

RSA Frequently-Asked Questions About Supported Employment (5.10.2017)

1. What do these FAQs address?

The Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for general information and clarification of changes to the Supported Employment program made with the passage of the Workforce Innovation and Opportunity Act (WIOA) and implementing regulations. In response, this Frequently Asked Questions (FAQ) page highlights substantial changes in title VI of the Rehabilitation Act of 1973, as amended by title IV of WIOA, (the Act) and its implementing Vocational Rehabilitation (VR) program and Supported Employment program regulations in 34 CFR parts 361 and 363 (see 81 FR 55629 (August 19, 2016) at <https://www.federalregister.gov/documents/2016/08/19/2016-15980/state-vocational-rehabilitation-services-program-state-supported-employment-services-program>). The information in these FAQs provides general guidance and technical assistance to VR agencies and community rehabilitation programs so that they may assist individuals with the most significant disabilities to achieve high-quality supported employment.

2. What significant changes have been made to the Supported Employment program through the Workforce Innovation and Opportunity Act (WIOA)

WIOA made several changes to the Supported Employment program, including requiring VR agencies to make extended services available to youth with the most significant disabilities through the use of Supported Employment program funds and/or VR program funds pursuant to section 604(b)(2). Other significant changes include:

- 1) Extending the time frame for the provision of supported employment services from 18 months to 24 months (section 7(39)(C) of the Act and 34 CFR §§361.5(c)(54)(iii) and 363.50(b)(1));
- 2) Requiring that supported employment be in competitive integrated employment or, if not, in competitive employment, in an integrated work setting in which the individual is working toward competitive integrated employment on a short-term basis (section 7(38) of the Act and 34 CFR §§361.5(c)(53)(i) and 363.1(b));
- 3) Requiring a State to reserve and expend 50 percent of its allotment under the Supported Employment program for the provision of supported employment services, including extended services, to youth with the most significant disabilities (section 603(d) of the Act and 34 CFR §363.22);
- 4) Requiring a State to provide not less than a 10 percent non-Federal contribution for the 50 percent of the allotment reserved to serve youth with the most significant disabilities (section 606(b)(7)(I) of the Act and 34 CFR §363.23); and

5) Reducing the amount of funds that States may spend on administrative costs to 2.5 percent from 5 percent of the State's Supported Employment program allotment (section 606(b)(7)(H) of the Act and 34 CFR §363.51).

For additional information regarding the reservation of funds and fiscal requirements related to the Supported Employment program found in the amendments to the Act made by WIOA, see Frequently Asked Fiscal Questions.

3. What is "supported employment"?

Section 7(38) of the Act, and implementing VR program and Supported Employment program regulations in 34 CFR §§361.5(c)(53) and 363.1(b), define "supported employment" as competitive integrated employment, including customized employment, or employment in an integrated work setting in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment; and that is individualized and customized, consistent with the individual's unique strengths, abilities, interests, and informed choice, including with ongoing support services for individuals with the most significant disabilities.

Because the definition of "employment outcome," in section 7(11) of the Act, requires all employment outcomes achieved through the VR program to be in the "integrated labor market," all supported employment outcomes must be in integrated settings with the additional expectation that individuals with the most significant disabilities can and will achieve competitive wages. This means that despite the payment of competitive wages, employment in a non-integrated work setting does not meet the requirement under the Act, for an employment outcome in supported employment. Therefore, employment in sheltered workshops and enclaves and group employment settings does not constitute supported employment because an individual achieves a supported employment outcome only if the supported employment meets the integrated setting requirement. More information regarding "integrated setting" may be found at Integrated Location Criteria of the Definition of "Competitive Integrated Employment" FAQs.

4. Who does the Supported Employment program serve?

Section 7(38) of the Act and 34 CFR §§361.5(c)(53) and 363.1(b) of the implementing regulations describe who may be served by the Supported Employment program. The Supported Employment program serves individuals with the most significant disabilities, including youth with the most significant disabilities, for whom competitive integrated employment has not historically occurred or for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability, and who, because of the nature and severity of their disabilities, need intensive supported employment services and extended services after the transition from support provided by the VR agency in order to perform the work involved.

Supported employment should not be considered automatically as the first choice for individuals with significant or the most significant disabilities. The Supported Employment program and supported employment services exist to assist individuals with the most significant disabilities who need intensive services and ongoing supports to achieve an employment outcome and should be considered after a comprehensive assessment of the rehabilitation needs of the individual when determining an individual's employment goal consistent with his or her unique strengths, priorities, concerns, abilities, capabilities, interests, and informed choice.

5. What are the authorized activities under the Supported Employment program?

States are authorized to use funds allotted under the Supported Employment program to provide supported employment services, as defined in section 7(39) of the Act and 34 CFR §361.5(c)(54), and to provide extended services in accordance with the requirements in section 604(b)(2) of the Act and 34 CFR §363.4(a)(2), to youth with the most significant disabilities for a period of time not to exceed four years, or until such time that a youth reaches the age of 25, thereby no longer meeting the definition of a "youth with a disability" in 34 CFR §361.5(c)(58), whichever occurs first.

In accordance with the VR services portion of the Unified or Combined State Plan and section 101(a)(22) of the Act, a VR agency may provide supported employment services or discrete post-employment services using funds made available through the VR program allotment for an individual who is eligible under the Supported Employment program. In addition, funds allotted under the Supported Employment program or the VR program may be used to provide extended services to youth with the most significant disabilities as authorized under section 604(b)(2) of the Act. However, extended services may not be provided by the VR agency using funds allotted under either the Supported Employment program or the VR program to an individual who is not a youth with a disability. See sections 604(b)(1) and 608 of the Act and 34 CFR 363.4(b) and (c).

6. What are supported employment services?

Section 7(39) of the Act and 34 CFR §361.5(c)(54) define "supported employment services" as ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment and that are organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment. Supported employment services are based on a determination of the needs of an eligible individual as specified in the individualized plan for employment (IPE), and are provided by the VR agency for a period of not more than 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE.

"Ongoing support services" as referenced in the definition of "supported employment services" is defined in 34 CFR §361.5(c)(37). Ongoing support services are services identified based on a

determination by the VR agency of an individual's need as specified in the IPE, and that are needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment. Ongoing services are furnished by the VR agency, using funds under the Supported Employment program and/or the VR program, from the time of job placement until the transition to extended services, and thereafter by one or more extended services providers, including the VR agency, in accordance with 34 CFR §363.4(a)(2), throughout the individual's term of employment in a particular job placement. However, the VR agency may also provide post-employment services following transition to extended services using funds made available under the VR program, if they are necessary to maintain or regain the job placement or advance in employment and are unavailable from an extended services provider, other than the VR agency.

Ongoing support services may include activities such as an assessment of employment stability and the provision or coordination of specific services at or away from the worksite that are needed to maintain stability, including supplementary assessments of rehabilitation needs, the provision of skilled job trainers for the individual at the worksite, social skills training, follow-up services, facilitation of natural supports at the worksite, and other applicable services defined within the scope of services in 34 CFR §361.48(b).

7. What is the time frame for the provision of supported employment services?

Prior to job placement in supported employment, individuals with the most significant disabilities receive VR services identified in the IPE, and which the VR counselor and the individual have determined will lead to achievement of the supported employment outcome. Supported employment services, also identified on the IPE, begin at the time of the individual's job placement. The definition of "supported employment services" in 34 CFR §361.5(c)(54) specifically references "ongoing support services," which are defined in 34 CFR §361.5(c)(37) and are furnished by the VR agency from the time of job placement until transition to extended services. They also may include post-employment services, if these services are required from the VR agency because they are unavailable from an extended services provider and are necessary to maintain or regain the job placement or advance in employment.

Under the Act, the time frame for the provision of supported employment services, has been extended from 18 months to no longer than 24 months, unless, under special circumstances, the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE. The extension provides additional time for individuals with the most significant disabilities to receive the services and supports necessary to achieve an employment outcome in supported employment either in competitive integrated employment or working in an integrated setting on a short-term basis to achieve competitive integrated employment.

8. What is the short-term basis?

The inclusion of the short-term basis provision in the definition of "supported employment" in section 7(38) of the Act clearly indicates Congress' intent that individuals with the most

significant disabilities should not linger in subminimum wage employment for long periods of time and should achieve competitive integrated employment. For purposes of supported employment, 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 within six months of achieving a supported employment outcome. In limited circumstances, the short-term basis period may be extended up to an additional six months (not to exceed 12 months from the achievement of the supported employment outcome), if a longer period is necessary based on the needs of the individual, and the individual has demonstrated progress toward competitive earnings based on information contained in the service record (section 7(38) of the Act and 34 CFR §363.1(c)).

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, meaning that the individual is stable in the supported employment placement for a minimum period of 90 days following the transition to extended services. At this point, the individual has achieved a supported employment outcome in accordance with the criteria set forth in 34 CFR §363.54.

It would not be appropriate to put an individual in an unpaid internship, pre-apprenticeship, apprenticeship (including a Registered Apprenticeship), or transitional employment for a short-term basis because the short-term basis period occurs after the achievement of the supported employment outcome. These employment experiences do not constitute supported employment outcomes within the meaning of the definition of "supported employment" in 34 CFR §§361.5(c)(53) and 363.1(b) and (c); instead, they are VR services that may lead to the achievement of employment outcomes. Therefore, they would not be appropriate placements for employment on a short-term basis.

9. What are the requirements for providing extended services for youth?

"Extended services," as defined in 34 CFR §361.5(c)(19), means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability in supported employment. Extended services must be organized and made available, singly or in combination, in such a way as to assist an individual in maintaining supported employment; based on needs specified in the IPE; provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource after an individual has made the transition from support from the VR agency; and, in the case of a youth with a most significant disability, provided by the VR agency in accordance with requirements in section 604(b)(2) of the Act and 34 CFR §363.4(a)(2), and as described in 34 CFR §361.5(c)(19)(v). The transition to extended services begins after all supported employment services are complete.

VR agencies must make extended services available to youth with the most significant disabilities with funds available under the Supported Employment program based upon the individual needs of the youth. Read together, sections 603(d) and 604(b)(2) of the Act, as amended by WIOA, mandates that the VR agency make available extended services for youth with the most significant disabilities for a period not to exceed four years. Furthermore, section 604(b)(2) of the Act permits VR agencies to use title I VR funds to pay for extended services to youth with the most significant disabilities. The regulations in 34 CFR §§361.5(c)(19)(v) and 363.4(a)(2) clarify that extended services may be provided for a period of up to four years or until such time that a youth reaches the age of 25, and, thus, no longer meets the definition of a “youth with a disability” under 34 CFR §361.5(c)(58), whichever occurs first. Therefore, a youth may no longer be eligible to receive extended services provided by the VR agency with funds allotted under the Supported Employment program or the VR program if the individual:

No longer meets age requirements established in the definition of a “youth with a disability” in 34 CFR §361.5(c)(58); or

Has received extended services for a period of four years; or

Has transitioned to extended services provided with funds other than those allotted under the VR program or Supported Employment program prior to meeting the age or time restrictions.

Once a youth reaches age 25 or his or her four year limit of extended services provided by the Supported Employment or VR program, under 34 CFR §363.53(b)(2)(ii), the VR agency must identify another source of extended services to ensure that there will be no interruption of services. The VR agency may not provide extended services to a youth with the most significant disability who has not received services from the VR agency through an IPE simply because he or she meets the definition of a “youth with a disability” and is in need of extended services. To be eligible for supported employment services, including extended services, a youth must meet the requirements of section 605 of the Act and 34 CFR §363.3 of the regulations, which include being determined eligible for VR services. It should be noted that WIOA did not amend title VI of the Rehabilitation Act to allow VR agencies to fund extended services to individuals with the most significant disabilities who are not youth with significant disabilities using Supported Employment or VR program funds (34 CFR §§361.5(c)(19)(v) and 363.4(b)).

10. Can the VR agency “opt out” of providing extended services to youth?

While the VR agency cannot “opt out” of any of the activities authorized under section 604 of the Act and 34 CFR §363.4 by refusing to fund them, VR agencies determine the need for and fund services on a case-by-case basis dependent upon each individual’s need for services. In light of the responsibility to make available funds for extended services for youth with the most significant disabilities, VR agencies should continue to explore the availability of funding from other sources, as is done for other individuals with the most significant disabilities transitioning from supported employment services to extended services.

Prior to WIOA, VR agencies were not permitted to expend Supported Employment or VR program funds for extended services. This new requirement is implemented in the definition of “extended services” in 34 CFR §361.5(c)(19)(v) of the regulations and is an authorized service in 34 CFR §363.4(a)(2). In addition, under section 603(d) of the Act and 34 CFR §363.22, a reservation of 50 percent of a State’s Supported Employment program allotment is required for the provision of supported employment services, including extended services, to youth with the most significant disabilities.

11. What requirements must be satisfied to demonstrate achievement of an employment outcome in supported employment?

Section 7(11)(B) of the Act and 34 CFR §361.5(c)(15) include supported employment within the employment outcomes available to individuals with disabilities through the VR program. Under section 7(38) of the Act, and 34 CFR §§361.5(c)(53) and 363.1(b), supported employment requires that the individual be employed in competitive integrated employment or in an integrated setting in which the individual is working on a short-term basis toward competitive integrated employment. Thus, in limited circumstances, individuals in supported employment may not have achieved employment that satisfies all the criteria of “competitive integrated employment” initially since they will be earning noncompetitive wages on a short-term basis. This very narrow exception is the only instance in which the statute permits that all criteria of “competitive integrated employment” need not be satisfied for an individual to achieve an employment outcome. However, even under this narrow exception, the expectation is that, after a short period of time, the individual will achieve competitive integrated employment in supported employment. For further discussion of what constitutes an employment outcome in supported employment, see question 2 of this FAQ.

Requirements that must be satisfied to demonstrate achievement of an employment outcome in supported employment are set forth in 34 CFR §363.54 of the regulations:

First, the individual must have completed supported employment services, which may be received for up to 24 months, or longer if the counselor and the individual have determined that such services are needed to support and maintain the individual in supported employment. Any other VR services listed on the IPE provided to individuals who are working on a short-term basis toward the achievement of competitive integrated employment in supported employment need not be completed prior to satisfying the achievement of an employment outcome;

Second, the individual has transitioned to extended services provided either by the VR agency for a youth with the most significant disability, or another provider, consistent with the provisions of 34 CFR §§363.4(a)(2) and 363.22 of the regulations;

Third, the individual has maintained employment and achieved stability in the work setting for a minimum of 90 days after transitioning to extended services; and

Finally, the employment must be individualized and customized consistent with the strengths, abilities, interests, and informed choice of the individual.

12. When may a service record be closed?

The service record of an individual who has achieved an employment outcome in supported employment will be closed in accordance with 34 CFR §363.55 of the regulations.

Closure of the service record may occur at the time individuals or youth with the most significant disabilities achieve a supported employment outcome or at a later time, depending on whether individuals with the most significant disabilities, including youth with the most significant disabilities, achieve competitive integrated employment or work toward competitive integrated employment on a short-term basis and whether they are receiving extended services and/or any other VR services from the VR agency or from other service providers.

13. What are some scenarios for the achievement of supported employment outcomes and when service records may be closed?

The interplay between when an individual with a most significant disability has achieved a supported employment outcome and when the service record of the individual may be closed can involve multiple steps of analysis. Factors such as whether individuals with the most significant disabilities, including youth with the most significant disabilities, are working toward competitive integrated employment on a short-term basis and whether they are receiving extended services and/or any other VR services from the VR agency or from other service providers must be considered. The examples below incorporate the requirements in 34 CFR §§363.54 and 363.55 and are intended to assist in understanding the timing of closure of the service record in relation to the achievement of the supported employment outcome. All examples must still meet the other requirements for closing a service record in 34 CFR §361.56(c) and (d) – the VR counselor and consumer consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment and the individual is informed through appropriate modes of communication of the availability of post-employment services.

EXAMPLE 1: Bob has been placed in a competitive wage job in an integrated setting individualized and customized for him that is consistent with his strengths, abilities, interests, and informed choice; has completed up to 24 months of supported employment services; has transitioned to extended services provided by a provider other than the VR agency; and has been stable for a minimum of 90 days after transitioning to extended services.

Has he achieved a supported employment outcome? YES

Can the service record be closed? YES, if the requirements for service record closure in 34 CFR §361.56 also have been satisfied.

EXAMPLE 2: In the previous scenario, what if Bob is a youth with a most significant disability and is receiving extended services from the VR agency instead of from another provider?

Has he achieved a supported employment outcome? YES

Can the service record be closed? NO. Bob is continuing to receive services (extended services) from the VR agency. Once he no longer is receiving extended services from the VR agency (e.g., he has reached the age of 25, received extended services for 4 years or begins receiving extended services from another agency), his service record can be closed, if the requirements for service record closure in 34 CFR §361.56 also have been satisfied.

EXAMPLE 3: Bob has been placed in a job in an integrated setting at a subminimum wage that is individualized and customized for him that is consistent with his strengths, abilities, interests, and informed choice but he reasonably anticipates achieving competitive integrated employment within six months. He has completed up to 24 months of supported employment services; has transitioned to extended services provided by a provider other than the VR agency; and has been stable for a minimum of 90 days after transitioning to extended services and is receiving VR services while working on a short-term basis toward competitive integrated employment.

Has he achieved a supported employment outcome? YES

Can the service record be closed at the time of the supported employment outcome? NO. Bob is continuing to receive VR services during the short-term basis period from the VR agency with funds under 34 CFR part 361 (VR program funds).

When can the service record be closed?

The service record can be closed when Bob:

Achieves competitive integrated employment within the short-term basis period established pursuant to 34 CFR §363.1(c); and

Satisfies the requirements for service record closure in 34 CFR §361.56; and

Is no longer receiving VR services provided by the VR agency with funds under 34 CFR part 361.

The service record must also be closed if Bob does not achieve competitive integrated employment within the short-term basis period.

EXAMPLE 4: Bob is a youth with a most significant disability who has been placed in a job in an integrated setting at a subminimum wage that is individualized and customized for him that is consistent with his strengths, abilities, interests, and informed choice but he reasonably anticipates achieving competitive integrated employment within six months. He has completed up to 24 months of supported employment services; has transitioned to extended services provided by the VR agency; has been stable for a minimum of 90 days after transitioning to extended services and is receiving VR services funded under VR program funds while working on a short-term basis toward competitive integrated employment.

Has he achieved a supported employment outcome? YES

Can the service record be closed at the time of the supported employment outcome? NO. Bob is continuing to receive extended services funded under the Supported Employment program or the VR program and VR services during the short-term basis from the VR agency with VR program funds.

When can the service record be closed?

The service record can be closed when Bob:

Achieves competitive integrated employment within the short-term basis period; and

Is no longer receiving VR services provided by the VR agency with funds under 34 CFR part 361; and/or

Is no longer eligible to receive extended services provided by the VR agency with funds allotted under the Supported Employment program or the VR program or has transitioned to another extended services provider; and

Satisfies the requirements for service record closure in 34 CFR §361.56.

The service record must also be closed if Bob does not achieve competitive integrated employment within the short-term basis period and, in such a case, extended services should be coordinated with another extended services provider.

In summary, the service record may be closed and the supported employment outcome taken at the same time an individual, including a youth with a most significant disability, achieves a supported employment outcome in competitive integrated employment, unless an individual with a most significant disability is receiving VR services during the short-term basis period and/or, in the case of a youth with a most significant disability, is receiving extended services funded by either Supported Employment program or VR program funds.

14. What happens if an individual with a most significant disability working in an integrated setting has not achieved competitive wages by the end of the short-term basis period?

If an individual with a most significant disability does not achieve competitive wages during the short-term basis period, the service record will be closed, and he or she will have achieved a supported employment outcome working on a short-term basis. Because the individual has not achieved competitive wages and is continuing to work at a subminimum wage, he or she will be subject to the requirements of section 511 of the Act, related to limitations on the use of subminimum wage. Additionally, the VR agency will review the status of the individual on a semi-annual basis for the first two years of employment and annually thereafter to determine the interests, priorities, and needs of the individual with respect to competitive integrated employment or training for competitive integrated employment in accordance with 34 CFR §361.55(a)(2)(i) of the VR program regulations. At any time, the individual may also reapply for the VR program if he or she intends to seek competitive integrated employment.

15. What happens if an individual with a most significant disability loses a job after being placed in supported employment?

Consistent with the scope and provision of VR services for individuals with disabilities in section 103(a) of the Act and 34 CFR §361.48, if an individual with a most significant disability loses a job prior to achieving an employment outcome, he or she may continue to receive VR services that will lead to another placement in supported employment. After placement, he or she may receive supported employment services to assist in achieving a supported employment outcome.

Similarly, for an individual with a most significant disability who has achieved a supported employment outcome and subsequently loses his or her employment, prior to closure of the service record, the individual may receive VR services that will assist in finding another placement, after which additional supported employment services may be provided to enable him or her to achieve a supported employment outcome.

For an individual with a most significant disability who has lost a job following the achievement of an employment outcome and whose service record has been closed, he or she may apply to the VR agency for services again. Additionally, following transition to extended services, an individual with a most significant disability may receive post-employment services identified in the IPE that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment (34 CFR §§361.5(c)(54)(iv) and 361.46(c)).