



*Exceptional Results with Extraordinary
People*

September 11, 2017

Ms. Hilary Malawer
Assistant General Counsel, Office of the General Counsel
U.S. Department of Education
400 Maryland Ave SW, Room 6E231
Washington, DC 20202
Via electronic submission at <http://www.regulations.gov>

Re: Docket ID: ED-2017-OS-0074

Dear Ms. Malawer:

Skookum appreciates the opportunity to submit comments on regulations that may be appropriate for repeal, replacement, or modification according to the notice that was published in the Federal Register on June 22, 2017. Our comment is in regard to regulations and sub-regulatory guidance issued by the U.S. Department of Education (DoEd), Rehabilitation Services Administration (RSA) for the purpose of implementing the definition of competitive integrated employment [under 34 CFR §361.5(c)(9)(ii) and 361.5(c)(32)(ii)] in the Workforce Innovation and Opportunity Act (WIOA). These regulations and guidance are having an unintentional, but deleterious, job-killing impact for people with significant disabilities. Specifically, RSA's guidance is indiscriminately disqualifying vocational rehabilitation (VR) job placements to certain nonprofit agencies (NPAs) based upon their participation in the congressionally-mandated U.S. AbilityOne® Program.

Skookum Contract Services is a non-profit corporation which provides living wage career opportunities for people with disabilities by providing excellent services to our government customers on AbilityOne service contracts. Over 30% of Skookum's 1,100 employees are Veterans.

Skookum employees provide critical logistics and facility management services to the government to include; Vehicle and Equipment Maintenance and Repair, Transportation Services, Fuel Supply Management, Retail Supply and Services, Warehousing Management, Central Issue Facility Operations, Food Services, Information Technology Support for Logistics Software systems, Buildings and Structures; Utility Systems; Heating, Ventilation and Air Conditioning (HVAC) systems; Dining and Laundry Equipment; Grounds & Pavement Maintenance; and Call Center operations.

There is absolutely nothing about Skookum that resemble a "sheltered workshop". Skookum represents a new era of AbilityOne service providers who focus on a broader range of significant barriers to employment than just developmental disabilities such as; Wounded Warriors as well as people with physical and neurological disabilities, mental health issues, etc. This diversity of disability, coupled with continual employee interaction with our military and civilian customers, creates an integrated work setting. Many of our Wounded Warriors suffer from invisible disabilities. To an outsider walking onto one of our project sites, it would not be readily apparent that this is a workforce of people with disabilities.

Although the disabilities may not be obvious, most Skookum employees experienced chronic unemployment over their lives as they struggled to find and maintain a living wage job outside the AbilityOne Program. AbilityOne jobs pay prevailing wage with full benefits and opportunities for advancement. They are real jobs.

WIOA is an important piece of legislation that received considerable bipartisan support in Congress. Attaining competitive integrated employment is a worthy goal for all individuals with disabilities who receive vocational rehabilitation services under WIOA. However, we believe that the integrated location criterion in the final regulation is based on an overly simplistic and inaccurate understanding of the types of jobs that are provided through the AbilityOne Program. As a result



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of the integrated location criterion, we know of at least 19 state VR agencies that have stopped placing individuals with disabilities into AbilityOne jobs.

Skookum jobs are competitively integrated. Skookum employees with disabilities work right alongside co-workers without disabilities and the average hourly wage for more than 670 people with significant disabilities employed on Skookum contracts in 2016 was \$18.34 per hour, plus benefits valued at an average of \$5 per hour. Workers with disabilities have the same interactions with their co-workers, customers and vendors as their non-disabled counterparts. They also have the same opportunities for advancement as their co-workers without disabilities. They perform the same work and are held to the same performance standards.

The Skookum/AbilityOne jobs I have described above satisfy WIOA's statute definition of "competitive integrated employment" and, historically, most state VR agencies, after evaluating these jobs on a case-by-case basis, have routinely referred individuals receiving VR services to these job positions with NPAs participating in the AbilityOne Program.

The most heartbreaking aspect of the current 19 states no longer referring to AbilityOne jobs is that while a VR case worker may be successful placing someone in a low paying part time job, they are ignoring living wage AbilityOne jobs that could have a life changing impact!

We are respectfully requesting that the DoEd immediately rescind the FAQ guidance (posted on DoEd's website, <https://www2.ed.gov/about/offices/list/osers/rsa/wioa/competitive-integrated-employment-faq.html>) related to the definition of integrated settings and issue clarifying guidance that employment at "community rehabilitation programs," including employment positions funded through the AbilityOne Program, may be considered competitive integrated employment as long as it meets the criteria defined in RSA-TAC-06-01 and in Parts 361.5(c)(9) and 361.5(c)(32) of the WIOA regulations.

The definition for "integrated settings" in the July 2014 WIOA ACT is: *at a location where the employee interacts with other persons without disabilities (not including supervisory personnel or the person providing service) to the same extent as individuals with disabilities.*

We request the elimination of the following subjective "integrated settings" criteria defining language in the final rule that exceeds statutory language: "integrated setting typically found in the community" [§361.5(c)(9) and (32)]:

- *Businesses established by CRPs or any other entity for the primary purpose of employing individuals with disabilities do not satisfy the integrated settings criteria because these settings are not within the competitive labor market.*
- *The Department has long considered several factors to typically distinguish positions in these types of businesses from those that satisfy the criterion. The factors that generally would result in a business being considered "not typically found in the community," include: (1) the funding of positions through Javits-Wagner-O'Day Act (JWOD) contracts; (2) allowance under the FLSA for compensatory subminimum wages; and (3) compliance with a mandated direct labor-hour ratio of persons with disabilities.*

Thank you for the opportunity to comment on existing regulations that eliminate jobs, or inhibit job creation. If you have any questions or need any additional information, please contact me at jeff.dolven@skookum.org or 360-475-0756 ext. 100.

Sincerely,

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