

**Department of Human Services
Division of Rehabilitation Services
Division of Service to the Blind and Visually Impaired**

**PROGRAM GUIDE
DRS/DSBVI-2017-01
Date: 1/23/2017**

FROM: Eric Weiss, DRS Director 
Gaye Mattke, SBVI Director 

TO: All DRS& DSBVI Offices

SUBJECT: Competitive Integrated Employment

This Program Guide provides guidance on allowable employment goals and successful closures that meet the definition of "competitive integrated employment" found in 34 CFR Part 361 of the Federal Regulations. Found below is the complete definition of "competitive integrated employment" and specific examples of employment settings that must be evaluated on a case-by-case basis to determine if they would be allowable as employment goals for Vocational Rehabilitation. This guidance is effective immediately but it does allow for conditions if an individual is currently in an approved Individualized Plan for Employment.

Competitive Integrated Employment, 34 CFR, §361.5(9)

- (i) Is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that--
 - (A) Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the rate required under the applicable State or local minimum wage law for the place of employment;
 - (B) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and
 - (C) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and
 - (D) Is eligible for the level of benefits provided to other employees; and
- (ii) Is 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), 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; and
- (iii) Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

Requirements that must be met for an employment setting to be considered as Competitive Integrated Employment.

To satisfy the definition of "competitive integrated employment," the employment must satisfy the requirements for all three of the following components:

- **Competitive earnings:** The employee must be paid at the minimum wage and comparable to the customary rate paid by the employer to other employees without disabilities in similar positions with comparable skills, experience and training. The employee with the disability must also receive benefits comparable to employees without disabilities in the similar position with the employer.
- **Integrated Location:** The employment setting is typically found in the community and the individual with the disability interacts while performing his or her job duties with employees without disabilities in the work unit and the entire employment site. A job coach supporting the individual with a disability is not counted as an employee without a disability.
- **Opportunities for advancement:** The employee with a disability must be eligible for the same opportunities for advancement as are available to employees without disabilities in similar positions.

Indicators of when an employment setting is or is not considered Competitive Integrated Employment.

There are key words and statements used in the regulation's definition of competitive integrated employment. Below is clarification of when an employment setting is or is not competitive integrated employment will be determined as competitive integrated employment leading to a successful employment outcome for the Vocational Rehabilitation Programs. It is the Vocational Rehabilitation Counselor's role to evaluate the client's work environment to make this determination. These evaluations need to be conducted on a case-by-case basis of the work setting when the settings are operated by a Community Support Provider or other service providers. Form DHS-VR-352 can be used by the Vocational Rehabilitation Counselor in making the

determination of whether the employment meets the requirement of Competitive Integrated Employment.

Employment as unpaid family member, homemaker or sheltered workshop

Employment closures as sheltered employment were discontinued in the 2001 version of the VR regulations. With the revised regulations issued on August 19, 2016 uncompensated employment such as unpaid family member and home maker employment closures are also no longer allowed. However, services can continue for individuals currently with an employment goal as homemaker or unpaid family member if this was on their Individualized Plan for Employment prior to 9/19/2016. Their services for uncompensated employment must end by July 30, 2017.

Group employment settings such as enclaves or mobile work crews for the purpose of employing individuals with disabilities

Some enclaves or mobile work crews may have been previously allowed however with the revised regulations issued on August 19, 2016 it is clear these work settings will not meet the requirement of competitive integrated employment. These regulations make the following statement:

When the criteria are properly applied by DSUs, group and enclave employment settings operated by businesses formed for the purpose of employing individuals with disabilities will not satisfy the definition of "competitive integrated employment".¹

Entities set up specifically for the purpose of providing employment to People with Disabilities (PWD)

Community Support Providers and other service providers who have entered into production or service contracts with businesses typically in their community would be considered as an entity and a community rehabilitation program. The contract work they have established usually does not meet the definition of typically found in the community. The revised regulations issued on August 19, 2016 make the following statement:

...businesses established by community rehabilitation programs or any other entity for the primary purpose of employing individuals with disabilities do not satisfy this criterion [a setting typically found in the community], and, therefore, are not considered integrated settings, because these settings are not within the competitive labor market.²

... individuals with disabilities hired by community rehabilitation programs to perform work under service contracts, either alone, in mobile work crews, or in other group settings (e.g., landscaping or janitorial crews), whose interaction with

¹ Reference: 34 CFR part 361, "Integrated Location-General", Federal register final rules, Aug 19, 2016, pg. 55641, 3rd column, "Discussion"

² 34 CFR part 361, Federal register final rules, Aug 19, 2016, pg. 55643, 1st column, 2nd paragraph

*persons without disabilities (other than their supervisors and service providers), while performing job responsibilities, is with persons working in or visiting the work locations (and not with employees of the community rehabilitation programs without disabilities in similar positions) would not be performing work in an integrated setting.*³

Javits-Wagner-O'Day Act (JWOD)/AbilityOne Programs

Some Community Support Providers have established contracts in federal agencies through the Javits-Wagner-O'Day Act, also referred to as AbilityOne Programs. Individuals funded through these programs would not be considered in competitive integrated employment. The revised regulations make the following statement:

*The factors that generally would result in a business being considered "not typically found in the community," include: (1) the funding of positions through Javits-Wagner-O'Day Act (JWOD) contracts; (2) allowances under the FLSA for compensatory subminimum wages; and (3) compliance with a mandated direct labor-hour ratio of persons with disabilities.*²

Interaction During the Performance of Job Duties

Interaction with other workers without disabilities needs to be evaluated at the work setting. The integration of the job site should not be determined on the basis of an individual's interaction with customers and vendors alone. The revised regulations make the following statement:

*...the DSU is to consider the interaction between employees with disabilities and those without disabilities that is specific to the performance of the employee's job duties, and not the casual, conversational, and social interaction that takes place in the workplace. As a result, it would not be pertinent to its determination of an integrated setting for a DSU to consider interactions in the lunchrooms and other common areas of the work site in which employees with disabilities and those without disabilities are not engaged in performing work responsibilities.*⁴

Other Employment with Community Rehabilitation Programs

This policy should not deter or prohibit Community Support Providers and other service providers referred to as Community Rehabilitation Programs to employ individuals with disabilities as their staff. These agencies do offer employment in many other work areas/units such as Direct Support Personnel, group home staff, and management positions where they employ people with and without disabilities. These positions typically are considered as Competitive Integrated Employment.

³ 34 CFR part 361, Federal register final rules, Aug 19, 2016, pg. 55644, 3rd column, 2nd paragraph

⁴ 34 CFR part 361, Federal register final rules, Aug 19, 2016, pg. 55644, 3rd column, 1st paragraph

Self-employment or employment with no co-workers

This policy should not deter or prohibit the VR Counselor from assisting individuals with disabilities in obtaining self-employment or employment where there are no other co-workers.

Individuals currently in an approved Individualized Plan for Employment

If an employment goal is currently approved on a signed Individualized Plan for Employment (IPE), this employment will be allowed as a successful employment outcome. If a provider was involved in the services, their payments/reimbursements would also be based on the successful outcome.

Closing:

If you have any questions on this Program Guide, please contact the appropriate DRS or SBVI Assistant Director.

Enclosure:

Evaluation of Competitive Integrated Employment

Client Name: _____ CMID _____

Employer Name: _____

Work Location/Address: _____

Supervisor Name: _____ Title: _____

Date of Site visit & Interview with Supervisor: _____

Date and location of Client Interview: _____

Work Schedule: _____

_____ Wage rate paid to client.

_____ Is this employment through an AbilityOne contract (Federal Contracts)?

_____ Wage rate paid to other employees without disabilities with comparable skills, experience and training.

_____ Number of employees without disabilities (not counting job coach).

_____ Number of employees with disabilities including this employee.

Describe the opportunities for advancement in the employment:

Other Factors to Consider:

Yes/No Was the job opening posted to the general public?

Yes/No Did the individual submit an application for the job?

Yes/No Was the individual interviewed for the position? Date: _____

Yes/No Is there a job description for this position? If so, please attach.

Yes/No Is the individual paid from the payroll system as other staff?

Yes/No Is the individual included in staff meetings similar to other staff in similar positions?

Who is the paycheck from? _____

Describe the interaction with the co-workers without disabilities:

Describe the interaction with the public/customers without disabilities:

Who gives the individual their work schedule? _____

Who does the individuals consider as their boss/supervisor? _____

Other Comments:

Yes No It is determined that this employment meets the requirements of competitive earnings.

Yes No It is determined that this employment meets the requirements of integrated location.

Yes No It is determined that this employment meets the requirements of opportunities for advancement.

Yes No It is determined that this employment meets all the requirements of competitive integrated employment as defined in the Rehabilitation Act and 34 CFR part 361, Federal Register Final Rules issued August 19, 2016.

VR Counselor who completed this evaluation: _____

Date of Evaluation: _____