

Workforce Innovation and Opportunity Act (WIOA)

Limitations on Use of Subminimum Wage

Notice of Proposed Rulemaking

34 CFR Part 397

Title V of the *Rehabilitation Act*

- ▶ *WIOA* amends title V of the *Act* by adding:
- ▶ SECTION 511—LIMITATIONS ON USE OF SUBMINIMUM WAGE
- ▶ The provisions in section 511 are effective 2 years after enactment, specifically, July 22, 2016.
- ▶ The addition of Section 511 demonstrates the intent that individuals with disabilities, especially youth with disabilities, must be afforded a full opportunity to prepare for, obtain, maintain, advance in, or re-enter competitive integrated employment.
- ▶ The Secretary of Education proposes to promulgate new regulations in part 397 to implement new requirements for designated state units and state and local educational agencies under the purview of the Department that are imposed by Section 511 of the *Act*.

34 CFR 397—Limitations on Use of Subminimum Wage

- ▶ Section 511 imposes limitations on employers who hold special wage certificates, commonly known as 14(c) certificates, under the *Fair Labor Standards Act (FLSA)* (29 U.S.C. 214(c)) that must be satisfied before the employers may hire youth with disabilities at subminimum wage or continue to employ individuals with disabilities of any age at the subminimum wage level.
- ▶ Proposed regulations in part 397 focus exclusively on the related roles and responsibilities of educational agencies and DSUs.
- ▶ Any requirements on employers imposed by section 511 are under the purview of the Department of Labor, which administers the *FLSA*. Such requirements are not addressed in part 397.

Limitations on Use of Subminimum Wage: Proposed Definition of Terms...

- ▶ Special wage certificate means a certificate issued to an employer under section 14(c) of the *FLSA* and 29 CFR part 525 that authorizes payment of subminimum wages, wages less than the statutory minimum wage, to workers with disabilities for the work being performed.
- ▶ Entity, for purposes of part 397, means an employer, or a contractor or subcontractor of that employer, that holds a special wage certificate described in section 14(c) of the *FLSA*.
- ▶ Federal minimum wage has the meaning given to that term in section 6(a)(1) of the *FLSA*.
- ▶ (*continued...*)

Limitations on Use of Subminimum Wage: DSUs / Educational Agencies (...continued)

- ▶ The purpose of proposed part 397 is to set forth requirements that designated state units and state and local educational agencies must satisfy to ensure that individuals with disabilities, especially youth with disabilities, have a meaningful opportunity to prepare for, obtain, maintain, advance in, or regain competitive integrated employment, including supported or customized employment.
- ▶ This part would require a designated state unit to:
 - Provide youth with disabilities documentation demonstrating that they have completed certain requirements prior to starting subminimum wage employment with entities holding special wage certificates under section 14(c) of the *FLSA*;

(continued...)

Limitations on Use of Subminimum Wage: DSUs / Educational Agencies (...continued)

- Provide, at certain prescribed intervals, (every six months for the first year of the individual's subminimum wage employment and annually thereafter for the duration of such employment) career counseling and information and referral services, designed to promote opportunities for competitive integrated employment, to individuals with disabilities, regardless of age, who are known to be employed at a subminimum wage level for the duration of such employment; and
- In consultation with the state educational agency, to develop a, or utilize an existing, process to document completion of required activities under this part by a youth with a disability.
- ▶ A designated state unit, or a representative of a designated state unit, is authorized to engage in the review of individual documentation required to be maintained by entities holding special wage certificates under section 511 of the *Act*.

Limitations on Use of Subminimum Wage: DSU Requirements—Youth

- ▶ A designated state unit must provide youth with disabilities documentation upon the completion of the following actions:
 - Pre-employment transition services that are available to the individual under 34 CFR §361.48;
 - Application for VR services, in accordance with 34 CFR §361.41(b), with the result that the individual was determined—
 - Ineligible for VR services, in accordance with 34 CFR §361.43; or
 - Eligible for VR services, in accordance with 34 CFR §361.42; and

(continued...)

Limitations on Use of Subminimum Wage: DSU Requirements—Youth (...continued)

If eligible for VR services, the documentation would have to demonstrate the youth with a disability:

- Had an approved individualized plan for employment, in accordance with 34 CFR 361.46;
- Was unable to achieve the employment outcome specified in the individualized plan for employment, as described in 34 CFR 361.5(c)(15) and 361.46, despite working toward the employment outcome with reasonable accommodations and appropriate supports and services, including supported employment services, for a reasonable period of time; and
- Had a closed case record meeting all of the requirements of 34 CFR 361.47; and

(continued...)

Limitations on Use of Subminimum Wage: DSU Requirements—Youth (...continued)

- Provision of career counseling, and information and referrals to federal and state programs and other resources in the individual's geographic area that offer employment-related services and supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment:
 - In a manner that facilitates informed choice and decision-making by the youth, or the youth's representative as appropriate; and
 - Not be for subminimum wage employment by an entity defined in §397.5(d), and such employment-related services are not compensated at a subminimum wage and do not directly result in employment compensated at a subminimum wage provided by such an entity.

Limitations on Use of Subminimum Wage: Proposed Educational Agencies Requirements

- ▶ Proposed §§ 397.30 and 397.31 describe the responsibilities of local and state educational agencies to youth with disabilities who are known to be seeking subminimum wage employment.
- ▶ Proposed §397.31 would prohibit a local educational agency or a state educational agency from entering into a contract with an entity that employs individuals at subminimum wage for the purpose of operating a program under which a youth with a disability is engaged in subminimum wage employment. With regard to this proposed provision, the Secretary specifically seeks comments regarding the Department's role and jurisdiction.