

## WIOA Summary

- The Workforce Innovation Opportunity Act (WIOA) passed in 2014 and was signed by President Obama on July 22, 2014. Portions of the law take effect at differing times.
- One key change goes into effect in July 2016 that affects youth transitioning out of school who may have sought employment options through RESPECT or placement in ADTs. Also, state VR agencies have to allocate at least 15 percent of their funds to pre-employment transition services to assist youths transitioning to adulthood.
- States have to have cooperative agreements with the state Medicaid plan administrative agency and the IDD agency (APD) in place specifying how VR services will be delivered. (None yet.)
- The primary changes that will affect ECs are in Section 511 which amends the Rehabilitation Act of 1973 and also touches into HCBS waiver programs.
- WIOA realigns several federal agencies the National Institute on Disability, Independent Living, and one or two other programs under the Administration on Community Living. The Rehabilitation Services administration (VR) remains under the Department of Education.
- In the summer of 2015, DOL released four draft sets of rules:

RIN: 1205-AB74; Docket No. ETA-2015-0002;  
Pages 20573-20687

DOL and DOE: Unified and Combined State Plans, Performance  
Accountability and One-Stop System Joint Provisions

RIN: 1205-AB73; Docket Number: 2015-05530  
Pages: 20689-21150  
Department of Labor – Titles I and II of WIOA

RIN: 1820-AB71; Docket Number 2015-05535  
Pages 20988-21058  
DOE Miscellaneous Program Changes

RIN: 1820-AB70; Docket Number: 2015-058538  
Pages 21059-21146  
DOE State VR Services Program; State Supported Employment Services  
Program and Limitations on Use of Subminimum wages (Title IV)

These rules have **not** been forwarded to the Office of Management and Budget for final review and approval.

## Review of the Rules by Section

**RIN: 1205-AB74; Docket No. ETA-2015-0002; Pages 20573-20687; DOL and DOE: Unified and Combined State Plans, Performance Accountability and One-Stop System Joint Provisions.**

- 20CFR676.100 requires that states complete unified or combined state plans every 4 years to outline the state's vision of the workforce development system and how the state will achieve its WIOA's goals. Vocational Rehabilitation is one of the 6 core programs required to be in the plan.

Florida's plan is available at: <http://careersourceflorida.com/about-us/reports-and-publication/>

Florida's plan is almost 300 pages in length. The VR information is on page 147 – 220.

In our written comments, we encouraged DOL to require that Governors appoint disability service providers on State Workforce Development Boards to ensure proper representation for the development of this section of the plan.

**RIN: 1205-AB73; Docket Number: 2015-05530; Pages 20689-21150; Department of Labor – Titles I and II of WIOA**

- 20CFR679.110 (b)(3)(ii)(A) through (D) requires that not less than 20 percent of the members of the State Board be representatives of the workforce. Such representatives must include labor organizations and registered apprenticeship programs. Florida ARF recommended that Governors be required to appoint representatives from the disability community including people with disabilities, disability service providers and direct support professionals as members of the State Board and all standing committees. If WIOA is to address the disability workforce crisis, the State Board must have a better understanding of the Americans with Disabilities Act and the Rehabilitation Act of 1973.
- 20CFR679.320 reviews the required representatives of Local Workforce Development Boards. Florida ARF recommended that similar to the State Boards, people with disabilities, disability service providers, and direct support professionals should be included on the Local Workforce Development Boards.
- We acknowledged that Local Boards should be reminded of the new utilization goal implemented under Section 503 regulations that all federal contractors should meet a 7% utilization goal in the hiring of people with disabilities.
- 20CFR679.380. Florida ARF supported the reference that Local Workforce Boards should identify a wide range of services based on the needs in the local area with special attention to services for individuals with disabilities and literacy services.
- 20CFR680.400 discusses the need for providers of training services and emphasizes informed consumer choice, job-driven training, provider performance, and continuous improvement as well as the quality and selection of training providers. Florida ARF stressed that Local Workforce Boards will need to ensure the availability of providers of training who understand the unique needs of individuals with disabilities. We see this as a potential opportunity for ECs.

**RIN: 1820-AB71; Docket Number 2015-05535; Pages 20988-21058; DOE Miscellaneous Program Changes**

- 20CFR373.7 proposes the Commissioner will give priority consideration to special demonstration programs for improving transition from education to employment, including competitive integrated employment which adds “competitive integrated employment” to the current regulations. DOE also proposes to add a definition of “competitive integrated employment” in §373.4. Florida ARF continues to communicate that the Department must remain open to opportunities for individuals with significant intellectual and developmental disabilities who may not be able to enter a competitive integrated employment workforce, but who may want to be part of an integrated employment setting with limited hours and compensation to meet their individual needs.

**RIN: 1820-AB70; Docket Number: 2015-058538; Pages 21059-21146; DOE State VR Services Program; State Supported Employment Services Program and Limitations on Use of Subminimum wage**

- **Starting in 2016, additional criteria must be met before an individual under age 24 may be employed at a subminimum wage. The criteria include ongoing career counseling and monitoring, with regularly-scheduled reassessments. Also, there is a new prohibition on educational agencies from contracting with sheltered work providers.**
- 34CFR361.1 discusses the purpose of the section on the Vocational Rehabilitation program and lays out definitions and terms of use. We asked for further clarification for the definition of “economic self-sufficiency” included in §361.1(b). “Many individuals with IDD who are able to work in competitive integrated employment may not earn income at a level that would permit them to have complete economic independence.” Without a clear definition, requiring “economic self-sufficiency” could be a barrier to competitive integrated employment for many individuals.
- 34CFR361– State Vocational Rehabilitation Service Program – We asked that as a general recommendation throughout this part and the other regulations, DOL should add “intellectual and developmental disability when listing types of disability (e.g. 34CFR361.17 (b) (vii) (A).
- Designated State Units have to provide youth with disabilities documentation demonstrating the completion of certain requirements prior to their starting subminimum wage employment with entities holding special wage certificates.

**Competitive Integrated Employment**

- We asked for further clarification in order to determine the effect of the rule on integrated employment options. Also, we recommended the Department issue guidance in the final regulation summary and through follow-up with the designated State units for the VR program to address the definition of "work units" and their impact on the definition of competitive integrated employment. We asked if a "work unit" refers to all employees in a certain job category or program, or to groups of employees working together to accomplish tasks. Certain categories of employees (such as temporary office workers and certain kinds of contract workers) regularly interact with others within the work site (including other employees, customers, or vendors), but do not work side by side or in collaboration with others within the same job category. Without further clarification, it is unclear whether some job placement models - such as agencies that contract with workplaces to place individuals with disabilities in "scattered" positions throughout the workplace would constitute competitive integrated employment.

- WIOA defines competitive employment as: Pays minimum wage or above; includes benefits and wages similar to those w/o disabilities performing the work; and has the same opportunity to interact with non-disabled individuals. The majority of individuals employed through the RESPECT program earn minimum wages.
- We continue to work with the VR program to clarify successful placements (Code 26) in relationship to RESPECT job referrals. With WIOA, VR may take a stricter interpretation of integrated regarding their placements, although this is not a RESPECT requirement.
- We continue to maintain competitive, integrated employment is the first employment option for consideration for individuals with disabilities, but this priority should not be to the exclusion of an array of options that best suit the individuals and their goals.

### **Customized Employment**

- Florida ARF supports the addition of the regulatory language defining customized employment. We are pleased to see the new option for providing employment services to individuals with significant disabilities, and we appreciate that the provision of services and supports at the job location is not subject to an arbitrary time limit.
- We anticipate seeing more emphasis on customized employment in the RESPECT program. This term applies to individuals with significant needs who seek work. Job placements should be based on the individuals' strengths, needs, and interests. Also, the jobs have to meet the needs of the individual and their employer.

### **Employment Outcome**

- Florida ARF recommended that DOL eliminate uncompensated outcomes when tracking outcomes. The proposed regulations should be clearer about intent, perhaps by adding a note in the regulation explaining the change.

### **Extended Services**

- Florida ARF supported the allowance for states to provide extended services to youth with significant disabilities for 4 years, and we proposed DOL should allow a reasonable amount of additional time if needed by the individual. *If necessary, it could be extended for a reasonable period of time (as defined in section 397.20) which must be consistent with the disability-related and vocational needs of the individual.*

### **Supported Employment**

- In our written comments, we recommended that DOL remove the six months limitation for achievement of an employment outcome for supported employment because the six month limit creates a constraint on those who need additional time for supported employment services before they are successfully placed in competitive integrated employment. We recommended revising §367.5(c)(53) to reflect: For a reasonable period of time (as defined in section 397.20) which must be consistent with the disability-related and vocational needs of the individual, as well as the anticipated length of time required to complete the services identified in the individualized plan for employment, not to exceed 18 months.

## Assessment for Determining Eligibility and Priority for Services

- §397.30 discusses the responsibilities of a local educational agency to youth with disabilities who are known to be seeking subminimum wage employment. Florida ARF recommended a modification and an addition within §397.30 under Subpart D, which describes the responsibilities of local educational agencies in documenting that a youth has received transition services, and we recommend deleting “*who are known to be seeking subminimum wage employment*” We also recommended the following addition to §397.30 related to retention and availability of the local educational agency documentation. The recommended language should address the goals of WIOA and ensure that youth with disabilities are adequately protected when exploring options for services.

*Of the documentation to demonstrate a youth with a disability’s completion of the actions described in §397.20(a) of this part, a local educational agency, as defined in § 397.5 (b) (1), can provide the youth with documentation that the youth has received transition services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), such as transition services available to the individual under section 614(d) of that act (20 U.S.C. 1414(d)). The local educational agency shall retain copies of such documentation, including for review by the Client Assistance Program established under 34 CFR part 370 or a Protection and Advocacy agency established under 42 U.S.C. 15041 et. seq.*

- We have requested clarification regarding reports that some state VR agencies are interpreting the proposed rules as prohibiting assessments by Community Rehabilitation Providers that hold a 14(c) certificate. Also, concern exists that the proposed rule may be misinterpreted as meaning Community Rehabilitation Providers who appropriately conduct some or all aspects of the eligibility assessments in the agency setting may be precluded from performing assessments at all.
- For youth who began VR services in transitions status, documentation requirements have to show first year career counseling and Information and Referral services (initially at 6 months and annually thereafter). Individuals already participating in “sheltered workshop” programs will be assessed annually and will receive counseling services.
- VR will likely be contracting out the review and monitoring function. While this may be an opportunity for nonprofit agencies, obviously agencies could not review their own clientele. Also, VR will want providers who understand the appropriate use of subminimum wages.

## Contracting Limitations on Educational Agencies

- §397.31 contains regulations on contracting limitations on educational agencies for subminimum wage certificates. We requested the following modification: Neither a local educational agency, as defined in §397.5(b)(1), nor a State educational agency, as defined in §397.5(b)(2), may enter into a contract, subcontract or other arrangement with an entity, as defined in § 397.5(d), for the purpose of operating a program under which a youth with a disability is engaged in subminimum wage employment. We requested clarification that nothing in this statute should be interpreted as precluding other types of contracts, subcontract or other arrangement with an entity, as defined in § 397.5(d), for other than operating a program under which a youth with a disability is engaged in subminimum wage employment.

In follow up to the Department’s request (NPRM page 21090) for comments “regarding the Department’s role and jurisdiction” with respect to the contracting limitation (§397.31), we asked the Department to issue guidance to local and State educational agencies that make clear that

contracting prohibitions with an entity, as defined in §397.5(d), only apply to contracts for the purposes of operating a program under which a youth with disability is engaged in subminimum wage employment. While this distinction appears clear in the statute and proposed regulation, we are aware of concern about misinterpretation and/or misrepresentation about the contracting limitations at the state and local levels.

We opined that there should not be a blanket ban on all contracting with Community Rehabilitation Providers for the other array of services being provided that do not result in 14(c) employment. Nor do we believe that Congress intended such a broad prohibition on utilization of disability service providers because they hold a certificate for some who need that option.

### **Coordinated Documentation Process**

- §397.40 requires the designated state unit, 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 the Rehabilitation Act.
- We asked if the proposed rule meant that an entity who holds a 14(c) certificate cannot provide pre-employment transition services or self-advocacy, self-determination and peer mentoring training required when the entity does not have a financial interest in the individual's employment outcome.
- Fifteen (15%) of VR funds have to be used for pre-employment transitions services for youth in schools. The VR program reports the intent is to provide a type of case management for these services and this is a potential opportunity for VR vendors. Once youth transition out of school, they will be picked up by VR and can be served for up to four years. If it is determined the youth cannot meet employment goals, they can be released for work in a subminimum wage job but will receive counseling in six months and annually thereafter.