

Jennifer Lake submission to Federal Register regarding WIOA and DoED VR Final Rule
8/18/2017

In 2014, Congress passed the Workforce Innovation and Opportunity Act (WIOA), which reauthorized and reformed the nation's workforce development programs. To implement WIOA, federal agencies issued a total of five regulatory rules. DoED issued The Vocational Rehabilitation (VR) final rule in August, 2016. The VR final rule contained detrimental policy decisions and misguided language that we believe exceeded congressional intent and place at risk employment and related services for Americans who are blind at our agency, as well as those at other AbilityOne® Program agencies.

As an employee of the Association for the Blind and Visually Impaired in Rochester NY, am immersed in a culture where people who are blind are employed in competitive integrated employment that is also in compliance with the Ability One Program Standards. My 122 fellow employees who are blind work among our over 700 coworkers of very diverse backgrounds and abilities. They participate in all aspects of work life, share all facilities and receive all of the same opportunities and benefits as anyone else, while earning wages well above minimum wage, in all levels of our Organization including at professional and director levels, and also receive comprehensive health and retirement benefits.

Under WIOA, Congress combined previously existing definitions under what is now called "Competitive Integrated Employment". Congress did not change the "integration" definition that already existed in regulations and that has been used by the Rehabilitation Services Administration (RSA) and state VR agencies. And yet, the final WIOA rule on Vocational Rehabilitation programs enacted by DoE contained language that said any nonprofits working through AbilityOne, state use programs or that are required to comply with labor ratio requirements, are either never going to, or not likely not going to, provide employment in integrated work settings.

As a result of these misguided, blanket statements by DoED, some state VR agencies have distributed letters telling nonprofit agencies like ours they cannot continue to work with AbilityOne nonprofits. This is regulatory overreach, goes well beyond congressional intent, and is resulting in harm and the withholding of services to people who are blind and who freely choose to work at an AbilityOne associated nonprofit agency. This blanket statement deprives individuals with disabilities the right to self-determine who they choose to work for, and furthermore, undermines our Organization's culture and employment brand. The jobs we offer enable people with all levels of ability to enjoy the rewards of a career including entry level to skilled level manufacturing, supervisory and administrative roles as well as professional services such as customer help desks and other contact center functions. Opponents to the Ability One program dismiss the amazing job opportunities opened up for people who have typically been kept out of the job market due to companies' unwillingness to accommodate their loss.

Existing regulations issued by the Department of Education/RSA, and still in effect today, require state VR agencies to research each employment setting to make determinations as to whether or not it is "integrated" and this must be done on a case-by-case basis. State VR agencies cannot simply write off AbilityOne agencies based on unwise statements in the final VR rule issued by DoED.

The Department of Education also overreached in the VR rule when it made the discretionary decision to eliminate the category of uncompensated outcomes, which includes the "Homemaker Exemption." This category is utilized disproportionately by people who are blind, and allows older adults that have experienced vision loss sufficient time to receive training and rehabilitation. Congress did not direct DoED to eliminate the homemaker exemption when it passed WIOA, and this unilateral decision by the

Department comes at a time when the federal government projects increased numbers of older Americans will experience vision loss.

I respectfully request that the leadership of the two relevant committees in Congress (Senate Committee on Health, Education, Labor and Pensions, and House Committee on Education and the Workforce) direct the Administration and the Department of Education to do the following:

(1) Issue a new communication to state VR agencies and remind them of their obligation under existing regulations to investigate and make determinations about integrated work settings on a case-by-case basis; and (2) Reverse the decision made in August 2016 and restore the uncompensated outcomes category, including the Homemaker Exemption.

The livelihoods of thousands of Americans who are blind have been placed at risk by an agency that engaged in regulatory overreach and went beyond the will of Congress in 2016, and we are asking Congress to work with the Administration to correct these wrongs.

Sincerely,
Jennifer Lake