

**FEDERAL FISCAL YEAR 2016**

**Technical Assistance Report  
of the On-Site Visit to the  
Wyoming Division of Vocational  
Rehabilitation**



**U.S. DEPARTMENT OF EDUCATION**

**OFFICE OF SPECIAL EDUCATION AND  
REHABILITATIVE SERVICES**

**REHABILITATION SERVICES ADMINISTRATION**

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## **I. Introduction**

### **A. The Federal Mandate**

Section 107(b) of the Rehabilitation Act of 1973 (Act), as amended by title IV of the Workforce Innovation and Opportunity Act (WIOA), requires the Commissioner of the Rehabilitation Services Administration (RSA) to provide technical assistance to State vocational rehabilitation agencies to improve the quality of vocational rehabilitation (VR) services provided to, and promote the achievement of high quality employment outcomes by, individuals with disabilities. To fulfill, in part, this requirement, RSA conducted five technical assistance (TA) visits to five different VR agencies across the country in the final quarter of Federal fiscal year (FFY) 2016. These visits allowed RSA to review the progress of VR agencies toward compliance with new requirements under the Act, as amended by WIOA, and to assist States in complying with those requirements.

This report summarizes the activities and outcomes of the TA visit to the Wyoming Division of Vocational Rehabilitation (WDVR). The report includes a summary of pre on-site activities, TA provided by the RSA TA team during the on-site visit, and the identification of the VR agency's on-going TA needs and possible resources to meet those needs.

### **B. Description of the Technical Assistance Visit**

#### **1. General**

Section 506(d) of WIOA makes clear that the amendments to the Act took effect on the date of enactment (July 22, 2014) unless WIOA specified otherwise. As such, VR agencies must ensure that their policies and procedures incorporate and implement all new requirements under the Act, as amended by WIOA. To facilitate this process, and to support this undertaking by its grantees, a TA team from the State Monitoring and Program Improvement Division (SMPID) conducted a TA visit to WDVR from August 23, 2016 to August 25, 2016.

The specific programs covered during this TA visit included:

- The VR program, authorized under title I of the Act; and
- The Supported Employment program, authorized under title VI of the Act.

#### **2. Focus Areas of the TA Visit**

Prior to the conduct of the TA visits, RSA issued a Technical Assistance Guide that described the three focus areas that would constitute the primary work of the TA teams while on-site. The three focus areas included:

- Competitive integrated employment;
- Pre-employment transition services for students with disabilities, including the requirement for a State to reserve and expend at least 15 percent of the VR allotment to provide, or arrange for the provision of, pre-employment transition services; and

- Supported employment for individuals with the most significant disabilities, including the requirement for a State to reserve and expend 50 percent of its Supported Employment program allotment to provide supported employment services, including extended services, to youth with the most significant disabilities.

A summary of the TA provided under each focus area is discussed in greater detail in the sections that follow in this report. As a result of the TA visit, the RSA TA team, in collaboration with WDVR, identified:

- Policies and procedures that need to be revised for WDVR to comply with requirements of the Act, as amended by WIOA, and its implementing regulations; and
- The need and the resources for further technical assistance.

Section VI of this report summarizes the identified policies and procedures in need of further revision and any outstanding TA needs along with possible resources to meet those needs.

## **II. Overview of the Technical Assistance Visit Process**

### **A. Pre On-Site Activities**

Prior to the on-site visit, the RSA TA team conducted a variety of preparatory activities, including:

- An introductory teleconference on August 15, 2016 between the RSA TA team and WDVR to introduce the RSA TA team and inform WDVR management regarding purpose, focus areas, and follow-up communication regarding logistics related to the TA on-site visit;
- A review of WDVR's revised policies and procedures;
- A review of the formal interagency agreement with the Wyoming Department of Education;
- A review of documentation supporting WDVR data and fiscal reports;
- A review of data and fiscal tables generated by RSA related to the focus areas of the TA visit; and
- The Development of the on-site agenda.

### **B. Participants**

The RSA TA team consisted of Janette Shell (TA Unit), TA team lead; Larry Vrooman and Samuel Pierre (VR Program Unit); and Julya Doyle (Fiscal Unit).

During the on-site TA visit, the RSA TA team met with the following individuals and organizations:

- The WDVR Administrator;
- The WDVR Deputy Administrator for Special Programs and Training Coordinator;
- The WDVR Support Services Coordinator;

- The WDVR Deputy Administrator of Fiscal Services;
- WDVR transition coordinators;
- WDVR area managers;
- WDVR counselors;
- The Client Assistance Program Director
- Community rehabilitation program (CRP) representatives;
- Wyoming Independent Living Center representative; and
- The Wyoming Department of Education Transition Coordinator.

### **III. Competitive Integrated Employment**

#### **A. General**

The Act, as amended by WIOA, emphasizes the achievement of competitive integrated employment. The foundation of the VR program is the principle that individuals with disabilities, including those with the most significant disabilities, are capable of achieving high quality, competitive integrated employment when provided the necessary services and supports. To increase the employment of individuals with disabilities in the competitive integrated labor market, the workforce system must provide individuals with disabilities opportunities to participate in job-driven training and to pursue high quality employment outcomes. To reinforce this principle, the Act, as amended by WIOA, contains several critical changes that form the basis for this focus area. In addition, the VR program regulations, which were published at 81 FR 55629 on August 19, 2016, and which became effective on September 19, 2016, contain further critical changes that affect this focus area. The changes related to competitive integrated employment covered by the TA teams included:

- The new definition of “competitive integrated employment” in section 7(5) of the Act and 34 CFR §361.5(c)(9) of the implementing regulations that combines, clarifies, and enhances the two separate definitions of “competitive employment” and “integrated setting” for the purpose of employment under the VR program in prior 34 CFR §361.5(b)(11) and (b)(33)(ii), respectively;
- The revision of the definition of “employment outcome” in 34 CFR §361.5(c)(15) that specifically identifies customized employment as an employment outcome under the VR program and requires that all employment outcomes achieved through the VR program be in competitive integrated employment or supported employment, thereby eliminating uncompensated outcomes, such as homemakers and unpaid family workers, from the scope of the definition for purposes of the VR program; and
- The requirement in section 102(b)(4)(A) of the Act and 34 CFR §361.46(a) of the implementing regulations that the individualized plan for employment (IPE) include a specific employment goal consistent with the general goal of competitive integrated employment.

#### **B. Technical Assistance Topics**

During the course of the on-site visit, the TA team identified and discussed the following topics related to competitive integrated employment:

## 1. Definition and Application of Competitive Integrated Employment:

As defined in 34 CFR §361.5(c)(9):

“Competitive integrated employment means work that—

- (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.

Based on data reported by WDVR through the VR program Case Service Report (RSA-911) for FFY 2015:

- Of the 1,127 individuals served and whose cases were closed, 662 achieved employment outcomes (58.74 percent), while 465 did not. Of these 1,127 individuals, 284 (25.20 percent) were individuals who were age 14 through 24 years at the time of application and who were served and their cases closed in FFY 2015. Of these individuals, 165 achieved employment outcomes, while 119 did not.
- Of the 662 individuals who achieved employment outcomes, 590 obtained employment without supports in an integrated setting, 16 were self-employed, and 56 were employed with supports in an integrated setting.
- Of the 662 individuals who achieved employment outcomes in FFY 2015, 629 achieved competitive employment, or 95.02 percent. Of the 629 individuals who achieved

competitive employment outcomes, 564 obtained employment without supports in an integrated setting, 15 were self-employed, and 50 were employed with supports in an integrated setting. These 629 individuals who achieved competitive employment outcomes, attained average weekly earnings of \$415.29 and worked an average of 32.03 hours per week, for a mean hourly wage of \$12.35.

According to the RSA-911 data for FFY 2015, 95.02 percent of the individuals who achieved employment outcomes were in competitive employment. However, given the heightened emphasis on competitive integrated employment in the Act, as amended by WIOA, and the definition of “competitive integrated employment” in 34 CFR §361.5(c)(9) and “integrated setting” in 34 CFR §361.5(c)(32)(ii) of the implementing regulations, WDVR and the RSA TA team determined the need for TA and clarification regarding when an employment outcome is considered to be in competitive integrated employment. WDVR staff had questions regarding the factors related to competitive integrated employment when an individual is working in an occupation where employees typically work alone and have little interaction with the public or co-workers. WDVR staff and representatives of community rehabilitation programs (CRPs) also indicated a practice of negotiating wages for positions utilizing customized employment based on minimum wage, rather than based on the wages and benefits typically paid in the community to non-disabled individuals performing the same or similar work.

These topics arose primarily due to the use of customized employment by WDVR counselors and CRP job placement specialists who utilize customized employment as a means of obtaining placement opportunities that might not otherwise be available for individuals with significant disabilities who are unable to perform all aspects or required activities of a job.

TA Provided:

The RSA TA team discussed with WDVR staff and, as applicable, CRPs, the required components of “competitive integrated employment” as defined in 34 CFR §361.5(c)(9). The RSA TA team clarified that in order for an individual with a disability to achieve an employment outcome in competitive integrated employment, the individual must work part-time or full-time earning competitive wages (e.g., the higher of the State, local, or Federal minimum wage, not less than the customary wage paid to individuals without disabilities similarly skilled and performing the same or similar work; and for self-employment, income commensurate with the income that an individual without a disability earns in similar self-employment (34 CFR §361.5(c)(9)(i)). Additionally, the individual with a disability must be employed in an integrated location (34 CFR §361.5(c)(9)(ii)), and must have opportunities for advancement that are similar for other employees (34 CFR §361.5(c)(9)(iii)).

The RSA TA team provided guidance on how to determine if an employment outcome is in an “integrated setting” as described in the definition in 34 CFR §361.5(c)(32)(ii). With respect to an employment outcome, an “integrated setting” is a setting typically found in the community where an 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 work site and, as appropriate, with other persons (such as vendors and customers) who do not have disabilities (not including supervisors or those providing services to the employee with a disability) to the same extent that employees or co-workers without disabilities in comparable positions interact with these persons. WDVR staff inquired whether an individual with a disability placed in a grounds keeping occupation where an employee would typically have very little contact with other individuals would be considered to be in an integrated setting. The RSA TA team acknowledged that for this type of employment, as well as for other occupations such as a night watchman or an after-hours janitor, in which an individual normally works alone and lacks contact with employees or others without disabilities, interaction with individuals without disabilities may not be the single defining characteristic for determining integrated setting. The RSA TA team pointed out that other factors are important in determining if the individual is employed in an integrated setting. The individual's supervision and level of involvement and interaction with others should be comparable to non-disabled employees performing the same or similar work in businesses typically found in the community. If, however, the individual with a disability's only interaction with employees without disabilities is with a supervisor or job coach employed by a CRP, then the nature of the employment might not meet the test of competitive integrated employment.

Finally, the RSA TA team specified that an individual with a disability should be provided the same potential for raises in pay as well as paid vacation, sick leave and insurance benefits comparable to other employees without disabilities who work for the employer as well as similar opportunities for advancement. As a follow up to this topic, the RSA TA team facilitated discussion with VR agency staff and providers about the meaning of opportunities for advancement in 34 CFR §361.5(c)(9)(iii), clarifying that opportunities for advancement are not limited to a promotion to more advanced positions. The team used an example provided by a vendor to illustrate the concepts involved. In the example, an individual was placed in a grocery store at minimum wage bagging and facing shelves. However, the individual did not operate the cash register as did other non-disabled employees in the same position. The RSA TA team pointed out that an individual performing only part of the job may be less likely to receive pay raises that other employees may receive. This is particularly true if the worth of the remaining portions of the job was initially defined simply as minimum wage, rather than assessing the true worth of the job, commensurate with the wages paid to non-disabled individuals performing this occupation in the community.

The RSA TA team acknowledged the value and utility of being able to place an individual into a position he or she would not otherwise be qualified to hold, but emphasized that both the agency and vendor should, whenever possible, seek to develop the individual to his or her career potential, providing training and opportunities for the person to develop the missing skills with or without reasonable accommodations.

## 2. WDVR Competitive Integrated Employment Policy

The agency's policy manual (effective July 1, 2016) included a definition of "competitive integrated employment" defined it as follows:

“Competitive Integrated Employment” means work that is performed on a full-time or part-time basis (including self-employment) for which an individual;

is compensated at a rate that shall be 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 specified in the applicable State or local minimum wage law; and 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; or

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 is eligible for the level of benefits provided to other employees;

that is at a location where the employee interacts 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 individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

that, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

means full or part time work at minimum wage or higher , with wages and benefits similar to those without disabilities performing the same work and fully integrated with co-workers without disabilities.” (page 54)

WDVR policy incorporates competitive integrated employment language in its definitions of customized employment, employment outcome, authorized activities under pre-employment transition services, and supported employment. However, WDVR’s policy manual does not go into detail on the methodology agency staff should use in determining whether a position is integrated, consistent with the guidance in the preamble to the final regulations.

Given the extensive use of customized employment, the RSA TA team reviewed the customized employment provisions of WDVR’s policy manual in the context of competitive integrated employment policy. Competitive integrated employment includes “customized employment” as defined in 34 CFR §361.5(c)(11). “Employment outcome”

as defined in 34 CFR §363.5(c)(15) states that an employment outcome can include customized employment, self-employment, telecommuting, or business ownership, and must be consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

WDVR's policy manual defines "customized employment" as:

"...competitive integrated employment, for an individual with a significant disability, that is based on an individualized determination of the strengths, needs, and interests of the individual with a significant disability, is designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer, and is carried out through flexible strategies, such as:

- job exploration by the individual;
- working with an employer to facilitate placement, including;
  - customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;
  - developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;
  - representation by a professional chosen by the individual, or self representation of the individual, in working with an employer to facilitate placement; and
  - providing services and supports at the job." (page 56)

However the RSA TA team did not find more specific guidance regarding the application of policy to practice in terms of customized employment.

TA Provided:

The RSA TA team reviewed WDVR's draft policy manual and practices, discussed the purpose and utilization of policy manuals and internal agency procedures and suggested updates and revisions. The RSA TA team provided guidance on how to incorporate and implement WDVR's policy more effectively in assisting individuals with disabilities to achieve competitive integrated employment. This included a suggestion to review and include the factors outlined in previous RSA guidance and the preamble to the final regulations that the DSU must consider when determining whether a position is in an integrated setting. The RSA TA team suggested that WDVR continue to use monthly staff meetings to verify staff awareness, understanding, and implementation of current or updated requirements in its policy manuals, particularly relating to the requirements for competitive integrated employment and advised WDVR that additional guidance and technical assistance circulars would be forthcoming from RSA.

The RSA TA team also provided feedback on WDVR's practices that have the potential to negatively impact an individual's starting wage and the individual's potential for

advancement in employment. This included WDVR's use of minimum wage as a default starting wage, rather than determining the worth of the job based on the wages paid for comparable work in the community and WDVR's focus on job carving as its primary means of implementing customized employment as discussed in the topic area on customized employment that follows.

The RSA TA team facilitated a discussion about the requirements for competitive integrated employment found in 34 CFR §361.5(c)(9)(i), which indicates that in order to be considered competitive integrated employment, an individual must receive a compensated rate that is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 or the rate required under the applicable State or local minimum wage law for the place of employment. Wyoming's minimum wage rate is lower than the Federal minimum wage; therefore, WDVR must use the Federal minimum wage standard to ensure that the competitive earnings requirement is met.

In a discussion of WDVR's current job placement practices, the RSA TA team utilized examples provided by WDVR and its vendors to focus on the specific types of placement utilized by WDVR staff and vendors and highlighted strategies to improve opportunities for competitive integrated employment in the workplace for individuals in supported employment and customized employment.

### 3. Customized Employment:

Based on data reported by WDVR through the RSA-911 for FFY 2015:

- Of the 629 individuals who achieved competitive employment outcomes, 90 received customized employment services, or 14.31 percent.
- Of these 90 individuals, 58 achieved employment without supports in an integrated setting, earned an average of \$240.33 per week and worked an average of 23.81 hours per week, for a mean hourly wage of \$9.82.
- Of these 90 individuals, 32 achieved employment with supports in an integrated setting, earned an average of \$218.91 per week and worked an average of 21.78 hours per week, for a mean hourly wage of \$9.73.

When compared to similar VR agencies, RSA-911 data reported in FFY 2015 indicated that WDVR provided customized employment services leading to competitive employment outcomes at a rate significantly greater than the rates demonstrated by these agencies. Of the four similar agencies, the percentage of those individuals with competitive employment outcomes who received customized employment services in FFY 2015 ranged from 0.00 percent to 0.27 percent.

In addition to the WDVR FFY 2015 data, the RSA TA team requested currently available data for FFY 2016 from the agency prior to the review, which showed 63 outcomes utilizing customized employment services out of 436 total employment outcomes for a similar rate of 14.45 percent.

The significantly higher percentage of individuals with disabilities in competitive employment who received customized employment services is attributed by WDVR, in large part, to the focused training efforts of a previous regional continuing education program to promote customized employment. As a result, the use of customized employment appears to have become ingrained in WDVR's practices and approach to employment placement. WDVR also indicated that due to the rural nature of the State, customized employment is used more frequently, particularly in sparsely populated northern Wyoming; however, WDVR did not supply data to quantify the specific regional differences in use of customized employment.

The most prevalent methodology used by WDVR staff and CRPs providing customized employment services, is job carving of positions. Similarly, the primary criterion WDVR uses to negotiate a wage for positions customized through job carving is the achievement of minimum wage. As previously reported, the mean wage for individuals with disabilities at the time of service record closure in competitive employment who received customized employment services in FFY 2015 was \$9.79 with an average weekly wage of \$232.71 and 23.09 weekly hours worked. In comparison, for the similar VR agencies that reported providing customized employment services to individuals whose service records were closed in competitive employment, the reported average weekly wage for FFY 2015 ranged from \$10.48 to \$12.26; the average weekly wage ranged from \$376.79 to \$421.00; and the weekly hours worked ranged from 28.07 to 40 hours.

The RSA TA team explored with WDVR its use of customized employment to ensure consistency with 34 CFR §361.5(c)(11) and the process WDVR utilizes to determine if customized employment is the best option for an individual. Through discussion and analysis of current practices related to customized employment, the RSA TA team and WDVR identified the need for technical assistance in determining when customized employment presents the best strategy for achieving an employment outcome; the methodology for determining and negotiating appropriate wages for job-carved positions; additional strategies for achieving customized employment outcomes such as job sharing and re-assignment of job duties across multiple positions; and revision of current customized employment placement practices.

#### TA Provided:

In addition to general TA provided on the definition and application of competitive integrated employment, given the extensive use of customized employment, the RSA TA team devoted specific on-site sessions to customized employment.

The RSA TA team provided clarification of the meaning and most appropriate use of "customized employment" as defined in 34 CFR §361.5(c)(11), emphasizing that all employment outcomes in customized employment for an individual with a significant disability must meet the requirements under 34 CFR §361.5(c)(11). Specifically, the RSA TA team pointed out that a customized employment outcome must be in competitive integrated employment; must be based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability; and must also be designed to meet the specific abilities of the individual with a significant disability and

the business needs of the employer. Customized employment must be carried out through flexible strategies, such as job exploration by the individual and working with an employer to facilitate placement, including:

- Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;
- Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;
- Using a professional representative chosen by the individual, or if elected self-representation, to work with an employer to facilitate placement; and
- Providing services and supports at the job location.

Consistent with 34 CFR §361.5(c)(11), the RSA TA team advised that job carving is not the only method of customizing employment. Customized employment normally utilizes a variety of techniques to remove portions of a position the individual is unable to perform, such as reassignment of job duties across multiple positions and job sharing to provide for part time employment if the individual is unable to work full time.

The RSA TA team explained that restructuring of positions within the business by developing a unique set of job duties, a work schedule or job arrangement, or tailoring the specifics of supervision (including performance evaluation and review), and modifying job location should also be considered. These methods may be more effective in better matching the skills and abilities of the individual to specific tasks that need to be performed, without decreasing the level of integration, wages, benefits or potential for advancement.

Consistent with the requirements for competitive integrated employment, the team also provided specific feedback and guidance regarding WDVR's methodology for determining an appropriate wage for an individual placed in a customized employment position. The RSA TA team advised that while the wage must be at least minimum wage, this should not be regarded as the default wage. The RSA TA team indicated that the WDVR staff or CRP staff negotiating the wage at placement for a job carved position must require a wage that is at least minimum wage, but also must ensure that the wage is not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. The RSA TA team suggested that staff placing individuals into customized employment positions should consider the wages and benefits typically paid to individuals without disabilities in the community for the same or similar work.

## **IV. Pre-Employment Transition Services**

### **A. General**

The Act, as amended by WIOA, places heightened emphasis on the provision of services, including pre-employment transition services, to students and youth with disabilities to ensure they have meaningful opportunities to receive training and other services necessary to achieve employment outcomes in competitive integrated employment. The Act and its final regulations

in 34 CFR part 361 contain several new terms and requirements related to pre-employment transition services.

Pre-employment transition services, defined in section 7(30) of the Act, as amended by WIOA, and 34 CFR §361.5(c)(42) of the final regulations, include both required activities and authorized activities specified in section 113 of the Act and the final regulations in 34 CFR §361.48(a). There are **five required activities** (most beneficial to a student in the early stages of employment exploration) that are provided directly to eligible or potentially eligible students with disabilities. There are **nine authorized activities** described in 34 CFR §361.48(a)(3) that VR agencies may implement to improve the transition of students with disabilities from school to postsecondary education or an employment outcome.

Pre-employment transition services also include pre-employment transition coordination activities. Pre-employment transition **coordination activities**, described in 34 CFR §361.48(a)(4), include activities that each local VR agency office must engage in to coordinate and facilitate the provision of pre-employment transition services to students with disabilities.

## **B. Technical Assistance Topics**

During the course of the on-site visit, the TA team identified and discussed the following topics related to the provision of pre-employment transition services:

### 1. The Need for Order of Selection for Services (OOS):

Given the requirement to reserve and expend not less than 15 percent of the State's Federal VR allotment for the provision of pre-employment transition services, WDVR expressed concern that the requirement would result in a decrease in the availability of Federal VR funds for other VR services and the possible need to develop an OOS policy and implement an OOS. Furthermore, WDVR reported that non-Federal funding, which is provided from State appropriations, has decreased over the most recent years due to the decline of the oil industry. The state of the economy in Wyoming has led to a significant cut in State resources and the availability of State funding. As a result, WDVR has been monitoring its financial situation closely and has been able to avoid implementing an OOS to date, but has concerns about the probable implementation of an OOS. The RSA TA team reviewed fiscal forecasting information and current expenditure patterns to understand the agency's financial situation, particularly in terms of the impact of the reservation of funds requirement and the decline of State appropriations. At the agency's request, RSA reviewed a preliminary draft of an Order of Selection policy during the on-site visit.

#### TA Provided:

The RSA TA team clarified that States may spend 85 percent of the Federal VR allotment for other allowable expenses in the VR program provided that the State has reserved and expended at least 15 percent of the Federal VR allotment for the provision of pre-

employment transition services. This clarification helped WDVR properly allocate Federal funds for other allowable expenditures in the VR program, thereby ensuring an accurate financial picture from which to determine the need for a possible implementation of an OOS.

In addition, the RSA TA team recommended that WDVR take steps to ensure agency staff and VR counselors make every effort to seek and obtain comparable services and benefits to meet the needs of VR consumers, thereby maximizing the availability of Federal VR program funds for VR services for adults and youth with disabilities who are not receiving pre-employment transition services paid for with the 15 percent reserved funds. The RSA TA team pointed out that seeking comparable services and benefits also includes coordinating and collaborating with schools to provide support services for students receiving pre-employment transition services. Support services, other than auxiliary aids and services required under title II of the ADA and section 504 of the Rehabilitation Act, cannot be paid with the Federal funds reserved for the provision of pre-employment transition services, and other allowable VR services cannot be provided to students with disabilities using VR program funds unless the individual has been determined eligible for the VR program and has an approved and signed individualized plan for employment (IPE). Coordination of services between WDVR and educational agencies may assist the VR agency in its efforts to ensure necessary services are provided without significantly impacting the availability of Federal funds to serve all eligible individuals.

The RSA TA team clarified the requirement in 34 CFR §361.36(a)(2)(i) that states a VR agency must continue to provide services to all individuals currently receiving services and that these individuals not be placed on a waiting list for services. This was in response to WDVR's draft OOS policy in which it established a priority category for individuals with disabilities served by the agency who had IPEs at the time of implementation. Additionally, the TA RSA team suggested that WDVR include in the draft policy specific fiscal and caseload information in its justification for implementing an OOS.

The RSA TA team outlined the requirements at 34 CFR §361.36(a)(3) and steps to be completed to implement an OOS including the required content for amendments to the VR portion of the Wyoming Unified State Plan. The RSA TA team advised WDVR that it must develop and maintain written policies covering the nature and scope of each of the VR services the agency provides (34 CFR §361.50(a)).

Finally, RSA clarified that neither section 101(a)(5) of the Act nor 34 CFR §361.36(d) exempts students with disabilities from any of the order of selection requirements, which apply to all VR program applicants. As specified in 34 CFR §361.36(e)(3)(A), the DSU must continue to provide pre-employment transition services to students with disabilities who were receiving such services prior to being determined eligible for VR services, even if the student would have been assigned to a closed OOS category. Such a student may receive any of the pre-employment transition services following assignment to an OOS. Additionally, if a student applied for VR services without receiving pre-

employment transition services, they may not receive pre-employment transition services if assigned to a closed OOS category. However, VR agencies may provide general transition services that benefit a group of students with disabilities in a group setting pursuant to section 103(b)(7) of the Act, and 34 CFR §361.49(a)(7) to ensure the continuation of some beneficial services in the event that a student with a disability is assigned to a closed priority category prior to receiving pre-employment transition services.

2. Requirement to Reserve and Expend not Less than 15 Percent of the State's Federal VR Allotment for the Provision of Pre-employment Transition Services:

Section 110(d)(1) of the Act, as amended by WIOA, and 34 CFR §361.65(a)(3) require States to reserve not less than 15 percent of their Federal VR allotment for the provision of pre-employment transition services authorized in section 113 of the Act and 34 CFR §361.48(a). Federal VR expenditures that are reportable and can be incurred with funds reserved under section 110(d)(1) for the provision of pre-employment transition services include:

- The five required activities, described in section 113(b) of the Act, as amended by WIOA, and 34 CFR §361.48(a)(2);
- Authorized activities described in section 113(c) of the Act, as amended by WIOA, and 34 CFR §361.48(a)(3); and
- Pre-employment transition coordination activities described in section 113(d) of the Act, as amended by WIOA, and 34 CFR §361.48(a)(4).

The agency's non-Federal funds are provided via State appropriation. Due to the continued decrease in availability of State funds and the fact that WDVR operates on a cash basis of accounting, the State requires WDVR to match Federal funds with the required non-Federal funds per expenditure. As part of the VR allotment, funds reserved for the provision of pre-employment transition services have the same match requirement as all Federal VR funds, per 34 CFR §361.60. However due to WDVR's accounting system and the requirement to apply the required Federal and non-Federal share to each expenditure, WDVR is limited in their ability to fully utilize all Federal and non-Federal funds in the VR program. While some State VR agencies may be able to obligate State funds in the first year of the grant and carry over the Federal funds to obligate in the second year, WDVR must expend the Federal funds and State funds at the same time. WDVR has some flexibility in using the non-Federal share, associated with the Federal pre-employment transition services funds, on other allowable expenses in the VR program. However, those other allowable expenditures must be paid at the same time the Federal pre-employment transition services are paid. Since the funds reserved for the provision of pre-employment transition services are part of the VR allotment, the non-Federal share requirements are the same as those for all VR grant funds. This restriction on State appropriated monies limits the total amount of funds available to WDVR for other allowable expenses in the VR program.

During the on-site, WDVR indicated the majority of the agency expenditures for pre-employment transition services are for the five required activities in 34 CFR §361.48(a)(2) provided in-house, and dedicated “VR Transition Consultants” providing the authorized activities listed in 34 CFR §361.48(a)(3). The VR Transition Consultants’ time is charged 100 percent to the reservation requirement under 34 CFR §361.65(a)(3).

WDVR updated its procedures to include staff time spent directly providing pre-employment transition services listed in 34 CFR §361.48(a)(2), and the proportional time staff spend traveling to provide pre-employment transition services. However, at the time of the TA on-site visit, the agency had not discussed the process needed to proportionally allocate costs in instances when counselors and staff provide regular VR services to students in addition to pre-employment transition services. In addition, WDVR was not counting travel costs to attend IEP meetings for students receiving pre-employment transition services, as these were considered administrative. Currently, WDVR does not have any contractual agreements to provide pre-employment transition services.

TA Provided:

The RSA TA team explained that WDVR must cost allocate the staff time so that only the time and travel spent directly on providing the services count toward the reservation requirement. The duties of the two VR Transition Consultants were discussed in relation to the activities listed in 34 CFR §361.48(a)(3). Although the activities are designed to promote the provision of pre-employment transition services, some of the activities are administrative in nature. Some of the administrative activities performed by the VR Transition Consultants that cannot count toward the reservation requirement include travel costs if not for the direct provision of VR services. Administrative costs cannot count toward the reservation requirement (34 CFR §361.65(a)(3)(ii)(B)).

The RSA TA team also suggested that staff and travel time directly associated with attending meetings coordinating the provision of pre-employment transition services be counted toward the requirement to reserve and expend not less than 15 percent of the Federal VR allotment toward pre-employment transition services. The requirements at 34 CFR §361.48(a)(4) include attending IEP meetings as an allowable activity toward the requirement in 34 CFR §361.65(a)(3). Wyoming is a large state geographically, and including the travel time associated with the direct provision of the service will increase the amount of Federal funds spent toward the reserve and expend requirement.

In addition, RSA discussed possible considerations for increasing expenditures for pre-employment transition services, such as providing pre-employment transition services at an age earlier than age 16; including proportionally allocated staff travel and work time for the provision of pre-employment transition services; expanding provision of pre-employment transition services to groups of students; and entering into fee-for-service contractual agreements that could provide a wider variety of services to students, and help the agency reach the reservation requirement.

### 3. Pre-Employment Transition Services Required Activities:

In accordance with section 113(b) of the Act, as amended by WIOA, and 34 CFR §361.48(a)(2), pre-employment transition services include five required activities. Pre-employment transition services are designed to help students with disabilities begin to identify career interests that will be further explored through additional VR services, such as transition services. At the time of the on-site visit, required pre-employment transition services were being provided only to students with disabilities age 16 to 21 who had applied for VR services pending the final regulatory interpretation of “potentially eligible” students.

WDVR provides the required activities through several means. WDVR counselors are responsible for providing and/or coordinating the provision of those services statewide. WDVR contracts with CRPs to provide job exploration and work-based learning activities and contracts with the Wyoming Independent Living Center to provide self-advocacy, mentoring and job search skills activities in addition to work experience activities for students with disabilities. The Wyoming Business Leadership Network is providing mentoring opportunities for youth with disabilities that are not funded by WDVR. These opportunities may be available for students receiving pre-employment transition services.

VR counselors who were interviewed by the RSA TA team indicated that work-based learning was the primary pre-employment transition service provided. After meeting with students to talk about career exploration and their vocational interests, VR counselors work with students to identify a vocational goal and what they like about that goal (job exploration counseling). Then VR counselors discuss with the student a starting place for work-based learning experiences that relate to the identified goal that are also available in the local economy. Some experiences are school-based and some are in the community. VR counselors stated that there are no real training opportunities available in small towns for students. It is more likely that students can obtain a part-time job during the school year or during summer employment. While some work-based learning experiences are unpaid, paid work-based learning experiences constitute real work and are paid at or above the Federal minimum wage.

VR counselors provide counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs in group settings. This group counseling includes academic preparation, minimum grade point average requirements and life on campus. VR counselors also provide this type of counseling on an individual basis by discussing results of interest and aptitude testing and how it applies to entering comprehensive transition or postsecondary educational programs. Additionally, VR counselors refer students with disabilities to college disability services offices and to Job Corps counselors if students are interested in those programs.

TA Provided:

The RSA TA onsite team began its provision of technical assistance by presenting information about the pre-employment transition services required activities using PowerPoint slides presented at the RSA Regional training sessions held in August and September, 2016. These slides included definitions as well as examples of each of the required activities provided in group and in individual settings. During this presentation, WDVR and RSA discussed how the required activities relate to the career development process, vocational goal development, use of a projected vocational goal on IPEs for youth with disabilities (34 CFR §361.46(a)(2)(ii)), and the use of IPE amendments as the vocational goal changes during the career exploration and development process. With respect to the pre-employment transition services required activities, the RSA TA team clarified that:

- The “education program” component of the definition of “student with a disability” in 34 CFR §361.5(c)(51) is a recognized education program that leads to a recognized credential;
- All five pre-employment transition services required activities must be available statewide to all students with disabilities, including students with disabilities who have not applied and been determined eligible for VR services (34 CFR §361.48 (a)(1));
- WDVR may choose to provide pre-employment transition services at an earlier age than 16 if it so desires consistent with 34 CFR §361.5(c)(51)(A)(2); and
- The five required activities constitute early career exploration activities that are general in nature and begin an individual’s process to identify their interest in potential careers.

#### 4. Pre-Employment Transition Services Authorized Activities:

Authorized activities are described in section 113(c) of the Act, as amended by WIOA, and 34 CFR §361.48(a)(3). These activities may be provided to improve the transition of students with disabilities from school to postsecondary education or an employment outcome. The authorized activities must support the provision or arrangement for the provision of the required activities under section 113(b) of the Act, as amended by WIOA, and may be provided only if funds reserved under section 110(d)(1) remain after the provision of the required activities described in section 113(b) of the Act, as amended by WIOA. Any reserved funds remaining beyond the targeted amount necessary for the “required” activities may then be used for “authorized” activities in section 113(c) of the Act and 34 CFR §361.48(a)(3) of the implementing regulations.

As mentioned previously, the VR Transition Consultant positions were designed to help meet the reservation and expenditure requirement for the provision of pre-employment transition services. The job duties of these consultants specifically include the authorized activities listed in 34 CFR §361.48(a)(3). WDVR charged 100 percent of the VR Transition Consultants time to the reservation requirement under 34 CFR §361.65(a)(3).

In addition to the VR Transition Consultants, WDVR has included in its fiscal procedures specific duties of DVR Central Office employees that count toward the requirement to reserve and expend not less than 15 percent of the Federal VR allotment to the provision of pre-employment transition services. These activities include WDVR's Small Business Consultant assisting students in determining whether or not opening a small business would be a viable employment option for that student; and WDVR's Deputy Administrator of Special Programs in developing model transition demonstration projects, such as a "Project Search" contract. While the activities listed under 34 CFR §361.48(a)(3) are aimed at improving the provision of pre-employment transition services in a State, not all expenditures within each activity can count toward the reserve and expend requirement. Some of the activities include administrative functions, and administrative costs are not allowable expenditures under the reservation requirement in 34 CFR §361.65(a)(3).

#### TA Provided:

The RSA TA team and WDVR discussed the job duties and each activity performed by the VR Transition Consultants to cost allocate time based on the direct time spent providing the activities in 34 CFR §361.48(a)(3). An example that falls within this discussion included the VR Transition Consultants arranging a small conference regarding the provision of pre-employment transition services in the State. While the conference may fall within some of the activities listed under 34 CFR §361.48(a)(3), not all of the time the staff spend arranging for the conference may be counted toward the reservation requirement as they are administrative in nature. Staff travel is an administrative cost unless related to the direct provision of VR services. In addition, if other items are discussed at the conference, including the provision of regular transition services, the staff time must be proportionally allocated to account for only the time spent directly related to pre-employment transition services. Since the agency currently utilizes a paper timesheet system, this may increase work effort to accurately track and account for proportional time spent on the provision of pre-employment transition services.

The RSA TA team and WDVR discussed activities that fall under 34 CFR §361.48(a)(3)(vii) "developing model transition demonstration projects." WDVR does not utilize Project Search in the State. RSA explained that once Project Search has been established in a State, the State is no longer "developing" such a project and the activities provided under the project will have to be considered under the required activities listed under 34 CFR §361.48(a)(3). While many of the services provided under Project Search may fall within the required activities under the provision of pre-employment transition services, not every aspect of the project falls within the five required activities. Agencies must review all activities provided under Project Search and only count the time spent providing the activities that are specifically listed in 34 CFR §361.48(a)(2) toward the reservation requirement.

Lastly, RSA specified that the requirement in 34 CFR §361.65(a)(3)(ii)(B) states that administrative costs, whether for the provision of the required activities in

34 CFR §361.48(a)(2) or the authorized activities in 34 CFR §361.48(a)(3), may not count toward the reservation requirement under 34 CFR §361.65(a)(3). WDVR must consider and identify all administrative activities associated with the provision of pre-employment transition services and remove any costs associated from the reservation requirement. This includes removing staff travel time unless directly related to the provision of pre-employment transition services.

## 5. Policies Regarding Pre-Employment Transition Services:

The new definitions and requirements related to pre-employment transition services and students with disabilities under the Act, as amended by WIOA, require policy revisions and development of new policies, such as pre-employment transition services.

Prior to conducting the on-site technical assistance visit, the RSA TA team reviewed a draft policy manual provided by WDVR. The draft manual included new and updated definitions created by WIOA, including “pre-employment transition services,” “student with a disability,” and “youth with a disability” (34 CFR §§361.5(c)(42), 361.5(c)(51) and 361.5(c)(58) respectively). Some of these definitions required revisions to WDVR’s draft policy to be consistent with the Act and the VR program final regulations. The State VR agency is required under 34 CFR §361.50(a) to develop and maintain written policies covering the nature and scope of each of the VR services the agency provides. The WDVR draft policy manual did not contain a policy for the provision of pre-employment transition services. In addition, there were other parts of the draft policy manual that had language that was not consistent with Federal statute and regulation such as inclusion of a policy on use of an extended evaluation period when the Act no longer provides for one.

TA Provided:

In addition to providing guidance related to pre-employment transition services policy, RSA provided written feedback on the entire WDVR draft policy manual and identified a number of revisions needed, including but not limited to:

- Incorrect regulatory citations for some policies;
- Incomplete discussion of the policy topic, such as only discussing communication needs under the heading “Reasonable Accommodation”;
- Using imprecise wording, such as referring to use of a “waiver” without specifying the name of the waiver;
- Policy manual structure that mixed personnel policies with case management policy and in some cases included duplicate entries of items;
- Inclusion of new definitions under WIOA but no use of those new definitions in policy;
- Elimination of the term “transition services” from the policy manual, when it should continue to be included since it is maintained in the final regulations in 34 CFR §361.5(c)(55); and,

- Using definitions that are not consistent with Federal statutory and regulatory definitions.

The RSA TA team recommended that WDVR review and revise terms for VR services to reflect the actual activity performed, such as defining job coaching as teaching the tasks specific to performing a job and defining work readiness as teaching workplace communication and behavior.

Finally, the RSA TA team facilitated an on-site session yielding a draft outline for a policy on the provision of pre-employment transition services that will include the definitions relating to these services, who may receive the services, and how those services may be provided.

6. Requirements for the Memorandum of Understanding between WDVR and the Wyoming Department of Education (WDE) on the Provision of Transition Services:

Section 101(a)(11)(D) of the Rehabilitation Act and 34 CFR §361.22 require VR agencies to develop policies and procedures for coordinating with educational officials to facilitate the provision of VR services, including pre-employment transition services. In addition, the VR services portion of the Unified or Combined State Plan must contain plans, policies, and procedures for coordination between the VR agency and the State educational agency (SEA) to facilitate the transition of students from the receipt of educational services, including pre-employment transition services, to the receipt of VR services as required in 34 CFR §361.22(a)(1).

The WDVR agreement with the Wyoming Department of Education (WDE) was signed in June, 2016, before the effective date of the final VR program regulations. The memorandum does not include items on the collaboration of the two agencies in the provision of pre-employment transition services nor the process the two agencies will use to fulfill the documentation requirements under section 511 of the Act and 34 CFR part 397 of the final regulations. In addition, the agreement does not contain the assurance required under 34 CFR §361.22(b)(6) that neither the State educational agency nor the local educational agency will enter into a contract or other arrangement with an entity for the purpose of operating a program under which a youth with a disability is compensated for work at a subminimum wage. While the MOU does include a provision for the WDVR purchase of assistive technology provided by the school that a VR-eligible student needs for post-school plans, it does not otherwise address the financial responsibilities that each party has for providing pre-employment transition services and transition services. Also, the WDVR and WDE transition coordinators interviewed indicated that local school district personnel are not aware of these requirements and voiced concern about the difficulties they may experience in getting the collaboration and participation of 48 local educational districts to implement the MOU statewide.

TA Provided:

The RSA TA team met with WDVR and WDE personnel to discuss improvement of the MOU between the two agencies addressing the coordination and provision of transition

services and pre-employment transition services. The RSA TA team provided instruction on the required content of the formal interagency agreement and feedback on the existing MOU. In addition, RSA suggested strategies to achieve increased participation of local educational agencies in implementing the MOU, such as involving representatives from local educational agencies in the development of a draft agreement or requesting local district input in response to a draft of the agreement. The RSA TA team also suggested local or regional joint training sessions for WDVR and local educational agencies on the responsibilities of each party in coordinating and providing transition services and pre-employment transition services. The suggested training should include the criteria to determine financial responsibility for the provision of transition and pre-employment transition services, such as:

- The purpose of the service – educational or vocational;
- Customary services; and
- Eligibility for transition services under IDEA.

#### 7. Requirements for the Comprehensive Statewide Needs Assessment:

Under 34 CFR §361.29(a), the State VR agency must conduct a Comprehensive Statewide Needs Assessment (CSNA) every three years and include the results in the VR portion of the Unified or Combined State Plan. WIOA added new requirements to the CSNA to describe the vocational rehabilitation needs of youth with disabilities and students with disabilities, including 1) their need for pre-employment transition services or other transition services and 2) an assessment of the needs of individuals with disabilities for transition services and pre-employment transition services and the extent to which such VR services are coordinated with transition services provided under the IDEA (34 CFR §361.29(a)(i)(D)).

The RSA TA team reviewed the report for a CSNA that was completed in early FFY 2016. That report did not address the new requirements as well as some of the other requirements of the CSNA. WDVR staff indicated that they were aware of, but had not used, the *VR Needs Assessment Guide*, an RSA technical assistance guide for conducting a CSNA.

#### TA Provided:

The RSA TA team explained the relationship between the vocational rehabilitation needs of individuals with disabilities in the State identified by the CSNA and the goals, priorities and strategies to be outlined in the VR portion of the State Plan to meet those needs. The RSA TA team requested improvements in the goals, priorities and strategies and suggested that WDVR:

- Consider gathering existing information from multiple sources to supplement the existing CSNA and to revise description (j) adding missing information at the next opportunity to amend the VR portion of the Wyoming Unified State Plan;

- Review the request for proposals for the CSNA to determine if it outlined the required information that must be obtained by the CSNA and reported in the VR portion of the Wyoming Unified State Plan; and
- Use the *RSA VR Needs Assessment Guide* (located on the RSA website) to plan and guide their next CSNA.

#### 8. Reporting Procedures:

So that Federal VR funds reserved for the provision of pre-employment transition services are only spent on the allowable services identified in section 113 of the Act, as amended by WIOA, and 34 CFR §361.48(a), States must ensure that methods of administration are established to ensure accurate data collection and fiscal accountability as required in 34 CFR §361.12. The Uniform Guidance in 2 CFR §200.402(a) (formerly 34 CFR §80.20(a) of the Education Department General Administrative Regulations) requires States to develop financial management systems that permit the preparation of reports and the tracing of funds to a level of expenditure adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.

Prior to the on-site visit, WDVR sent RSA a copy of fiscal policies and procedures, including reporting procedures for the required Federal financial reports, and updated accounting codes for capturing the provision of pre-employment transition services. A few program codes assigned to the pre-employment transition services were not associated correctly with the appropriate activity. For example, counseling had been assigned to multiple required activities, which may result in inaccurate reporting of the provision of pre-employment transition services on the SF-425 as well as the RSA-911. In addition, accounting procedures did not appear to capture authorized services or counselor time spent providing those activities.

As mentioned previously, WDVR operates on a cash basis of accounting. Requirements in 2 CFR §200.302 state that non-Federal entities are required to adequately trace and account for the expenditure of Federal funds. As such, the State has separate revenue codes to account for and track Federal funds. WDVR created internal program codes to track and account for State funds used to meet the required non-Federal share and program codes to track the new requirement to spend not less than 15 percent of the Federal allotment for the provision of pre-employment transition services. However, the process used by WDVR to verify and reconcile expenditures is burdensome and includes a lot of manual verification and reconciliation by fiscal staff. This manual process has the potential to result in over- or under-reporting of the provision of pre-employment transition services.

TA provided:

The RSA TA team stressed the importance of processes and procedures to promote the accurate and timely reporting of performance and fiscal data, particularly with respect to the provision of pre-employment transition services. The RSA TA team discussed methods to improve and achieve accuracy in reporting of expenditures from the

requirement to reserve and expend not less than 15 percent of Federal funds. WDVR procedures related to Federal financial reporting were reviewed and discussed, including reporting of pre-employment transition services. Due to the limitations in the case management system, WDVR reconciles all obligations and expenditures to ensure they are classified and accounted for appropriately. WDVR has the flexibility to update codes in the current case management system to reflect services provided. However, the current case management system does not have system edits that can tie applicant/client age restrictions to pre-employment transition service codes for students. Detailed fiscal procedures and information should be included in agency-wide policies and procedures. In addition, the information should be available to the rest of WDVR staff and counselors to ensure accuracy in the initial assignment of expenditures and services to correct program codes. The RSA TA team also suggested that unique codes for each of three required activities currently assigned to one counseling code be created by adding a unique digit (letter or number) at the end of the existing code.

Lastly, RSA reviewed fiscal policy and suggested areas in which internal controls should be strengthened in order to mitigate potential risk as well as inaccurate reporting of Federal funds. One potential aspect discussed that would strengthen internal controls includes listing responsibilities of each staff member responsible for expenditure review and data entry. WDVR will update procedures to detail internal monitoring procedures and staff responsibilities.

## **V. The State Supported Employment Services Program**

### **A. General**

The State Supported Employment Services program (Supported Employment program), authorized under title VI of the Act, as amended by WIOA, provides grants to assist States in developing and implementing collaborative programs with appropriate entities to provide programs of supported employment services for individuals with the most significant disabilities, including youth with the most significant disabilities, to enable them to achieve a supported employment outcome in competitive integrated employment.

WIOA made several significant changes to title VI of the Act, which governs the State Supported Employment Services program. All of the amendments to title VI are consistent with those made throughout the Act, namely to maximize the potential of individuals with disabilities, especially those individuals with the most significant disabilities, to achieve competitive integrated employment and to expand services for youth with the most significant disabilities.

Through the implementation of this focus area, the RSA TA team provided technical assistance to WDVR in both program specific and fiscal accountability areas related to the Supported Employment program. Program specific technical assistance refers to the Act, and to both the VR and Supported Employment program implementing regulations at 34 CFR part 361 and 34 CFR part 363, respectively.

## B. Technical Assistance Topics

During the course of the on-site visit, the TA team identified and discussed the following topics related to the State supported employment services program:

### 1. Competitive Employment and Implementation of the Short-Term Basis:

Section 7(38) and the implementing regulation in 34 CFR §363.1 requires that supported employment be in competitive integrated employment or, if not, in an integrated setting in which the individual is working toward competitive integrated employment on a short-term basis. The six-month short-term basis period, and the additional six months that may be available in limited circumstances, begins after an individual has completed up to 24 months of supported employment services (unless a longer period of time is necessary based upon the individual's needs) and the individual has achieved a supported employment outcome.

The RSA TA team reviewed WDVR's implementation and use of the short-term basis requirement. WDVR reported that the short-term basis is rarely needed. In practice, individuals with the most significant disabilities do not achieve employment outcomes until competitive wages are attained.

Based on data reported by WDVR through the RSA-911 for FFY 2015:

- Of the 662 individuals who achieved employment outcomes, 50 individuals with the most significant disabilities (7.56 percent) achieved supported employment outcomes;
- Of the 50 individuals with the most significant disabilities who achieved supported employment outcomes, the average weekly earnings were \$221.06, the average number of hours worked per week was 21.76, and the average hourly wage was \$9.89—all less than for individuals with disabilities that worked without supports or were self-employed;
- Of the 629 individuals who achieved competitive employment outcomes, 44 individuals with the most significant disabilities (7 percent) achieved supported employment outcomes in competitive employment;
- Of the 50 individuals with the most significant disabilities who achieved supported employment outcomes, the average time from IPE to closure was 1.92 years; and
- Of the 44 individuals with the most significant disabilities who achieved supported employment outcomes in competitive employment, the average time from IPE to closure was 1.86 years.

Despite FFY 2015 data that indicated that 44 out of 50 individuals with the most significant disabilities achieved competitive employment, during an on-site discussion with WDVR and their CRPs about competitive integrated employment, the CRPs expressed the opinion that a competitive integrated outcome, as defined by statute and regulation, could not be achieved. CRPs stated that individuals requiring supported employment services were typically not able to perform tasks and complete job duties at a level commensurate with coworkers earning the customary wages.

The RSA TA team explained that the short-term basis requirement is to be used in limited situations to ensure competitive integrated employment can be reasonably achieved within six (6) months of achieving an employment outcome in supported employment, or in limited circumstances, within a period not to exceed 12 months from the achievement of the supported employment outcome. To the extent that the agency strives to place individuals in competitive integrated employment, the short-term basis becomes less necessary. In addition, the RSA TA team also explained that RSA does not anticipate extensive use of the short-term basis if individuals receive appropriate supported employment services after placement for up to 24 months, or longer if needed.

#### TA Provided:

The RSA TA team reviewed applicable regulations and requirements regarding this provision including the purposes of the short-term basis requirement in 34 CFR §363.1(c) as well as the relevant portion of the definition of supported employment in 34 CFR §361.5(c)(53)(ii) indicating that an individual with a most significant disability, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, as defined in 34 CFR §361.5(c)(9), 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.

The RSA TA team also discussed when the short-term basis requirement could be useful and effective. In limited circumstances, individuals with the most significant disabilities in supported employment may not have achieved employment that satisfies all the criteria of “competitive integrated employment,” such as initially earning non-competitive wages on a short-term basis. The RSA TA team further stressed that the short-term basis should only be used if there is progress towards a competitive integrated employment outcome. RSA described that progress towards competitive integrated employment could include, but is not limited to an increase of hours, increase of responsibilities, mastery of job skills, or added tasks.

#### 2. Supported Employment Federal Allotment Reserve Requirement:

Section 603(d) of the Act, as amended by WIOA, and 34 CFR §363.22 require States to reserve 50 percent of the Federal Supported Employment program allotment for the provision of supported employment services, including extended services, to youth with the most significant disabilities.

Prior to the implementation of WIOA, WDVR fully utilized its Federal Supported Employment program funds. With the new requirements under WIOA that require a State to spend 50 percent of the Federal supported employment funds for youth with the most significant disabilities, WDVR anticipates not being able to fully utilize and expend the Federal funds allotted under this program. During discussion, WDVR indicated that the majority of the individuals provided supported employment services have been adults. Since WDVR has utilized the grant fully in the past by providing services to adults under the Supported Employment program, the agency expressed concern that the requirement to reserve and expend 50 percent of the allotment for youth will impact the amount of

supported employment Federal funds available for adults. WDVR anticipates having to spend more Federal VR program funds for this population. WDVR also voiced its concern that providers of extended services may now consider the VR program as the primary provider of extended services for youth.

Supported employment funds are meant to be used to support and maintain an individual with the most significant disability in employment, (section 7(39) of the Rehabilitation Act); as such the provision of supported employment services may not be provided prior to an individual being placed into an employment position requiring supported employment services. All Federal expenditures for an individual with a most significant disability that occur prior to the individual being placed into a supported employment position must be provided with VR funds. This clarification for WDVR, which has historically used some of the supported employment allotment prior to placement, has led the agency to anticipate having Federal supported employment funds remaining unspent.

WDVR's current case management system has the capability to update service codes to capture services provided specifically under the reservation requirement. However, the current case management system does not have system edits that can tie client age restrictions to Supported Employment service codes for youth. The agency's case management system is limited by the decision of the current contractor not to continue maintenance or upgrades on the system. Thus, WDVR has updated their accounting codes to address the new requirements under the Supported Employment program. The agency has created separate accounting codes, one for youth receiving supported employment (SEY) and one for supported employment adults (SEA). WDVR counselors are responsible for correctly assigning the correct accounting code when authorizing a service. VR counselors are not always correct in the assignment of accounting codes for services provided, therefore fiscal staff must review every obligation and expenditure to determine if the individual served meets the definition of youth or not. The fiscal staff manually reassigns expenditures if the accounting code was not assigned appropriately.

TA provided:

The RSA TA team explored possible ways with WDVR to fully utilize and expend the Federal funds received for serving individuals with the most significant disabilities in supported employment, including considering comparable benefits as defined in 34 CFR §361.5(c)(8). In addition, the RSA TA team discussed enhancing WDVR's expenditure monitoring and internal controls. In order to monitor progress toward meeting the VR reservation requirement, WDVR maintains spreadsheets that projects the total amount of Federal funds expended to date as well as reconciling those expenditures against the reservation requirement. The RSA TA team suggested updating the agency's Supported Employment program procedures to include a similar process for tracking and monitoring the expenditure of the Federal and non-Federal supported employment funds. This should ensure that WDVR has internal controls in place to adequately assess current spending and accurately project progress and the ability to meet the requirements to reserve and expend 50 percent of the Federal supported employment allotment for youth with the most significant disabilities, including extended services for youth. In the event all funds cannot be expended from the Supported Employment program allotment, the

RSA TA team suggested that WDVR make Federal funds available for reallocation to other states, pursuant to the requirements under 34 CFR §363.21

### 3. Non-Federal Share Requirement:

Section 606(b)(7)(I) of the Act, as amended by WIOA, and 34 CFR §363.23 require that States must provide non-Federal expenditures in an amount that is not less than 10 percent of total expenditures reserved for youth with the most significant disabilities. Total expenditures means both the Federal reserved funds and the non-Federal share incurred for the provision of supported employment services, including extended services, to youth with the most significant disabilities. Since the required non-Federal share is only applicable to the 50 percent reserved funds for youth with the most significant disabilities, the non-Federal expenditures are required to be spent on supported employment services, including extended services, to youth with the most significant disabilities. However, the 10 percent non-Federal share cannot count toward meeting the reserve requirements, which apply only to the Federal Supported Employment program allotment. There is no requirement that the State provide non-Federal expenditures to match the Federal funds in excess of the 50 percent reserved and spent for this purpose.

Due to State requirements, WDVR has one year to spend the Federal Supported Employment program funds. Section 19(b) of the Rehabilitation Act requires grantees to satisfy the applicable non-Federal share requirement for matching purposes for the year in which the Federal funds were appropriated. Since WDVR has one year to spend the Federal Supported Employment program funds, the agency matches all Federal funds spent by the end of the year of appropriation and does not carry over Federal funds into the subsequent Federal year. This practice ensures that WDVR does not overspend Federal funds which have not been matched. The agency operates on a cash basis of accounting and the State requires WDVR to match Federal funds with the required non-Federal funds per expenditure. Since the agency has historically provided the Federal and non-Federal share for each expenditure, thereby assuring the match is met per expenditure, the requirement to match a portion of supported employment expenditures will require some accounting adjustments on behalf of WDVR.

TA provided:

The RSA TA team discussed WDVR making Federal Supported Employment program funds available for reallocation to other states, pursuant to the requirements under 34 CFR §363.21, in the event that all funds cannot be expended. While WDVR can meet the match required in the Supported Employment program under 34 CFR §363.23, the agency speculated that it may not be able to fully expend the Federal Supported Employment program allotment due to the fact that WDVR spends most of the allotment for services to adults. Since the non-Federal share must also be spent on services to youth with the most significant disabilities, including extended services, and WDVR indicated that it has historically provided the majority of its Supported Employment program services to adults, WDVR anticipates having Federal Supported Employment program funds remaining unspent even if the match requirement has been met.

#### 4. Reporting Procedures:

As with all VR and Supported Employment program funds, States must implement processes necessary to ensure the proper accounting and reporting of expenditures, including those incurred with reserved funds, to ensure the funds spent were only for allowable and allocable purposes. The Uniform Guidance at 2 CFR §200.402(a) requires States to develop financial management systems that permit the preparation of reports and the tracing of funds to a level of expenditure adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.

Prior to the on-site visit, WDVR sent RSA a copy of fiscal policies and procedures, including reporting procedures for the required Federal financial reports. As mentioned previously, due to State requirements and limitations in the State's case management system, WDVR created internal accounting codes to track and account for the requirement to spend 50 percent of the Federal Supported Employment program allotment for services, including extended services, to youth with the most significant disabilities. WDVR created two new accounting codes to capture supported employment services provided. The two new codes capture supported employment services provided to youth (SEY), and supported employment services provided to adults (SEA). WDVR staff is responsible for correctly identifying the accounting code in the case management system when authorizing a service. Due to the fact that this process is manual, and subject to human error, fiscal staff reviews every obligation and expenditure for the supported employment program to determine if counselors adequately assigned each service to the appropriate accounting code of either SEA or SEY. Fiscal staff manually reassigns the expenditure if the accounting code was not properly assigned. This manual process makes it difficult for WDVR to adequately monitor ongoing progress of the requirement to reserve and expend 50 percent of the Federal allotment on youth with the most significant disabilities, including extended services. The process the fiscal staff uses to monitor and reassign is burdensome and includes a large potential for user error in reporting of expenditures.

TA provided:

The RSA TA team reviewed fiscal policy and suggested areas in which internal controls should be strengthened in order to mitigate potential risk as well as inaccurate reporting of Federal funds. One potential aspect discussed that would strengthen internal controls was the listing of responsibilities of each staff member responsible for expenditure review and data entry. WDVR will update procedures to detail internal monitoring procedures and staff responsibilities. In addition, RSA suggested updating current fiscal procedures for reporting the expenditures on the supported employment SF-425.

#### 5. Provision of Extended Services and Use of Supports:

As defined in 34 CFR §363.53, a designated state unit (DSU) must provide for the transition of an individual with a most significant disability, including a youth with a most significant disability, to extended services, as defined in 34 CFR §361.5(c)(19), no later than 24 months after the individual enters supported employment, unless a longer period is established in the individualized plan for employment. The time frame for the provision of supported employment services has been extended from 18 months to 24 months as defined in 34 CFR §363.50(b)(1).

The RSA TA team explored WDVR's current supported employment practices, the use of supports, and implementation of supported employment as described in the agency's policy manual. Prior to the on-site visit, WDVR provided the RSA TA team with a draft policy manual for review. RSA's review determined that WDVR did not thoroughly address the source of extended services as defined in 34 CFR §363.53(b)(2). Also, WDVR policy did not address the availability and potential duration of extended services for youth with the most significant disabilities. During the on-site visit, WDVR indicated that the agency has had a difficult time providing or arranging for the provision of supported employment services, including extended services because the State has limited providers and resources.

TA Provided:

The RSA TA team clarified that 34 CFR §361.5(c)(19)(iv) defines "extended services" as ongoing support services and other appropriate services that are provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made a transition from support from the DSU. Thus, sources other than WDVR's VR or Supported Employment funds can be used to provide extended services to youth with the most significant disabilities, and sources other than the VR agency can fund extended services to adults with the most significant disabilities. The RSA TA team further clarified that the VR agency must use reserved funds to provide supported employment services to youth with the most significant disabilities, including extended services. However, extended services to youth with the most significant disabilities may also be provided with VR program funds or by other providers if available.

The RSA TA team explained that natural supports can be very important to the success of individuals with the most significant disabilities, including youth with the most significant disabilities. Natural supports can often be the ongoing support needed to maintain an individual with the most significant disability in supported employment after Federal, State or non-profit support has ended. The RSA TA team offered examples of natural supports that could assist individuals with the most significant disabilities, including youth with the most significant disabilities, to maintain employment. Job coaches, for example, should seek the contribution and commitment of the employer and/or supervisor in the successful integration of the employee. Other natural supports could include co-workers, family members, mentors and teachers. The RSA TA team advised WDVR to explore all options when considering supports and extended services,

and these should be discussed with individuals with the most significant disabilities and others at the time of planning.

## **VI. Next Steps**

### **A. General**

As part of RSA's follow-up activities to the technical assistance visit to WDVR, RSA will continue to assist WDVR to implement new policies and procedures required by the Act, as well as its implementing regulations, through further technical assistance and monitoring in accordance with section 107 of the Act.

### **B. Technical Assistance Needs**

The RSA TA team has, in consultation with WDVR, identified the following technical assistance needs that either were not met during the on-site visit or are on-going TA needs of the agency. RSA will continue to provide technical assistance to WDVR directly or by connecting the agency with TA resources.

1. Training for the staff of WDVR and partners. WDVR needs a common understanding with its partners about new WIOA requirements and agreement on how to fulfill them. WDVR expressed the following staff training needs:
  - Internal and joint training with LEAs, SEA and service providers on pre-employment transition services definitions, requirements, and implementation strategies; and
  - Internal and joint training with CRP staff on customized employment and competitive integrated employment to disseminate the information discussed during the on-site review to all relevant staff and CRP providers.

The RSA TA team provided WDVR with slides from the Regional Trainings on the final regulations regarding transition and pre-employment transition services that may serve as a training and technical assistance resource. In addition, RSA referred WDVR to the WINTAC for assistance in meeting these training needs. WDVR also indicated they would investigate the development of a training module or modules on VR services, transition and pre-employment transition services for an existing online training vehicle on a Zoom platform known as Project Echo. This resource is available to WDVR staff. In addition WDVR will contact WINTAC for any additional information it may be able to provide on customized employment.

2. Revision of the WDVR policy manual. WDVR indicated that it will need assistance in completing a "major renovation" of its policy manual to ensure that it addresses all requirements and staff information needs. The RSA TA team referred WDVR to the WINTAC and also agreed to provide links to policy manuals from other VR agencies that demonstrate different organizational structures for the policy manual.

3. Identification of Potential Contractors for a CSNA. WDVR indicated that there was only one bidder for the most recent CSNA contract. RSA suggested that the agency conduct a search for potential bidders for the next CSNA contract, including any Wyoming State government entities that may have the expertise to perform this work. In addition, RSA provided the name of the contractor that developed the *VR Needs Assessment Guide* and referred WDVR to the WINTAC for assistance in identifying other potential contractors.
4. Current Case Management System. WDVR indicated that a lot of the difficulties related to the implementation of the new requirements under WIOA fall within the limitations of the current case management system. WDVR requested that RSA provide them with contact information for other States that operate on a cash basis of accounting. WDVR expressed interest in discussing the utilization and limitations of other case management systems with these state agencies. The RSA TA team reached out to a few State VR agencies to ask if WDVR may contact them.

### C. Next Steps

#### 1. Agency Next Steps

In response to the TA provided by RSA during the onsite visit, WDVR will assess its current financial status, conduct fiscal forecasting, and determine the need to develop and implement an OOS. If the decision is to implement, they will follow all required steps outlined by the RSA TA team to develop and submit to RSA for review an amendment to the VR portion of the Wyoming Unified State Plan to implement an OOS

WDVR contacted the WINTAC for assistance during the onsite review, requesting assistance with staff and partner training and implementation of pre-employment transition services and section 511 requirements. In addition, WDVR plans to request assistance from WINTAC in identifying potential bidders for conducting the next CSNA.

The following summarizes WDVR's next steps:

- During the onsite visit, WDVR began the process to task its Futures Group, a leadership development initiative for a cross-section of staff, with the policy manual renovation to begin upon receipt of the TA visit final report.
- WDVR will review and revise its Request for Proposal for the CSNA to ensure that all required information on the vocational rehabilitation needs of individuals with disabilities in the State are identified and reported in the VR portion of the Wyoming Unified State Plan.
- WDVR expressed interest in discussing the utilization and limitations of other case management systems with state agencies that operate on a cash basis of accounting.

#### 2. RSA Next Steps

RSA will provide TA as needed and requested in the areas of competitive integrated employment, pre-employment transition services and supported employment services.

If needed and requested, RSA will provide TA during WDVR's process to determine its ability to serve all eligible individuals in the State. As WDVR considers developing policy and implementing an OOS, RSA will review a draft amendment and approve a final amendment, if submitted, to the VR portion of the Wyoming Unified State Plan to implement an OOS.

RSA will identify and provide WDVR with examples of VR agency policy manuals. In addition, once WDVR has drafted new policy manuals, RSA will review and provide comments and suggested edits if requested.

RSA also agreed to assist WDVR in identifying potential bidders to conduct the agency's next CSNA.

RSA will provide WDVR with contact information for other States that operate on a cash basis of accounting.

RSA will provide WDVR with clarification regarding reporting customized employment on the RSA-911.

RSA will provide WDVR with information regarding the Client Assistance Program's ability to serve students who are potentially eligible for pre-employment transition services and who have not yet applied for VR services.