

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, DC 20202-2800

TECHNICAL ASSISTANCE CIRCULAR
RSA-TAC-22-03
DATE: April 22, 2022

ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES
STATE REHABILITATION COUNCILS
CLIENT ASSISTANCE PROGRAMS

SUBJECT: Prohibition Against Applying Financial Needs Tests or Requiring Cost Participation as a Condition for the Receipt of Vocational Rehabilitation Services for SSI and SSDI Recipients

PURPOSE:

The U.S. Department of Education's (Department) Rehabilitation Services Administration (RSA), within the Office of Special Education and Rehabilitative Services, issues this Technical Assistance Circular (TAC) to remind State Vocational Rehabilitation (VR) agencies of the prohibition at 34 C.F.R. § 361.54(b)(3)(ii) against applying a financial needs test or requiring financial participation as a condition for providing VR services to an individual who has been determined eligible for Social Security benefits under titles II or XVI of the Social Security Act (i.e., recipients of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI)).

BACKGROUND:

VR program regulations in 34 C.F.R. § 361.54 govern the participation of individuals with disabilities in the cost of services based on financial need. In general, these regulations—

- State that there is no Federal requirement that VR agencies consider the financial need of individuals with disabilities when providing VR services (34 C.F.R. § 361.54(a));
- Require VR agencies to maintain written policies if they choose to consider the financial need of eligible individuals, as well as individuals with disabilities engaging in trial work experiences, for purposes of determining the extent of their participation in the cost of VR services (34 C.F.R. § 361.54(b)(1) and (2)(i));
- Require that the written policies, among other things, explain the method to be used when determining financial need and specify the VR services to which the policies will apply (34 C.F.R. § 361.54(b)(2)(i)(A) and (B));
- State that certain VR services are exempt from cost participation and financial needs tests (34 C.F.R. § 361.54(b)(3)(i)); and

- Prohibit VR agencies from applying financial needs tests or requiring participation in the cost of VR services as a condition for providing VR services to individuals with disabilities determined eligible for Social Security benefits under titles II and XVI of the Social Security Act (34 C.F.R. § 361.54(b)(3)(ii)).

RSA issues this TAC to ensure State VR agencies' understanding of the regulatory requirements governing financial needs testing and client financial participation, particularly the prohibition in 34 C.F.R. § 361.54(b)(3)(ii).

TECHNICAL ASSISTANCE:

RSA reminds State VR agencies that 34 C.F.R. § 361.54(b)(3)(ii) prohibits agencies from applying a financial needs test or requiring financial participation as a condition for providing VR services to individuals with disabilities eligible to receive SSI or SSDI benefits. In other words, if a State VR agency maintains written policies for applying a financial needs test or requiring client financial participation in the cost of VR services, SSI and SSDI recipients are exempt from both under 34 C.F.R. § 361.54(b)(3)(ii).

Section 103(a) of the Rehabilitation Act of 1973 (Rehabilitation Act) and 34 C.F.R. § 361.48(b) require VR agencies to make available the full scope of VR services, based on the rehabilitation needs of the individual and consistent with the individualized plan for employment (IPE), to assist the individual with a disability in preparing for, securing, retaining, advancing in, or regaining an employment outcome that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. In addition, regulations implementing the amendments to the Rehabilitation Act made by the Workforce Innovation and Opportunity Act (WIOA) emphasize the provision of services, including financial support for postsecondary and graduate-level education, designed to lead to high-quality competitive integrated employment outcomes (see 34 C.F.R. § 361.48(b)(6)).

When State VR agencies fail to comply with the prohibition in 34 C.F.R. § 361.54(b)(3)(ii), these agencies may be preventing SSI and SSDI recipients from receiving the full array of VR services needed to achieve their employment outcomes. Financial needs tests and policies that require participation in the cost of VR services may disincentivize these individuals from participating in the VR program, thereby hampering their ability to achieve competitive integrated employment and reduce their reliance on public benefits.

Notably, under 34 C.F.R. § 361.45(c)(2)(ii)(A), during the IPE development process, VR agencies must inform an individual of the applicable agency guidelines and criteria for determining the eligible individual's financial commitments under the IPE. Thus, VR agencies must inform individuals eligible for SSI or SSDI benefits that they are not responsible for the cost of any VR service listed on their IPEs.

INQUIRIES:

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/s/

Carol L. Dobak
Acting Deputy Commissioner,
delegated the authority to perform the
functions and duties of the Commissioner

cc: Council of State Administrators of Vocational Rehabilitation
National Council of State Agencies for the Blind
National Disability Rights Network