

**DEPARTMENT OF EDUCATION****34 CFR Part 379**

RIN 1820-AB33

**Projects With Industry****AGENCY:** Department of Education.**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations governing the Projects With Industry (PWI) program to clarify statutory intent, reduce grantee burden, address certain implementation problems, and enhance project accountability.

**EFFECTIVE DATE:** These regulations take effect March 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Finch, U.S. Department of Education, 600 Independence Avenue, SW., Room 3315, Mary E. Switzer Building, Washington, DC 20202-2575. Telephone: (202) 205-8292. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The PWI program is authorized by section 621 of the Rehabilitation Act of 1973, as amended (the Act). The purpose of the PWI program is to create and expand job and career opportunities for individuals with disabilities in the competitive labor market by establishing partnerships between program grantees and private industry to provide job training, job placement, and career advancement activities.

On January 22, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (61 FR 1672). The major issues related to this program are discussed in greater detail in the preamble to the NPRM.

The significant changes made in these final regulations from the NPRM include revision of the definitions of "placement," "competitive employment," and "integrated setting," as well as an additional application content requirement for a description of career advancement services. These changes are discussed in detail in the analysis of comments section of the preamble to the final regulations.

The Secretary invited comments on changes needed to improve the compliance indicators in the NPRM, but has made no changes to the indicators in these final regulations. The comments provided in response to the NPRM, as well as the comments

provided by interested parties in subsequent follow-up meetings held by the Rehabilitation Services Administration (RSA), will be used by the Department in determining what changes to make to the compliance indicators. The Secretary expects to propose specific revisions to the PWI compliance indicators in the near future.

**Goals 2000: Educate America Act**

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goal that every adult American will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

**Executive Order 12866****Assessment of Costs and Benefits**

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the final regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

**Summary of Potential Costs and Benefits**

The potential costs and benefits of these final regulations were discussed in the preamble to the NPRM under the following headings: More Accurate Reflection of Statutory Requirements, Reduction of Grantee Burden, and Clarification of Program Requirements (61 FR 1677).

**Analysis of Comments and Changes**

In response to the Secretary's invitation in the NPRM, 87 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

The comments have been grouped according to subject, with appropriate references to sections of the regulations. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

**Section 379.3 Eligibility for Services**

**Comments:** Several commenters recommended alternative procedures for determining eligibility for PWI services other than those specified in the NPRM. One commenter wanted eligibility to be determined jointly by the State vocational rehabilitation (VR) agency, the PWI grantee, and the individual seeking PWI services. Another commenter stated that only the VR agency or its designee should make eligibility determinations. Another commenter wanted PWI grantees to be allowed to determine eligibility for PWI services without VR agency review. Another commenter wanted the final regulations to clarify that a PWI grantee is responsible for making eligibility determinations even if the grant is sub-contracted to another organization. A final commenter raised concerns that some VR agencies do not respond to initial or preliminary determinations of eligibility made by PWI grantees.

**Discussion:** Section 621(a)(3) of the Act prescribes the manner in which eligibility for PWI services is to be determined. The VR agency is initially authorized to make eligibility determinations in this program, but if the VR agency fails to act, either by not making a determination or failing to disagree within 60 days with a preliminary determination of eligibility made by the PWI grantee, then the PWI grantee can determine eligibility. There is no legal authority to substitute a different eligibility determination process in the regulations. Under the Department's grants regulations, grantees are held responsible for all aspects of their project operations, even if they subcontract project activities. Finally, the regulations address concerns that some VR agencies do not respond to preliminary PWI eligibility determinations by providing, consistent with the statute, that if the VR agency fails to act within 60 days, then the preliminary PWI eligibility

determination becomes a final determination.

*Changes:* The Secretary has revised the explanatory material in the note following this section to clarify that if the VR agency has referred an individual to a PWI project for services, then the VR agency has already determined that the individual is eligible for project services. In other instances, the PWI grantee makes an initial determination of eligibility that becomes final if not countermanded by the VR agency within 60 days.

#### Section 379.5 Definitions

##### Section 379.5(b)(2)(ii) Definition of "Competitive Employment"—Prevailing Community Wage Requirement

*Comments:* Several commenters opposed the requirement in the proposed regulations that individuals in competitive employment earn at least the prevailing wage for the same or similar work in the local community performed by non-disabled individuals. Eight commenters believed that it would be unduly burdensome for grantees to ascertain the relevant prevailing wage given the potential differences in wages provided by employers within the same community. A few commenters stated that prevailing community wage rates are sometimes inflated and that many job-seekers are unsuccessful in finding employment at the prevailing community wage. Several commenters recommended that the final regulations require only that the minimum wage be paid and that PWI participants be afforded the same terms and benefits provided to non-disabled co-workers in similar jobs, consistent with section 621(b)(1) and (2) of the Act. Other commenters recommended that the wage standard should be one of parity with the wages paid by the same employer to non-disabled workers doing the same or similar job.

*Discussion:* The Secretary agrees that requiring individuals placed by the PWI program into competitive employment to earn at least the prevailing wage for the same or similar work in the local community performed by non-disabled individuals is unduly restrictive and potentially burdensome. The Secretary also agrees that a more reasonable wage standard is one that is employer-based rather than community-based and that requires equity in wage and terms and benefits (e.g., insurance premiums, retirement contributions) with non-disabled workers.

*Changes:* The Secretary has amended § 379.5(b)(2)(ii) to define "competitive work," in part, as work for which an individual earns at least the minimum

wage but not less than the customary or usual wage and terms and benefits provided by the same employer to non-disabled workers who perform the same or similar work.

##### Section 379.5(b)(3) Definition of Integrated Setting, as Part of the Definition of "Competitive Employment"

*Comments:* Several commenters were concerned that the proposed standard for integration in competitive employment (the opportunity for interaction with non-disabled individuals at the work site) would preclude certain kinds of employment outcomes from the scope of competitive employment. Specifically, the commenters identified self-employment, home-based employment, and various forms of telecommuting as examples of employment outcomes that are competitive, but are not located in integrated settings. These commenters stated that these employment options should be available to individuals with disabilities served by the PWI program to the same extent that they are available to non-disabled persons. Other commenters stated that individuals in competitive employment should be required to interact with non-disabled persons only to the extent that non-disabled persons in similar positions interact with others.

*Discussion:* The Secretary agrees with those commenters who contend that the best measure of integration in an employment setting for individuals with disabilities is to require parity with the integration experienced by non-disabled workers in similar positions. The Secretary also believes that interaction between individuals with disabilities and non-disabled persons need not be face-to-face in order to meet this standard. Individuals with disabilities under the PWI program who are self-employed or who telecommute may interact regularly with non-disabled persons through a variety of mediums (e.g., telephone, facsimile, or computer). Self-employment, home-based employment, and other forms of employment in which individuals communicate regularly from separate locations, therefore, would satisfy the integration requirement of competitive employment as long as the individual interacts with non-disabled persons, other than service providers, to the same extent as a non-disabled person in a comparable job.

*Changes:* The Secretary has revised § 379.5(b)(3) to establish a standard of integration for individuals in competitive employment that is based on ensuring the same level of

interaction with non-disabled persons as that experienced by a non-disabled worker in the same or similar job.

##### Section 379.5(b)(5) Definition of "Job Training"

*Comments:* One commenter recommended the inclusion of pre-employment planning under the definition of job training. Another commenter recommended expanding the definition of job training to include social preparation for individuals interviewing for jobs. Ten commenters recommended deleting the phrase "provided prior to placement" because the phrase excludes training by employers or other entities after placement. Two commenters recommended that attitudinal change training be provided for employers under the definition of training. Four commenters recommended that training be provided in an integrated setting. Other commenters underscored the need for specific input on the part of the Business Advisory Committee (BAC) in identifying and prescribing training needs. Still other commenters stated that the responsibility for defining the parameters of job training should be the domain of the BAC. Another commenter stated that the emphasis on skills training is contrary to current trends of "one-stop career centers" and expressed doubts as to whether grantees have adequate resources and expertise to provide job skills training.

*Discussion:* The Secretary believes that the final regulations give projects sufficient flexibility to provide pre-employment planning and interview preparation if these services are deemed necessary. However, the Secretary believes that these activities fall under the definition of job readiness training in § 379.5(b)(4), rather than the definition of job training under this section. The Secretary also believes that attitudinal change training for employers is an authorized activity under the PWI program, but does not believe it falls within the scope of job training, as it is defined in this section.

While section 621(a)(2)(B) of the Act requires that training be provided in "realistic work settings," the Secretary does not believe that this can be interpreted to require projects to provide training in an integrated setting. However, the Secretary encourages projects to ensure that training is provided in an integrated setting to the extent possible.

The Secretary strongly agrees with the commenters who stated that the BAC should take an active role in prescribing training programs and notes that this is consistent with section 621(a)(2)(A)(iv)

of the Act, which states that the BAC shall "prescribe training programs designed to develop appropriate job and career skills." The Secretary does not believe that the definition of job training in this section in any way weakens this statutory requirement.

The Secretary notes the concern of some commenters that grantees may have insufficient resources to provide job training. The use of the BAC, other private industry expertise, and active collaboration with State VR agencies and other providers can supplement what individual projects may lack in terms of resources for job training.

*Changes:* None.

*Section 379.5(b)(7) Definition of "Placement"*

*Comments:* One commenter recommended that the term "placement" be deleted throughout the regulations and replaced with the term "PWI employment outcome." This commenter believed the use of the term "placement" was confusing because the proposed definition includes two elements: (1) Attaining competitive employment and (2) maintaining it for a certain period.

Other commenters were concerned about the proposed minimum retention period for maintaining competitive employment in order to have the employment outcome considered a placement for purposes of meeting the program compliance indicators. The NPRM proposed the option of using the duration of the employer's normal probationary period or, if the employer does not have an established probationary period, for at least 90 days. The current regulatory time period for maintaining employment is 60 days. These commenters stated that the use of a probationary period was problematical for a variety of reasons, such as (1) an employer's probationary period could be as short as two weeks, and that timeframe would be inadequate; (2) many employers no longer use probationary periods, so the option is not meaningful; and (3) if some employers have long probationary periods, some projects might be disinclined to place individuals with those employers. Some commenters argued for a uniform Federal standard in the regulations that would avoid variations among employers. Some of these commenters suggested that there be no change from the current retention period of 60 days. Other commenters recommended 90 days, 120 days, 180 days, or 12 months. Some commenters objected to any specific timeframe in the regulations and believed the retention period should be individually

determined by the individual with a disability, the counselor, and the employer.

Some commenters recommended that the phrase "who has successfully completed training" be deleted from the definition because the regulations recognize that not all persons served by a PWI project may need and, therefore, receive job training.

*Discussion:* The Secretary does not believe the use of the term "placement," as defined in the regulations, is confusing. The PWI regulations for many years have defined "placement" to include a required period of time in which a competitive employment outcome must be maintained.

The Secretary agrees with those commenters who believe the use of a probationary period option is problematical and that a uniform minimum retention period prescribed in the regulations is desirable. The Secretary also believes that the retention period should be longer than the 60 days required in the current regulations in order to ensure that the individual's employment remains stable. The Secretary has determined that 90 days is the minimum acceptable standard and that this lengthened time period will result in more successful placements. At the same time, however, the Secretary recognizes that in some instances 90 days may be too short a period to ensure job stability. Section 621(a)(2)(E) of the Act requires projects to provide any support services that may be required for an individual to maintain employment. Therefore, the Secretary encourages projects to make individualized determinations of whether to extend the 90-day period to conform with an employer's longer probationary period if, at the end of the 90 days, it is uncertain whether the individual will be able to successfully satisfy the probationary period without support services from the project.

The Secretary also agrees that the phrase "who has successfully completed training" is inaccurate and should be removed from the definition because some project participants may not need job training.

*Changes:* The Secretary has amended the definition of "placement" in the final regulations to provide for a minimum job retention period of 90 days and to substitute the phrase "who has received services" for the phrase "who has successfully completed training."

*Section 379.10(a) Project Requirements Regarding Job Training and the Note to This Section*

*Comments:* One commenter recommended deletion of the last three sentences of the note, which specify that training provided after placement (i.e., attaining competitive employment and maintaining it for at least 90 days) or job-readiness training do not satisfy the requirement that projects provide job training. Another commenter suggested revising this requirement to allow projects the option of providing only job readiness training. Some commenters suggested that individual projects should have the responsibility of assessing each participant's training needs and how that training will be provided. Some commenters suggested that grantees should be allowed the flexibility to work with employers in order to provide training on the job. Some commenters questioned whether job training should be provided for all participants. Two commenters stated that all grantees should have an identifiable training component for individuals who lack job skills, but that all program participants should not be required to avail themselves of training. Other commenters mentioned the added costs of providing job training and asked whether grant awards should be increased to cover these costs.

*Discussion:* The Secretary disagrees with the commenter who suggests deletion of the clarification in the note that training provided after placement and job readiness training do not by themselves satisfy the requirement in § 379.10(a). In accordance with section 621(a)(2)(B) of the Act, projects are required to provide training in order to prepare the individuals for employment and career advancement in the competitive market. The Secretary, therefore, believes that projects should ensure that training, if deemed appropriate to the participant's needs, is provided either before the individual begins employment or within the first 90 days of employment (i.e., before the individual is considered placed in accordance with the definition of "placement" in § 379.5(b)(7)). On-the-job training would meet the requirements of this section if the project ensures its provision and it is provided within the first 90 days of employment. The 90-day requirement, of course, does not apply to employed individuals who are receiving career advancement services from a PWI project.

The Secretary also believes that the job training requirement is not met if a project provides only job readiness

training. While job readiness training is an authorized activity under the PWI program, the Secretary believes that job readiness training alone does not meet the statutory requirement that projects provide training to prepare individuals for employment in the competitive labor market. The final regulations, like the NPRM, therefore contain separate definitions of "job training" and "job readiness training." The Secretary agrees with those commenters who suggested that job training need not be provided to every participant. The language in this section requires that job training be provided "if appropriate to the needs of each individual served by the project." However, the Secretary expects that every project will have a job training component (whether the training is provided on-site, through employers and other entities, or both), since a certain population of individuals will enter the program without the job skills necessary to be placed and advance in competitive employment.

The Secretary notes the concern of commenters regarding the costs of providing job training. The Secretary believes the regulations give projects sufficient flexibility to arrange with employers and other entities to provide job training should they find that providing job training themselves is too costly or for other reasons is not feasible.

*Changes:* The Secretary has added a statement to the note to emphasize that if a project arranges for the provision of job training by outside entities (e.g., an employer), the project must conduct appropriate follow-up measures to ensure that training is provided. The note is also amended to clarify that job training must be provided either prior to, or within 90 days of, attaining competitive employment and that job training provided by the employer after this 90-day period, therefore, does not meet the requirement of § 379.10(a).

**Section 379.21(a)(1) Application Content Requirement Regarding Labor Market Analysis**

*Comments:* A number of commenters stated that a labor market analysis obligates applicants to predict for five years the training needs that will meet the demands of the labor market and that the labor market changes too rapidly for this to be accomplished. Other commenters recommended deleting the language regarding labor market analysis. Other commenters stated that individuals with disabilities may not fit appropriately into a market trend and may require individualized job matching. A commenter recommended that each application

describe how existing labor market studies will be used in securing employment and validating training needs.

*Discussion:* The Secretary does not intend to require the use of a particular tool (e.g., a labor market analysis) to identify the needs of the local labor market. If an applicant determines that a labor market analysis is inappropriate for the type of project being proposed, the applicant can choose a different method of identifying local labor market needs. The requirement in § 379.21(a)(1) is intended to ensure that applicants have assessed labor market needs in the geographic area to be served and have designed their projects in accordance with the identified needs for people trained for specific occupations. Applicants can determine labor market needs by either performing their own labor market analyses or needs assessments in conjunction with private industry or by using existing current labor market analyses or needs assessments. The Secretary understands that local labor market needs may change during the five-year duration of the project and that these changes may, in some cases, necessitate adjustments in the project. However, the Secretary believes that this does not diminish the utility of an initial labor market analysis or needs assessment. The Secretary also believes that the identification of local labor market needs does not contravene the practice of individualized job-matching for individuals with disabilities.

*Changes:* The Secretary has made minor changes to clarify that the applicant may comply with § 379.21(a)(1) either by using an existing current labor market analysis or needs assessment or by performing a labor market analysis or needs assessment in conjunction with private industry.

**Section 379.21(a)(4) Application Content Requirement Concerning Unserved or Underserved Areas**

*Comments:* One commenter recommended that an applicant for a PWI grant be required to document geographic need through verification by the State VR agency. This commenter wanted to avoid duplication of awards and to ensure that services are provided in areas most in need.

*Discussion:* The Secretary encourages all applicants to consult with the relevant State VR agency to ensure that services are to be provided in areas where individuals are unserved or underserved, but does not want to require this. It is the responsibility of each applicant to explain in its grant application how the geographic area it

proposes to serve is unserved or underserved by the PWI program and to provide whatever justification it considers necessary to support its position.

*Changes:* None.

**Section 379.21(a)(7) Requirement Concerning Career Advancement Services**

*Comments:* Some commenters suggested that career advancement services be addressed with an application content requirement rather than as a compliance indicator.

*Discussion:* The 1992 Amendments to the Rehabilitation Act of 1973, as amended, added career advancement services to the range of services PWI projects are required to provide. In the NPRM, the Secretary solicited comments on how best to address the career advancement requirement. The Secretary agrees that an application content requirement is the best way to implement the career advancement services provision.

*Changes:* In response to commenters' suggestions, the Secretary has added to this section the requirement that a grant application contain a description of how career advancement services will be provided to project participants.

**Section 379.30 Recommendation of New Selection Criterion**

*Comments:* One commenter recommended that applicants under this program be required to include a plan for continuing the project after the Federal grant period has ended.

*Discussion:* The Secretary finds no statutory basis, as exists for the recreation programs authorized under section 316 of the Act, for adding a criterion to require applicants to include a plan for continuation of the project after the Federal grant period has ended.

*Changes:* None.

**Section 379.30(a)(1) Selection Criterion: Extent of Need for Project—Labor Market Analysis**

*Comments:* A number of commenters suggested alternative language to a "labor market analysis" and recommended tailoring a needs assessment to local communities rather than to the national or regional job market as implied by the term. Some commenters recommended that the phrase "labor market analysis" be deleted.

*Discussion:* The Secretary intends, and the NPRM stated, that the applicant's labor market analysis or needs assessment be conducted "for the geographic area to be served." The Secretary does not intend by using the

term "labor market analysis" to require the applicant to conduct an analysis that is regional or national in scope. While the Secretary expects that projects once established should work with local businesses and the BAC to identify job opportunities for individuals with disabilities, the Secretary does not believe this action eliminates the need for an initial survey of local labor market needs. An initial labor market analysis or needs assessment demonstrates a need for the project and also enables the project to tailor its job training and services to the needs of the local labor market.

*Changes:* The Secretary has made minor changes to clarify that the applicant may satisfy § 379.30(a)(1) either by using an existing current labor market analysis or needs assessment or by performing a labor market analysis or needs assessment in conjunction with private industry.

*Section 379.30(a)(2) Selection Criterion: Extent of Need for Project—Labor Market Analysis*

*Comments:* None.

*Discussion:* The Secretary believes the phrase "occupations and occupational categories" is more precise than "industry or industries" because it refers to a type of job or jobs for which participants are to be trained (e.g., computer programmer) rather than the industries in which they might be placed (e.g., the computer industry).

*Changes:* The Secretary has amended § 379.30(a)(2) in the final regulations to clarify that the job training to be provided must meet the identified needs for specific occupations or occupational categories in the geographic area to be served.

*Section 379.41(a)(f) Allowable Costs*

*Comments:* One commenter recommended specifying under this section on allowable costs that, if appropriate, grantees may modify facilities and equipment of employers. Another commenter recommended the addition of job modification and job development as allowable costs.

*Discussion:* The Secretary agrees with the commenters that the costs of job development and modification and the costs of modifications of employer facilities or equipment to be used by PWI program participants should be specifically identified in the final regulations as permissible expenditures. This is consistent with language in 34 CFR 379.10(d) (1) and (3), which requires grantees to undertake these activities, to the extent appropriate.

*Changes:* The Secretary has amended § 379.41(a) to include as allowable costs job development and modification and modifications for facilities and equipment of employers participating in the program.

*Section 379.43 and § 379.54(a) Annual Evaluation Report and Compliance Indicator Data*

*Comments:* One commenter did not agree with the proposed requirement that projects submit annual evaluation report and compliance indicator data 60 days after the end of the project year.

*Discussion:* The Secretary believes that the 60-day timeline is reasonable for submission of project evaluation and compliance indicator data in order to ensure timely receipt of project information and to increase program accountability. In addition, the Secretary has the option to extend this timeline for reasonable cause.

*Changes:* None.

*Paperwork Reduction Act of 1995*

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected sections of the regulations.

*Intergovernmental Review*

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

*Assessment of Educational Impact*

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from

any other agency or authority of the United States.

*List of Subjects in 34 CFR Part 379*

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, vocational rehabilitation.

Dated: October 25, 1996.

Judith E. Heumann,

*Assistant Secretary for Special Education and Rehabilitative Services.*

(Catalog of Federal Domestic Assistance Number 84.234 Projects With Industry)

The Secretary amends Title 34 of the Code of Federal Regulations as follows:

1. By revising part 379, subparts A through E, by revising the heading of subpart F, and by adding a new § 379.54 in subpart F to read as follows:

## **PART 379—PROJECTS WITH INDUSTRY**

### **Subpart A—General**

Sec.

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### **Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?**

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**Subpart F—What Compliance Indicator Requirements Must a Grantee Meet To Receive Continuation Funding?**

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379.54 What are the reporting requirements for the compliance indicators?

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Authority: Sects. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g, unless otherwise noted.

**Subpart A—General**

**§ 379.1 What is the Projects With Industry (PWI) program?**

This program is designed to—

(a) Create and expand job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process;

(b) Identify competitive job and career opportunities and the skills needed to perform these jobs;

(c) Create practical settings for job readiness and job training programs; and

(d) Provide job placements and career advancement.

(Authority: Sect. 621(a)(1) of the Act; 29 U.S.C. 795g(a)(1))

**§ 379.2 Who is eligible for a grant award under this program?**

(a) The Secretary may make a grant under this program to any—

(1) Community rehabilitation program provider;

(2) Designated State unit;

(3) Employer;

(4) Indian tribe or tribal organization;

(5) Labor Union;

(6) Nonprofit agency or organization;

(7) Trade association; or

(8) Other agency or organization with the capacity to create and expand job and career opportunities for individuals with disabilities.

(b) New awards may be made only to those eligible entities identified in paragraph (a) of this section that propose to serve individuals with disabilities in States, portions of States, Indian tribes, or tribal organizations that are currently unserved or underserved by the PWI program.

(Authority: Section 621(a)(2) and 621(e)(2) of the Act; 29 U.S.C. 795g(a)(2) and 795g(e)(2))

**§ 379.3 Who is eligible for services under this program?**

(a) An individual is eligible for services under this program if the appropriate State vocational rehabilitation unit determines the individual to be an individual with a disability or an individual with a severe

disability, as defined in sections 7(8)(A) and 7(15)(A), respectively, of the Act.

(b) In making the determination under paragraph (a) of this section, the State vocational rehabilitation unit shall rely on the determination made by the recipient of the grant under which the services are provided, to the extent that the determination is appropriate, available, and consistent with the requirements of the Act.

(c) If a State vocational rehabilitation unit does not notify a recipient of a grant within 60 days that the determination of the recipient is inappropriate, the recipient of the grant may consider the individual to be eligible for services.

(Authority: Sect. 621(a)(3) of the Act; 29 U.S.C. 795g(a)(3))

**Appendix to § 379.3**

The following guidance is provided regarding the determination of eligibility for PWI project services:

(1) If an individual is referred to the PWI project by the State vocational rehabilitation (VR) unit and the individual has been determined by the State VR unit to be an "individual with a disability" under section 102(a)(1)(A) of the Act, then the PWI grantee may initiate services to that individual. In these instances, the State VR unit should provide documentation of this determination to the PWI grantee. If the State VR unit has determined that the individual also meets the definition of an "individual with a severe disability" under section 7(15)(A) of the Act, the PWI grantee should be advised of that determination and provided appropriate documentation of that determination.

(2) If an individual is not referred to the PWI project by the State VR unit, then the PWI grantee makes an initial or preliminary determination that the individual is eligible for services because the individual meets the definition of an "individual with a disability" or an "individual with a severe disability." The State VR unit has a maximum of 60 days to assess the appropriateness of the preliminary determination. If the State VR unit does not decide that the preliminary eligibility determination is inappropriate within this time period, the eligibility determination becomes final.

**§ 379.4 What regulations apply?**

The following regulations apply to the Projects With Industry program:

(a) The regulations in this part 379; and

(b) The regulations in 34 CFR part 369, except for the regulations in §§ 369.30 and 369.31.

(Authority: Sect. 621 of the Act; 29 U.S.C. 795g)

**§ 379.5 What definitions apply?**

(a) The definitions in 34 CFR part 369 apply to this program.

(b) The following definitions also apply to this program:

(1) *Career advancement services* mean services that develop specific job skills beyond those required by the position currently held by an individual with a disability to assist the individual to compete for a promotion or achieve an advanced position.

(2) *Competitive employment*, as the placement outcome under this program, means work—

(i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(ii) For which an individual is compensated at or above the minimum wage, but not less than the customary or usual wage and terms and benefits provided by the employer for the same or similar work performed by individuals who are not disabled.

(3) *Integrated setting*, as part of the definition of *competitive employment*, means a setting typically found in the community in which individuals with disabilities interact with non-disabled individuals, other than non-disabled individuals who are providing services to them, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(4) *Job readiness training*, as used in § 379.41(a), means—

(i) Training in job-seeking skills;

(ii) Training in the preparation of resumes or job applications;

(iii) Training in interviewing skills;

(iv) Participating in a job club; or

(v) Other related activities that may assist an individual to secure competitive employment.

(5) *Job training*, as used in this part, means one or more of the following training activities provided prior to placement, as that term is defined in § 379.5(b)(7):

(i) Occupational skills training.

(ii) On-the-job training.

(iii) Workplace training combined with related instruction.

(iv) Job skill upgrading and retraining.

(v) Training to enhance basic work skills and workplace competencies.

(vi) On-site job coaching.

(6) *Person served* means an individual for whom services by a PWI project have been initiated with the objective that those services will result in a placement in competitive employment.

(7) *Placement means* the attainment of competitive employment by a person who has received services from a PWI project and has maintained employment for a period of at least 90 days.

(Authority: Sects. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

### Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

#### § 379.10 What types of project activities are required of each grantee under this program?

Each grantee under the PWI program shall—

(a) Arrange for the provision of, or provide individuals with disabilities with, job training in a realistic work setting, if appropriate to the needs of the individual, in order to prepare individuals for employment and career advancement in the competitive labor market;

(b) Provide individuals with disabilities with job placement and career advancement services;

(c) Provide individuals with disabilities with supportive services that are necessary to permit them to maintain the employment and career advancement for which they have received training under this program;

(d) To the extent appropriate, provide for—

(1) The development and modification of jobs and careers to accommodate the special needs of the individuals with disabilities being trained and employed under this program;

(2) The purchase and distribution of rehabilitation technology to meet the needs of individuals with disabilities at job sites; and

(3) The modification of any facilities or equipment of the employer that are to be used by individuals with disabilities under this program; and

(e) Provide for the establishment of a Business Advisory Council (BAC) comprised of representatives of private industry, business concerns, organized labor, and individuals with disabilities and their representatives who will identify job and career availability within the community, the skills necessary to perform those jobs and careers, and prescribe appropriate training programs.

#### Appendix to § 379.10

A PWI grantee can meet the requirements of § 379.10(a) (1) by directly providing job training to project participants, (2) by arranging for the provision of this training by other entities and taking appropriate follow-up measures to ensure that the training is, in fact, provided, or (3) by a combination of both (1) and (2). The job training provided must meet the definition of job training in § 379.5(b)(5) and must be provided as appropriate to the needs of each individual served by the project. Although each individual served by the project may not need job training, the Secretary expects that each PWI project will have an identifiable job

training component that is available to those individuals who need it. In order to meet the requirements of § 379.10(a), the job training must be provided while the individual is participating in the project (i.e. prior to, or within 90 days of, attaining competitive employment). Therefore, training provided by an employer more than 90 days after the individual begins competitive employment would not meet this requirement. In addition, a project that provides only job readiness training, as defined in § 379.5(b)(4), would not meet the requirements of § 379.10(a).

(Authority: Sect. 621(a) of the Act; 29 U.S.C. 795g)

#### § 379.11 What additional types of project activities may be authorized under this program?

The Secretary may include, as part of grant agreements with recipients under this program, authority for recipients to provide the following types of technical assistance:

(a) Assisting employers in hiring individuals with disabilities.

(b) Improving or developing relationships between grant recipients or prospective grant recipients and employers or organized labor.

(c) Assisting employers in understanding and meeting the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C 12101 *et seq.*) as that Act relates to employment of individuals with disabilities.

(Authority: Sect. 621(a) of the Act; 29 U.S.C 795g)

### Subpart C—How Does One Apply for an Award?

#### § 379.20 How does an eligible entity apply for an award?

In order to apply for a grant, an eligible entity shall submit an application to the Secretary in response to an application notice published in the Federal Register.

(Approved by the Office of Management and Budget under control number 1820-0612.)

(Authority: Sec. 621(e)(1)(B) of the Act; 29 U.S.C. 795g(e)(1)(B))

#### § 379.21 What is the content of an application for an award?

(a) The grant application must include a description of—

(1) The proposed job training to prepare project participants for specific jobs in the competitive labor market for which there is a need in the geographic area to be served by the project, as identified by an existing current labor market analysis or other needs assessment or one conducted by the applicant in collaboration with private industry;

(2) The involvement of private industry in the design of the proposed project and the manner in which the project will collaborate with private industry in planning, implementing, and evaluating job training, job placement, and career advancement activities;

(3) The responsibilities of the BAC and how it will interact with the project in carrying out grant activities;

(4) The geographic area to be served by the project, including an explanation of how the area is currently unserved or underserved by the PWI program;

(5) A plan for evaluating annually the operation of the proposed project, which, at a minimum, provides for collecting and submitting to the Secretary the following information and any additional data needed to determine compliance with the program compliance indicators established in subpart F of this part:

(i) The numbers and types of individuals with disabilities served.

(ii) The types of services provided.

(iii) The sources of funding.

(iv) The percentage of resources committed to each type of service provided.

(v) The extent to which the employment status and earning power of individuals with disabilities changed following services.

(vi) The extent of capacity building activities, including collaboration with business and industry and other organizations, institutions, and agencies, including the State vocational rehabilitation unit.

(vii) A comparison, if appropriate, of activities in prior years with activities in the most recent year.

(viii) The number of project participants who were terminated from project placements and the duration of those placements;

(6) A description of the manner in which the project will address the needs of individuals with disabilities from minority backgrounds, as required by 34 CFR 369.21; and

(7) A description of how career advancement services will be provided to project participants.

(b) The grant application must also include assurances from the applicant that—

(1) The project will carry out all activities required in § 379.10;

(2) Individuals with disabilities who are placed by the project will receive compensation at or above the minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who are not disabled;

(3) Individuals with disabilities who are placed by the project will be given

terms and benefits of employment equal to those that are given to similarly situated co-workers and will not be segregated from their co-workers; and

(4) The project will maintain any records required by the Secretary and make those records available for monitoring and audit purposes.

(Approved by the Office of Management and Budget under control number 1820-0612.)

(Authority: Secs. 621(a)(4), 621(a)(5), 621(b), and 621(e)(1)(B) of the Act; 29 U.S.C. 795g(a)(4), 795g(a)(5), 795g(b), and 795g(e)(1)(B))

#### Subpart D—How Does the Secretary Make a Grant?

##### § 379.30 What selection criteria does the Secretary use under this program?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for project* (20 points). The Secretary reviews each application to determine the extent to which the project meets demonstrated needs. The Secretary looks for evidence that—

(1) The applicant has described an existing current labor market analysis or other needs assessment, or one that it has performed in collaboration with private industry, that shows, for the geographic area to be served, a demand in the competitive labor market for the types of jobs for which project participants will be trained; and

(2) The job training to be provided meets the identified needs for personnel in specific occupations or occupational categories in the geographic area to be served.

(b) *Partnership with industry* (25 points). The Secretary looks for information that demonstrates—

(1) The extent of the project's proposed collaboration with private industry in the planning, implementation, and evaluation of job training, placement, and career advancement activities; and

(2) The extent of proposed participation of the BAC in the identification of job and career opportunities, the skills necessary to perform the jobs and careers identified, and the development of training programs designed to develop these skills.

(c) *Project design and plan of operation for achieving competitive employment outcomes* (25 points). The Secretary reviews each application to determine—

(1) The extent to which the project goals and objectives for achieving competitive employment outcomes for individuals with disabilities to be served by the project are clearly stated

and meet the needs identified by the applicant and the purposes of the program;

(2) The extent to which the project provides for all services and activities required under § 379.10;

(3) The feasibility of proposed strategies and methods for achieving project goals and objectives for competitive employment outcomes for project participants;

(4) The extent to which project activities will be coordinated with the State vocational rehabilitation unit and with other appropriate community resources in order to ensure an adequate number of referrals and a maximum use of comparable benefits and services;

(5) The extent to which the applicant's management plan will ensure proper and efficient administration of the project; and

(6) Whether the applicant has proposed a realistic timeline for the implementation of project activities to ensure timely accomplishment of proposed goals and objectives to achieve competitive employment outcomes for individuals with disabilities to be served by the project.

(d) *Adequacy of resources and quality of key personnel* (10 points). The Secretary reviews each application to determine—

(1) The adequacy of the resources (including facilities, equipment, and supplies) that the applicant plans to devote to the project;

(2) The quality of key personnel who will be involved in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The experience and training of key personnel in fields related to the objectives and activities of the project; and

(3) The way the applicant plans to use its resources and personnel to achieve the project's goals and objectives, including the time that key personnel will commit to the project.

(e) *Budget and cost effectiveness* (10 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Project evaluation* (10 points). The Secretary reviews each application to determine the quality of the proposed evaluation plan with respect to—

(1) Evaluating project operations and outcomes;

(2) Involving the BAC in evaluating the project's job training, placement, and career advancement activities;

(3) Meeting the annual evaluation reporting requirements in § 379.21(a)(5);

(4) Determining compliance with the indicators; and

(5) Addressing any deficiencies identified through project evaluation.

(Approved by the Office of Management and Budget under control number 1820-0612.)

(Authority: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

##### § 379.31 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria in § 379.30, the Secretary, in making awards under this program, considers—

(a) The equitable distribution of projects among the States; and

(b) The past performance of the applicant in carrying out a similar PWI project under previously awarded grants, as indicated by factors such as compliance with grant conditions, soundness of programmatic and financial management practices, and meeting the requirements of subpart F of this part.

(Authority: Secs. 621(e)(2) and 621(f)(4) of the Act; 29 U.S.C. 795g(e)(2) and 795g(f)(4))

#### Subpart E—What Conditions Must Be Met by a Grantee?

##### § 379.40 What are the matching requirements?

The Federal share may not be more than 80 percent of the total cost of a project under this program.

(Authority: Sec. 621(c) of the Act; 29 U.S.C. 795g(c))

##### Appendix to § 379.40

(a) For example, if the total cost of a project is \$500,000, the Federal share would be no more than \$400,000 and the grantee's required minimum share (matching contribution) would be \$100,000 (provided in cash or through third party in-kind contributions). The matching contribution is based upon the total cost of the project, not on the amount of the Federal grant award.

(b) The matching contribution must comply with the requirements of 34 CFR 74.23 (for grantees that are institutions of higher education, hospitals, or other nonprofit organizations) or 34 CFR 80.24 (for grantees that are State, local, or Indian tribal governments). The term *third party in-kind contributions* is defined in either 34 CFR 74.2 or 34 CFR 80.3, as applicable to the type of grantee.

##### § 379.41 What are allowable costs?

In addition to those costs that are allowable in accordance with 34 CFR 74.27 and 34 CFR 80.22, the following items are allowable costs under this program:

(a) The costs of job readiness training, as defined in § 379.5(b)(4); job training, as defined in § 379.5(b)(5); job placement services; job development and modification; and related vocational rehabilitation services and supportive rehabilitation services.

(b) Instruction and supervision of trainees.

(c) Training materials and supplies, including consumable materials.

(d) Instructional aids.

(e) The purchase or modification of rehabilitation technology to meet the needs of individuals with disabilities.

(f) Alteration and renovation appropriate and necessary to ensure access to and use of buildings by persons with disabilities served by the project.

(g) The modification of any facilities or equipment of the employer to be used by individuals with disabilities under this program.

(Authority: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

**§ 379.42 What are the requirements for a continuation award?**

(a) A grantee that wants to receive a continuation award must—

(1) Comply with the provisions of 34 CFR 75.253(a), including making substantial progress toward meeting the objectives in its approved application and submitting all performance and financial reports required by 34 CFR 75.118; and

(2) Submit data in accordance with § 379.54 showing that it has met the program compliance indicators established in Subpart F of this part.

(b) In addition to the requirements in paragraph (a) of this section, the following other conditions in 34 CFR 75.253(a) must be met before the Secretary makes a continuation award:

(1) Congress must appropriate sufficient funds under the program.

(2) Continuation of the project must be in the best interest of the Federal Government.

(Approved by the Office of Management and Budget under control number 1820-0612.)

(Authority: Secs. 12(c) and 621(f)(4) of the Act; 29 U.S.C. 711(c) and 795g(f)(4))

**§ 379.43 What are the additional reporting requirements?**

Each grantee shall submit the data from its annual evaluation of project operations required under § 379.21(a)(5) no later than 60 days after the end of each project year, unless the Secretary authorizes a later submission date.

(Approved by the Office of Management and Budget under control number 1820-0612.)

(Authority: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

**Subpart F—What Compliance Indicator Requirements Must a Grantee Meet To Receive Continuation Funding?**

**§ 379.54 What are the reporting requirements for the compliance indicators?**

(a) In order to receive continuation funding for the third or any subsequent year of a PWI grant, each grantee must submit data for the most recent complete project year no later than 60 days after the end of that project year, unless the Secretary authorizes a later submission date, in order for the Secretary to determine if the grantee has

met the program compliance indicators established in this Subpart F.

(b) If the data for the most recent complete project year provided under paragraph (a) of this section shows that a grantee has failed to achieve the minimum composite score required in § 379.52(f) to meet the program compliance indicators, the grantee may, at its option, submit data from the first 6 months of the current project year no later than 60 days after the end of that 6-month period, unless the Secretary authorizes a later submission date, to demonstrate that its project performance has improved sufficiently to meet the minimum composite score.

(Approved by the Office of Management and Budget under control number 1820-0612.)

(Authority: Sec. 621(f)(2) of the Act; 29 U.S.C. 795g(f)(2))

Note: A grantee receives its second year of funding (or the first continuation award) under this program before data from the first complete project year is available. Data from the first project year, however, must be submitted and is used (unless the grantee exercises the option in paragraph (b) of this section) to determine eligibility for the third year of funding (or the second continuation award).

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**§ 379.53 [Amended]**

2. Section 379.53 is amended by adding “(Approved by the Office of Management and Budget under control number 1820-0612.)” before the authority citation at the end of the section.

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