

DEPARTMENT OF EDUCATION

34 CFR Part 361

RIN 1820-AB52

State Vocational Rehabilitation Services Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the State Vocational Rehabilitation Services Program (VR program) by revising the scope of available employment outcomes under the VR program. The proposed regulations would redefine the term "employment outcome" to include only those outcomes in which an individual with a disability works in an integrated setting. This action is necessary to reflect the purpose of Title I of the Rehabilitation Act of 1973, as amended (Act) (29 U.S.C. 701-744), which is to enable individuals with disabilities who participate in the VR program to achieve an appropriate employment outcome in the competitive, integrated labor market.

DATES: We must receive your comments by August 25, 2000.

ADDRESSES: Address all comments about these proposed regulations to Fredric K. Schroeder, U.S. Department of Education, 400 Maryland Avenue, SW., room 3028, Mary E. Switzer Building, Washington, DC 20202-2531.

Comments also may be sent by facsimile to (202) 205-9874. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov.

You must include the term "VR Regulations—Employment Outcome" in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Beverlee Stafford, U.S. Department of Education, 400 Maryland Avenue, SW., room 3014, Mary E. Switzer Building, Washington, DC. 20202-2531.

Telephone (202) 205-8831. If you use a telecommunications device for the deaf (TDD), you may call (202) 205-5538.

Individuals with disabilities may obtain this document in an alternate

format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director, Alternate Formats Center, U.S. Department of Education, 400 Maryland Avenue, SW., room 1000, Mary E. Switzer Building, Washington, DC. 20202-2531. Telephone (202) 260-9895. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**Invitation To Comment**

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the VR program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3214, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205-8113 or (202) 260-9895. If you use a TDD, you may call the Federal Information Relay Service at 1-800-877-8339.

Background

The State Vocational Rehabilitation Services Program (VR program) makes available to individuals with disabilities, particularly those with significant disabilities, necessary

vocational rehabilitation (VR) services so that they may enter or continue to work in the competitive, integrated labor market along with the general population. The chief measure of success of a State VR agency's efforts in serving a participant in the VR program is whether the individual has achieved an appropriate employment outcome, in particular a high-quality, competitive job in an integrated setting. Integrated employment settings generally refer to those settings that are typically found in the community in which individuals with disabilities have the same opportunity to interact with others as is given to any other person (see 34 CFR 361.5(b)(30)(ii) of the current VR program regulations for a detailed definition). Accordingly, this notice of proposed rulemaking (NPRM) addresses the scope of available outcomes under the VR program in order to ensure that program participants attain jobs in the competitive, integrated labor market as the Act intends.

The statutory authority for the VR program, Title I of the Act, has, over time, placed greater and greater emphasis on integration, a fact further reflected in recent reauthorizations. As indicated in section 100(a)(1) of the Act, a provision retained in the 1998 Amendments to the Act, individuals with disabilities, including individuals with the most significant disabilities, have demonstrated their ability to achieve gainful employment in integrated settings if appropriate services and supports are provided. Recent legislative history also reflects Congress' commitment to ensuring that individuals with significant disabilities be able to progress to jobs in the competitive integrated job market (see e.g., Senate Report 105-166, p. 13).

The scope of employment outcomes authorized under the VR program must be consistent with the definition of "employment outcome" in section 7(11) of the Act. That section of the Act, which explicitly refers only to employment outcomes that occur in integrated settings, defines "employment outcome" as full-time or, if appropriate, part-time competitive employment in the integrated labor market, supported employment, or *any other vocational outcome the Secretary may determine to be appropriate* (including the vocational outcome of self-employment, telecommuting, or business ownership), consistent with the requirements of the Act [emphasis added].

Thus, the Act entrusts the Secretary to determine the scope of employment outcomes, other than competitive employment (*i.e.*, integrated work at or

above minimum wage—see 34 CFR 361.5(b)(10)) and supported employment (integrated work with ongoing support services—see 34 CFR 361.5(b)(46)), which individuals with disabilities should pursue under the VR program consistent with the Act's requirements.

Through this NPRM, we are proposing to amend the current regulations governing the VR program (34 CFR part 361) to no longer consider extended employment (also referred to as non-integrated or sheltered employment) as an employment outcome under the VR program. We believe the proposed regulatory changes are necessary to implement the clear emphasis that the Act places on competitive employment and supported employment—outcomes that occur in integrated settings. At the same time, however, the proposed changes would not prohibit State VR agencies from serving individuals, or enabling individuals to work, in extended employment settings (also referred to as non-integrated or sheltered settings) if appropriate to the individual, but would ensure that those individuals are provided the services that they need to transition to the competitive labor market in the community.

On February 28, 2000, we published an NPRM (65 FR 10620) that would implement extensive changes to the current VR program regulations to reflect statutory changes made by the Rehabilitation Act Amendments of 1998 (1998 Amendments). As mentioned previously, the proposal in this new NPRM to change the regulatory definition of the term “employment outcome,” and to implement corresponding changes to other sections of the current regulations affected by the revised definition, are based not only on the 1998 Amendments, but on the emphasis that the Act, over time, has placed on enabling individuals in sheltered employment to transition to employment outcomes in the competitive, integrated labor market. Although these proposed changes were not developed in time to be included in the February 28 NPRM, we consider this new NPRM critical to realizing the full potential of individuals with significant disabilities. Thus, it is our intent to implement these new changes as part of the final regulations that follow the February 28 proposed regulations.

We also note that the proposed regulations would not exclude from the scope of “employment outcomes” under the VR program all positions obtained by individuals with disabilities under certain types of set-aside contracts authorized by the Javits-Wagner-O'Day

Act (JWOD), 41 U.S.C. 46–48. For example, service-related jobs performed under JWOD contracts and in settings that satisfy the definition of “integrated setting” in 34 CFR 361.5(b)(30)(ii) (*i.e.*, a setting typically found in the community in which the VR program participant's interaction with non-disabled persons is the same as that experienced by a non-disabled person in a comparable position) would meet the definition of “employment outcome” in the proposed regulations. Those positions are to be contrasted with jobs in sheltered settings performed under JWOD contracts or other arrangements that are not integrated and would not be considered employment outcomes. The determination as to whether any job, including those obtained under JWOD contracts, meets the regulatory definition of “integrated setting,” and therefore qualifies as an “employment outcome” under the proposed regulations, should be made on a case-by-case basis.

Section-by-Section Summary

Section 361.5 Applicable Definitions

Employment Outcome; Extended Employment

The chief revision to the current regulations that would be implemented by this NPRM concerns the scope of outcomes, other than competitive employment and supported employment, covered under the definition of “employment outcome.” Specifically, the current regulatory definition would be changed to include only employment in integrated settings, meaning that jobs in sheltered or other non-integrated settings would no longer be recognized as “employment outcomes” under the VR program. In particular, “extended employment,” which is defined in both the current and proposed regulations as work in a non-integrated or sheltered setting for a nonprofit entity along with any support services that the individual needs in order to prepare for competitive employment, would not be an authorized employment outcome under the proposed regulations.

The changes to the current regulations proposed in this NPRM, while essential to fulfilling the expectation in the Act that individuals with disabilities are generally capable of pursuing competitive, integrated work in the community, should not cause great difficulty to State VR units in administering their programs. Under the current regulations, the VR program pays the short-term costs of services (*e.g.*, vocational evaluation, work adjustment, and other training services)

that enable an individual to perform work in an extended employment setting. The ongoing costs of services associated with an individual who remains in extended employment are typically borne by other State and local resources. In addition, only a relatively small number of individuals exit the VR program after obtaining non-integrated employment (about 3.5% of outcomes nationwide in 1998, the most current data available). Thus, it is evident that many State units already have been deemphasizing non-integrated work as a final employment goal for some time. Those units have come to realize, as is reflected throughout the Act's legislative history, that in the past individuals with disabilities were too often inappropriately placed in sheltered settings as a final outcome rather than as a temporary placement from which the individual could transition to a job in the community.

The proposed regulations would continue to allow State units to use extended employment jobs as interim steps for VR program participants. The State unit, however, could only consider the individual to have achieved an employment outcome after the individual transitions to integrated work in the community. We believe this approach better reflects the relationship between the VR program and sheltered employment and is further supported by the relatively few VR program participants who engage in extended employment. To the extent extended employment continues to be used as a temporary worksite for an eligible individual under the VR program, the State unit should continue to provide services to that individual, but should not identify (for State or Federal reporting purposes, for purposes of satisfying VR program performance measures, etc.) that person's job as a successful outcome until the individual enters the integrated labor market in the community.

In addition, §§ 361.47 and 361.55 of the proposed regulations, which are discussed in the following paragraphs, specify recordkeeping and annual review requirements, respectively, that are designed to ensure that persons in extended employment receive necessary support in order to continue to pursue integrated employment. We believe that these proposed requirements, which are much the same as the recordkeeping and review requirements in the current regulations, and any burden associated with the proposed requirements, are necessary to ensure that persons are able to pursue high-quality competitive employment in the integrated labor market as the Act intends.

Section 361.37 Establishment and Maintenance of Information and Referral Programs

In order to ensure that individuals with disabilities who choose to work in an extended employment setting long-term, rather than pursue employment in an integrated setting under the VR program, are able to access the services they need, § 361.37(a) of the proposed regulations would require that State VR agencies refer these individuals to local extended employment providers. We are particularly interested in comments from community rehabilitation programs and other State and local service providers on the impact that the proposed regulations would have on those resources that currently pay most of the costs of serving individuals in extended employment. We also note that persons who initially choose to pursue extended employment and subsequently change their minds and seek competitive or other integrated employment can still access the VR system. Also, while we recognize that this proposed change would result in an additional responsibility being placed on the State VR agency, we believe that any burden associated with that responsibility is outweighed by the need to ensure that individuals who choose sheltered work can access State and local resources that support extended employment programs.

Section 361.47 Record of Services

We are proposing limited changes to the current regulations to reflect the proposed revisions to the definition of "employment outcome" and the review requirements in § 361.55.

In sum, proposed changes to paragraph (g) of this section would require a justification in the record of services for any decision on the part of the State unit to provide a VR program participant services in a non-integrated setting, including a decision to support the individual in extended employment as an initial step toward integrated employment. In addition, proposed paragraph (k) of this section would be added to the current regulations to require documentation of the annual reviews required under section 101(a)(14) of the Act and § 361.55 of the proposed regulations for individuals who achieved an authorized (*i.e.*, integrated) employment outcome but are compensated through a wage certificate under section 14(c) of the Fair Labor Standards Act (FLSA) (*e.g.*, individuals in supported employment who earn less than the minimum wage).

Finally, a State unit would also be required under the proposed changes to

this section to document follow-up reviews when it closes the record of services for an individual in extended employment who chooses to remain there long-term or who the State unit determines cannot achieve integrated employment. As explained in the discussion on § 361.55, these individuals would not be considered to have achieved an employment outcome under the VR program.

It should be noted that each of the documentation requirements in the proposed regulations also is reflected in the February 28 NPRM referred to in the *Background* section of this preamble.

Section 361.55 Annual Review of Individuals in Extended Employment and Other Employment Under Special Certificate Provisions of the Fair Labor Standards Act

Removing extended employment from the scope of available employment outcomes under the discretion given to the Secretary under section 7(11)(C) of the Act necessitates changes to this section of the current regulations. Initially, it should be noted that the proposed regulations reflect the requirement in section 101(a)(14) of the Act and the current regulations that the State unit conduct an annual review of any VR program participant who has achieved an employment outcome (*i.e.*, integrated employment under the proposed regulations) but is compensated under a wage certificate as authorized in section 14(c) of the FLSA. With regard to those participants in the VR program who are still placed in extended employment, however, the State unit's future obligations under the proposed regulations would depend on a number of factors.

As indicated previously, we expect that most individuals in extended employment would perform that work temporarily as a means of training or otherwise preparing for competitive employment. Because the State unit would continue to provide services to these individuals and to review the individual's plan of services consistent with 102(b)(2)(E) of the Act until they successfully transition to a job in an integrated setting, that individual's record of services would remain open, and the review requirements in this revised section need not apply.

On the other hand, if the State unit decides to close the record of services of an individual in extended employment because it does not believe the individual can achieve integrated employment (*i.e.*, an employment outcome under the proposed regulations) or because the individual chooses to remain in extended

employment, then the proposed regulations would continue to require that the State unit conduct an annual review and reevaluation (for 2 years and thereafter if requested by the individual) of the individual's readiness for competitive employment, that the individual be able to provide input into each review, and that the State unit make maximum efforts to assist the individual in transitioning to competitive employment.

Effective Date of Changes

Finally, we recognize that the proposed changes in this NPRM, while supported by the Act, represent a departure from the past practice of including non-integrated jobs among the scope of authorized employment outcomes. Thus, in order to minimize the impact that these proposed changes would have on State units or eligible individuals under the VR program, we are proposing that the changes to the current regulations in this NPRM take effect beginning in FY 2002 (*i.e.*, October 1, 2001). This delayed implementation date would give State units and other providers of VR services more than a year to take whatever steps may be necessary to meet the revised regulatory requirements. Most importantly, we expect that the time afforded will enable States to implement the proposed changes in a manner that is least disruptive to VR program beneficiaries. Nonetheless, we intend to provide necessary technical assistance to State units in order to assist those agencies in making the transition required by the proposed regulations. We also are particularly interested in comments on whether persons agree that the delayed implementation date will give States sufficient time to implement the proposed policy.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed regulations would address the National Education Goal that every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Executive Order 12866*1. Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action. The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

We believe that the NPRM would substantially improve the State VR Services Program and would yield substantial benefits in terms of program management, efficiency, and effectiveness. The proposed regulatory changes would align the VR program appropriately with the statutory expectation that individuals with disabilities can in fact achieve employment in the competitive labor market. The proposed changes also include program requirements (e.g., those related to referrals, documentation of service records, and reviews of persons in extended employment) that are designed to ensure that individuals with disabilities are supported in pursuing competitive jobs or are able to access other resources that can assist those who choose extended employment. We believe that the proposed regulations represent the least burdensome way to implement the Act and fulfill important policy objectives that we consider to be essential to the success of the program and to persons with disabilities.

Elsewhere in this preamble we discuss other potential costs and benefits of these proposed regulations under the following heading: Section-by-Section Summary.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government

Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol and a numbered heading; for example, § 361.47 *Record of services*.)

- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would impact some community rehabilitation programs that currently operate extended employment programs, or execute Federal contracts under the Javits-Wagner-O'Day Act, for individuals with disabilities. Those facilities rely on the State VR Services Program, as well as other programs, for referrals of persons for whom sheltered employment is appropriate. However, since most costs of employing persons with disabilities in a sheltered setting are born by programs other than the State VR Services Program, and since State VR agencies could continue to provide support to persons in extended employment settings (without considering that work a successful employment outcome), we do not believe potential impact would be significant.

Paperwork Reduction Act of 1995

Section 361.47 contains information collection requirements that pertain to State recordkeeping, and section 361.55 contains information collection

requirements under the State plan. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: State Vocational Rehabilitation Services Program

The information to be collected includes State plan assurances to meet statutory requirements and other required information that the Department considers important to the efficient and effective administration of the VR program. Required information that is unrelated to the State plan is necessary for purposes of Department monitoring of program performance and compliance.

The Department needs and uses the information related to the State plan for the VR program in order to ensure compliance with Federal requirements. An approved State plan is necessary for a State to receive a grant under the VR program. All State plan assurances are reported once unless the State has submitted the information previously or determines that modifications are necessary, or the Secretary requires modifications due to changes in State policy, Federal law (including regulations), interpretation of the Act by a Federal court or the highest court in the State, or a finding by the Secretary of State noncompliance with the requirements of the Act.

As previously noted, the Department published an NPRM on February 28, 2000 (65 FR 10620) that proposed extensive changes to the regulations under this part in order to conform to the 1998 Amendments to the Act. In the February 28, 2000 NPRM, we estimated an annual reporting and recordkeeping burden for the collection of information to average 12,220 hours for each response for 82 respondents, or a total of 1,002,050 burden hours. The annual reporting and recordkeeping burden for the collection of information in this new NPRM is included in that total since the information collection requirements proposed in the new NPRM were included in the February 28, 2000 NPRM as well (although some of the requirements were located in other sections in the prior NPRM). Nonetheless, it is estimated that the actual burden for the information collection requirements in sections 361.47(g) and (k) and 361.55 would average 87 hours for each response for 82 respondents, including the time for reviewing instructions, searching existing data sources, gathering and

maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden for this specific collection to be 7,134 hours of the total 1,002,050 hours identified in the NPRM published on February 28, 2000.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20508; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;

- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;

- Enhancing the quality, usefulness, and clarity of the information we collect; and

- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthening federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number: 84.126 State Vocational Rehabilitation Services Program)

List of Subjects in 34 CFR Part 361

Reporting and recordkeeping requirements, State-administered grant program—education, Vocational rehabilitation.

Dated: June 20, 2000.

Richard W. Riley,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 361 of title 34 of the Code of Federal Regulations as follows:

PART 361—STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

1. The authority citation for part 361 continues to read as follows:

Authority: 29 U.S.C. 709(c), unless otherwise noted.

2. Section § 361.5 is amended by revising paragraphs (b)(15) and (b)(18), and the authority citations following each of those paragraphs, to read as follows:

§ 361.5 Applicable definitions

* * * * *

(b) * * *

(15) *Employment outcome* means, with respect to an individual, entering

or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 7(11), 12(c), 100(a)(2), and 102(b)(3)(A) of the Act; 29 U.S.C. 705(11), 709(c), 720(a)(2), and 722(b)(3)(A))

* * * * *

(18) *Extended employment* means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that an eligible individual performs for the purposes of training or otherwise preparing for competitive employment and for which the individual receives—

(i) Compensation in accordance with the Fair Labor Standards Act; and

(ii) Any support services that the individual needs in order to prepare for competitive employment.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

* * * * *

3. Section 361.37 is amended by removing the word “and” at the end of paragraph (a)(2); removing the period at the end of paragraph (a)(3), and adding, in its place, “; and”; adding a new paragraph (a)(4); and revising the authority citation following the section to read as follows:

§ 361.37 Establishment and maintenance of information and referral programs.

(a) *General provisions.* The State plan must assure that—

* * * * *

(4) The State unit will refer to local extended employment providers an individual with a disability who makes an informed choice to pursue extended employment as the individual's employment goal.

* * * * *

(Authority: Sec. 12(c) and 101(a)(20) of the Act; 29 U.S.C. 709(c) and 721(a)(20))

4. Section 361.47 is amended by revising paragraph (g), adding a new paragraph (k), and revising the authority citation following the section to read as follows:

§ 361.47 Record of services.

* * * * *

(g) In the event that an individual's IPE provides for vocational rehabilitation services in a non-integrated setting, including an extended employment setting, a

justification to support the need for the non-integrated setting.

* * * * *

(k) In the event an individual achieves an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act or the designated State unit closes the record of services of an individual in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with § 361.5(b)(15) or that the individual through informed choice chooses to remain in extended employment, documentation of the results of the annual reviews required under § 361.55, the individual's input into those reviews, and the individual's or, if appropriate, the individual's representative's acknowledgement that those reviews were conducted.

(Authority: Sections 101(a)(6), (9), (14), (20) and 102(a), (b), and (d) of the Act; 29 U.S.C. 721(a)(6), (9), (14), (20) and 722(a), (b), and (d))

* * * * *

5. Section 361.55 is revised to read as follows:

§ 361.55 Annual review of individuals in extended employment and other employment under special certificate provisions of the Fair Labor Standards Act.

(a) The State plan must assure that the designated State unit conducts an annual review and reevaluation in accordance with the requirements in paragraph (b) of this section for an individual with a disability served under this title—

(1) Who has achieved an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act; or

(2) Whose record of services is closed while the individual is in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with § 361.5(b)(15) or the individual through informed choice chooses to remain in extended employment.

(b) For each individual with a disability who meets the criteria in paragraph (a) of this section, the designated State unit must—

(1) Annually review and reevaluate the status of each individual for 2 years after the individual's record of services

is closed (and thereafter if requested by the individual or, if appropriate, the individual's representative) to determine the interests, priorities, and needs of the individual with respect to competitive employment or training for competitive employment;

(2) Enable the individual or, if appropriate, the individual's representative to provide input into the review and reevaluation and must document that input in the record of services, consistent with § 361.47(k), with the individual's or, as appropriate, the individual's representative's signed acknowledgment that the review and reevaluation have been conducted; and

(c) Make maximum efforts, including identifying and providing vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individual in engaging in competitive employment as defined in § 361.5(b)(10).

(Authority: Sections 12(c) and 101(a)(14) of the Act; 29 U.S.C. 709(c) and 721(a)(14))

[FR Doc. 00-15991 Filed 6-23-00; 8:45 am]

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