







ACCSES THE VOICE OF DISABILITY SERVICE PROVIDERS

WIOA Rules

- Department of Labor regulations – effective 60 days after publication (October 18)
 - WIOA (Titles I and III) (provisions affecting core programs)
- Joint Rule – effective 60 days after publication (October 18)
 - Unified and Combined State Plans, Performance Accountability, One-Stop

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WIOA Rules

- Amend the regulations governing the State VR program found in 34 CFR 361, the State Supported Employment Services Program, 34 CFR part 363, and adds regulations in a new part 391 to implement limitations on Section 511 of the Rehabilitation Act, related to subminimum wage.
- The Joint Final Rule is intended to give guidance for state and local workforce development systems with the aspiration of increasing skills, employee retention, and economic opportunity.

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WIOA Rules

- WIOA calls for an integrated approach to reach its goals with respect to implementation, administration, delivery of services, and evaluation of services across its core programs:
 - Adult dislocated worker and youth programs administered under WIOA Title I (DOL)
 - The Adult Education and Family Literacy program administered under Title II (DOE)
 - Wagner-Peyser Act employment programs administered until Title III of WIOA (DOL)
 - Vocational Rehabilitation Program administered under Title IV of WIOA (DOE)

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Key Takeaways from the New VR Rules

- Student and youth services are a major focus of WIOA, with the goal of all youth achieving an “employment outcome.”
- States are required to reserve at least 15% of its State VR allotment to provide pre-employment transition services to students with disabilities. Any portion of that 15% not used for pre-employment transition services may not be used for other VR services.
- States must reserve and spend half of its federal supported employment allotment on supported employment services to youth with significant disabilities. The State also must match at least 10% of those expenditures with non-federal funds, also for supported employment services for youth.

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Key Takeaways from the New VR Rules

- The goal for everyone is competitive integrated employment – all people with disabilities, no matter how significant, are capable of achieving high-quality CIE when provided any necessary services and supports. To achieve that goal, the workforce system must provide job-driven training and pursue high-quality employment outcomes.

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§361.5 Competitive Integrated Employment

- To qualify as CIE, the person must earn a wage that is equal to or greater than the federal, state, or local minimum wage (whichever is higher), and
- The wage must be comparable to the customary rate that the employer pays to employees without disabilities in similar positions with comparable skills, experience, and training.
- Benefit paid to a person with disabilities must be comparable to the benefits paid to employees without disabilities in similar positions.
- The person with disabilities must be eligible for advancement in the same way as any other person in a similar position.

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§361.5 Competitive Integrated Employment

- On the next page is a portion of the definition. The underlined portions of the text are additions made during the regulatory process. The bracketed portion are words that were deleted from the statutory definition.

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§361.5 Competitive Integrated Employment

- CIE is defined, in relevant part as occurring:
- (ii) "at a location — (A) Typically found in the community; and (B) Where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g., customers and vendors), [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 employees who are not individuals with disabilities and who are in comparable positions interact with these persons. . . . 11

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What is an Integrated Setting?

- To qualify as competitive integrated employment, the individual job must satisfy two "setting" criteria:
- 1. It must be in a setting typically found in the community. This means it must be part of the competitive labor market. CRPs have been deemed not to be part of the competitive labor market, and therefore not a part of the community, and therefore not an integrated setting.
- Factors that "generally" would result in a business being considered not typically found in the community are (1) funding of positions through JWOD contracts; (2) holding a 14(c) certificate; and (3) complying with a mandated hiring ratio of people with disabilities (such as through a State Use or AbilityOne contract)

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§361.5 Competitive Integrated Employment

- 2. The employee with disabilities must interact while performing the duties of the job with employees without disabilities both in the work unit and across the entire work site as well as vendors, customers, etc. to the same extent that an employee without disabilities would interact with the same persons.
- Work unit – refers to all employees in a job category or to a group of employees working together to accomplish a task; the interpretation depends on the employer’s organizational structure. (The Secretary did not agree with commenters who believe the sub-definition of “work unit” should be stricken out of a concern that it will result in fewer opportunities for people with disabilities.)

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§361.5 Competitive Integrated Employment

- The state VR agency or DSU is not to make a determination that a location is integrated based on the employee’s interaction with customers and vendors.
- Neither should the state VR Agency or DSU consider social interaction that occurs casually in the workplace.
- To be integrated means within the context of the job itself.

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§361.5 Competitive Integrated Employment

- The state VR agency or Designated State Unit is not to make a determination that a location is integrated based on the employee’s interaction with customers and vendors.
- Neither should the state VR Agency or DSU consider social interaction that occurs casually in the workplace.
- To be integrated means within the context of the job itself.

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§361.5 Competitive Integrated Employment

- “Enclave employment settings” operated by businesses formed for the purpose of employing people with disabilities will not be considered integrated. Enclave employment is not banned under the Rules, but it is not eligible for a VR closure.

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§361.5 Competitive Integrated Employment

- DSUs must apply criteria on a case-by-case basis when determining if an individual's employment is in an integrated location.
- An individual hired by a CRP to work under a service contract and whose contacts while working are with persons who work for the work locations and not the individual's employer would not be considered working in an integrated setting.

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WIOA Looks for an Employment Outcome

- Both the WIOA Act and §361.46(a)(1) of the regulations require that an Individual Plan for Employment (IPE) include a specific employment goal that is consistent with the general goal of competitive integrated employment. This is defined in the WIOA regulations as an “employment outcome.”

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§361.5 (15) Employment Outcome

- “Employment outcome” means with respect to an individual entering, advancing in, or retaining full-time or, if appropriate part-time competitive integrated employment (including customized employment, self-employment, telecommuting or business ownership), or supported employment, that is consistent with an individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- The definition of “employment outcome” no longer includes uncompensated employment, and VR agencies will have until June 2017 to close existing cases where the plan involves seeking uncompensated employment.

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VR Services Requires an Employment Outcome

- An individual with disabilities who wants to participate in the VR program must choose an employment outcome, as defined.
- If an individual does not want an “employment outcome,” such as if they want uncompensated employment, the VR agency must refer that person to other federal, state, and local programs that can provide services that will meet that person’s needs.

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What Is An Employment Outcome?

- Competitive integrated employment; or
- Supported employment.
- Supported employment applies to individuals with the “most significant disabilities” (a defined term that differs from an individual with a significant disability).

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What Is An Employment Outcome?

- Supported employment is the only narrow exception that allows for an individual to achieve an employment outcome without earning a competitive wage.

BUT

- An individual *working in an integrated setting* but not in competitive integrated employment (i.e., not making a competitive wage) must be working toward competitive integrated employment on a short-term basis for the work to qualify as supported employment.

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§361.5 Other Defined Terms

- Student with a disability – An individual with a disability in school who is 16 (or a state may apply the term to younger students) and no older than 21 (unless a state provides transition services to older students) who is receiving transition services pursuant to Section 504 of the Rehabilitation Act. DOE interprets this as not including students in postsecondary education. Youth with a disability is defined as not younger than 14 nor older than 24.

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Section 511

- Section 428 of WIOA amends the Rehabilitation Act of 1973 to add Section 511, which is a limitation on the use of subminimum wages.
- Section 511 requires employers holding special wage certificates to take certain steps before hiring a youth with disabilities at subminimum wage or to continue employing a person of any age in subminimum wage job.
- Section 511 does not authorize any changes in Section 14(c) certificates, however, the Department of Labor has issued enforcement guidance that is already in effect.
- Section 511 applies to the payment of subminimum wage. It is not related to settings.
- It does not eliminate center-based employment or facility-based employment.

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Section 511

- Section 511 states:
- (a) IN GENERAL.—No entity, including a contractor or subcontractor of the entity, which holds a special wage certificate as described in section 14(c) of the Fair Labor Standards Act of 1938 . . . may compensate an individual with a disability who is age 24 or younger at a [subminimum wage] that is less than the Federal minimum wage unless 1 of the following conditions is met:

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Section 511

- (1) The individual is currently employed, as of (July 22, 2016), by an entity that holds a valid certificate pursuant to section 14(c) of the Fair Labor Standards Act of 1938.
- (2) The individual, before beginning work that is compensated at a subminimum wage, has completed, and provides documentation indicating completion of, each of the following actions:
 - (A) The individual has received pre-employment transition services . . . with the result that—“(i)(I) the individual has been found ineligible for such services . . . and has documentation consistent with section 102(a)(5)(C) regarding the determination of ineligibility; or
 - (ii)(aa) the individual has been determined to be eligible for vocational rehabilitation services; (bb) the individual has an individualized plan for employment under section 102; (cc) the individual has been working toward an employment outcome specified in such individualized plan for employment, with appropriate supports and services, including supported employment services, for a reasonable period of time without success; and (dd) the individual’s vocational rehabilitation case is closed; and
 - (iii)(i) the individual has been provided career counseling, and information and referrals to Federal and State programs and other resources in the individual’s geographic area that offer employment-related services and supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment; and (ii) such counseling and information and referrals are not for employment compensated at a subminimum wage provided by an entity described in this subsection, and such employment-related services are not compensated at a subminimum wage and do not directly result in employment compensated at a subminimum wage provided by an entity described in this subsection.

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Section 511

- (c) DURING EMPLOYMENT – (1) The entity described in subsection (a) may not continue to employ an individual, regardless of age, at a subminimum wage unless, after the individual begins work at that wage, at the intervals described in paragraph (2), the individual (with, in an appropriate case, the individual’s parent or guardian) –
 - (A) is provided by the designated State unit career counseling, and information and referrals described in subsection (a)(2)(B)(ii), delivered in a manner that facilitates independent decision making and informed choice, as the individual makes decisions regarding employment and career advancement; and
 - (B) is informed by the employer of self-advocacy, self-determination, and peer mentoring training opportunities available in the individual’s geographic area, provided by an entity that does not have any financial interest in the individual’s employment outcome [i.e., NOT the employer], under applicable Federal or State programs or other sources.
- (2) TIMING – The actions required under subparagraphs (A) and (B) of paragraph 2 shall be carried out once every six months for the first year of the individual’s employment at a subminimum wage, and annually thereafter for the duration of such employment.

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Section 511

- (d) DOCUMENTATION – (1) The designated State unit, in consultation with the State educational agency, shall develop a new process or utilize an existing process . . . to document the completion of the actions described in subparagraphs (A) and (B) of subsection (a)(2) by a youth with a disability . . .
- Once the individual has completed the required actions, the designated State unit “shall provide” the individual a document indicating such completion “within a reasonable time following the completion of the actions.”
- (e) VERIFICATION – (1) BEFORE EMPLOYMENT – Before an individual covered by subsection (a)(2) begins work . . . at a subminimum wage, the entity described in subsection (a) shall review such documentation received by the individual under subsection (d) and provided by the individual to the entity, that indicates that the individual has completed the actions described in subparagraphs (A) and (B) of subsection (a)(2) and shall maintain copies of the documentation described in subsection (d).
- (2) DURING EMPLOYMENT – (A) In order to continue to employ an individual at a subminimum wage, the entity described in subsection (a) shall verify completion of the requirements of subsection (c), including reviewing any relevant documents provided by the individual and shall maintain copies of the documentation described in subsection (d).
- (B) The entity described in subsection (a) shall be subject to review of individual documentation described in subsection (d) by a representative of the designated State unit or the Department of Labor.

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Section 511

- Section 511 must be read with the regulations for:
 - 34 CFR part 361 (related to the VR Program)
 - 34 CFR part 397 (related to subminimum wage)
 - 34 CFR part 300 (IDEA)
 - 29 CFR part 525 (Fair Labor and Standards Act)

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§397.1 Purpose

- Sets forth the requirements that DSUs and state and local educational agencies must satisfy to ensure that individuals, 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.”
- Section 511 of the Act and §397 of the regulations focus exclusively on the requirements that must be satisfied before an entity holding a Section 14(c) certificate may hire or continue to employ an individual with a disability at a subminimum wage, not on the setting in which those wages are paid.

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Section 511 – What does this mean in Plain English?

- Before a youth may begin work at subminimum wage, the youth must demonstrate and provide documentation for receipt of:
 - Pre-employment transition services under the VR program or
 - Transition Services under IDEA
 - The youth must show that the youth’s application for VR services resulted in a determination of eligibility or ineligibility.

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Section 511 – What does this mean in Plain English?

- If the youth has been determined to be eligible for VR services, the youth must have:
 - An approved Individual Employment Plan
 - Spent a reasonable period of time working toward the employment outcome in the IPE with appropriate supports AND must have been unsuccessful in that endeavor
 - A closed VR record; and
 - Documented receipt of career counseling, and information and referral services.

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Section 511 – What does this mean in Plain English?

- There are also requirements for career counseling and information and referrals:
 - It must be provided by a Designated State Unit
 - It must be conducted in a manner to promote informed choice and decision-making
 - It must be provided within 30 calendar days of a determination for a youth known to be seeking subminimum wage employment
 - It cannot be for a subminimum wage employment by Section 14(c) certificate holder
 - It cannot be for employment related services for which a subminimum wage is paid
 - It cannot directly result in subminimum wage employment

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Section 511 – What is a “Reasonable Time”?

- The “reasonable time” a youth must attempt to achieve an employment outcome must be consistent with the amount of time expected to complete services in the IPE, and must be consistent the vocational needs of the youth and the disability related needs of the youth
- For supported employment, a reasonable time is up to 24 months or longer, if the youth and the counselor agree that more time is needed

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Document Coordination

- Section 511 requires the DSU and the state education agency to coordinate in documenting that a youth with disabilities has completed the required steps under Sections 397.10; 397.20 (responsibilities of a DSU to a youth seeking subminimum wage), and 397.30 (responsibilities of an LEA to a youth seeking subminimum wage):
 - Pre-employment transition services or transition services
 - Application for VR services with a determination of ineligibility or eligible for VR services and a showing that the youth was unable to achieve an employment outcome despite working toward an employment outcome with reasonable accommodations, and supports and services, including supported and customized employment
 - Verification that the youth received career counseling and referrals (and the referral may not be for subminimum wage employment)

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Document Coordination

- It is the responsibility of the youth with a disability to provide documentation to the Section 14(c) certificate holder before the youth can be employed in a subminimum wage job.
- The documentation must reflect that all of the required activities have been completed.
- The DSU must provide the documentation to the youth within a reasonable time.
- The documentation must contain the name of the youth, the determination made or activities completed, the dates of service, and the manner in which the documentation was given to the youth.

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Document Coordination

- A youth who refuses to participate in the VR process is not eligible to work in subminimum wage employment:
 - “Although Section 511 of the Act and final part 397 establish prerequisites for a youth with a disability to work in subminimum wage employment, as with any VR service, the youth with a disability, or his or her parent or guardian, may exercise informed choice and refuse to participate . . . DSUs should inform youth with disabilities and/or their parents or guardians of the youth’s ineligibility for subminimum wage employment if he or she refuses to participate in the required activities.”
 - Once a youth or the youth’s parent or guardian refuses to participate in the activities required under Section 511, documentation must be provided to the youth within 10 calendar days.

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No Grandfathering

- WIOA does not permit a Section 14(c) certificate holder to re-hire a youth with disabilities after July 22, 2016 who left before July 22, 2016 without going through the entire process VR process.
- There also is presently no guidance as to whether a youth with disabilities who has part-time work in competitive integrated employment may work in a job paying subminimum wage for the remainder of the week.

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Career Counseling/Assessment Services

- Section 397.40 requires a Designated State Unit to provide career counseling and referral services to individuals of any age known to the DSU to be employed by a 14(c) certificate holder and earning subminimum wage. The DSU may contract this to another private or public service, but it may not contract with a Section 14(c) certificate holder to perform this service.
- DOE has no authority to prohibit a DSU from contracting with CRP for assessment services even when the CRP holds a Section 14(c) certificate; however, DOE “strongly encourages DSUs to contract with providers that can conduct assessments in competitive integrated settings.”

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Pre-Employment Transition Services

- DSUs must provide pre-employment transition services to all students who are potentially eligible for VR services whether or not they have applied and been found eligible.
- LEAs and SEAs may not contract with a 14(c) certificate holder for a program that pays youth subminimum wage, but LEAs and SEAs are not precluded from contracting with a 14(c) certificate holder for another purpose, including the provision of transition and pre-employment transition services. The 14(c) certificate holder may not pay the student subminimum wage, as part of that service.

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Pre-Employment Transition Services

- Pre-employment transition services must include:
- Job exploration counseling
- Work-based learning (in-school, after school, or community-based opportunities)
- Counseling on enrollment in post-secondary educational programs
- Training for workplace readiness/social skills/independent living
- Peer mentoring and instruction in self-advocacy
- May be conducted individually or in a group setting
- Work-based learning should be in an integrated setting whenever possible

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Section 511 Requirements For All Ages

- Every individual with a disability who wants to continue subminimum wage employment with a Section 14(c) certificate holder must receive career counseling and information and referral services annually.
- Counseling must be conducted annually for all persons; and for any person who is hired after July 22, 2016, the counseling must occur twice in the first year.
- For persons hired prior to July 22, 2016, counseling must be provided prior to July 22, 2017, and once a year thereafter.

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Section 511 Requirements For All Ages

- The counseling must be conducted in a manner that fosters informed choice and independent decision making.
- The counseling may include a discussion of benefits.
- The DSU is required to provide documentation as soon as possible after the service has been provided, or within 10 days if the service has been declined.

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Section 511 Requirements For All Ages

- A DSU may provide this service directly or contract with an outside service provider, but not with an entity that has an interest in the individual's employment outcome, and not with a Section 14(c) certificate holder.
- The DSU must provide the service to all persons who become known to the DSU whether through VR, self-referral, or via a third party, including the Section 14(c) certificate holder.

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Section 511 Employer Obligation

- Annually, an employer must provide information on self-advocacy, self-determination and peer mentoring training opportunities provided in the geographic area. The entity providing the training may not have a financial interest in the individual's employment outcome – this actual mentoring/training cannot be provided by the employer or another Section 14(c) certificate holder.

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Department of Labor Guidance

- Wage & Hour Division Enforcement guidance Issued July 27, 2016
- Notes that WIOA establishes two new requirements that must be met for a worker with a disability to be paid a subminimum wage: (1) Individuals with disabilities 24 and younger receive additional services to improve access to CIE, including transition services and VR and career counseling services before being hired, and (2) all workers, including youth, receive career counseling and information about training opportunities as a condition of payment of a subminimum wage.

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Department of Labor Guidance

- “The employer is required to verify completion of these requirements and review any relevant documentation provided by the employee.”
- Employers must retain copies of this documentation.
- “In the event of a WHD investigation, employers may be assessed back wages at the full minimum wage for each affected employee if it is determined that these requirements have not been met.”
- Employers must determine the age of all new hires after July 22, 2016 in order to determine who is covered by Section 511 and, if so, whether they have received services.

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Department of Labor Guidance

- If the youth cannot provide documentation that the services have been completed, the employer must pay full minimum wages until the youth provides documentation.
- WHD states: “Prospective employers and employees are strongly encouraged to contact the VR agencies in their States to obtain services and documentation.” (It does not appear, however, that VR is authorized to give the documentation to a prospective employer; rather, it is given to the employee.)

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Department of Labor Guidance

- Employers must verify that each current Section 14(c) employee, regardless of age, receiving the counseling they are entitled to, twice in the first year of employment, and annually thereafter. "Employers are strongly encouraged to contact the DSU in their State as soon as possible and make appropriate referrals in order to receive the mandatory career counseling within the required time frames."
- Employers should review any documents provided by the employee indicating that counseling has been provided.

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Department of Labor Guidance

- If the employer does not or cannot verify that the requirements for counseling have not been completed within the relevant time frame, the employer must pay full minimum wage until the counseling has been completed.

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Department of Labor Guidance

- The employer must provide all current Section 14(c) employees with information about local self-advocacy, self-determination, and peer mentoring training opportunities every six months during the first year of employment and annually thereafter and must verify that they have done so.
- If the employer cannot verify that the self-advocacy, peer mentoring, and training opportunities have been provided to the employee, the employer must pay full minimum wages until the information is provided.

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Department of Labor Guidance

- Enforcement: WHD investigator will request dates of birth and start dates for every employee being paid subminimum wage who is hired after July 22, 2016.
- If an employee does not meet the requirements, WHD will require back wages at full minimum wage to the date of the violation.

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Reality Check

- VR offices apparently learned of the counseling requirements in late June.
- There is no grandfathering of current employees.
- Many states have thousands of people already working in subminimum wage jobs.
- In a state with more than 6,000 subminimum wage workers, VR offices would have to accomplish 115 counseling sessions per week. It does not appear that this mandate comes with additional funding.
- Section 14(c) certificate holders may not do VR's job, but are subject to penalties if VR cannot do its job.
- The clock started on July 22, 2016.

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What is ACCSES?

- A dedicated network of organizations that provide services to people with disabilities across the U.S.
- We are passionate supporters of people with disabilities, their capabilities, their determination, and their right to have a full array of employment options.
- We keep a close eye on the issues, prepare issue briefs and policy papers, build relationships at all levels of government, assist our members with their concerns, and advocate on behalf of the issues important to our members and the people they serve.

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WHAT IS ACCSES WORKING ON?

- In addition to continuing advocacy with respect to WIOA, the regulations, and DOE/DOL guidance, ACCSES is advocating on numerous other issues:
- Pending legislation that will affect members
- Drafting legislation that will affect members
- Communicating with DOE/DOL/CMS and other agencies over issues of concern to our members
- Advocating at all levels of government with respect to issues of concern to our members

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Section 14(c)

- There is considerable interest in eliminating/curtailing/more strictly enforcing Section 14(c) certificates, by Congress, DOL, the ACICIEID Committee, and both the Democratic and Republican parties.

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Transition to Independence Act

- This is another bill we are keeping an eye on:
- S. 1604, The Transition to Independence Act (Grassley, R-IA/Wyden, D-OR/Casey, D-PA).
- If passed, this bill would encourage HHS to establish a program giving Medicaid incentives to states under certain circumstances for expanding individual integrated employment and reducing subminimum wage work, congregate setting work, or facility-based day habilitation placements for working-age individuals with a disability receiving Medicaid-funded home or community-based service.

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TIME Act

- H.R. 188 (Harper, R-MS)/S. 2001 (Ayotte, R-NH) The Transitioning to Integrated and Meaningful Employment (TIME) Act
- This has not moved forward but has not gone away. There are 69 co-sponsors, 16 of whom signed on this year, including this summer.
- If enacted, the Time Act would phase out special wage certificates.
- It was placed into the Republican Party platform, but it is unclear whether there is someone powerful pushing for it.

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National Defense Authorization Act

- Section 829H of S.2943, National Defense Authorization Act of 2017, endangers AbilityOne programs by placing a limitation on the Department of Defense's ability to contract through the AbilityOne Program.
- The House bill does not contain the language.
- ACCSES and others are making sure conferees charged with the final bill text understand why the wording must change.

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ACICIEID Committee

- The Advisory Committee to Increase Competitive Integrated Employment for Individuals with Disabilities released its Draft Final Report of the committee's recommendations.
- The Final Report and the Committee's final recommendations will go to Secretary Perez and Congress on September 15.

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ACICIEID Committee

- The Committee was charged with studying and preparing “findings, conclusions, and recommendations on”:
- ways to increase the employment opportunities for individuals with intellectual or developmental disabilities or other individuals with significant disabilities in competitive integrated employment;
- the use of the Section 14(c) certificate program for the employment of individuals with I/DD, or other individuals with significant disabilities; and
- ways to improve oversight of the use of such certificates.

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ACICIEID Committee

- The Draft Final Report is broken down into six sections:
 - (1) Overall Capacity Building
 - (2) Capacity Building for Youth
 - (3) Capacity Building through Changes in the Use and Oversight of 14(c)
 - (4) Building Capacity in the Marketplace
 - (5) Capacity Building in Federal Agencies
 - (6) Increasing Competitive Integrated Employment in the AbilityOne Program.

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ACICIEID Committee

- The Draft Final Report makes substantive recommendations regarding a timed phase-out of Section 14(c) certificates, and strongly suggests increasing the difficulty of obtaining or renewing a certificate, and calls for stricter enforcement of existing certificates.
- The Draft Final Report likewise calls for significant changes to the AbilityOne program, including an immediate cessation of the use of Section 14(c) certificates for all contracts for products or services.
- The Draft Final Report is available online, and I have prepared a summary for ACCSES members.

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DOL Overtime Rule

- Issued May 18, 2016
- Goes into effect December 1, 2016
- Nonprofits are subject to the rule
- Raises overtime eligibility threshold to \$47,476
- There has been pushback that employees will not benefit to the extent DOL expects, but rather will in effect be demoted back to hourly, with loss of status, loss of hours, loss of training and leadership opportunities, and loss of flex-time.
- Nonprofits have pushed back on DOL and Congress, asserting that this will cost jobs, a reduction in services, and negatively impact employee morale, among other things.

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DOL Overtime Rule

- Our Position (which is also laid out in an issue brief we prepared on this issue): Nullify it. Or, if the pending nullification resolutions are either not passed or Congress is unable to override a presidential veto, delay it until a study can be done as to the effects of the Overtime Rule on nonprofits and small businesses. Or, fund it.
- S.J. Res. 34 (Alexander, R-TN) (44 co-sponsors), introduced June 7, 2016; H.J. res. 95 (Fox, R-NC) (26 co-sponsors), introduced June 16, 2016 seek to nullify through the Congressional Review Act. Both resolutions are presently in committee.

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DOL Overtime Rule

- The Protecting Workplace Advancement and Opportunity Act, S. 2707 (Alexander R-TN, Scott, R-N.C.) and H.R. 4773 (Kline R-MN, Walberg, R-MI) was introduced in March, and presently are in their respective committees.
- SOS – Save Our Services – is recently introduced legislation supported by Tonko, D-MA and Stivers, R-OH – intended to lead to funding.

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Individuals with Disabilities Education Act

- There is pending rulemaking to resolve a DOE concern that students of color with disabilities are treated differently with respect to identification, placement, and discipline, resulting in lower academic achievement and graduation rates.
- DOE seeks to establish a reasonable threshold to determine when racial disparity in the school district has become significantly disproportionality.
- Any LEA so identified would have to review its procedures and reserve 15% of its IDEA funds for comprehensive coordinated early intervention services.
- We have been staying abreast of this issue with our colleagues in the Consortium for Citizens with Disabilities

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HCBS Settings Rule

- On April 13, 2016, CMS granted initial and final approval to Tennessee's state transition plan. On June 2, 2016, CMS granted initial approval only to Kentucky and Ohio. Both states still have work to do. More recently, Delaware was more recently provided initial approval.
- CMS made clear: Reverse integration, by itself will not be an acceptable form of compliance.
- CMS informed Ohio that "hiring, recruiting, or inviting individuals who are not HCBS recipients into the setting to participate in activities that a non-HCBS individual would normally take part of in a typical community setting" would be insufficient.

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HCBS Settings Rule, cont'd

- States must assure settings are integrated in and support access to the greater community; provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources; and ensure the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS.
- Many of CMS's other requested changes to Kentucky's and Ohio's transition plans involve questions about the assessment process and how the states will validate self assessments.

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HCBS Settings Rule

- Kentucky planned to bring people from the community to adult health centers and training centers “to interact with participants in a meaningful way in areas of interest to them.”
- Kentucky was told “compliance requires a plan to integrate beneficiaries into the broader community. Reverse integration or a model of intentionally inviting individuals not receiving HCBS into a facility-based setting to participate in activities with HCBS beneficiaries is not considered by CMS in itself to be a sufficient strategy for complying with the community integration requirements outlined in the HCBS settings rule.”

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Keep Up Your Advocacy

- Individuals, families, communities, service providers must work together to influence the direction and outcomes of change through:
 - Outcome research
 - Public relations and education
 - Educating policy makers
 - Media engagement – pay attention and respond to coverage of issues important to you
 - Advocacy at the federal, state, and local level
 - Lobbying for change
 - Litigation if needed

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Keep Up Your Advocacy

- Invite your member of Congress to your site for a visit – Congress will be in recess in October. This is retail politics. If you invite them, they will come.
- Take photos, put them on your site, on FB, on Twitter – really engage with your representative and Senators. Let ACCSES know so we can post it in social media, and follow up with the representative or Senator.
- Do not forget your local legislators!
- Showcase why a full array of options is needed.

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