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**To:** Department of Education Regulatory Reform Task Force  
**From:** **Minnesota State Rehabilitation Council - Blind**  
**Date:** **September 20, 2017**  
**Subject:** Recommendations to Improve Implementation of the Workforce Innovation and Opportunity Act (WIOA)

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The following is submitted under the direction of the Minnesota State Rehabilitation Council - Blind by action taken at the August 3, 2017, meeting of that council. We believe the regulations addressed in these comments interfere with the provision of services to the intended customers, but that fairly simple modifications can remedy these situations.

Focusing attention on transition age students is a necessary part of increasing their overall chances to eventually achieve competitive employment. However, by allocating 15% of the federal dollars received to Pre-ETS services when no additional funding was provided, already shrinks the funding for other customers. To additionally exclude the services that are provided to Pre-ETS customers who have an Individualized Plan for Employment from that 15% can affect the continuity of the services provided while placing an even greater strain on the provision of services to other customers. While later clarifications have included certain activities, postsecondary tuition and fees are still excluded. Specifically, the policy statement in the preamble of 34 C.F.R 361 states:

...a DSU may not use the funds reserved for pre-employment transition services to pay for tuition and other costs of attending postsecondary education, since this is not among those activities that are required or authorized under section 113 of the Act and final Section 361.48(a).

Yet, some aspects of postsecondary education appear to be acceptable in a response in the preamble of the regulation which says:

Nonetheless, we agree that section 7(37) of the Act, as amended by WIOA, is silent on the educational setting for a student with a disability. After much consideration of the potential effects for such change in interpretation, the Secretary agrees that the definition of a “student with a disability” in final section 361.5(c)(51) for purposes of the VR program, should be interpreted as applying to students also enrolled in educational programs outside secondary school, including postsecondary education programs, so long as the students satisfy the age requirements set forth in final section 361.5(c)(51).

What this means is that much effort is made to prepare a student to successfully navigate gaining an education according to the IPE, only to find that the financial support for which they may otherwise qualify may not be available. This exclusion seems arbitrary and should be eliminated.

A second closely related concern is the possible interruption of service provision that arises from the separation between Pre-ETS funds and the funding of services once a customer has applied for rehabilitation services. When “Order of Selection” is active, it is possible for a transition aged customer to be left without services while in the “order of selection” window. At the very least, Pre-ETS funding should be available until vocational rehabilitation services begin.

Another area of concern of our council has been improving the rate of successful closures. We are therefore concerned with the requirement that a case be closed if an Individualized Plan for Employment is not in place within 90 days of the determination of eligibility for services. Specifically, regulation 34 C.F.R. 361.45(e) requires that “an IPE be in place not later than 90 days after the date of determination of eligibility, unless the State unit and the eligible individual agree to the extension of that deadline to a specific date by which the individualized plan for employment must be completed.” If unanticipated circumstances prevent a customer from returning an IPE, for example, such circumstances will likely prevent the agreement for an extension to be completed as well. If a customer has been determined to be eligible and the state agency and the customer have begun to work together to produce an IPE, a case should not be closed because a customer has not, for example, returned that IPE. While the intent of this regulation is likely to encourage prompt action from the state agency while avoiding the maintenance of open cases where customers have lost interest, there is a good deal of middle ground that should be more clearly defined.

Certainly there are additional regulations that deserve review, but the above would seem to have fairly simple solutions. Thank you for considering our comments.

Best regards,

Steve Jacobson, Chair  
Minnesota State Rehabilitation Council – Blind