Fed Reg (Last Rev. 08/02/16)

**CALIFORNIA DEPARTMENT OF REHABILITATION**

**REVIEW OF WIOA FEDERAL REGULATIONS**

This table reflects the California Department of Rehabilitation initial review of the final federal rules implementing the Workforce Innovation and Opportunity Act (WIOA) posted June 30, 2016. The California Department of Rehabilitation anticipates further review may result in changes and addition to this side-by-side. The section numbers in the table do not reflect any order of importance but were added to identify areas or topics to facilitate discussion.

## Vocational Rehabilitation Services

| **#** | **Prior to WIOA** | **WIOA** | **WIOA Federal Regulations** |
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| 1.1 | Competitive Employment and Integrated Setting  **(Former 34 CFR 361.5(b)(11) and (33))**  Prior federal regulation, not law, defined “competitive employment” and “integrated setting” as two distinct terms. These regulations together required work in a competitive labor market in a setting typically found in the community at or above the minimum wage, but not less than the customary wage with the same level of benefits paid by the employer to other employees without disabilities for the same or similar work. Employees with disabilities had to interact with individuals without disabilities to the same extent as their co-workers without disabilities. | Competitive Integrated Employment  **(WIOA 404 and 29 USC 705(5))**  While the law introduces “Competitive Integrated Employment” as a new term, it is not a new concept. The law also requires the opportunity for advancement and the same level of benefits offered to all other employees. | Competitive Integrated Employment  **(34 CFR 361.5(c)(9))**  The level of interaction among employees is clarified in that the employee with a disability must interact for the purpose of performing the duties of the position with other employees who are not individuals with disabilities within a particular work unit and entire work site. |
| 1.2 | Employment Outcome  **(Former 29 USC 705(11))**  Entering or retaining competitive employment in the integrated labor market; satisfying the vocational outcome of supported employment; or satisfying any other vocational outcome the Secretary of Education may determine to be appropriate. | Employment Outcome  **(WIOA 404 and 29 USC 705(11))**  No Significant changes. | Employment Outcome  **(34 CFR 361.5(c)(15))**  The vocational rehabilitation agency may continue services to individuals with uncompensated employment goals until June 30, 2017, as long as Individualized Plans for Employment have been approved prior to the effective date of the regulations. These services can extend beyond June 30, 2017, if a longer period of time is required based on the needs of the individual. |
| 1.3 | Eligibility  **(Former 29 USC 722)**  In determining that an applicant is unable to benefit in terms of an employment outcome from vocational rehabilitation services due to the severity of the individual’s disability, the designated state unit shall use trial work experiences. An exception to utilizing trial work experiences is allowed “under limited circumstances when an individual cannot take advantage of such experiences.” | Eligibility  **(WIOA 413 and 29 USC 722(a))**  The exception to utilizing trial work experiences is removed from the statute. | Eligibility  **(34 CFR 361.41 and 361.42)**  Trial work experiences must be used when conducting an exploration of an individual’s abilities, capabilities, and capacity to perform in work situations. Extended evaluation has been removed from the regulations. |

## Distinct Services

| **#** | **Prior to WIOA** | **WIOA** | **WIOA Federal Regulations** |
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| 2.1 | Individualized Plan for Employment (IPE)  **(Former 29 USC 722)**    Transition services were not a mandatory component. | Individualized Plan for Employment (IPE)  **(WIOA 413 and 29 USC 722 (b)(4))**  IPE must include specific transition services if the eligible individual is a student. | Individualized Plan for Employment (IPE)  **(34 CFR 361.46)**  The description of the employment outcome may be a description of the individual’s projected post-school outcome. The IPE must include the specific transition services and supports needed to achieve the employment outcome. The IPE also must be coordinated with the Individualized Education Program (IEP) or section 504 services, as applicable. |
| 2.2 | Definition of Student and Youth with a Disability  **Undefined in previous Rehabilitation Act.** | Definition of Student and Youth with a Disability  **(WIOA 404 and 29 USC 705(37) and (42))**  Two new definitions:   1. Student with a disability between ages 16 through 21 who is eligible for and receiving IDEA services or is an individual with a disability for purposes of section 504. 2. Youth with a disability between the ages 14 through 24. Pre-employment transition services must be provided only to “students with a disability.” | Definition of Student and Youth with a Disability    (**34 CFR 361.5(c)(51))**  Student with a disability is broadly defined to include any student enrolled in an educational program, including a post-secondary or other recognized education program who meets the age requirements.  **(34 CFR 361.5(c)(58))**  Youth with a disability is age 14 through 24. |
| 2.3 | Pre-Employment Transition Services  **New term under WIOA.** | Pre-Employment Transition Services  **(WIOA 422 and 29 USC 733)**  Vocational rehabilitation services include the following five activities for students with disabilities (16 through 21 year-olds) who are eligible or potentially eligible for vocational rehabilitation services:   1. job exploration counseling, 2. work-based learning, opportunities, 3. counseling on post-secondary educational opportunities, 4. workplace readiness training, and 5. instruction in self-advocacy. With remaining funds, the vocational rehabilitation agency is authorized, but not required to provide nine other activities, specifically identified in the law. | Pre-Employment Transition Services  **(34 CFR 361.48(a))**  Pre-employment transition services must be available statewide to all students with disabilities in need of such services without regard to type of disability from 15 percent set-aside, regardless of whether the student has applied for or been determined eligible for vocational rehabilitation services. Cooperating agencies may provide pre-employment transition services to these individuals. However, pre-employment transition services do not include the following: tuition or other costs of attending postsecondary educational institutions, job coaching, orientation and mobility training, travel expenses, uniforms, or assistive technology. |
| 2.4 | Recipients of Services  **(Former 29 USC 722)**  Applicants or eligible individuals have individual rights and due process rights. | Recipients of Services  **(29 USC 722)**  No change. | Recipients of Services  **(34 CFR 361.38, 361.52, and 361.57)**  Youth or students with disabilities who have not yet applied or been determined eligible for vocational rehabilitation services have individual rights and due process rights, as they are recipients of services (specifically pre-employment transition services and transition services). These rights include, but are not limited to, the right to protection of personal information, the right to exercise informed choice, the right to mediation and fair hearing, and the right to be notified of and to seek advocacy assistance from the Client Assistance Program. |
| 2.5 | 15 Percent Set Aside  New requirement under WIOA. | 15 Percent Set Aside  **(WIOA 419 and 29 USC 730(d))**  Requires all states to use at least 15 percent of its vocational rehabilitation section 110 state allotments for provision of pre-employment transition services. The 15 percent cannot be used to pay for administrative costs of providing the pre-employment transition services. | 15 Percent Set Aside  **(34 CFR 361.65)**  This set aside must not be used to pay for administrative costs, as defined in section 361.5(c)(2). Administrative costs include supervisory costs. However, administrative costs do not include staff-related costs including salaries, fringe benefits, and travel, incurred while providing pre-employment transition services. Vocational rehabilitation funds, other than from the 15 percent set aside, may be used to pay for the administrative costs. |
| 2.6 | Transition Coordination  **New section under WIOA.** | Transition Coordination  **(WIOA 422 and 29 USC 733(d))**   1. Each local office of a vocational rehabilitation agency must: attend Individual Education Program meetings for students with disabilities when invited, 2. work with local workforce development boards, One-Stop centers, and employers to develop work opportunities for students with disabilities, 3. work with schools, to coordinate and guarantee the provision of pre-employment transitions services, and 4. attend person-centered planning meetings for individuals receiving services under Title 19 of Social Security Act, when invited. | Transition Coordination  **(34 CFR 361.48(a)(4))**  Pre-employment transition coordination services may be paid with funds reserved for providing pre-employment transition services, because coordination activities are essential for arranging and providing those services. |

## Support Employment

| **#** | **Prior to WIOA** | **WIOA** | **WIOA Federal Regulations** |
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| 3.1 | Supported Employment  **(Former 29 USC 705(35))**  Competitive work in integrated work settings, or employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most significant disabilities   1. for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of a significant disability; and 2. who, because of the nature and severity of their disability, need intensive supported employment services for the period, and any extension, and extended services after the transition in order to perform such work.   Includes certain transitional employment for persons who are individuals with the most significant disabilities due to mental illness. | Supported Employment  **(WIOA 404 and 29 USC 705(38))**  While individuals may continue working in an integrated, subminimum wage setting toward competitive integrated employment, they may only do so on a “short term basis.” Also, “customized employment,” a new term defined in the WIOA, is now included in the supported employment definition. | Supported Employment  **(34 CFR 363.5(c)(53))**  Working in an integrated, subminimum wage setting on a “short-term basis” is where the consumer reasonably anticipates achieving competitive integrated employment within six months of achievement of a supported employment outcome. Under limited circumstances based upon the consumer’s needs and demonstrated progress, this period may be extended for up to 12 months. |
| 3.2 | Supported Employment Services  **(Former 29 USC 705(36))**  Supported employment services not to exceed 18 months, unless special circumstances existed. | Support Employment Services  **(WIOA 404 and 29 USC 705(39))**  Individuals may now receive supported employment services for up to 24 months, but it may be extended under special circumstances. | Supported Employment Services  **(34 CFR 361.5(c)(54))**  The vocational rehabilitation agency may provide supported employment services for up to 24 months, which may be extended under special circumstances based on a consumer’s need to achieve the employment outcome in an Individualized Plan for Employment. |

## Subminimum Wage

| **#** | **Prior to WIOA** | **WIOA** | **WIOA Federal Regulations** |
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| 4.1 | Subminimum Wage and Individuals 24 and Younger  **No provision.** | Subminimum Wage and Individuals 24 and Younger  **(WIOA 458 and 29 USC 794g)**  Effective July 22, 2016, payment of subminimum wage to individuals aged 24 or younger is prohibited, unless the individual is already employed at subminimum wage or documentation from the vocational rehabilitation agency shows that the individual has received pre-employment transition services, career counseling, and information and referrals designed to enable the individual to obtain competitive integrated employment. Also, the individual must either: 1) have applied for and been found ineligible for vocational rehabilitation services, or 2) is working toward an employment outcome in an Individualized Plan for Employment and received appropriate supports and services, including supported employment services for a reasonable period of time, without success, resulting in case closure, and individual has been provided career counseling and information and referrals to federal and state programs to help the individual discover, experience and attain competitive integrated employment, and the counseling and information was not for employment at subminimum wage. | Subminimum Wage and Individuals 24 and Younger  **(34 CFR 397.10, 397.20, and 397.30)**  The regulations establish the minimum information necessary to document the required activities or refusal to participate in the activities and the timeframes for providing such information to the individual. |
| 4.2 | Subminimum Wage Regardless of Age  **No Provision.** | Subminimum Wage Regardless of Age  **(WIOA 458 and 29 USC 794g)**  Effective July 22, 2016, an employer may not continue to employ an individual, regardless of age, in a subminimum wage placement, unless, twice during the first year of placement and annually thereafter:   1. the vocational rehabilitation agency provides career counseling and information and referrals that offer employment related services and supports; and 2. the employer informs the individual of self-advocacy, self-determination, and peer mentoring training opportunities available in the local community. | Subminimum Wage Regardless of Age  **(34 CFR 397.40(c))**  Career counseling, information, and referral for those hired in subminimum wage positions on or after July 22, 2016, must be provided at six months and then annually thereafter and for those employed prior to July 22, 2016, once by July 22, 2017, and annually thereafter. The intervals for the are calculated based upon when the individual becomes known to the vocational rehabilitation agency.  Specific information must be included in the documentation of completion of the required services or activities or refusal to participate, and the documentation must be provided to the individual within specified timeframes. |
| 4.3 | Authorization to Review Required Subminimum Wage Documentation  **No provision.** | Authorization to Review Required Subminimum Wage Documentation  **(WIOA 458 and 29 USC 794g)**  Certified employer shall be subject to review of the required individual documentation by a representative working directly for the vocational rehabilitation or the United States Department of Labor at such a time and in such a manner as may be necessary to fulfill the intent of the law. | Authorization to Review Required Subminimum Wage Documentation  **(34 CFR 397.50)**  The regulations recommend, but do not require, the vocational rehabilitation agency to report deficiencies noted in the documentation to the United States Department of Labor. |

## One-Stops

| **#** | **Prior to WIOA** | **WIOA** | **WIOA Federal Regulations** |
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| 6.1 | Memorandums of Understanding  **(Former 29 USC 2841)**  Required memorandums of understanding between local board and One-Stop operators must include provisions on:   1. services to be provided, 2. funding sources and mechanisms; 3. methods of referral between One-Stop operator and partners; and 4. duration of the memorandum of understanding. | Memorandums of Understanding  **(WIOA 121 and 29 USC 3151)**  Required memorandums of understanding must now also include the methods to ensure needs of individuals with disabilities are addressed and limits the duration of the memorandum of understanding to a maximum three years. The funding provision expanded to require discussion of how funding through cash and in-kind contributions will be used and how infrastructure costs will be funded. | Memorandums of Understanding  **(34 CFR 361.500)**  The information in a required memorandum of understanding includes descriptions of:   1. services to be provided through the One-Stop, including coordination and delivery; 2. funding the costs of the services, including funding of infrastructure, shared services and operating costs; 3. methods for referring individuals between the One-Stop operators and partners for appropriate services and activities; 4. methods to ensure that the needs of workers, youth, and individuals with barriers to employment, including individuals with disabilities, are addressed in providing access to services, including technology and materials services. |
| 6.2 | Establishment of a One-Stop Delivery System  **(Former 29 USC 2841)**  The law simply provided that if One-Stop delivery system had been established prior to 1998, the Governor could decide to certify. | Establishment of a One-Stop Delivery System  **(WIOA 121 and 29 USC 3151)**    The requirements of a One-Stop Delivery Systems include:   1. a One-Stop in each local area with access to the six core programs; 2. the services must be provided at least one physical center in each local area and may make the services available through a network of affiliated sites or through a network of eligible One-Stop partners; 3. collocation of employment service offices under Wagner-Peyser Act; and 4. should have a common system identifier, such as logo or phrase. | Establishment of a One-Stop Delivery System  **(20 CFR 678.305 and 34 CFR 361.305)**  While a Title I staff person must be physically present at the One Stop, access to the other partner programs and services includes making available a direct linkage through technology to program staff who can provide meaningful information and services. Providing a phone number or website would be considered serving an individual, as long as more involved access was available to that customer if desired. |

## Funding

| **#** | **Prior to WIOA** | **WIOA** | **WIOA Federal Regulations** |
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| 7.1 | Certified Match  **No provisions regarding certified expenditures for match.** | Certified Match  **No provisions regarding certified expenditures for match.** | Certified Match  **(34 CFR 361.28, 361.60, and 363.23)**  Certified match excludes administrative, operating, and indirect costs regarding third-party cooperative arrangements for both vocational rehabilitation and supported employment. Only costs directly spent providing services under the arrangements are allowable. |

## Performance Accountability System

| **#** | **Prior to WIOA** | **WIOA** | **WIOA Federal Regulations** |
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| 8.1 | Performance Standards  **(Former 29 U.S.C. 726)**    The statutorily required evaluation standards and performance indicators for the vocational rehabilitation program were established and published in the federal implementing regulations. | Performance Standards  **(WIOA 116 and 416 and 29 USC 3141)**  Establishes six new common performance standards for all core programs, which include the percentage of participants employed during second and fourth quarters after program exit; median earnings of participants during second quarter after exit; percentage of participants who obtain diplomas or credentials during the program or within one year after exit; percentage of participants achieving measureable skill gains or progress toward credentials or employment; and effectiveness in serving employers. | Performance Standards  **(34 CFR 361.150, 361.155,**  **463.150, and 463.155 and20 CFR 677.150 and 677.155)**   1. The regulations define key performance measure terms—participant, reportable individual, and exit.   The regulations do not identify the measure for the effectiveness in serving employers but this measure is being piloted to determine which method or methods of determining effectiveness will be in the final performance measure. |