



June 15, 2015

Janet LaBreck
Commissioner,
Rehabilitative Services Administration
Potomac Center Plaza
550 12th Street SW
Washington, D.C. 20202

RE: Docket ID ED-2015-OSERS-0001

Dear Commissioner LaBreck:

The Arc of the United States appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) released April 16, 2015 implementing the proposed changes resulting from the Workforce Innovation and Opportunity Act (P.L. 113-128) which replaced the Workforce Investment Act and amended the Rehabilitation Act of 1973. The Arc is the largest national community-based organization advocating for and serving people with intellectual and developmental disabilities (I/DD) and their families. The Arc is endorsing the comments provided by the Consortium for Citizens with Disabilities Employment and Training Task Force and is providing additional comments regarding several proposals.

Currently, there is an unacceptably high number of people who have I/DD who are absent from the workforce. The reauthorization of the Vocational Rehabilitation Act (VR), as part of the Workforce Innovation and Opportunity Act (WIOA), provides an opportunity to improve this situation. WIOA's emphasis on improving transition services for youth who are entering the workforce through expansion of supported employment services, addition of a customized employment option, and provision of pre-employment transition services and other supports prior to placement of post-high school youth in jobs earning subminimum wage, are examples of provisions that should expand opportunities for competitive integrated employment.

These expanded opportunities are intended to benefit people with the most significant disabilities, which includes people with intellectual and/or developmental disabilities (I/DD). The Arc urges the Department to provide guidance to states on what is meant by the most significant disabilities. The guidance should be clear that people with I/DD have the most significant disabilities and the guidance may help achieve greater consistency across the states on who is a person with the most significant disability. In doing so, the Department should emphasize that these changes in the law are meant to increase opportunities for people with I/DD and that the higher expectations of competitive, integrated employment should not be used to find more people with I/DD ineligible for services based on perceptions that their disability is too significant. Currently, only a very small

number of people with I/DD receive services from VR and The Arc is confident that Congress did not intend to see that number decrease as a result of the changes to the Act.

The Arc strongly supports the pre-employment transition provisions in the law and proposed regulation. In the past, The Arc has advocated for an increased emphasis on the provision of services to youth with disabilities to attain employment outcomes. The Arc agrees with the interpretation by the Administration that the students with disabilities who are provided pre-employment transition services do not need to apply for VR services. The Arc recognizes that many of the critical provisions in the NPRM mirror the law, including:

- The required and authorized activities under pre-employment transition services;
- The prohibition against using the reservation of funds for pre-employment transition services on administrative costs; and
- The requirement that these provisions do not supplant or replace the transitions services authorized by the IDEA.

The Arc urges the Department to maintain and enforce these provisions. The Arc offers the following comments to help ensure that the changes in the law are properly implemented.

Part 361 – State Vocational Rehabilitation Service Program

Applicable Definitions (§361.5)

(c) The following definitions:

(9) Competitive Integrated Employment

The Arc urges the Department to clarify what is meant by the term “work unit” as the term is not used in the statute where the standard is interaction with other employees. The standard in the statute is clear and flexible enough to apply to a variety of work situations. The addition of the term “work unit” and “for the purposes of performing the duties of the position” appear to narrow what is acceptable interaction in the workplace. Is the intent to create a higher standard in the rule than is required by statute? Regardless of intent, we request that the Department provide additional clarification and allow greater flexibility.

The Arc’s Recommendation: The Arc asks the Department to issue guidance in the final regulation summary and through follow-up with the designated State units for the VR program to address the definition of "work units" and their impact on the definition of competitive integrated employment.

(15) Customized Employment

The Arc supports the addition of the regulatory language defining customized employment as the statute requires. The Arc appreciates the new option for providing employment services to individuals with significant disabilities. The Arc appreciates that the provision of services and supports at the job location is not subject to an arbitrary time limit. Customized employment is another strategy for assisting many individuals in finding competitive integrated employment.

(15) Employment Outcome

The Arc supports the intent of the agency to eliminate uncompensated outcomes such as homemaker and unpaid family member, as described in the preamble to the NPRM. We support this change and assume that it is being accomplished by striking out “to the greatest extent practicable” from the

existing regulations. The proposed regulations however should be clearer about this intent, perhaps by adding a note in the regulation explaining the change.

(19) Extended Services

The Arc supports the allowance for states to provide extended services to youth with significant disabilities for 4 years.

The Arc’s Recommendation: We propose that the agency modify the language to allow a reasonable amount of additional time if needed by the individual. This is consistent with the emphasis in the law on providing individualized services based on the individual’s needs.

Revise §361.19

Proposed Rule	The Arc’s Recommendation
<p>(19) Extended services means ongoing support services and other appropriate services that are— (i) Needed to support and maintain an individual with a most significant disability including a youth with a most significant disability, in supported employment; (ii) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment; (iii) Based on the needs of an eligible individual, as specified in an individualized plan for employment; (iv) Provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the designated State unit; and (v) Provided to youth with the most significant disabilities by the designated State unit in accordance with requirements set forth in this part and part 363 for a period not to exceed 4 years. The designated State unit may not provide extended services to individuals with the most significant disabilities who are not youth with the most significant disabilities.</p>	<p>(19) Extended services means ongoing support services and other appropriate services that are— (i) Needed to support and maintain an individual with a most significant disability including a youth with a most significant disability, in supported employment; (ii) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment; (iii) Based on the needs of an eligible individual, as specified in an individualized plan for employment; (iv) Provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the designated State unit; and (v) Provided to youth with the most significant disabilities by the designated State unit in accordance with requirements set forth in this part and part 363 for a period not to exceed 4 years. If necessary, it could be extended for a reasonable period of time (as defined in section 397.20) which must be consistent with the disability-related and vocational needs of the individual. The designated State unit may not provide extended services to individuals with the most significant disabilities who are not youth with the most significant disabilities.</p>

(53) Supported Employment

The Arc recommends removing the six month limit for individuals considered to be working on a “short-term basis” toward competitive integrated employment. The Arc is concerned that six months

is an arbitrary time limit that is not based on an individual’s needs or employment plan. The six month limit creates an unnecessary constraint on those who need additional time for supported employment services before they are successfully placed in competitive integrated employment. The Arc would also appreciate clarification about what would happen to the individual if he/she did not achieve competitive integrated employment within the short term basis, however it is defined. The Department should further clarify whether the VR clock restarts the allowable 24 months when the person achieves competitive integrated employment. The Arc recommends instead the following modification:

Revise §361.5(c)(53)(ii)

Proposed Rule	The Arc’s Recommendation
<p>(ii) For purposes of this part, an individual with the most significant disabilities, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, as defined in paragraph (c)(9) of this section, is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment within six months of achieving an employment outcome of supported employment.</p>	<p>(ii) For purposes of this part, an individual with the most significant disabilities, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, as defined in paragraph (c)(9) of this section, is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment within six months of achieving an employment outcome of supported employment a reasonable period of time (as defined in section 397.20) which must be consistent with the disability-related and vocational needs of the individual, as well as the anticipated length of time required to complete the services identified in the individualized plan for employment, not to exceed 18 months.</p>

(54) Supported Employment Services

The Arc is proposing to strike from the regulation the language that was deleted from the law and replace it with the statutory language. If the Department believes additional clarifying language is needed it should describe what is meant by “if necessary” which should not be the language that was removed from the statute.

Revise §361.5(c)(54)

Proposed Rule	The Arc’s Recommendation
(54) Supported employment services means ongoing support services, including	(54) Supported employment services means ongoing support services, including

<p>customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment that are—</p> <p>(i) Organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment; (ii) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; (iii) Provided by the designated State unit for a period of time not to exceed 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and (iv) Following transition, as postemployment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.</p>	<p>customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment that are—</p> <p>(i) Organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment; (ii) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; (iii) Provided by the designated State unit for a period of time not to exceed 24 months, except that period may be extended, if necessary, in order to achieve the employment outcome identified in the individualized plan for employment; unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and (iv) Following transition, as postemployment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.</p>
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(§361.17) Requirements for a State Rehabilitation Council

The Arc is pleased to see the proposed addition of programs established under the Assistive Technology Act of 1998 in the list of entities with which the SRC must coordinate its activities. We agree that their inclusion underscores the integral role that assistive technology plays in the ability of individuals with disabilities to obtain and maintain employment.

The Arc recommends an addition to and seeks clarification for §361.17, the proposed regulation that outlines requirements for a State Rehabilitation Council under Part 361 (Requirements for a State Rehabilitation Council).

The Arc’s Recommendation: The Arc recommends the following modification to §361.17 to better ensure inclusivity of individuals with intellectual disability:

Amend §361.17 by inserting “(including intellectual disability)” between “cognitive” and “, sensory”

The Arc’s recommendation: The Arc also recommends adding at least one representative of the state’s Council on Development Disabilities to the State Rehabilitation Council:

Amend § 361.17 by inserting “At least one representative of the Council on Developmental Disabilities established pursuant to Sec. 125 of 42 U.S.C. 15001 et. seq.”

Proposed Rule	The Arc’s Recommendation
§361.17(b)(vii)(A) Individuals with physical, cognitive, sensory, and mental disabilities; and	§361.17(b)(vii)(A) Individuals with physical, cognitive (including intellectual disability) , sensory, and mental disabilities; and
§361.17(b) <i>Composition</i>	§361.17(b)(xi) At least one representative of the Council on Developmental Disabilities established pursuant to Sec. 125 of 42 U.S.C. 15001 et. seq.”

§361.18 Comprehensive System of Personnel Development

§ 361.18(d)(1)(i)

The Arc is pleased that this section will be amended to require the comprehensive system of personnel development to include training implemented in coordination with entities carrying out State programs under section 4 of the Assistive Technology Act of 1998.

The Arc recommends an addition to and seeks clarification of §361.29 to ensure personnel are adequately qualified (Comprehensive system of personnel development).

The Arc’s Recommendation: The Arc recommends the following modification to §361.18 to better ensure personnel are adequately qualified:

Amend §361.18(c)(B) by inserting “and Demonstrated paid or unpaid experience, for not less than one year, consisting of (i) Direct work with individuals with disabilities in a setting such as an independent living center; (ii) Direct service or advocacy activities that provide such individual with experience and skills in working with individuals with disabilities; or (iii) Direct experience in competitive integrated employment environments as an employer, as a small business owner or operator, in in self-employment, or other experience in human resources or recruitment, or experience in supervising employees, training, or other activities” as found in §361.18(c)(1)(ii)(A)(1), after “and”

Proposed Rule	The Arc’s Recommendation
§361.18(c)(B) Attainment of a master’s or doctoral degree in a field of study such as vocational rehabilitation counseling, law, social work, psychology, disability studies, business administration, human resources, special education, management, public administration, or another field that reasonably provides competence in the employment sector, in a disability field, or in both	§361.18(c)(B) (1) Attainment of a master’s or doctoral degree in a field of study such as vocational rehabilitation counseling, law, social work, psychology, disability studies, business administration, human resources, special education, management, public administration, or another field that reasonably provides competence in the

business-related and rehabilitation-related fields; and	employment sector, in a disability field, or in both business-related and rehabilitation-related fields; and (2) Demonstrated paid or unpaid experience, for not less than one year, consisting of (i) Direct work with individuals with disabilities in a setting such as an independent living center; (ii) Direct service or advocacy activities that provide such individual with experience and skills in working with individuals with disabilities; or (iii) Direct experience in competitive integrated employment environments as an employer, as a small business owner or operator, in in self-employment, or other experience in human resources or recruitment, or experience in supervising employees, training, or other activities; and
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The Arc’s Recommendation: The Arc recommends the following modification to §361.18 to better ensure personnel are adequately qualified:

Amend §361.18(2)(ii)(A) by inserting “, including the social models of disability” after disabilities

Proposed Rule	The Arc’s Recommendation
§361.18(2)(ii)(A) Understanding the medical and psychosocial aspects of various disabilities;	§361.18(2)(ii)(A) Understanding the medical and psychosocial aspects of various disabilities, including the social models of disability;

Similarly, The Arc recommends that the same personnel standards apply to contractors engaged in documentation review as noted in §397.50 (What is the role of the designated State unit in the review of documentation process under this part?)

The Arc’s Recommendation: The Arc recommends the following modification to §397.50 to better ensure personnel are adequately qualified:

Amend §397.5 by inserting “If a contractor is used to engage in the review of individual documentation as noted in §397.5, that contractor must meet the same personnel standards designated in §361.18(c).” after “part.”

Proposed Rule	The Arc’s Recommendation
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<p>§397.5 The designated State unit, or a contractor working directly for the designated State unit is authorized to engage in the review of individual documentation required under this part that is maintained by entities, as defined at 397.5(d), under this part.</p>	<p>§397.5 The designated State unit, or a contractor working directly for the designated State unit is authorized to engage in the review of individual documentation required under this part that is maintained by entities, as defined at 397.5(d), under this part.</p> <p>(a) If a contractor is used to engage in the review of individual documentation as noted in §397.5, that contractor must meet the same personnel standards designated in §361.18(c).</p>
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§361.24 Cooperation and Coordination with Other Agencies

§361.24 (f) *Cooperative agreement regarding individuals eligible for home and community based waiver programs*

The Arc supports the statutory and regulatory provisions requiring cooperative agreements with the state Medicaid agency and the state agency primarily serving people with intellectual and/or developmental disabilities (I/DD). As youth transition into adult life, it is critically important that the systems which provide services and supports are working together. Many states already experience waiting lists for access to home and community-based services and they need to plan for how they will meet the needs of transitioning youth.

§361.29 Statewide Assessment; annual estimates; annual State goals and priorities; strategies and progress reports.

The Arc recommends an addition to and seeks clarification of §361.29 to ensure objective assessment of state vocational rehabilitation services.

The Arc’s Recommendation: The Arc recommends the following modification to §361.29 to better ensure an objective and comprehensive statewide assessment:

Amend §361.29(a)(1) by inserting “an independent and” between “results of” and “comprehensive”

Proposed Rule	The Arc’s Recommendation
<p>§361.29(a)(1) The results of a comprehensive statewide assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the state has one) every three years.</p>	<p>§361.29(a)(1) The results of an independent and comprehensive statewide assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the state has one) every three years.</p>

§361.36 Ability to serve all eligible individuals; Order of selection for services

361.36(a)(3)(v) states whether the designated State unit will elect to serve, in its discretion, eligible individuals (whether or not the individuals are receiving vocational rehabilitation services under the order of selection) who require specific services or equipment to maintain employment, notwithstanding the assurance provided pursuant to paragraph (3)(iv)(A) of this section.

The Arc’s Recommendation:

The Arc is concerned that the flexibility provided to the designated state unit, if used frequently, would make the order of selection meaningless. The Arc recommends that the use of this be monitored at the state level. The State Rehabilitation Council reviews the state’s order of selection policies and should be provided with information about how this policy is being implemented by the state and whether changes are needed.

Proposed Rule	The Arc’s Recommendation
<p>361.36(f) State Rehabilitation Council (f) State Rehabilitation Council. The designated State unit must consult with the State Rehabilitation Council, if the State unit has a Council, regarding the— (1) Need to establish an order of selection, including any reevaluation of the need under paragraph (c)(2) of this section; (2) Priority categories of the particular order of selection; (3) Criteria for determining individuals with the most significant disabilities; and (4) Administration of the order of selection.</p>	<p>361.36(f) State Rehabilitation Council (f) State Rehabilitation Council. The designated State unit must consult with the State Rehabilitation Council, if the State unit has a Council, regarding the— (1) Need to establish an order of selection, including any reevaluation of the need under paragraph (c)(2) of this section; (2) Priority categories of the particular order of selection; (3) Criteria for determining individuals with the most significant disabilities; and (4) Administration of the order of selection including the use of the discretionary authority to provide services and equipment to individuals to maintain employment.</p>

§361.32 Provision of training and services for employers

The Arc supports the added emphasis on engaging employers in the VR process. All of the intended progress of individuals with significant disabilities in competitive integrated jobs will require thousands of informed, committed and responsive private sector employers. To help build that critical component of success, the Department should recommend that the states convene Employer Advisory Councils either on a Statewide and/or regional/local basis and other efforts to engage employers.

§361.42 Assessment for determining eligibility and priority for services

§361.42(a)(2) Presumption of benefit. The designated State unit must presume that an applicant who meets the eligibility requirements in paragraphs (a)(1)(i) and (ii) of this section can benefit in terms of an employment outcome.

The Arc’s Recommendation:

The Arc supports the regulatory language that mirrors the statutory language regarding the presumption of benefit. The Arc urges the Department to clarify that this is a shift away from spending significant time and resources determining whether the severity of a person’s disability is too severe to achieve an employment outcome. The law still allows that outcome but it should be used infrequently, given the assumptions in the Act that people can achieve competitive, integrated, employment. The Arc urges the states to presume ability and severely limit the use of the trial work experiences for individuals with significant disabilities found in 361.42 (e). The trial work experience is intended to be a safeguard to ensure that people who have a significant disability and need services can have trial work experiences. However, this should not become a widespread practice. This safeguard could be strengthened with the following modifications to §361.42 (e) (2)(iii):

Proposed Rule	The Arc’s Recommendation
(iii) Trial work experiences must be of sufficient variety and over a sufficient period of time for the designated State unit to determine that there is sufficient evidence to conclude that the individual cannot benefit from the provision of vocational rehabilitation services in terms of a competitive integrated employment outcome; and	(iii) Trial work experiences must be of sufficient variety and over a sufficient period of time for the designated State unit to determine that there is sufficient clear and convincing evidence to conclude that the individual cannot benefit from the provision of vocational rehabilitation services in terms of a competitive integrated employment outcome; and

Clear and convincing evidence is a much stronger standard. State agencies should be familiar with the meaning of the standard and the high bar it sets, as described in the note on page 21125. This is an important consumer protection for the very limited number of people who may need to use the trial work experience to demonstrate that they can benefit from services, despite the severity of the disability.

§361.45 Development of the individualized plan for employment

§361.45 (e) *Standards for developing the individualized plan for employment.*

The Arc supports the provision in the law and the regulation requiring that the individualized plan for employment be developed as soon as possible, but not later than 90 days. The Arc urges the Department to emphasize the “as soon as possible” aspect of the requirements as state VR agencies can and do complete the individual plan in a more expedited manner. However having a nationwide standard of 90 days is an important protection for individuals seeking services.

§361.48 Scope of Vocational Rehabilitation Services for Individuals with Disabilities

Proposed §361.48(a)(2) Required activities would specify the required pre-employment transition services that are provided directly to students with disabilities.

The Arc’s Recommendation: The Arc recommends the following modification to §361.48(a)(2)(v) to clarify who is qualified to deliver self-advocacy training.

Amend §361.48(a)(2)(v) by inserting “and is delivered by a recognized self-advocate leader or recognized self-advocacy group of the individual’s choosing” after “employment”).

Proposed Rule	The Arc’s Recommendation
§361.48(a)(2)(v) Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment).	§361.48(a)(2)(v) Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment), and is delivered by a recognized self-advocate leader or recognized self-advocacy group of the individual’s choosing.

§361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities

§361.49 (a)(1)

The Arc supports the additional language allowing the state agency to provide support to nonprofit community rehabilitation programs to develop or improve their ability to prepare individuals for competitive integrated employment. This support can be helpful to rehabilitation programs transitioning to other models of supports and services. The Arc urges the Department to encourage states to provide this assistance.

§397.30 What are the responsibilities of a local educational agency to youth with disabilities who are known to be seeking subminimum wage employment?

The Arc recommends a modification and an addition within §397.30 under Subpart D, which describes the responsibilities of local educational agencies in documenting that a youth has received transition services.

The Arc’s Recommendation: The Arc recommends the following modification to proposed §397.30:

Amend §397.30 by deleting “who are known to be seeking subminimum wage employment”

The Arc’s Recommendation: The Arc recommends the following addition to §397.30 related to retention and availability of the local educational agency documentation.

Amend § 397.5(b)(1) by inserting at the end the following: “The local educational agency shall retain copies of such documentation, including for review by the Client Assistance

Program established under 34 CFR part 370 or a Protection and Advocacy agency established under 42 U.S.C. 15041 et. seq.”

Proposed Rule	The Arc’s Recommendation
<p>§ 397.30 What are the responsibilities of a local educational agency to youth with disabilities who are known to be seeking subminimum wage employment?</p> <p>Of the documentation to demonstrate a youth with a disability’s completion of the actions described in §397.20(a) of this part, a local educational agency, as defined in §397.5(b)(1), can provide the youth with documentation that the youth has received transition services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), such as transition services available to the individual under section 614(d) of that act (20 U.S.C. 1414(d)).</p>	<p>§ 397.30 What are the responsibilities of a local educational agency to youth with disabilities who are known to be seeking subminimum wage employment?</p> <p>Of the documentation to demonstrate a youth with a disability’s completion of the actions described in §397.20(a) of this part, a local educational agency, as defined in § 397.5(b)(1), can provide the youth with documentation that the youth has received transition services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), such as transition services available to the individual under section 614(d) of that act (20 U.S.C. 1414(d)). The local educational agency shall retain copies of such documentation, including for review by the Client Assistance Program established under 34 CFR part 370 or a Protection and Advocacy agency established under 42 U.S.C. 15041 et. seq.</p>

§397.31 Are there any contracting limitations on educational agencies under this part?

The Arc recommends an addition to and seeks clarifying guidance for §397.31, the proposed regulation that outlines contracting limitations on educational agencies under Part 397 (Limitations on the Use of Subminimum Wages).

The Arc’s Recommendation: The Arc recommends the following modification to §397.31 to better ensure congressional intent:

Amend §397.31 by inserting “, subcontract” between “contract” and “or other arrangements”

Proposed Rule	The Arc Recommendation
<p>§397.31 Are there any contracting limitations on educational agencies under this part?</p> <p>Neither a local educational agency, as defined in §397.5(b)(1), nor a State educational agency, as defined in §397.5(b)(2), may enter into a contract or other arrangement with an entity, as</p>	<p>§397.31 Are there any contracting limitations on educational agencies under this part?</p> <p>Neither a local educational agency, as defined in §397.5(b)(1), nor a State educational agency, as defined in §397.5(b)(2), may enter into a contract, subcontract or other arrangement with an entity,</p>

<p>defined in § 397.5(d), for the purpose of operating a program under which a youth with a disability is engaged in subminimum wage employment.</p>	<p>as defined in § 397.5(d), for the purpose of operating a program under which a youth with a disability is engaged in subminimum wage employment. Nothing in this statute should be interpreted as precluding other types of contracts, subcontract or other arrangement with an entity, as defined in § 397.5(d), for other than operating a program under which a youth with a disability is engaged in subminimum wage employment.</p>
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The Arc’s Recommendation: In follow up to the Department’s request (NPRM page 21090) for comments “regarding the Department’s role and jurisdiction” with respect to the contracting limitation (§397.31), The Arc asks the Department to issue guidance to local and State educational agencies that makes clear that contracting prohibitions with an entity, as defined in §397.5(d), only applies to contracts for the purposes of operating a program under which a youth with disability is engaged in subminimum wage employment. While this distinction appears clear in the statute and proposed regulation, we are aware of and concerned about misinterpretation and/or misrepresentation about the contracting limitations at the state and local levels. It appears that there is confusion about whether VR can contract with an entity holding a special wage certificate for a allowable service.

We request clarification in the final regulation summary as well as follow-up guidance to State educational agencies and designated State units that the contracting limitation (§397.31) does not in any way prevent a local and State educational agency from entering into a contract with an entity, as defined in §397.5(d), for transition and pre-employment transition services aimed at developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently, participate in postsecondary education experiences, and obtain and retain competitive integrated employment.

ADDITIONAL QUESTIONS AND COMMENTS

P.L. 113-128 Statutory Provision—Section 405 Administration of the Act (Section 12)

405 (c)(1)(D) provide technical assistance to entities to carry out community rehabilitation programs to build their internal capacity to provide individualized services and supports leading to competitive integrated employment, and to transition individuals with disabilities away from nonintegrated settings.

The Arc’s Recommendation:

The Arc seeks clarification from the Department on how this permissive authority will be implemented. The Arc encourages the Commissioner to aggressively provide support through this authority to entities who wish to build their capacity to provide these services.

P.L. 113-128 Statutory Provision--Section 412 State Plan (Section 101)

Statutory provisions at 101 (a)(6)(B)(i) requires the state to report: “the number of applicants and the number of individuals determined to be eligible or ineligible for the program carried out under

this title, including the number of individuals determined to be ineligible (disaggregated by type of disability and age)”.

The Arc’s Recommendation:

The Arc recommends that the Department clarify how they are implementing this new provision in the law. The Arc is particularly interested in the break down by most significant disability (by disability) disability and age. This is one way that the agency can determine if the WIOA changes in the Act result in more people with intellectual and/or developmental disability being found ineligible rather than the intended outcome of more people with intellectual disabilities receiving the supports and services needed to achieve integrated competitive employment. A baseline of data is needed to determine if there is a problem and develop strategies for the state to fix the problem.

The Arc appreciates the opportunity to provide input on the NPRM and looks forward to working with RSA on the implementation of the new requirements. If you have any questions or would like further information please contact Julie Ward (ward@thearc.org).

Sincerely,

Marty Ford
Senior Executive Officer, Public Policy