

TWC Input on WIOA NPRM – Title IV

Reference(s): § 361.1

TWC Position: Agree

Summary

This section changes the purpose of this act from "prepare for and engage in gainful employment" to "prepare for and engage in competitive integrated employment and achieve economic self-sufficiency."

Comment

No comment.

Reference(s): § 361.2 to § 361.5

TWC Position: Agree

Summary

361.2 States that submit to the Secretary of Education a vocational rehabilitation services portion of the Unified or Combined State plan that meets the requirements of this act is eligible for a rehabilitation grant.

361.3 The Secretary of Education provides funding to assist the state in the costs of providing vocational services and administrative costs under the vocational rehabilitation services of the Unified or Combined State plan.

361.4 This section lists other sections of the Code of Federal Regulations (CFR) that apply to this program including the Education Department General Administrative Regulations (EDGAR) and others.

361.5 The preamble notes changes in 13 definitions out of 59 listed in this section in WIOA. Seven of the 11 definition changes are related to the changes in the most discussed term --"competitive integrated employment." The definition of "Administrative cost" is changed to clarify that for the VR program administrative costs do not include capital expenditures

Comment

No comment.

Reference(s): § 361.10

TWC Position: Agree

Summary

WIOA makes several changes in state plan requirements. First, it requires the state to submit a VR services portion of a Unified or Combined State Plan to be eligible to receive an allotment. Second, it clarifies that the plan includes all information required under section 101 (a) of the Act. Third it provides a cross-reference to the Unified and Combined State Plan proposed jointly by the Departments of Education and Labor which are published elsewhere in the Federal Register. The intent is to provide seamless, effective, and efficient delivery of services through the collaboration and combined funding. They request that proposed revisions to this section be limited to VR-specific comments and that more general comments be submitted to the proposed joint regulations published elsewhere. Prior to the adoption of any substantive policies or procedures specific to the provision of vocational rehabilitation services under the plan, the designated state agency must conduct public meetings throughout the state.

Comment

No comment.

Reference(s): § 361.11

TWC Position: Agree

Summary

361.11 describes the basis for the withholding of funds

Comment
No comment

Reference(s): § 361.12

TWC Position: Agree

Summary

The State Plan VR portion must assure the State agency, and the designated State unit if applicable, employs methods of administration found necessary by the Secretary for the proper and efficient administration of the plan and for carrying out all functions for which the State is responsible. These methods must include procedures to ensure accurate data collection and financial accountability.

Comment
No comment.

Reference(s): § 361.13

TWC Position: Agree

Summary

The State Plan must designate the DSA and DSU and specifies the requirements for each. If the DSA is authorized under State law to provide VR services to individuals who are blind, and includes a DSU as provided in paragraph (b), the Plan may designate that agency as the sole State agency to administer the part of the Plan under which VR services are provided for individuals who are blind. The Plan must assure the DSU meets the requirements of this section. The DSA may assign responsibility for providing VR services for individuals who are blind to a unit separate from that which provides VR services to other individuals with disabilities. Sections 361.13(c)(i)--(v) specify DSU's required activities and responsibilities, including (i) all decisions affecting eligibility for and the services provided to an individual; (iii) policy formulation and implementation; and (iv) the allocation and expenditure of VR funds.

Comment
No comment.

Reference(s): § 361.14

TWC Position: Agree

Summary

Provides for the state to designate a substitute DSA if the Secretary withholds funds from the original agency. Specifies requirements.

Comment
No comment.

Reference(s): § 361.15

TWC Position: Agree

Summary

Specifies the DSA's requirements if the State Plan's VR portion provides for the administration of the plan by one or more local agencies.

Comment
No comment.

Reference(s): § 361.16

TWC Position: Agree

Summary

Requires the State Plan include one of two assurances addressing whether the DSA is an independent Commission controlled by consumers or has established a State Rehabilitation Council meeting the requirements of Sec 361.17. Specifies requirements of the DSA to transmit information to consumers or the Council.

Comment

No Comment.

Reference(s): § 361.17

TWC Position: Agree

Summary

Specifies requirements for the Rehabilitation Council specified under Sec 361.16, including its appointment and its composition, terms, functions, and responsibilities (including those regarding the DSA).

Comment

No comment.

Reference(s): § 361.18

TWC Position: Agree

Summary

This provision relates to the comprehensive system of personnel development (CSPD) each DSU must establish to ensure adequately trained personnel. The amendments add specific educational and experiential criteria, describing requirements at the bachelor's [the bachelor's degree and specified experience are new minimum requirements], master's, and doctoral level, in fields related to rehabilitation that prepare the individual to work with individuals with disabilities and employers.

Comment

No comment.

Reference(s): § 361.19

TWC Position: Agree

Summary

Requires that the State Plan assure the DSA takes affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as stated in section 503 the Rehabilitation Act of 1973, as amended.

Comment

No comment.

Reference(s): § 361.20

TWC Position: Agree

Summary

Section 361.20(a) requires the DSA to conduct public meetings prior to adoption of substantive policies or procedures; Section 361.20(b) requires assurance the DSA provides notice of public hearings; Section 361.20(c) requires a summary of the input of the State Rehabilitation Council be included in the plan. Section 361.20(d) requires assurance the DSA conducts the consultations with the Client assistance Program regarding the provision of vocational rehabilitation services; Section 361.20(e) requires the State unit to use appropriate modes of communication.

Comment

No comment.

Reference(s): § 361.21

TWC Position: Agree

Summary

Requires the Plan to assure that, in connection with matters of general policy related to the administration of VR services, the DSA takes into account the views of individuals and groups who receive VR services, personnel working in programs providing VR services, programs providing VR services, the director of the client assistance program, and the State Rehabilitation Council.

Comment

No comment.

Reference(s): § 361.22

TWC Position: Agree

Summary

Requires the Plan to contain plans, policies, and procedures (including providing for the development and approval of an individualized plan for employment in accordance with Section 361.45 during the transition process) for coordination between the DSA and education officials responsible for the public education of students with disabilities that are designed to facilitate the transition of those students from educational services in school, including pre-employment transition services, to the receipt of the DSA's VR services. Provides requirements, including requirements for a formal interagency agreement.

Comment

No comment.

Reference(s): § 361.23

TWC Position: Disagree

Summary

As a required partner in the one-stop service delivery system, the designated State unit (DSU) must satisfy all requirements of the joint regulations in subpart F of this part.

Comment

TWC disagrees.

Section 361.23 is entitled "Requirements Related to the Statewide Workforce Development System." However, the only requirement listed is the development of an MOU related to supported employment. The preamble explains that Rehabilitation Services Administration (RSA) proposes to remove the remainder of this section because the substance of these requirements is contained in joint regulations proposed by DOE and DOL.

We recommend that either the title of the section be renamed to "Requirements Related to Supported Employment" or that additional language be added to more fully explain this connection. While the preamble explains that there are additional regulations that govern this connection, we are concerned that without a specific reference in the actual text of the regulations, the section could be misconstrued. In the future, individuals who are reviewing the regulatory framework may not be aware that they need to review other aspects of regulations in order to fully understand how VR fits within the statewide workforce development system.

To ensure transparency in how the workforce system operates, we recommend that language be added to specifically reference the joint guidance. Suggested language: As a required partner in the statewide workforce development system under Title I of WIOA, the DSU must satisfy all requirements as set forth in the DOL regulations found in Part 766, Subpart C regarding Memorandums of Understanding, Subpart D regarding Unified and Combined State Plans, Subpart E regarding One-Stop Operating Costs, Subpart F regarding Description of the One-Stop System and Part 361, Subpart D regarding Unified and Combined State Plans, and Subpart F regarding Description of the One Stop System.

Reference(s): § 361.24

TWC Position: Agree

Summary

— Requires the Plan to describe the DSA’s cooperation with specified Federal, State, and local agencies and programs, to the extent that the agencies and programs are not using the workforce development system.

—The Plan has to assure (1) a working relationship with the Statewide Independent Living Council and independent living centers; (2) American Indian Vocational Rehabilitation Services (AIVR) grant recipients; (3) coordinate activities with any other State agency functioning as an employment network under the Ticket to Work and Self-Sufficiency Program established under the Social Security Act, §1148; (3) show how it will work with employers to identify competitive integrated employment and career exploration opportunities, and provide VR and transition services; (4) enter into coordination agreements with, and refer individuals to, agencies that implement the Assistive Technology Act of 1998, §4 (29 U.S.C. 3003).

—If there is a separate DSU for the blind, The DSUs must establish reciprocal referral services, use each other's services and facilities as feasible, jointly plan activities, and cooperate to provide more effective services, including, if appropriate, using a written cooperative agreement.

— The Plan must assure the DSU has entered into a formal agreement with the State agency that administers the State Medicaid plan and with the State agency with primary responsibility for providing services and supports for individuals with intellectual disabilities and those with developmental disabilities; and the State agency responsible for providing mental health services, to develop opportunities for community-based employment in integrated settings the agreement has to cover delivery of VR services, including individuals determined to be eligible for home and community-based services under a Medicaid waiver, or other authority related to a State Medicaid program.

Comment

No comment.

Reference(s): § 361.25

TWC Position: Agree

Summary

Statewideness. The State Plan must assure VR services will be available in all political subdivisions of the State, unless a waiver of statewideness is requested and approved.

Comment

No comment.

Reference(s): § 361.26

TWC Position: Agree

Summary

Waiver of statewideness.

(a) The DSU may provide services, in one or more political subdivisions of the State, that increase or expand the scope of services that are available statewide if: (1) The non-Federal share is met from funds provided by a local public agency, including funds contributed to a local public agency by a private agency, organization, or individual; (2) The services are likely to promote the vocational rehabilitation of substantially larger numbers of individuals with disabilities or of individuals with disabilities with particular types of impairments; and (3) For purposes other than those specified in § 361.60(b)(3)(i) and consistent with the requirements in § 361.60(b)(3)(ii), the State includes in its State Plan, and the Secretary approves, a waiver of the statewideness requirement. (b) The request for a waiver of statewideness must: (1) Identify the types of services to be provided; (2) Contain a written assurance from the local public agency that it will make available to the DSU the non-Federal share of funds; (3) Contain a written assurance that DSU approval will be obtained for each proposed service before it is put into effect; and (4) Contain a written assurance that all other requirements of the State Plan, including a State's order of selection requirements, will apply to all services approved under the waiver.

Comment
No comment.

Reference(s): § 361.27

TWC Position: Agree

Summary

Shared funding and administration of joint programs. If the State Plan provides for the DSA to share funding or duties to carry out a joint program, the State must submit a plan describing its shared funding and administrative arrangement. Specifies requirements for the Plan.

Section 361.27(c) requires that if a proposed joint program does not comply with the statewideness requirement (§361.25), the State unit must obtain a waiver of statewideness (§361.26).

Comment
No comment.

Reference(s): § 361.28

TWC Position: Agree

Summary

Allows the DSU to enter into a third-party cooperative arrangement for providing or contracting for the provision of VR services with another State agency or a local public agency that is providing part or all of the non-Federal share and specifies conditions. Specifies conditions for and requirements of providing the non-federal share. Conditions include requirements for personnel, including the DSU's management of personnel.

Comment
No comment.

Reference(s): § 361.29

TWC Position: Disagree

Summary

Requires the Plan to include a comprehensive statewide assessment jointly conducted by the DSU and the State Rehabilitation Council every three years. Provides detailed requirements for the assessment. Requires reports to the Secretary of any updates. Requires annual estimates and provides detailed requirements. The Plan must identify goals and priorities, jointly developed and agreed to with the Council; provides the basis for the goals and priorities. Requires the Plan to include strategies to meet the needs identified by the assessment and methods to improve service delivery. Requires the conduct of evaluations and reports and specifies their requirements and requires Council participation.

Comment
TWC disagrees and believes that DOL and ED missed an excellent opportunity to coordinate and identify this provision for a technical amendment to the statute to align the unified state planning requirements (every four years) with the comprehensive assessment requirements (every three years).

Reference(s): § 361.30

TWC Position: Agree

Summary

The State Plan must assure that the DSA provides VR services to American Indians who are individuals with disabilities residing in the State to the same extent as it provides vocational rehabilitation services to other significant populations of individuals with disabilities residing in the State.

Comment
No comment.

Reference(s): § 361.31

TWC Position: Agree

Summary

The State Plan must describe how the State will establish cooperative agreements with private nonprofit vocational VR service providers.

Comment

No comment.

Reference(s): § 361.32

TWC Position: Agree

Summary

The DSU can spend money under this part to educate and provide services to employers who have hired or are interested in hiring individuals with disabilities under the VR program. Services to employers include training and technical assistance regarding work-based learning (including internships), transition services, recruiting applicants, training, and promoting awareness. Allows expenditures for assisting employers regarding workplace accommodations, assistive technology, and facilities and access, and help working with community partners and other employers.

Comment

No comment.

Reference(s): § 361.34

TWC Position: Agree

Summary

The supported employment plan, including revisions, must be submitted as a supplement to the VR portion of the combined plan and must assure that the plan provides for the use of funds for cost of services leading to supported employment.

Comment

No comment.

Reference(s): § 361.35

TWC Position: Agree

Summary

The VR portion of the combined plan must assure that the State will reserve and use a portion of the funds allotted to the State under section 110 of the Act for development and implementation of innovative approaches to improve VR services particularly to individuals with the most significant disabilities, including youth transition services and pre-employment transition services for students consistent with the findings of the comprehensive statewide assessment under 361.29. Further, the reserve portion of funds must support the funding of the State Rehabilitation Council and support the Statewide Independent Living Council. The State and the Statewide Independent Living Council may use other sources of funding if available. The plan must describe how reserved funds will be used and include a report describing how the funds were used.

Comment

No comment.

Reference(s): § 361.36

TWC Position: Agree

Summary

The DSU must be able to provide the full range of services listed in Sec. 103 of the Act and 361.48 to all eligible individuals or include in the plan the order of selection to be followed. The selection of order described in the plan must show the order in selection, provide a justification for the order, identify service and outcome goals and the time within which the goals may be achieved for individuals in each priority category. Individuals who do not meet the order of selection criteria will have access to services provided through the information and referral system established under 361.37. The plan must assure referral forms are widely available throughout the State and that outreach efforts are conducted to identify and serve those who have been unserved or underserved by the VR system and not delayed through wait lists. Part 2 describes factors that cannot be used in determining order of selection. The DSU must consult with the State Rehabilitation Council regarding the need to establish an order of selection and the priority categories.

Comment

No Comment.

Reference(s): § 361.37

TWC Position: Agree

Summary

The DSA will implement an information and referral system adequate to ensure that individuals who do not meet the order of selection criteria are provided accurate VR information and guidance including counseling and referral for job placement. Criteria for appropriate referrals are described in this section.

Comment

No comment.

Reference(s): § 361.38

TWC Position: Agree

Summary

The State Agency and the State unit must adopt and implement written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. The policies and procedures must ensure that that provisions laid out are implemented including all applicants and eligible individual's representatives, service providers, cooperating agencies and interested persons and are informed through appropriate modes of communications of the confidentiality of PI and the conditions for accessing and releasing this information.

Comment

No comment.

Reference(s): § 361.39

TWC Position: Agree

Summary

DSU must, upon request, identify regulations and policies relating to the administration or operation of its VR program that are State-imposed, including any regulations or policy based on State interpretation of any Federal law, regulation, or guideline.

Comment

No comment.

Reference(s): § 361.40

TWC Position: Agree

Summary

DSU must report in a manner that provides a complete count other than information provided through sampling and

protect the confidentiality of the identity of the each individual.

Comment

No comment.

Reference(s): § 361.41

TWC Position: Agree

Summary

DSU must implement procedures for the prompt and equitable handling of referrals of individuals for VR services and an eligibility determination must be made within 60 days of submitting an application for VR services, barring any unforeseen circumstances.

Comment

No comment.

Reference(s): § 361.42

TWC Position: Agree

Summary

Describes criteria and procedures for assessing if an individual is eligible for VR services.

Comment

No comment.

Reference(s): § 361.43

TWC Position: Agree

Summary

Describes the procedures the DSU will implement if an individual is not eligible for VR services.

Comment

No comment.

Reference(s): § 361.44

TWC Position: Agree

Summary

Provides criteria for when a DSU can close a record prior to making an eligibility determination.

Comment

No comment.

Reference(s): § 361.45

TWC Position: Agree

Summary

Describes criteria for developing the individualized employment plan for individuals eligible for VR services.

Comment

No comment.

Reference(s): § 361.46

TWC Position: Agree

Summary

Content that should be included in an individualized employment plan for individuals determined to be eligible for VR services.

Comment

No comment.

Reference(s): § 361.47

TWC Position: Agree

Summary

Describes the criteria that must be maintained in the individual's record.

Comment

No comment.

Reference(s): § 361.48

TWC Position: Agree

Summary

Describes services available for students with disabilities that have not applied for VR services and services available to individuals that have applied for VR services and have been determined eligible for VR services.

Comment

No comment.

Reference(s): § 361.49

TWC Position: Agree

Summary

Describes criteria for providing VR services to groups of individuals.

Comment

No comment.

Reference(s): § 361.50 to § 361.52

TWC Position: Agree

Summary

Criteria regarding 1) policies for services; 2) standards for facilities; and 3) informed choice.

Comment

No comment.

Reference(s): § 361.53

TWC Position: Agree

Summary

Criteria regarding providing services to an individual when comparable services and benefits are available through interagency coordination.

Comment

No comment.

Reference(s): § 361.54

TWC Position: Agree

Summary

Criteria regarding individual's participating in the cost of services based on financial need.

Comment

No comment.

Reference(s): § 361.55

TWC Position: Agree

Summary

Criteria for reviewing individuals currently in subminimum wage employment or extended employment. Previous regs required an annual review and current reqs require a semi-annual review.

Comment

No comment.

Reference(s): § 361.56 to § 361.57

TWC Position: Agree

Summary

Criteria regarding closing an individual's record and review of determinations for an individual who is dissatisfied with a determination.

Comment

No comment.

Reference(s): § 361.60; § 361.61; § 361.62; § 361.63; § 361.64; § 361.65

TWC Position: Agree

Summary

361.60 describes the matching requirement

361.61 describes the limitation on the use of funds for construction expenditures

361.62 describes maintenance of effort requirements

361.63 describes program income

361.64 describes the obligation of federal funds

361.65 describes the allotment and payment of federal funds for vocational rehabilitation services

Comment

No comment.

Reference(s): § 363.1 to § 363.11

TWC Position: Disagree

Summary

363.1 describes the State Supported Employment Services program and defines "supported employment" as employment that is competitive, integrated employment. If the employment is in an integrated setting but not at a competitive wage, the individual is considered to have achieved a supported employment outcome only if that employment arrangement is in place on a short term basis and is leading to competitive integrated employment. "Short term basis" is defined in the regulations as six months or less.

Subpart A §§363.2—363.6 describes: the State Supported Employment Services Program; who is eligible for an award; who is eligible for services; the authorized activities under the program; the regulations that apply; and the definitions that apply.

Subpart B §§363.10—363.11 describes: the documents a State submit to receive a Grant (a SUPPLEMENT to the State Plan); and the requirements for the SUPPLEMENT.

Comment

Rather than establishing an arbitrary timeframe to be used to define "short term basis" for all consumers, TWC recommends that the regulations provide states with the flexibility to determine the criteria to be used in establishing the short term timeframe for supported employment arrangements that do not meet the criteria for competitive integrated employment.

Reference(s): § 363.20; § 363.21; § 363.22; § 363.23; § 363.24; § 363.25

TWC Position: Agree

Summary

363.20 describes the Secretary's allocation of funds

363.21 describes the Secretary's reallocation of funds

363.22 describes how funds are reserved for youth with the most significant disabilities

363.23 describes matching requirements

363.24 describes program income and how it may be used

363.25 describes the period of availability of funds

Comment

No comment.

Reference(s): § 363.50 to § 363.55

TWC Position: Agree

Summary

Subpart F §§363.50—363.55 describes: the collaborative agreements the State must develop; allowable administrative costs; information collection and reporting requirements; requirements a State must meet before it provides for the transition of an individual to extended services; when an individual will be considered to have achieved an employment outcome in supported employment; and the notice requirements that apply to the program.

Comment

No comment.

Reference(s): § 397.1 to § 397.50

TWC Position: Agree

Summary

The regulations in this part are new and pertain to subminimum wage. Their intent is to impose 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. These regulations are based on Section 511 of the Rehab Act which 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.

The designated state unit must provide career counseling and information and referral services to individuals who are known to be employed by an entity at a subminimum wage level.

Comment

No comment.
