships, summer employment and other employment opportunities available throughout the school year, and apprenticeships;
- (iii) Working with schools, including those carrying out activities under section 614(d) of the IDEA, to coordinate and ensure the provision of pre-employment transition services under this section; and
- (iv) When invited, attending person-centered planning meetings for individuals receiving services under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

Finally, proposed §361.48(a)(5) supports DSUs in providing pre-employment transition services, consulting with other federal agencies, and identifying best practices of the States for the provision of transition services to students with a variety of disabilities. [80 FR column 2 at page 21080]

Section 103(a)(15) of the Act, as amended by WIOA, adds pre-employment transition services among the scope of VR services that may be provided in accordance with an individual's individualized plan for employment. ED proposes to reorganize current §361.48 so that all current provisions are retained in proposed §361.48(b). ED also proposes to incorporate, along with those transition services already provided for, pre-employment transition services among the authorized list of individualized services a VR agency may provide under proposed §361.48(b)(18).

VR SERVICES FOR GROUPS OF INDIVIDUALS WITH DISABILITIES [§361.49(A)]

ED proposes 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. [80 FR column 3 at page 21082]

REVIEW OF INDIVIDUALS IN EXTENDED EMPLOYMENT AND OTHER EMPLOYMENT UNDER FLSA SPECIAL CERTIFICATES [§361.55]

Section 101(a)(14) of the Rehab Act, as amended by WIOA, increases the frequency of reviews that the DSUs must conduct when individuals with disabilities, who have been served by the VR program, obtain subminimum wage employment or extended employment. ED proposes to amend §361.55 to incorporate the new statutory requirement that these reviews be conducted semi-annually for the first two years of the individual's employment and annually thereafter. [80 FR column 2 at page 21084]

STATE SUPPORTED EMPLOYMENT SERVICES PROGRAM

PURPOSES [§363.1]

As proposed, the regulations would make clear that the purpose of the Supported Employment program is to enable individuals with the most significant disabilities, with on-going supports, to achieve competitive integrated employment (i.e., employment in an integrated setting that is compensated at or above the minimum wage). [80 FR column 2 at page 21086]

The proposed definition of “supported employment” would take into account that under some circumstances an individual’s employment, which must always be in an integrated setting, may not initially meet all of the criteria for competitive integrated employment. In those circumstances, an individual with a most significant disability would be considered to have achieved an employment outcome of supported employment if he or she is working in an integrated setting, on a short-term basis, toward competitive integrated employment. In the proposed definition, we would interpret “short-term basis” in this context to mean within six months of the individual entering supported employment. [80 FR column 2 at page 21086]

SERVICES TO YOUTH WITH THE MOST SIGNIFICANT DISABILITIES [§363.6 AND §363.54]

Section 603(d) of the Rehab Act, as amended by 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.

ED proposes to amend multiple sections in part 363 to incorporate these new requirements for providing supported employment services, including extended services, to youth with the most significant disabilities. [80 FR column 1 at page 21087]

In proposed §363.4(a) and (b), ED would implement new statutory provisions permitting the expenditure of supported employment program funds, reserved for the provision of supported employment services to youth with the most significant disabilities on extended services to youth with the most significant disabilities for up to four years following the transition from support from the Designated State Unit (DSU). ED proposes to amend current §363.4(c) to clarify that nothing in this part is to be construed as prohibiting the VR program from providing extended services to youth with the most significant disabilities with funds allotted under part 361.

EXTENSION OF TIME FOR THE PROVISION OF SUPPORTED EMPLOYMENT SERVICES [§363.6 AND §363.54]

Section 7(39) of the Act, as amended by 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.

ED proposes to amend current §363.53 to require that an individual must transition to extended services within 24 months of starting to receive supported employment services unless a longer time period is agreed to in the individualized plan for employment. The proposed regulation would specify conditions that must be met before a DSU assists an individual in transitioning to extended services, such as ensuring the individual is engaged in supported employment that is in competitive integrated employment, or in an integrated work setting in which the individual is working on a short-term basis toward competitive integrated employment, and the employment is customized for the individual consistent with his or her strengths, abilities, interests, and informed choice. Administratively, the State unit would also have to identify the source of extended services and meet all requirements for case closure. [80 FR column 3 at page 21087]

LIMITATIONS ON THE USE OF SUBMINIMUM WAGES [PROPOSED 34 CFR PART 397]

PURPOSE [§397.1]

Section 511 of the Rehab Act, as added by 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 of the Rehab Act also establishes the roles and responsibilities of the Designated State Units (DSU) for the vocational rehabilitation (VR) program 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 VR and the local educational agencies. [80 FR column 1 at page 21089]

Proposed §397.1 establishes the purpose of the regulations in this part, which is to set forth requirements the DSUs 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. [80 FR column 1 at page 21089]

This proposed section also states that these regulations should be read in concert with: part 300, which implements requirements under part B of the Individuals with Disabilities Education Act; part 361, which implements requirements for the VR program; and part 363, which implements the State Supported Employment Services program. ED believes this clarification is necessary to ensure all stakeholders understand that nothing in this part is to be construed as altering any requirement under parts 300, 361, or 363. Other relevant proposed regulations in this part include: §397.2, regarding the Department's jurisdiction; §397.3, regarding rules of construction; §397.4, regarding other applicable regulations; and §397.5, regarding applicable definitions. [80 FR column 2 at page 21089]

COORDINATED DOCUMENTATION PROCESS [§397.10]

Section 511(d) of the Rehab Act, as added by WIOA, requires the DSU 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 of the Act. Other relevant statutory provisions include section 511(a) of the Rehab Act, regarding the actions that youth must complete prior to beginning subminimum wage employment, and section 511(c) of the Rehab Act, regarding the actions that individuals with disabilities of any age must complete in order to continue employment at subminimum wage. [80 FR column 2 at page 21089]

Proposed §397.10 would require the DSU, in consultation with the State educational agency, to develop a process that ensures individuals with disabilities, including youth with disabilities, receive documentation demonstrating completion of the various activities required by section 511 of the Rehab Act, such as, to name a few, the receipt of transition services by eligible children with disabilities under the Individuals with Disabilities Education Act and pre-employment transition services under section 113 of the Act, as appropriate. [80 FR column 2 at page 21089]

Proposed §§397.20 and 397.30 would establish the documentation that the DSUs and local educational agencies, as appropriate, must provide to demonstrate completion of the various activities, required by section 511(a)(2) of the Rehab Act, by a youth with a disability. These would include completing pre-employment transition services under proposed §361.48(a) and the determination of eligibility or ineligibility for VR services under proposed §361.42 and § 361.43. [80 FR column 3 at page 21089]

Proposed §397.40 would establish the documentation that the DSUs must provide to individuals with disabilities of any age who are employed at a subminimum wage upon the completion of certain information and career counseling-related services, as required by section 511(c) of the Act. [80 FR column 3 at page 21089]

These proposed regulations are necessary to implement new statutory requirements. In so doing, these proposed regulations would inform DSUs, State, and local educational agencies of their specific responsibilities related to documentation required under

section 511 of the Act and would ensure that individuals with disabilities have sufficient information available to make informed choices. [80 FR column 3 at page 21089]

CONTRACTING PROHIBITION [§397.31]

Section 511(b)(2) of the Rehab Act, as added by WIOA, prohibits a local or State educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) from entering into a contract or other arrangement with an entity, which holds a special wage certificate under 14(c) of the FLSA for the purpose of operating a program for a youth under which work is compensated at a subminimum wage. [80 FR column 3 at page 21089]

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. Although section 511(b)(2) of the Act refers to youth in general, the proposed regulation is limited to youth with disabilities in order to be consistent with all other provisions of section 511 of the Act. [80 FR column 3 at pages 21089 to 21090]

REVIEW OF DOCUMENTATION PROCESS [§397.50]

Section 511(e)(2)(B) of the Rehab Act, as added by WIOA, permits DSUs, 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 for individuals with disabilities, including youth with disabilities, who are employed at the subminimum wage level, is maintained. [80 FR column 1 at page 21090]

Proposed §397.50 would authorize a DSU to review individual documentation, required by this part, for all individuals with disabilities who are employed at the subminimum wage level, that is maintained by employers, who hold special wage certificates under the FLSA. [80 FR column 2 at page 21090]