

Virginia Department for the Blind and Vision Impaired

Regulatory Reform Comments September 19, 2017

Pursuit to Presidential Executive Order (EO) 13777, Federal agencies are directed to establish a Regulatory Reform Task Force (Task Force) to evaluate existing regulations and make recommendations to agency heads to repeal, replace, or modify relevant regulations. Among other activities, the Task Force must seek input from key stakeholders on regulations that meet certain criteria. In the context of EO 13777, “regulation” means an agency statement of general or particular applicability and future effort designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency excluding specific regulations.

The Virginia Department of the Blind and Vision Impaired (DBVI) has reviewed the Rehabilitation Act of 1973 as amended, the United States Department of Education (DOE) regulations found at 34 CFR Part 361, and the DOE Rehabilitation Services Administration (RSA) guidance and policy statements to identify regulatory provisions that are unduly costly or unnecessarily burdensome to State Vocational Rehabilitation Programs in the administration of VR Services to individuals with disabilities.

Included in these comments are issues that impact DBVI’s ability to provide efficient and effective services to potentially eligible and eligible individuals, including students and youth, who are blind, vision impaired, and deaf blind.

ISSUE 1: Recordkeeping regarding the provision of Pre-ETS services and the accounting for use of those funds causes Administrative Burden.

RSA has issued guidance and provided training regarding states' responsibilities for accounting of Pre-ETS expenditures that is burdensome and places unrealistic expectations for VR agencies as they attempt to document accounting of the 15% set-aside funds and the provision of Pre-ETS.

The provision of Pre-ETS ensures that students with disabilities are provided with more finely tuned services that ultimately lead to better competitive integrated employment options. However, new data collection requirements and development of new reporting systems specific to Pre-ETS causes undue administrative burden on agencies and have the unintended consequence of taking valuable time from VR Counselors and other staff that could be spent on identifying progressive ways to provide services to students.

Recommendation/Solution: That RSA and State VR agencies collaborate to establish reasonable and accomplishable documentation standards for Pre-ETS 15% reserved funds and case records that do not place unnecessary administrative burden on VR agencies.

ISSUE 2: 34 CFR §361.5(c)(51)(i)(A)(2) and 361.5(c)(51)(B)(2) definition of 'student with a disability' and 361.5(c)(51)(B)(2) definition of "State" cause unintended consequences.

DBVI is one of two designated state units (DSU), providing vocational rehabilitation services to people with disabilities in Virginia; DBVI serves individuals who are blind, vision impaired, and deaf blind, including

students and youth. 34 CFR 361.5(c)(51)(A)(2) and 34 CFR 361.5(c)(51)(B)(2) contain defining language of “student with a disability” that provides for states to elect to use lower minimum age or higher maximum age for the provision of Pre-ETS as long as the minimum or maximum ages are in compliance with WIOA and IDEA respectively. Guidance from RSA has been that States with two DSUs, like Virginia, must agree on the age at which Pre-ETS must be available to students. The regulatory justification for RSA’s guidance is found at 34 CFR 361.5(c)(48) where “state” is defined as any of the 50 states...; unfortunately, this definition does not account for states in which there are more than one DSU.

There are significant and serious unintended consequences of RSA’s interpretation, especially for DSUs like DBVI, who is providing Pre-ETS for students who are blind, vision impaired, and deafblind where more than 80% of total number of eligible individuals served in the VR program are older than the defined age of students with disabilities. Because the population of school aged students (14 to 21) served by DBVI is much smaller than the number of students served by the general VR agency, DBVI has the capacity to serve more students at an earlier age. In fact, DBVI could serve approximately 75% more students, including middle school students, if allowed to determine the minimum and maximum age at which Pre-ETS could potentially begin independent of the general VR agency. DBVI has found over time that providing services such as orientation and mobility instruction and assistive technology as soon as possible raises expectations for students’ academic accomplishments and leads to greater opportunities for employment. The requirement to establish minimum and maximum ages in conjunction with the general agency causes

agencies like DBVI to be unable to engage with students at the earliest possible age and to continue Pre-ETS as students become older.

Recommendation/Solution: Modify regulation at 34 CFR 361.5(c)(48) and RSA policy guidance to allow each DSU to establish the minimum and maximum age at which Pre-ETS can be provided to students with disabilities.

ISSUE 3: 34 CFR §361.48(a)(2) Pre-ETS Required Activities - regulations restricting the continuum of VR services

34 CFR 361.48(a)(2) regulations and policy guidance from RSA identify confusing and unnecessary distinctions between vocational rehabilitation services available to eligible and potentially eligible students and newly established Pre-ETS required and authorized services. Based on these distinctions and subsequent RSA guidance, VR agencies cannot include services available to individuals who are receiving VR under other subsections of 34 CFR Part 361.48 in the 15% Pre-ETS reservation of funds. This prohibition causes significant burden on states because the 15% Pre-ETS reservation of funds is removed from basic VR grants which ultimately reduces funding for provision of services to the largest proportion of individuals receiving VR services. This separation not only restricts use of funds that inherently should be expansive of other services documented at 34 CFR 361 as service options to facilitate competitive integrated employment for students, it also causes unnecessary administrative burden.

Recommendation/Solution: DBVI recommends that all vocational rehabilitation services documented at 34 CFE 361.48 (Scope of Services) be considered as costs or expenditures that can be funded by the DSUs 15% pre-employment set-aside for students and youth who are blind,

vision impaired, and deafblind. These services would include, but not be limited to, the required and authorized Pre-ETS, postsecondary education and vocational training tuition and fees, transportation, assistive technology, orientation and mobility instruction.

ISSUE 4: 34 CFR §361.5(c)(9) definition of “competitive integrated employment” and 34 CFR §361.5(c)(32)(ii) definition of “integrated settings” conflict with legislative language

DBVI is generally in support of the definitions of “competitive integrated employment” and “integrated settings” found at 34 CFR 361.5 (c)(9) and 34 CFR 361.5(c)(32)(ii), respectively. However, DBVI is concerned that the language within the regulations is more restrictive than that found under section 7(5) of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014 (the Act).

Recommendation/Solution: RSA should amend 34 CFR 361.5(c)(9) to reflect only the legislative language at section 7(5) of the Act and that the regulation at 34 CFR 361.5(c)(32)(ii) be deleted because the legislative definition includes the requirements for employment in an integrated setting.

Issue 5: Regulatory guidance at 34 CFR 361.17(a) and sub-regulatory guidance in RSA Technical Assistance Circular (TAC) 12-01 conflict with governing legislation

Regulatory guidance at 34 CFR 361.17(a) and RSA sub-regulatory guidance issued through Technical Assistance Circular (TAC) 12-1 contains requirements that members of the State Rehabilitation Council, including the Director of the Designated State Unit (DSU), must

be appointed by the Governor of a state. However, the Rehabilitation Act of 1973, as amended, specifies in section 105(b)(2) that “The Director of the DSU shall be an ex-officio, nonvoting member of the council”. The regulatory guidance described at 34 CFR 361.19(a) and RSA’s guidance adds unnecessary administrative burden as both require DBVI to comply with the Gubernatorial appointment process in Virginia.

Recommendation/Solution: DBVI recommends that RSA recognize and provide guidance that the Director of the DSU serves as a statutory member of the State Rehabilitation Council and that the regulation at 34 CFR 361.17 be replaced with language that is consistent with section 105(b)(2) of the Rehabilitation Act.

ISSUE: Policy Directive RSA-PD-16-04 and Reporting Manual for the Case Service Report (RSA-911) (OMB Control Number 1820-0508, June 2017) case administrative burden

Quarterly reporting requirements described in the new RSA 911 Case Service Report Manual are unduly burdensome for states. The increase in data elements requires additional staff time for DBVI to collect and maintain and states will not receive additional funding to support the increase in the administrative workload. Additionally, this increase in staff time and resources doesn’t include the time it takes to input data into the DBVI case management system. In the first year alone, DBVI staff responsible for the RSA 911 report have spent potentially half of their work time preparing and collecting data for the first quarterly report; DBVI estimates that a full quarter of their time will be spent performing these same functions in years to come. The new requirements, in general, beg the question as to what is the purpose of quarterly reporting and what is the return for states?

Recommendation/Solution: DBVI recommends that RSA amend data elements in the latest version of the RSA-911 Case Services Reporting Manual to include:

- 1. Removing Section XVIII: Post-Exit Data Elements from the RSA-911 reporting requirements.**
- 2. Allowing all individuals to not self-identify their race and striking instructions mandating staff to identify race.**
- 3. Remove data elements 64, 67, 69, 70, and 71.**

Issue 4: Prior approval of administrative costs over \$5000.

Prior to expiration of EDGAR 34 CFR Part 80, State VR programs were exempt from prior approval requirements included in 2 CFR Part 200.407 (Uniform Administrative Requirements, Cost Principals, and Audit Requirements). Current regulations for the State Vocational Rehabilitation Program described at 34 CFR 361.4(d) (Applicable regulations) and guidance from RSA, make applicable the requirements under 2 CFR Part 200.407 which places additional administrative burden on State VR Agencies. An increase in paperwork and potential delays in an agency's ability to expend funds without prior approval will result in the unintended consequence of extra and unnecessary administrative burden.

Recommendation/Solution: DBVI suggests that the Department of Education seek exemption to Uniform Administrative Regulations for the State VR Program as a means of decreasing administrative burden.

Policy, Planning, Evaluation Unit

SDP

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