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From: Steve Cook, President/CEO, INARF
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RE: Docket ID: ED-2017-OS-0074-0001

Date: September 20, 2017

Thank you for the opportunity to comment on regulations or guidance that may be appropriate for repeal, replacement, or modification in accordance with Executive Order 13777, "Enforcing Regulatory Reform Agenda". INARF applauds Secretary DeVos for the importance she places upon obtaining public input from a wide range of stakeholders prior to implementation of regulatory reform, and is confident that the feedback received will be carefully considered.

INARF is the principal statewide trade association representing agencies that serve Hoosiers with intellectual and developmental disabilities. INARF Members often play a lifelong role in the lives of those they serve by providing a continuum of services that in many instances stretches from birth to death and across all facets of life in their chosen community. Further, INARF and its members are committed to ensuring Indiana's system of services and supports for individuals with intellectual and developmental disabilities offers maximum options, access, and choice.

With respect to regulations and sub-regulatory guidance issued by the U.S. Department of Education (DOE) and the Rehabilitation Services Administration (RSA), INARF is concerned that the regulations for implementation of the Workforce Innovation and Opportunity Act (WIOA) exceeded the scope of the act and have limited choice in employment options and opportunities and created unnecessary barriers for people with disabilities who are seeking employment. INARF believes this has occurred due to regulations implementing the definition of "competitive integrated employment" found in 34 CFR §361.5(c)(9).

Specifically, the definition of "competitive integrated employment" (34 CFR §361.5(c)(9)) was rewritten during the regulatory process. The Department of Education changed what Congress intended by narrowing what qualifies as competitive integrated employment by adding the condition "is at a location typically found in the community." This condition is not specifically established in the law and was interpreted by the Department of Education to exclude the Community Rehabilitation Programs that employ thousands of people with disabilities in Indiana and throughout the nation. INARF recommends that the regulatory definition be eliminated and replaced with the definition included in the WIOA statute.

In both the definition of “competitive integrated employment” (CIE) and the definition of “integrated setting” (34 CFR §361.5(c)(32)), the Department describes integration occurring at the “work unit” level. This language is not found in the WIOA statute and was created during the regulatory process. Defining integration as occurring at the “work unit” level is job limiting and would be impossible to apply to the general workforce given that people with disabilities have every right to their privacy. The “work unit” language specifically targets people who work for non-profit providers of employment services to people with disabilities. This language treats people with disabilities differently from the workforce at large and the non-profit service provider differently than any other employer. The sub definition of the “work unit” should be eliminated from the regulations.

The Department of Education and the Rehabilitation Services Administration did not stop with the narrow interpretation of competitive integrated employment and the definition of the “work unit;” they added a presumption that jobs falling under programs intended to employ people with disabilities would not qualify as an employment outcome under the law. RSA incorporated this message into FAQs that the RSA posted on January 18, 2017. Subsequently, State VR offices in numerous states have stopped referring people with disabilities to good jobs that meet their needs, including jobs under the federal AbilityOne program and State Set-Aside programs. Additionally, some VR offices are not referring people with disabilities to jobs that are co-located with jobs under the AbilityOne program due to their interpretation of RSA’s guidance concerning competitive integrated employment. This is not what Congress intended. These FAQs represent a significant change of federal policy. The FAQs are a carryover from the last administration that is costing people jobs by eliminating referrals from State VR agencies. The Department should eliminate the FAQs and RSA should advise the State VR offices that AbilityOne jobs, State Set-Aside jobs, and jobs co-located with jobs under these programs may qualify as competitive integrated employment.

The narrow interpretations of CIE and integrated settings have ultimately diminished work opportunities for people with disabilities. The Department should focus on expanding employment options, access, and choice for people with disabilities, not limiting it. People with disabilities want and deserve a full array of options in employment. A definition that limits their menu of choices will not lead to further integration, but rather will reduce opportunities and cost people with disabilities jobs.

Finally, INARF recommends that the Department of Education and RSA provide as much flexibility as possible to states in implementing Pre-Employment Transition Services as required in WIOA. The circumstances and resources available in each state are vastly different, and states need the flexibility to determine how best to implement these important services to ensure that students successfully transition from school into post-school activities, including employment.

Thank you very much for the opportunity to comment on existing rules, regulations and policy that are detrimental to employment creation and job sustainment activities.