



Janet LaBreck
U. S. Department of Education
400 Maryland Avenue SW Room 5086
Potomac Center Plaza (PCP)
Washington, D.C. 20202-2800

June 5, 2015

Dear Ms. LaBreck:

RE: Docket No. ED-2015-OSERS-0001
RIN 1820-AB70
State Vocational Rehabilitation Services Program: State Supported
Employment Services Program; Limitations on Use of Subminimum Wage

The California Department of Rehabilitation (CDOR) welcomes the opportunity to provide comment on the Notices of Proposed Rulemaking (NPRMs) in order to facilitate innovation and greater opportunities in the workforce development system, in accordance with the Rehabilitation Act of 1973 (Act), as amended by the Workforce Innovation and Opportunity Act (WIOA).

In developing comments, CDOR sought input from its stakeholders, including individuals eligible for services, the State Rehabilitation Council and other advisory bodies, provider organizations and employers. A recurring theme from the stakeholders as well as from our employees is that it is critical that the federal regulations provide flexibility, so that we may meet the unique needs of Californians throughout our diverse state and utilize the federal funds most efficiently. We identified several areas in which the proposed regulations align with or further, the goals and purposes of WIOA and provide flexibility. In addition to these areas, however, CDOR has identified some areas that must be modified:

1. Competitive Integrated Employment [34 CFR 361.5(c)(9)]
2. Impartial hearing officer and Qualified and impartial mediator [361.5(c)(24), 361.5(c)(43)]
3. Definition of Pre-Employment Transition Services [34 CFR 361.5(c)(42)]:
4. Definition of Student with a Disability [34 CFR 361.5(c)(51)(C)]
5. Definition of Short-Term Basis for Supported Employment [34 CFR 361.5(c)(53)]

6. Comprehensive System of Personnel Development [34 CFR 361.18]
7. Third-party cooperative arrangements involving funds from other public agencies [34 CFR 361.28]
8. Matching Requirements [34 CFR 361.60]
9. Assessment for Determining Eligibility, Prohibited Factors [34 CFR 361.42]
10. Pre-Employment Transition Services [34 CFR 361.48]
11. Comparable Services and Benefits, Exempt Services [34 CFR 361.53(b)]
12. Elimination of uncompensated outcomes from definition of employment outcome.
13. What are the matching requirements? [34 CFR 363.23]

1. Competitive Integrated Employment [34 CFR 361.5(c)(9)]

WIOA amended the Act by adding a definition for “Competitive Integrated Employment.” This definition, in part, requires “a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons.”

Proposed 34 CFR 361.5(c) (9) imposes an additional requirement that does not exist in WIOA, for “Competitive Integrated Employment”: it must be a location which is “typically found in the community.” The new condition creates an unwarranted barrier to a consumer achieving an employment outcome. We recognize that a consumer may seek employment in an uncommon or unique place that would otherwise satisfy the requirements of competitive integrated employment.

In California, business is as unique and dynamic as the individuals who live and work here, and the business climate encourages and rewards innovation and new opportunities. Vocational rehabilitation programs must have the flexibility to support our consumers in achieving competitive integrated employment with unique businesses that are “not typically found in the community.” Further, this additional condition may conflict with informed choice and does not advance consumers in achieving competitive integrated employment. As such, we suggest that the phrase, “typically found in the community” be deleted from the proposed regulatory definition of “Competitive Integrated Employment.”

2. Impartial hearing officer and qualified and impartial mediator [361.5(c)(24), 361.5(c)(43)]

WIOA did not amend the Act with regard to the qualifications for an impartial hearing officer or qualified and impartial mediator.

In two proposed regulations, an impartial hearing officer or qualified and impartial mediator means an individual who, according to subsection (F), “Has no personal, professional, or financial interest that could affect the objectivity of the individual.” (Emphasis added.) Subsection (F) of current regulations, 361.5(b) (25) and 361.5(b) (43), state, “Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.” (Emphasis added.)

The changes are not related to the changes implemented by WIOA. There is no reasoning provided in the preamble in the NPRM regarding this change. The changes apply a heightened conflict of interest standard that is overly restrictive. Certainly, many interests could affect an individuals’ objectivity, either positively or negatively; however, an individual is qualified to be an impartial hearing officer or qualified and impartial mediator if the interest would not be in conflict with the objectivity of the individual. For example, an impartial hearing officer who has a family member with a disability might have a bias for the individual with a disability, yet would currently satisfy the requirements of an impartial hearing officer. Under the proposed regulation, the individual would not be eligible because the relationship might, or “could” be a conflict.

The CDOR recommends that this proposed regulatory change be omitted.

3. Definition of Pre-Employment Transition Services [34 CFR 361.5(c)(42)]:

WIOA amends the Act by defining pre-employment transition services, a term vital to understanding and complying with provisions of the Act as amended.

The proposed definition of pre-employment transition services is a cross-reference to a different regulation in which the state’s duties to provide these services to qualified individuals with reserved funding is described.

The CDOR proposes that the regulatory definition specify that pre-employment transition services include the three categories of services in lieu of the proposed regulation, as follows:

“Pre-employment transition services means the required activities, including pre-employment transition coordination, and authorized activities described in 361.48(a), that commence when the individual is a student as defined in 361.5(c)(51).”

4. Definition of Student with a Disability [34 CFR 361.5(c)(51)]

WIOA amends the Act by defining a student with a disability by age range along with receiving special education services or meeting the conditions of a person with a disability in accordance with the Act. In providing services to students, Congress has described the intention to provide transition services for individuals to post-secondary “life.”

The proposed regulatory definition of “student” is critical to states’ implementation of WIOA because the term defines who may receive pre-employment transition services, whether eligible or potentially eligible, and because states must demonstrate that they have spent at least fifteen percent of the state’s vocational rehabilitation allotment on the services, not including administrative costs.

First, CDOR supports proposed regulation 361.5(c)(51)(C)(1), relating to an individual with a disability ‘who is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act’ (IDEA) as it is consistent with WIOA. Individuals eligible and receiving services under IDEA in California are in school which includes some charter schools. The regulation should clarify that any individual receiving the services under IDEA, regardless of setting, are eligible for services. The preamble states and only students “in school” are eligible. Further, the regulation must clarify that individuals eligible for, and receiving services under IDEA when pre-employment services begin, are eligible for services. If the clarification is not provided, it will not be possible to provide the continuum of services that Congress intended, as the services must cease if the student is out of school but nevertheless transitioning to post-secondary life, as intended.

For example, the 18 year old in his first year of community college may still need the pre-employment transition services to transition to “post-secondary life.” Also, for example, the 18 year old who began receiving pre-employment transition services in his senior year in high school but needs the services his first year in college in order to transition, he should be eligible in order to carry out the purpose of WIOA.

Second, CDOR finds that proposed regulation 361.5(c)(51)(C)(2) is an unauthorized rule as it exceeds the authority of the statute. The preamble and proposed regulation defining alternative eligibility for pre-employment transition services is inconsistent with WIOA.

WIOA includes “an individual with a disability for the purposes of section 504” among those individuals who are included in the definition of the term “student” for the purposes of the services authorized. This part of the law does not specify that the individual must be in school, or receiving 504 services from a school.

The proposed regulation limits eligibility for services by narrowly defining this category of individuals who may receive vital services: the phrase “is a student who” has been inserted into the beginning of the description, thereby limiting the services to those who, as with the first category, are in school.

Individuals, who are not attending school, including high school, college or pursuing a secondary degree through any of the means described above, are eligible if they have a disability that interferes with the daily activities of living. There is no explanation as to why a 17 year old who has dropped out of high school, or who may be ill and not attending any school at the time, should not receive the types of services that Congress has identified as critical for individuals aged 16 through 21 transitioning to post-secondary life. While not included herein, there are numerous situations in which an individual age 16 through 21, with a disability, may not be attending school yet needs the services.

The CDOR recommends aligning the preamble and replacing the portion of the proposed regulation, at 361.5(c)(51)(C)(2) with the following language, maximizing services to individuals with disabilities in need of such services:

“is an individual with a disability for the purposes of section 504 of the Rehabilitation Act, as amended, as the individual has a physical or mental condition which substantially limits one or more major life activities, whether or not the individual is pursuing a high school diploma or certificate at the time of services.”

In enacting WIOA, Congress intended “to ensure, to the greatest extent possible, that youth with disabilities and students with disabilities, who are transitioning...have opportunities for postsecondary success.” Re-defining “student” as CDOR has proposed, aligns the regulation with WIOA.

5. Definition of Short-Term Basis for Supported Employment [34 CFR 361.5(c)(53)]

WIOA amends the Act by revising the definition of “Supported Employment.” While the new statutory definition primarily focuses on competitive integrated employment, it also includes “employment in an integrated setting in which individuals are working on a short-term basis toward competitive integrated employment.”

Proposed 34 CFR 361.5(c)(53) defines “short term basis,” in relation to supported employment in an integrated setting, to mean that the individual is reasonably anticipated to achieve competitive integrated employment within six months.

Limiting the provision of supported employment services in an integrated setting to no more than six calendar months may have unintended consequences in that it restricts the vocational rehabilitation professional’s ability to consider or factor in an individual’s specific circumstances, needs, and informed choice, as he or she works to achieve competitive integrated employment.

For example, a consumer with potential for competitive integrated employment, who has developed skills and experience that he has not had with a history of working in a non integrated setting, receiving less than minimum wage in accordance with the Fair Labor Standards Act, could no longer receive supported employment if he is not yet ready for employment in a competitive integrated setting at the end of six months. He could no longer have any employment even though he has shown progress and both he and his counselor agree that an additional short term period may result in his success.

Similarly, if the individual becomes ill during the last two months of the short term, he would no longer be eligible for any services.

The six-month limitation may penalize the consumer in that there may not be time to provide him or her with the necessary job coaching to reorient the consumer to the job, including modified duties, and additional services, such as mobility evaluations.

Some individuals with significant disabilities have not worked or have been working in non-competitive integrated settings for years or even decades. Depending on the severity of disability and individual experiences, supported employment in an integrated setting on a short term basis in which the individual is working toward competitive integrated employment may be an individual’s first employment

experience. As such, there may need to be more supports from time to time to reorient an individual to the behavioral and other expectations of the job and in the workplace. In light of these considerations, consumers, with their vocational rehabilitation professional's support, must have the authority to make exceptions based upon unique circumstances.

To provide effective support to individuals with the most significant disabilities in achieving competitive integrated employment, consumers and their professional vocational rehabilitation counselors must have the flexibility to define "short term basis" in a manner that maximizes the potential for a successful competitive integrated employment outcome.

The CDOR recommends revising the six-month limitation in proposed Section 361.5(c)(53)(ii) with language that permits the consumer to, working with the vocational rehabilitation professional, extend the six-month period when necessary to provide additional training or other services, or to obtain employment:

For purposes of this part, an individual with the most significant disabilities, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, as defined in paragraph (c)(9) of this section, is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment within six months of achieving an employment outcome of supported employment, unless under special circumstances the individual and the rehabilitation counselor jointly agree to extend the time to achieve competitive integrated employment.

We expect that any extension of the six-month "short term basis", as well as the reasons or special circumstances, would be documented in the record of services.

We also want to take this opportunity to respond to public concern that has been shared with us through our stakeholder engagement efforts. The concern is that eliminating the six-month maximum time period that the vocational rehabilitation program could support individuals with a significant disability in an integrated setting as he or she works toward achieving competitive integrated employment would result in individuals languishing in subminimum wage settings. There is no evidence to indicate that a maximum six-month time period will result in more individuals achieving

competitive integrated employment. Eliminating the maximum time period provides the necessary flexibility for the vocational rehabilitation professional and consumer, and his or her authorized representative as appropriate, to consider the consumer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Further, the vocational rehabilitation professional and consumer, and his or her authorized representative as appropriate, would have the ability to address any unforeseen circumstances, such as medical issues requiring absence from work or reduced hours, additional services, or change of work setting to assist the consumer in achieving competitive integrated employment without regard to a six-month time clock. Focusing on a specific number of months may result in vocational rehabilitation programs not having the time to fully address all the needs of the individual, unique needs of consumers, thereby reducing the likelihood of achieving competitive integrated employment.

6. Comprehensive System of Personnel Development [34 CFR 361.18]

WIOA amended the Act to specify the minimum educational and experience requirements states must establish for vocational rehabilitation counselors of either a baccalaureate degree in a field reasonably related to vocational rehabilitation plus one year of relevant experience or a masters' degree.

The proposed regulation mirrors the statute and adds no additional guidance. As such, the proposed regulation is unnecessary.

Since RSA previously, in regulation promulgated under WIA, discouraged employing minimally qualified individuals by substituting equivalent experience for education, CDOR adopted the master's degree as the standard for vocational rehabilitation counselors in the state of California. The CDOR has found that, vocational rehabilitation counselors with a master's degree are best prepared to serve the needs of our consumers.

7. Third-party cooperative arrangements involving funds from other public agencies.
[34 CFR 361.28]

WIOA amended the Act by requiring vocational rehabilitation agencies to provide pre-employment transition services to students with disabilities who are eligible or potentially eligible for vocational rehabilitation services. Proposed 34 CFR 361.28 does not allow the cooperating agency to provide pre-employment transition services to all students with disabilities who are eligible or potentially eligible for services from

the designated state unit. This provision of services is in accordance with the Act, as amended by WIOA (29 USC section 733), and proposed regulation 361.48(a). Third party cooperative arrangements will be essential in California for providing pre-employment transition services. The CDOR recommends modifying 34 CFR 361.28(a)(2) to include, “students with disabilities who are eligible or potentially eligible for services from the designated state unit.”

WIOA did not amend the Act by making changes to the matching requirements for vocational rehabilitation. The proposed regulations add a new subsection (c), which restricts the contributions that may be used for the non-Federal share for match. In addition, proposed subdivision (c) should be deleted. Without citing statutory or other existing regulatory authority, proposed regulation 361.28(c) overly restricts the contributions that the designated state agency can use for the non-Federal share for match. Proposed subdivision (c) states that non-Federal contributions from the cooperating agency can only be in cash or certified personnel expenditures “for the time cooperating agency staff spent providing direct vocational rehabilitation services.” The proposed regulation also states, “Certified personnel expenditures may include the allocable portion of staff salary and fringe benefits based upon the amount of time cooperating agency staff spent providing services under the arrangement.”

The CDOR maximizes available resources in order to serve as many individuals with disabilities as possible. Cooperative agreements comprise a large portion of CDOR’s non-federal share for match. The proposed regulation does not allow many types of contributions to be used for match that are permissible under existing regulations including 2 CFR 200.306, such as: 1) staff time spent providing supervision or support to personnel providing direct vocational rehabilitation services; 2) indirect rates; and 3) expenditures for staff development, contract administration, or other expenditures for administering the cooperative program.

WIOA did not make changes to the matching requirements for vocational rehabilitation; therefore, there is no statutory justification for subdivision (c) of this proposed regulation. The comments in the “Summary of Proposed Changes” section of the NPRM indicate that changes were made “to align with 2 CFR 200 to ensure consistency.” However, the language in subdivision (c) is inconsistent with 2 CFR 200.306. 2 CFR 200.306 provides criteria for all contributions and does not use the language cited in proposed regulation 361.28(c). The CDOR recommends directly citing 2 CFR 200.306, instead of imposing further restrictions on vocational rehabilitation programs. If the proposed regulation is implemented without changes,

CDOR will lose valuable resources, which will result in fewer individuals with disabilities going to work and becoming independent particularly when need outweighs the resources currently, resulting in CDOR being in an Order of Selection.

8. Matching Requirements [34 CFR 361.60]

WIOA did not amend the Act to make changes to the matching requirements for vocational rehabilitation. Proposed regulation 361.60(b)(1) states that the non-Federal share for match must be “consistent with the provisions of 2 CFR 200.306(b).” Proposed regulation 361.60(b)(2) states, “Third party in-kind contributions specified in 2 CFR 200.306(b) may not be used to meet the non-Federal share;” however, subdivision (b)(2) is actually inconsistent with the provisions of 2 CFR 200.306(b). 2 CFR 200.306(b) does not define third party in-kind contributions and it does not differentiate between cash and in-kind contributions. Rather, this regulation states that all contributions must be accepted when such contributions meet the listed criteria. In order to ensure consistency and as it is not necessary to further ensure accountability, CDOR recommends deleting subsection (b)(2) of proposed regulation 361.60. The criteria established in 2 CFR 200.306(b) is sufficient to ensure that the contributions are verifiable, non-duplicative, and reasonable.

In addition, proposed regulation 361.60(b)(3) imposes the additional restriction that contributions by private entities must be in cash and must be deposited in the State agency’s account prior to their use. This restriction is also not based upon any statutory change made pursuant to WIOA. It is also not explained why this additional restriction is imposed here, but not on the proposed regulation 363.23(c)(1), which does not limit contributions by private entities to cash.

Further, the proposed regulatory changes were not made to alleviate an identified problem within the vocational rehabilitation system that would require additional limitations beyond what are imposed on other federal grants. The requirements applied to vocational rehabilitation funds through 2 CCR 200 are sufficient to ensure accountability and responsibility.

The CDOR maximizes available resources in order to serve as many individuals with disabilities as possible. Proposed regulation 361.60 does not allow many types of contributions to be used for match although these contributions are permissible under existing regulations, including 2 CFR 200.306. If proposed regulation 361.60 is

implemented without changes, CDOR will lose valuable resources, which will result in fewer individuals with disabilities going to work and becoming independent.

9. Assessment for Determining Eligibility, Prohibited Factors [34 CFR 361.42]

WIOA did not amend the Act prohibiting consideration of an applicant's employment history or status.

Proposed regulation 361.42(c)(2)(ii)(E) prohibits vocational rehabilitation agencies from considering an "[a]pplicant's employment history or current employment status" when determining eligibility. Prohibiting consideration of an applicant's employment history or current employment status may prohibit important considerations as to whether an individual needs services to attain a vocational goal or to advance. As WIOA provides for both people who need employment as well as those who need assistance in advancing their careers, employment history and status are relevant factors in considering eligibility.

An applicant's employment history may be vital when considering the need for services in order to maintain employment, and to advance in employment.

We agree that an individual should not be denied eligibility based upon the individual being currently employed, but prohibiting the consideration of the history or status could be considered an arbitrary regulation, and not reasonably based upon the Act, as amended.

The CDOR recommends deleting 361.42(c)(2)(ii)(E).

10. Pre-Employment Transition Services [34 CFR 361.48]

WIOA amended the Act by requiring vocational rehabilitation agencies to provide services, including transition coordination, and by permitting vocational rehabilitation agencies to provide other services, to students with disabilities as defined.

The proposed regulation does not provide any additional guidance and is therefore, unnecessary. However, CDOR recommends that the regulation provide some guidance to better define the scope of required services to students and other eligible individuals, consistent with the purpose of WIOA, and to ensure that the tools and accommodations necessary to provide the services are included among the definition.

CDOR recommends that the following language be added to the regulation:

- (1) Availability of services: Pre-employment transition services, including reasonable accommodations and services necessary to provide the required services, may be provided to all students with disabilities as defined in 361.5(c)(51), regardless of whether an application for services has been submitted.
- (2) Required Activities. The designated state unit shall provide or arrange for the provision of, 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 to the maximum extent possible and for which travel may be provided;
 - (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 which may include but is not limited to training in an institution of higher learning including college or trade school;
 - (v) Instruction in self-advocacy which may include but is not limited to peer mentoring from individuals working in competitive, integrated employment.”

The suggested amendments clarify that, in order to assist in transitioning to post-secondary life, services may be initiated before post-secondary education, but may continue into the post-secondary setting or other setting “for postsecondary success” as described in WIOA.

For example, a high school senior may need self-advocacy services, and to transition as intended by Congress, would need those services to continue for some time in the college setting. Ending services when school ends would not constitute transition to post-secondary life: the terms must overlap for the pre-employment transition services.

Similarly, an eighteen year old in special education may need pre-employment transition services during the period of time in which she is not yet employed, but has completed high school.

The suggested amendments also identify the need to provide the accommodations necessary for a student with a disability to receive the services, without requiring those who need an accommodation to apply for services when those who do not need an accommodation need not apply for services. Reasonable accommodations are not

administrative costs and should be considered among the required or authorized services.

For work-based learning experiences, the CDOR recognizes that particularly in rural areas, a student may not be able to find such an experience so we must be authorized to fund travel when necessary for this vital experience.

11. Comparable Services and Benefits, Exempt Services [34 CFR 361.53(b)]

WIOA amended the Act by specifying that reasonable accommodations and auxiliary aides are subject to comparable benefit searches.

The proposed regulation mirrors the statute. The CDOR has identified a technical error in the proposed regulation and recommends additional language to further the intent of WIOA.

First, the technical error is in identifying subdivision (a) instead of subdivision (b) in proposed regulation 361.53(b): the “vocational rehabilitation services described in 361.48(a) are exempt from a determination of the availability of comparable services and benefits.” The list of six services that follows is not described in 361.48(a), but is described in 361.48(b) as a result of the addition of Pre-Employment Transition Services replacing (a). The CDOR recommends correcting 361.53(b) to reference 361.48(b), not 361.48(a).

Second, the CDOR also recommends adding language to 361.53(b) which exempts pre-employment transition services from a comparable service and benefit review as WIOA requires the vocational rehabilitation agency to ensure that the services are provided or provide them directly.

Lastly, proposed regulation 361.53(a) mirrors the statutory language in requiring a comparable service review before prior to the provision of an “accommodation or auxiliary aid or service.” The CDOR recommends modifying the statutory language to clarify that a comparable service review is not required prior to providing an accommodation or auxiliary aid or service if necessary for an individual to receive one of the exempt services listed in proposed 361.48(b). For example, under the proposed regulation, an individual who needs an accommodation or auxiliary aid for an assessment by the vocational rehabilitation agency should be provided that accommodation or aid without the need for identifying another source.

The CDOR recommends the following language: "The following vocational rehabilitation services described in section 361.48(b) and accommodations and auxiliary aids and services are exempt from a determination of the availability of comparable services and benefits under paragraph (a) of this section when providing...." We also propose adding a sentence to the effect that the provisions of Pre-Employment Transition Services are not subject to this section.

12. Elimination of uncompensated outcomes from definition of employment outcome

WIOA amended the definition of an employment outcome in the Act, by including customized employment and emphasizing competitive integrated employment throughout the Act. While there is no proposed regulation that specifically addresses unpaid 'employment' outcomes, the Significant Proposed Regulation section explains that the proposed regulation 361.5(c)(15) will eliminate uncompensated outcomes, such as homemakers and unpaid family workers, from the scope of the definition of employment outcome.

In accordance with competitive integrated employment, the proposed regulations seek to delete the appendix to the existing regulations, which has been the authority to approve and fund uncompensated outcomes, including homemakers and unpaid family workers.

While CDOR appreciates the intent to move forward to competitive integrated employment, the services provided by vocational rehabilitation agencies through homemaker plans are necessary and vital for many individuals to become or maintain independence. Thus, CDOR urges our federal partners to allocate funding for these essential services through a new or expanded grant or program.

For example, a 54-year-old, newly blind individual or one with deteriorating vision, needs the services and technology currently provided by a vocational rehabilitation agency, to remain independent, within their homes, and not dependent on family members who would likely need to decrease their working hours to assist him in his daily living needs. Discussing a paid work opportunity during a difficult time when he is trying to maintain independence may be premature.

The CDOR urges our federal partners to provide each state the flexibility to offer these services, while not including them as outcomes yet funded with vocational rehabilitation funds, until this identified gap is addressed and another method for

providing these services that are often necessary to achieve compensated employment is provided.

13. What are the matching requirements? [34 CFR 363.23]

WIOA amended the Act to require states to provide non-Federal contribution of at least 10% for supported employment services. Proposed regulation 363.23(a)(2)(ii)(2), regarding supported employment services, states that the non-Federal share for match must be “consistent with the provisions of 2 CFR 200.306.” Subdivision (b) of proposed regulation 363.23 states, “Third party in-kind contributions specified in 2 CFR 200.306(b) may not be used to meet the non-Federal share.”

Proposed regulation 363.23(b) is inconsistent with the provisions of 2 CFR 200.306(b). 2 CFR 200.306(b) does not define third party in-kind contributions and it does not differentiate between cash and in-kind contributions. Rather, this regulation states that all contributions must be accepted when such contributions meet the listed criteria. In order to ensure consistency, subsection (b)(2) should be deleted. The criteria established in 2 CFR 200.306(b) is sufficient to ensure that the contributions are verifiable, non-duplicative, and reasonable.

WIOA did impose a statutory change, implementing a new matching arrangement governing a portion of the funds allotted for the provision of supported employment services. Prior to WIOA, there was no matching arrangement for supported employment. However, the new statutory language allows for a wide range of contributions from public or private entities for the non-Federal share for match. Specifically, the Act states, “The State agency will provide directly or indirectly through public or private entities, non-Federal contributions.” (29 USC 795k(b)(7)(I).)

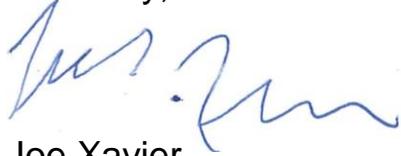
The CDOR maximizes available resources in order to serve as many individuals with disabilities as possible. The proposed regulation does not allow as many types of contributions to be used for match that are permissible under existing regulations including 2 CFR 200.306.

The comments in the “Summary of Proposed Changes” section of the NPRM indicate that changes were made “to align with 2 CFR 200 to ensure consistency.” However, as stated above, the language in of proposed regulation 363.23(b) does not ensure consistency and actually imposes additional, unnecessary restrictions on the use of contributions for the non-Federal share for match, when these contributions are not

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restricted in the Act. In fact, the Act specifically allows contributions “directly or indirectly.” Therefore, since proposed regulation 363.23(b) in effect eliminates the indirect method of providing the non-Federal share, it is contrary to the Act and, therefore, CDOR recommends deleting subdivision (b) of proposed regulation 363.23.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Xavier", is written over the typed name.

Joe Xavier
Director