

**To:** Department of Education Regulatory Reform Task Force  
**From:** **Maryland Division of Rehabilitation Services**  
**Date:** September 19, 2017  
**Subject:** Recommendations to Improve Implementation of the Workforce Innovation and Opportunity Act (WIOA)

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Maryland Division of Rehabilitation Services (DORS) identified language in Department of Education (DOE) regulations, policy statements, and guidance that causes undue hardship and implementation barriers for designated state agencies. The following regulations, in addition to the new Rehabilitation Services Administration (RSA) – 911 reporting requirements, were amended and developed in response to the Workforce Innovation and Opportunity Act (WIOA):

- 34 C.F.R. Part 361 (2016) – State Vocational Rehabilitation Services Program
- 34 C.F.R. Part 363 (2016) – The State Supported Employment Services Program
- 34 C.F.R. Part 397 (2016) – Limitations on the Use of Subminimum Wage

Below, DORS outlines policy areas that are constrained by specific sections within each of the above regulations and related policy guidance from the Rehabilitation Services Administration (RSA) that create conflicts for designated state units (DSUs), and recommends solutions for each problem. Policy guidance cited in the text below comes from several sources, including statements from the preamble of the regulations, communications and meetings with RSA staff, and RSA training for state administrators.

## 1. Pre-employment Transition Services (Pre-ETS)

### 34 C.F.R. § 361.48(a)(2) Required Activities

*The designated State unit must provide the following pre-employment transition services:*

- (i) Job exploration counseling;*
- (ii) Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment in the community to the maximum extent possible;*
- (iii) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;*
- (iv) Workplace readiness training to develop social skills and independent living; and*
- (v) Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment).*

**Issue 1:** Students with Disabilities Determined Eligible for VR Services and Assigned to Closed Order of Selection Categories may be prohibited from receiving Pre-Employment Transition Services (Pre-ETS).

**Recommendation**

- **Modify 34 C.F.R. §361.36(e)(3)(i)** to allow States to provide pre-employment transition services for eligible students with disabilities while on the waiting list for VR services, regardless of whether they had previously received Pre-ETS. This would allow students with disabilities to apply for VR services when referred by their schools without undue concern that they may be disqualified from receiving pre-employment transition services once determined eligible.

**Rationale**

- **34 C.F.R. §361.48(a)(1)** requires pre-employment transition services to be made available to *“all students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services.”*
- Guidance regarding “potentially eligible” in the Preamble contradicts the requirement to provide Pre-ETS to *“all students with disabilities”* with this statement: *“While under the order of selection regulations at 361.36, the student could continue to receive pre-employment transition services if such services have begun, a student could not begin to receive pre-employment transition services if such services had not begun prior to applying and being determined eligible.”*
- DORS is currently on an Order of Selection. When eligible students are assigned to a closed Order of Selection category prior to receiving Pre-ETS, they are unable to receive Pre-ETS. Thus, if potentially eligible students apply for vocational rehabilitation services before receiving Pre-ETS, they risk being placed on a wait list and having all services postponed until they are removed from the waiting list.
- This places potentially eligible students with disabilities in a bind:
  - If they think they will be assigned to a closed category, do they postpone applying for VR services until after they have begun receiving Pre-ETS?
  - If they are found eligible and assigned to a closed Order of Selection category prior to receiving any pre-employment transition services, do they:
    - Wait potentially several years to be removed from the waiting list so that they can receive DORS-funding for Pre-ETS (assuming they are still students) and traditional VR services concurrently? or
    - Ask to be taken off the waiting list via case closure in order to be allowed to receive Pre-ETS as “potentially eligible” students with disabilities?
- To avoid placing students in this bind, DORS has developed inefficient procedures which are confusing to staff, students, parents, and school liaisons, but which are intended to ensure students with disabilities are not denied the provision of Pre-ETS after applying and being determined eligible for VR services and assigned to a closed Order of Selection category. These procedures often require students to begin receiving services with one counselor

devoted to providing Pre-ETS and then to be transferred at some point to a different counselor focused on providing the full array of VR services. This also involves moving from a case type devoted to Pre-ETS in the Agency's case management system to a VR case type, and occasionally being assigned to two counselors and two case types simultaneously, especially during the period of transition from one counselor to another.

## **Issue 2: Narrow Definition of Pre-Employment Transition Services (Pre-ETS) Excludes Support Services Required for Student Participation in Pre-ETS**

### **Recommendations**

- **Modify** guidance to permit States to pay for Travel Expenses, including maintenance (room and board) and transportation costs, incurred as a result of students' participation in Pre-ETS. In order to allow the provision of travel expenses under Pre-ETS, RSA may choose to either:
  - **Modify** 29 U.S.C. Section 730(d)(1) of WIOA to exclude students' transportation or travel costs from administrative costs, or
  - **Modify** the definition of administrative costs in 34 C.F.R. § 361.5(c)(2) to exclude students' transportation and travel costs for customers.
- **Modify** guidance to allow States to pay for Technology needed for students' education, skill development, and participation in Pre-ETS under "*authorized activities*," as defined under 34 C.F.R. § 361.48(a)(3)(i) and 34 C.F.R. § 361.48(a)(3)(ii).

### **Rationale**

- Although Pre-ETS individuals who are determined to be potentially eligible can receive Pre-ETS prior to applying, the services they are able to receive at this stage are limited to the five required services. However, students aged 14-21 need support services, which may include traditional VR services, such as maintenance, transportation, and assistive technology, to enable them to participate in Pre-ETS services. Thus, students in need of these supports may be unable to participate in Pre-ETS when DORS is not allowed to provide traditional VR services and their families or schools do not have the resources to provide the necessary supports for them to participate. The following support services are available to individuals receiving VR services and crucial for certain students to a comprehensive employment plan, but are prohibited from being charged to Pre-ETS funds:
- **Travel Expenses:** DORS has received conflicting guidance regarding transportation services for students with disabilities in relation to the above definition of Pre-ETS services and the following two regulations:

**29 U.S.C. Section 730(d)(1)** *From any State allotment under subsection (a) for a fiscal year, the State shall reserve not less than 15 percent of the allotted funds for the provision of pre-employment transition services (2) Such reserved funds shall not be used to pay for the administrative costs of providing pre-employment transition services.*

**34 C.F.R. § 361.5(c)(2)(xii)** *travel costs related to carrying out the program, other than travel costs related to the provision of services*

According to RSA guidance, the term "travel" in the definition of "administrative costs under the vocational rehabilitation services portion of the Unified or Combined State Plan" (see 34

C.F.R. § 361.5(c)(2)(xii) above) includes transportation services for students with disabilities participating in Pre-ETS. Following this interpretation, RSA has advised States not to pay for transportation costs incurred for students participating in Pre-ETS with Pre-ETS funds. This interpretation significantly limits students' ability to participate in Pre-ETS, particularly those in more rural locations. Transportation costs for students enrolled in daily programming can accumulate quickly and lead to exorbitant bills for families.

In contrast, DORS interprets the term "travel" in section 34 C.F.R. § 361.5(c)(2)(xii) as those costs incurred by staff for duties unrelated to the direct provision of Pre-ETS services. Examples of such costs would include staff traveling to attend a training event, educational conference, or planning meeting. DORS does not believe the definition above refers to students' transportation needs to participate in Pre-ETS. Furthermore, as in the case of postsecondary tuition and fees discussed above, transportation services increasing students' ability to independently participate in Pre-ETS or their local community fall under the definition of authorized activities 1 and 2, or 34 C.F.R. § 361.48(a)(3)(i) and 34 C.F.R. § 361.48(a)(3)(ii) (see page 3).

An RSA training directed VR programs to issue stipends to students who are participating in work, which they can in turn use to pay for any costs they incur. This workaround not only creates an inefficient process for the VR agency, but was specified as limited to students who are working and does not include those who are receiving services and in a work program. Rather than following standard procedures for reimbursing reliable transportation providers, a new procedure must be developed for estimating stipend amounts and issuing payments to customers. Moreover, students and families are burdened when forced to pay for services upfront as they wait for reimbursement from the State.

- **Technology:** Assistive technology, including software and hardware, increases independence and job readiness and it is increasingly important for transition-age students to develop technology skills so they are competitive in higher education and the job market.

RSA previously advised that, though assistive technology could not be purchased for students using the reserved fund, that DORS may loan assistive technology to these students. Not only does developing an Assistive Technology Loan Program add administrative burden for DORS staff, but restricting purchasing for assistive technology for students with disabilities places these students at a disadvantage in a number of ways:

- **Long-term technology use is limited** – Students can only use the technology loaned to them for as long as it is needed to participate in the Pre-ETS activities. However, assistive technology assessments typically reveal technology options that will work well for the students when provided sufficient opportunity to develop their skills with that technology. For example, blind students typically need a refreshable Braille display or Braille note taker and low vision students often need smaller transportable desktop CCTVs for reading and writing print. Additionally, mainstream computer hardware and software also currently cannot be purchased, like a laptop or a Microsoft Office license. These tools are frequently recommended and students' proficiency increases as they use them regularly. Furthermore, technology skills

continuously build and permit the acquisition of other skills, such as reading, writing, or developing spreadsheets.

- **Product ownership and licensing** – currently, most computer software and mobile applications are sold exclusively via digital download and must be associated with a specific user account for the product’s owner or developer. Operating with technology from a Loan Program, students can only use devices with software purchased through DORS accounts temporarily. However, if the product is effective in helping them reach their education and employment goals, DORS staff must then purchase a separate device for the student, assist them in creating and customizing a new personal account for the product, install the software on a new device purchased from the basic VR fund, collect the borrowed device, restock the device in inventory and reset it for the next customer.

### **Issue 3: Postsecondary Tuition and Fees Excluded from Definition of Pre-Employment Transition Services.**

- 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). These and other necessary services however, may be provided with VR funds not reserved for the provision of pre-employment transition services so long as they are provided pursuant to an approved individualized plan for employment under section 103(a) of the Act and final Section 361.489b) of these final regulations.”
- While the regulation limits the definition of Pre-ETS, it expands the definition of a student with a disability to include individuals who are enrolled in other educational programs, including post-secondary institutions. A RSA response in the preamble of the regulation indicates: “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 § 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 § 361.5(c)(51).”

#### **Recommendation**

- **Modify** the regulatory guidance in the preamble to 34 C.F.R. § 361 to allow for payment of postsecondary education and related costs as “authorized activities” defined in under 34 C.F.R. § 361.48(a)(3)(i) and 34 C.F.R. § 361.48(a)(3)(ii).

#### **Rationale**

- The RSA interpretation to exclude postsecondary tuition and fees is inexplicably narrow and not required by WIOA. Postsecondary training aligns with workplace readiness training as defined by the federal legislation, and as such Pre-ETS funds should be allowed to cover the associated costs of a student attending an institution of higher learning.

- Postsecondary training aligns with the authorized activities 1 and 2, or 34 C.F.R. § 361.48(a)(3)(i) and 34 C.F.R. § 361.48(a)(3)(ii):

*(3) Authorized activities. Funds available and remaining after the provision of the required activities described in paragraph (a)(2) of this section may be used to improve the transition of students with disabilities from school to postsecondary education or an employment outcome by—*

*(i) Implementing effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;*

*(ii) Developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently; participate in postsecondary education experiences; and obtain, advance in and retain competitive integrated employment;*

**Issue 4:** The process DSUs are required to use to demonstrate that the reserve fund is being spent on Authorized Activities “after the provision of required activities” is imprecise.

#### **Recommendation**

- **Modify 361.48(a)(3)** by replacing:

*“Funds available and remaining after the provision of the required activities described in paragraph (a)(2) of this section may be used to improve the transition of students with disabilities from school to postsecondary education or an employment outcome by . . .”*

with

*“Funds remaining and available, after the provision of the required activities described in paragraph (a)(2) of this section, to be carried over into the next federal grant year may be used to improve the transition of students with disabilities from school to postsecondary education or an employment outcome by . . .”*

#### **Rationale**

- Per the WINTAC website, numerous VR agencies have struggled with how to ensure that they are following an approved process that will allow them to expend their 15% reserve on authorized services.
- Failure to spend the 15% reserve fund in its entirety may result in Agencies receiving reduced allotments during the next federal grant cycle. This penalty would reduce the funding for Pre-ETS and traditional VR. Thus, Agencies need every opportunity to comply with the requirement to expend the 15% reserve fund fully on Pre-ETS.

## 2. Competitive Integrated Employment

**Reference:** <https://www2.ed.gov/about/offices/list/osers/rsa/wioa/competitive-integrated-employment-faq.html#question4>

**4. Who is responsible for determining whether an employment setting is in an integrated location and satisfies the definition of “competitive integrated employment”?**

*VR agencies - not OSERS - must determine on a case-by-case basis in light of the facts presented whether an employment setting meets both criteria for an integrated location. VR agencies have the ability to visit employment sites and gather the facts necessary for these determinations. Therefore, the VR agency is responsible for determining whether the jobs performed by individuals with disabilities employed by community rehabilitation programs satisfy the definition of “competitive integrated employment” when individuals seek the VR agency’s assistance in obtaining these positions. If the VR agency, after applying the criteria to the facts related to the particular job, determines that a position is in non-integrated employment, under 34 CFR §361.37(b), it must refer the individual interested in the position to other programs, including community rehabilitation programs, for assistance in obtaining his or her chosen employment goal. In considering whether a position is in non-integrated employment, VR agencies should consider the guidance provided in the preamble to the 2016 final regulations (81 FR at 55641-55645) as summarized in pertinent part in these FAQs.*

**5. What is meant by “typically found in the community,” as used in the definition of “competitive integrated employment”?**

*Employment settings that are “typically found in the community” are those in the competitive labor market (81 FR at 55642). Settings established by community rehabilitation programs specifically for the purpose of employing individuals with disabilities (e.g., sheltered workshops) do not constitute integrated settings because these settings are not typically found in the competitive labor market--the first of two criteria that must be satisfied if a VR agency is to determine that a work setting is an integrated location under 34 CFR §361.5(c)(9).*

*The Department has long considered several factors that generally would result in a business being considered “not typically found in the community,” which include: (1) the funding of positions through Javits-Wagner-O’Day (JWOD) Act contracts or State purchase programs; (2) allowances under the Fair Labor Standards Act for compensatory subminimum wages; and (3) compliance with a mandated direct labor-hour ratio of persons with disabilities. It is the responsibility of the VR agency to take these factors into account when determining if a position in a particular work location is an integrated setting.*

**Issue:** While DORS concurs with RSA’s interpretation of competitive integrated employment and specifically, what is “not typically found in the community”, requiring VR agencies or individual counselors to determine on a “case-by-case basis” whether a particular employment situation is considered “competitive integrated employment” results in inconsistent and inefficient practices.

**Recommendation**

- **Modify** the RSA guidance to provide further clarification—straightforward and simple guidelines—regarding permissible employment outcomes for all Agencies to follow.

## Rationale

- CRPs often serve consumers from neighboring States which have provided their staff different instruction regarding how to interpret the guidance in the Preamble. This results in inconsistent decision-making across state lines. Furthermore, counselors are occasionally asked to determine on an individual basis if a position is competitive integrated employment only after a consumer has been offered the position.
- A number of the CRPs in Maryland are also Ability One contractors, and Ability One contractors in general are insisting that VR agencies and RSA are inaccurately applying the definition of competitive integrated employment by excluding positions set aside for employing individuals with disabilities. Based on RSA FAQ #5, DORS has discontinued providing job development funding for CRPs to place individuals with disabilities in Ability One positions. If permitted again, RSA-issued straightforward and simple guidelines regarding which jobs are permissible will be critical for DORS to be productive. DORS does not have sufficient staff to visit all of the Ability One job sites where CRPs may potentially provide job development in order to determine whether the job will qualify as competitive integrated employment.
- DORS counselors must have confidence in advance of funding job search assistance and job support services that the positions obtained will be permitted to be closed as competitive integrated employment. Agencies cannot afford to wait until the individual is offered the job to know this. Straightforward and simple guidance will reduce the number of individual employment setting evaluations requested from CRPs, as well as the confusion resulting from inconsistent decision-making.

## 3. Performance Standards and Reporting Requirements

34 C.F.R. § 361.45(e) Standards for developing the individualized plan for employment

**ISSUE 1:** The regulation in 34 C.F.R. § 361.45(e) *Standards for developing the individualized plan for employment* often leads to burdensome and counterproductive processes in order to meet reporting and compliance standards.

### Recommendation

- **Modify** the regulation by replacing:

*The individualized plan for employment must be developed as soon as possible, but 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.*

With

The individualized plan for employment must be developed as soon as possible, but not later than 90 days after the date of determination of eligibility, unless the State unit documents a delay due to exceptional or unforeseen circumstances.



## **Rationale**

- A comprehensive assessment of need, including vocational guidance and counseling, review of current documentation, and, if needed, scheduling additional assessment and reviewing those results, often requires greater than 90 days.
- While the regulations allow for a delay in developing the individualized plan of employment (IPE) within 90 days, it is not always a simple matter to get the consumer to agree to a plan extension before the 90<sup>th</sup> day is reached.
- Just to meet the 90 day deadline for IPE development, counselors create initial IPEs with temporary goals that they know they will need to amend later when the consumer is fully invested in the employment goal and/or the services required to achieve that goal are better understood. This built-in haste to get an IPE signed and date results in counselors and consumers spending more time than necessary to prepare IPEs.

**ISSUE 2:** RSA-911 Case Service reporting requirements as outlined in Policy Directive RSA-PD-16-04 are excessive and burdensome. (Reference: OMB Control Number 1820-0508, June 2017)

## **Recommendation**

- **Modify** Section XVIII: Post-Exit Data Elements RSA-911 reporting requirements so that States are not compelled to collect Supplemental Information for wage verification purposes.
- **Modify** Section IX: E. Barriers to Employment to provide clear guidance regarding documentation required when recording Barriers to Employment data. As often as possible and when consistent with the practice used by Labor, permit the consumer's self-attestation to be sufficient documentation for the Yes/No response chosen for each Barrier to Employment.

## **Rationale**

- Despite the addition of numerous data elements that will require additional staff resources to collect and maintain the data, no additional funding was provided to States to meet these requirements.
- New Section XVIII. Post-Exit Data Elements reporting requirements include an additional year of follow-up after an individual's case has been closed to acquire credential and employment data. If an individual's wage information is not available through access to the State's unemployment insurance (UI) database, staff must collect supplemental wage information. Individuals who are self-employed or employed by the federal government will not have wage records in the State's UI system, and such records can be difficult or costly to obtain. In order to collect wage and credential information, staff must maintain contact with consumers with closed cases, in addition to managing currently active caseloads. Providing supplemental credential and wage data creates a burden for customers, who must collect documentation and maintain contact with the State for one year following the closure of their case.
- Although the RSA PD 16-04 provides detailed instruction regarding the various definitions for the new Barriers to Employment data elements, no guidance has been provided as to what documentation is required in the case record to demonstrate why "Yes" or "No" was selected. Since this data collection ties directly to future negotiation, it is vitally important that State Workforce Programs are consistent when documenting Barriers to Employment.

## 4. Maintenance of Effort Waiver

### 34 C.F.R. § 361.62(d) Maintenance of effort requirements

*(d) Waiver or modification. (1) The Secretary may waive or modify the maintenance of effort requirement in paragraph (a) of this section if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that—*

*(i) Cause significant unanticipated expenditures or reductions in revenue that result in a general reduction of programs within the State; or*

*(ii) Require the State to make substantial expenditures in the vocational rehabilitation program for long-term purposes due to the one-time costs associated with the construction of a facility for community rehabilitation program purposes, the establishment of a facility for community rehabilitation program purposes, or the acquisition of equipment.*

*(2) The Secretary may waive or modify the maintenance of effort requirement in paragraph (b) of this section or the 10 percent allotment limitation in §361.61 if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster, that result in significant destruction of existing facilities and require the State to make substantial expenditures for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation program purposes in order to provide vocational rehabilitation services.*

*(3) A written request for waiver or modification, including supporting justification, must be submitted to the Secretary for consideration as soon as the State has determined that it has failed to satisfy its maintenance of effort requirement due to an exceptional or uncontrollable circumstance, as described in paragraphs (d)(1) and (2) of this section.*

**ISSUE:** Although [34 C.F.R. § 361.62\(a\)](#) permits States waivers or modifications to maintenance of effort requirements due to “exceptional or uncontrollable circumstances, this is insufficient to account for many one-time expenses States incur to implement significant program changes or invest in infrastructure.

#### **Recommendation**

- **Modify 34 C.F.R. § 361.62(d)** to clearly allow waiver or modifications for States that make significant one-time investments to better meet their customers’ needs or comply with regulatory changes.

#### **Rationale**

- The current limitation to waivers or modifications to MOE requirements is particularly burdensome for States issued temporary funding to open a waiting list within an Agency operating under Order of Selection.

- VR agencies that require one-time funding increases to implement programmatic changes to comply with regulatory changes following the passage of WIOA may, without reasonable flexibility, be discouraged from making such investments out of fear that they will lose federal funding in the future.

## 5. Administration Burden Resulting from Need for Prior Approval under 2 CFR §200.407

**Issue:** Regulatory contradiction between Section 407 of the Act and 34 CFR§ 361

### **Recommendation**

- **Modify** 34 CFR §361.4(d) to exempt the OSERS/RSA programs from the requirements under 2 CFR §200.407 as a matter of reducing administrative burden.

### **Rationale**

- Regulation at 34 CFR §361.4(d) makes applicable the requirements under 2 CFR Part 200 (Uniform Administrative Regulations) to the State Vocational Rehabilitation (VR) Services Program. During recent monitoring reviews by the Rehabilitation Services Administration (RSA), State VR agencies have been advised that the prior approval requirements under 2 CFR §200.407 now apply to the State VR Program. In the past EDGAR 34 CFR Part 80 applied instead. Part 80 has expired and was replaced by 2 CFR Part 200. Under Part 80, OSERS and RSA had received an exemption to the prior approval requirements.
- 2 CFR§ 200.407 lists a number of activities that require prior approval before they can be considered allowable expenses. However, it would appear that under both the Act and under 34 CFR§ 361 States have been granted prior approval for a number of activities, both programmatically and administratively that are specifically listed in Section 407, which creates a conflict as to whether prior approval is in fact required.
- The need to request prior approval for those activities that are already authorized by Congress and RSA creates an unnecessary administrative burden on both RSA and the State VR agencies. Here are a couple examples of these conflicts:

- **2 CFR§ 200.439 vs 34CFR §361.48(b) 17**

Seeking prior approval for equipment expenditures greater than \$5,000 would place a significant administrative burden on both State VR agencies and RSA. The amount of paperwork and the potential for significant delays in the ability to spend VR funds on capital expenditures and other items requiring prior approval will prove to be a significant and unnecessary burden for State VR agencies.

The VR programs under the authority of §361.48(b) 17 frequently purchase equipment, in particular Assistive Technology, for clients that exceeds the \$5,000 threshold. 2 CFR§ 200.439 does not distinguish the difference between purchases of equipment in accordance with a Client's Individual Plan for

Employment (IPE) and purchases which are administrative in nature. Because of this lack of distinction, this clearly puts RSA in the middle of having to approve the inclusion of equipment on individuals' IPEs. RSA does not have the staffing to be involved in every single IPE where the cost of the equipment exceeds \$5,000. These activities have already received prior approval from both Congress through enactment of WIOA and RSA through corresponding regulations. Thus requiring prior approval again for equipment above \$5,000 creates an unnecessary burden on RSA, the State VR agencies, and ultimately the clients.

- **2 CFR§ 200. 456 vs 34 CFR§ 361.48(b) 6,7, & 8**

2 CFR§ 200.75 defines Participant Support costs as the direct cost of items such as stipends, subsistence allowances, travel allowances and registration fees paid to or on behalf of participants or trainees in connection with conferences or training projects. According to 2 CFR§ 200.456, these costs require prior approval. This conflict puts the State VR agencies in a position of having to request prior approval from RSA every time Vocational Training, Maintenance, or Transportation is included on individuals' IPEs. Again, these activities have already received prior approval from both Congress through enactment of WIOA and RSA through corresponding regulations. Thus, requiring prior approval creates a duplicative burden on RSA, and the State VR agencies, and ultimately delaying services to the clients.

## 6. Improving Future Policy Development Efforts

**ISSUE:** Federal regulations are frequently developed in isolation from the State administrators and staff who are tasked with enforcing and implementing them.

### **Recommendation**

- RSA should **modify** its process while drafting and amending regulations to involve a workgroup consisting of State VR professionals who could provide input and feedback regarding how the draft regulations would affect the VR program.

### **Rationale**

- DORS recognizes the insurmountable task of revising regulations following a substantial overhaul of federal law, as in the case of WIOA, and believes engaging State VR professionals during the process of drafting or amending regulations would improve the process in the future.
- VR agencies are knowledgeable of the process and implementation issues leading to inefficiencies, as well as the issues beneficiaries face in accessing services and obtaining employment. As such, States can serve as resources to RSA during the policy development process.
- In addition to assisting with the draft process, State participation would serve as a forum for RSA to ensure that States have a consistent understanding of regulations and would increase the VR

Programs' confidence that they are basing their policy and business practices on instruction and technical assistance provided to all programs.