**To: ANCOR Membership**

**From: Katherine Berland, Esq., Director of Public Policy**

**Date: July 13, 2017**

**Re: Workforce Innovation and Opportunity Act – Updates and Current Status**

**The Law**

The [Workforce Innovation and Opportunity Act](https://www.doleta.gov/wioa/Overview.cfm) (WIOA) was signed into law on July 22, 2014. It was the update of the Workforce Investment Act (WIA) of 1998. The law is designed to help job seekers access employment, education, training and support services in order to succeed in the labor market. The 2014 law included a new section 511, which puts in place additional requirements for individuals with disabilities that work under section 14(c) subminimum wage certificates. It requires individuals to attempt and exhaust competitive employment options prior to be placed in subminimum wage employment, and be reevaluated regularly to determine if a 14(c) program is still appropriate.

**WIOA Advisory Committee**

The law created an Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities. This committee met regularly for two years with the mandated task of producing a report of recommendations to the Secretary of Labor on how to increase competitive integrated employment for people with disabilities. ANCOR submitted both public and written testimony to the committee at several of the committee’s meetings. On September 15, 2016, the committee issued its [final report](https://www.dol.gov/odep/topics/pdf/ACICIEID_Final_Report_9-8-16.pdf). Recommendations from the report include building capacity for youth and transition services, systems integration, working with businesses to encourage and support employment of people with disabilities, and a thoughtful phase-out of section 14(c) subminimum wage certificates.

**Final Regulations and RSA Guidance**

A series of [final regulations](https://www.doleta.gov/wioa/Final_Rules_Resources.cfm) implementing WIOA were issued in August 2016. The five regulations, issued by Department of Labor (DOL), Department of Education (DOEd), or jointly by the agencies, largely contain technical changes required to implement WIOA.

There are a couple of areas to be highlighted within the final regulations; one is the definition of “integrated settings”, another is the definition of a “work unit”. The Rehabilitation Services Administration (RSA) issued [guidance](https://www2.ed.gov/about/offices/list/osers/rsa/wioa/competitive-integrated-employment-faq.html?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=) on how to define “integrated settings” with regard to competitive integrated employment.

**“Typically found in the community”** – The guidance lists 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. VR agencies are directed to take these factors into account when determining if a position in a particular work location is an integrated setting.

**“Work Unit” –** A work unit may refer to all employees in a particular job category or to a group of employees working together to accomplish tasks, depending on the employer’s organizational structure. The level of integration experienced by all individuals with disabilities employed by a community rehabilitation program is not the same and is dependent on the circumstances of the particular job within each work unit of the organization. Therefore, some employment opportunities offered by community rehabilitation programs may be considered to be in “integrated locations,” and thus satisfy the definition of “competitive integrated employment,” while others may not.

**Mobile Work Crews** - Individuals with disabilities hired by community rehabilitation programs to perform work under service contracts, either alone, in mobile work crews, or in other group settings (e.g., landscaping or janitorial crews) whose interaction with persons without disabilities (other than their supervisors and service providers), while performing job responsibilities, is with persons working in or visiting the work locations (and not with employees of the community rehabilitation programs without disabilities in similar positions) *would not be performing work in an integrated setting* [emphasis added]. Even if such group employment in a community rehabilitation program provides for competitively paid wages, this fact does not change the non-integrated nature of the employment and may result in a less desirable level of integration (e.g., interaction with non-disabled co-workers), which supports the autonomy and self-sufficiency of individuals with disabilities.

**Impact and Current Status**

The final regulations, including the RSA guidance, have been pushed back on by several organizations that have called for changes to be made to the guidance and its definition of integrated settings that they believe may cause state vocational rehabilitation agencies to exclude referring people with disabilities to certain employment programs due to employment models currently in use that are impacted by the definitions in the guidance.

ANCOR will continue to weigh in with the relevant federal agencies as opportunities arise to develop additional guidance or revise existing guidance. We encourage providers who believe the guidance or the regulations have adversely impacted their ability to employ individuals with disabilities to contact Katherine Berland at kberland@ancor.org.