

Commissioner Carol Dobak  
Rehabilitation Services Administration  
Office of Special Education and Rehabilitative Services  
U.S. Department of Education  
400 Maryland Ave SW, Room 5153  
Potomac Center Plaza  
Washington, DC 20202

December XX, 2021

Re: FAQs 22-02, Criterion for an Integrated Employment Location in the Definition of “Competitive Integrated Employment” and Participant Choice

Dear Commissioner Dobak,

We are writing in response to the guidance released on Oct. 29 by the Rehabilitation Services Administration titled, *Frequently Asked Questions: Criterion for an Integrated Employment Location in the Definition of “Competitive Integrated Employment” and Participant Choice*.

The newly released FAQs make it difficult for State Vocational Rehabilitation (VR) agencies to classify AbilityOne jobs as competitive integrated employment (CIE). As the combined employers of more than 40,000 people with disabilities in the AbilityOne Program, including 3,000 veterans, we are concerned about the devastating impact this may have on job opportunities for this segment of the workforce.

Collaboration between State VR programs, nonprofit agencies, and federal disability employment programs like AbilityOne is needed to ensure that employment opportunities continue to be available for these talented individuals.

The updated FAQs point to employment opportunities found within the Javits-Wagner-O’Day Act (JWOD) as an example of job positions for which individuals with disabilities are hired to comply with a direct labor hour ratio requirement and defines them as “likely are not considered ‘typically found in the community.’” This imposes serious restrictions on the many jobs offered by the SourceAmerica network through the AbilityOne Program.

The revision appears to be predicated on the erroneous assumption that is reflected in Question 7 of the FAQs which states that AbilityOne jobs are not open to all applicants. The FAQs make an unfounded distinction between hiring to comply with a direct labor hour ratio and affirmatively seeking to hire individuals with disabilities. This is based on the expectation that only job positions in the latter circumstance are open to all applicants. However, AbilityOne nonprofit agencies maintain a diverse workforce, and anyone, regardless of their disability status, can apply for these jobs. AbilityOne positions are open to any qualified applicant with or without a disability so long as the nonprofit agency maintains the 75% direct labor hour ratio as required by the JWOD Act.

In response to comments received during the rulemaking period, RSA declined to specify that jobs under the JWOD Act and similar state law such as the State Use Program are “typically found in the community,” citing a “long-standing Department interpretation” that considers those jobs outside the community because “such settings are not found in the competitive labor market.”

We disagree with that interpretation. The mission of many of our organizations has evolved over time and many of us function as private nonprofit agencies and local job creators. Additionally, some of our organizations are the largest employers of people with disabilities in our respective communities, playing an important role in local economies.

We strongly encourage RSA to reconsider the framing of job positions “typically found in the community.” In fact, the majority of AbilityOne jobs do meet the other statutory requirements for integrated employment. AbilityOne employees perform the same work, are held to the same performance standards, and have the same opportunities for advancement as their co-workers without disabilities. Many AbilityOne employees with disabilities are also compensated “at a rate of the higher of the Federal, State, or local minimum wage applicable to the place employment, and not less than the customary rate paid by the employer to employees without disabilities performing the same or similar work and who have similar experience, training, and skills.” Nearly all of the people employed in positions through the AbilityOne Program were paid an average hourly wage of \$15 in 2020.

RSA also states that the updated FAQs make clear that VR agencies are not to make “blanket determinations” when conducting case-by-case analysis of the integrated nature of the employment location for an individual’s job position, including those in community rehabilitation programs. While we appreciate the emphasis placed on the need for case-by-case analysis, this is not a sufficient justification to avoid making changes to the guidance. The U.S. Department of Education’s long-standing policy on what is considered “typically found in the community” has been a factor in at least 22 states adopting a blanket approach where they do not currently assess any jobs in the AbilityOne Program on a case-by-case basis.

The updated guidance will likely exacerbate an already serious problem and encourage other states to take similar blanket approaches to AbilityOne jobs. If RSA continues to be reticent in updating FAQ guidance, we strongly encourage the consideration of alternative approaches to deal with states adopting blanket decisions regarding job opportunities in the AbilityOne Program that are in direct contradiction to the guidance. To that end, we suggest RSA offer targeted webinars or technical assistance to provide an opportunity for stakeholders to engage and better understand guidance requirements, including the obligation to conduct case-by-case analysis.

AbilityOne and other federal disability employment programs are more important than ever with the unemployment rate for people with disabilities on the rise as a result of the COVID-19 pandemic. The revised guidance imposes unnecessary and costly barriers to nonprofit agencies interested in providing employment options for people with disabilities, potentially limiting future opportunities for this skilled segment of the American workforce.

If you have any additional questions, please reach out to SourceAmerica’s Vice President of Government Affairs, Stacy Palmer Barton, at [spalmerbarton@sourceamerica.org](mailto:spalmerbarton@sourceamerica.org).

Sincerely,