

QUESTIONS AND ANSWERS

Section 511 of the Rehabilitation Act – Limitations on Use of Subminimum Wage

April 8, 2021

The U.S. Departments of Education and Labor (Departments) have jointly developed the following Questions and Answers to provide information to employers, agencies, and individuals with disabilities concerning limitations on the payment of a subminimum wage, that is, a wage below the Federal minimum wage, to individuals with disabilities. These limitations are imposed by Section 511 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA) (29 U.S.C. § 794g).

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

One of WIOA's primary purposes is to increase access to and opportunities for the employment, education, training, and support services needed for individuals with barriers to employment, including individuals with disabilities, to succeed in the labor market (see Section 2(1) of WIOA). To accomplish this, WIOA aligns the Vocational Rehabilitation (VR) program with other core programs of the workforce development system and also brings together various entities in workforce, educational, and human resource programs to create a seamless, customer-focused service delivery network that integrates service delivery across programs, enhances access to services, and improves long-term employment outcomes for individuals with disabilities.

Section 511 of the Rehabilitation Act imposes specific requirements on designated State units (DSUs), the State agencies responsible for the administration of the State VR program; local educational agencies (LEAs) and State educational agencies (SEAs); and entities holding special wage certificates (employers or certificate holders) under Section 14(c) of the Fair Labor Standards Act of 1938, as amended (FLSA), 29 U.S.C. § 214(c).

The U.S. Department of Education, Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration issued final regulations implementing the requirements of Section 511 that fall within its purview in 34 C.F.R. part 397 (81 FR 55630 (August 19, 2016)). These regulations are located at <https://www.federalregister.gov/documents/2016/08/19/2016-15980/state-vocational-rehabilitation-services-program-state-supported-employment-services-program>.

The U.S. Department of Labor, Wage and Hour Division issued Field Assistance Bulletin (FAB) No. 2016-2 at <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2016-2> and released Fact Sheet #39H at <https://www.dol.gov/agencies/whd/fact-sheets/39h-14c-WIOA> regarding

implementation of the requirements of Section 511 that fall under its purview and relate to enforcement of Section 511's limitations on payment of subminimum wages under Section 14(c) of the FLSA.

General Information

Q1. When did the requirements of Section 511 take effect?

Section 511 of the Rehabilitation Act took effect July 22, 2016, two years after WIOA was signed into law.

Q2. What is the purpose of Section 511, and how does it fit with other changes made by WIOA?

The changes mandated by WIOA, including the amendments to the Rehabilitation Act, were designed to streamline and improve workforce development, training, and education services, including services for workers with disabilities.

The addition of Section 511 is consistent with other amendments made by WIOA to the Rehabilitation Act. Throughout WIOA's amendments to the Rehabilitation Act, Congress emphasized that individuals with disabilities, including those with the most significant disabilities, can achieve competitive integrated employment as defined in Section 7(5) of the Rehabilitation Act, if provided the necessary supports and services.

The limitations on the payment of subminimum wages imposed by Section 511 require individuals with disabilities, including youth with disabilities, to satisfy certain service-related requirements in order to start or maintain, as applicable, subminimum wage employment. In addition, Section 511 establishes the roles and responsibilities of the DSUs and LEAs when assisting individuals with disabilities, including youth with disabilities, to satisfy these requirements, and places limitations on the payment of subminimum wages by Section 14(c) certificate holders unless certain conditions are met.

The requirements imposed by Section 511 ensure that individuals with disabilities, including youth with disabilities transitioning from education to employment, maximize opportunities to achieve competitive integrated employment through the services provided by DSUs and LEAs. Neither Section 511 of the Rehabilitation Act nor 34 C.F.R. part 397 eliminates the payment of subminimum wages or Section 14(c) certificates, which are issued by the U.S. Department of Labor, Wage and Hour Division, and allow for the payment of subminimum wages to individuals with disabilities by employers holding such certificates.

Q3. What requirements of Section 511 apply to youth with disabilities?

First, Section 511 requires individuals with disabilities age 24 or younger (i.e., youth) seeking subminimum wage employment as of July 22, 2016, to complete certain requirements and

provide documentation of the completion of all of those requirements prior to being paid a subminimum wage. Those requirements, as identified in statute, are as follows:

1. Receipt of transition services under the Individuals with Disabilities Education Act (IDEA) or pre-employment transition services under Section 113 of the Rehabilitation Act, as applicable (Section 511(a)(2)(A) of the Rehabilitation Act and 34 C.F.R. § 397.20(a)(1));
2. Application for the VR program with the result that—
 - a. the youth was found ineligible; OR
 - b. the youth was found eligible; and
 - i. had an individualized plan for employment (IPE);
 - ii. worked toward an employment outcome, as described on the IPE, with appropriate supports and services for a reasonable period without success; and
 - iii. the VR case was closed (Section 511(a)(2)(B)(i) of the Rehabilitation Act and 34 C.F.R. § 397.20(a)(2)); and
3. Receipt of career counseling and information and referral services to Federal and State programs and other resources in the individual's geographic area that offer employment-related services and supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment (Section 511(a)(2)(B) of the Rehabilitation Act and 34 C.F.R. § 397.20(a)(3)).

Except for career counseling and information and referral services, as described in more detail below, the requirements outlined above apply only to youth with disabilities who were or are seeking subminimum wage employment after July 22, 2016, and do not apply to youth with disabilities who were employed as of that date by a Section 14(c) certificate holder.

Second, Section 511 also requires that all youth with disabilities receive career counseling and information and referral services, as well as information about self-advocacy, self-determination, and peer mentoring training opportunities. Youth with disabilities must receive these services once every six months for the first year of employment at a subminimum wage and annually thereafter for as long as the youth remains employed at subminimum wage (Section 511(c)(2) of the Rehabilitation Act and 34 C.F.R. § 397.40(c)).

All youth with disabilities who were employed at subminimum wage on the effective date of Section 511 must have received these services at least once between the effective date of July 22, 2016, and July 22, 2017, and annually thereafter for the duration of such employment. These services are the same as those required for individuals with disabilities of any age that are described in Q4 below.

Q4. What requirements of Section 511 apply to employees with disabilities of any age?

Section 511 prohibits a Section 14(c) certificate holder from continuing to pay an employee with a disability, regardless of age, a subminimum wage unless—

1. The DSU provides the employee with career counseling and information and referral services (Section 511(c)(1)(A) of the Rehabilitation Act and 34 C.F.R. § 397.40(a)); and
2. The employer provides the individual with information about self-advocacy, self-determination, and peer mentoring training opportunities available in the individual's geographic area (Section 511(c)(1)(B) of the Rehabilitation Act). Small business employers (those with fewer than 15 employees) may satisfy the requirement to provide information about self-advocacy, self-determination, and peer mentoring training to employees paid subminimum wages by referring those employees to the DSU, which must provide those services (Section 511(c)(3) of the Rehabilitation Act and 34 C.F.R. § 397.40(b)).

Career counseling and information and referral services must be provided by the DSU, and information about self-advocacy, self-determination, and peer mentoring training opportunities must be provided by the employer (or the DSU, as applicable) every six months for the individual's first year of subminimum wage employment and annually thereafter for the duration of subminimum wage employment (Section 511(c)(2) of the Rehabilitation Act and 34 C.F.R. § 397.40(c)).

Employees with disabilities who were employed at subminimum wage on the effective date of Section 511 should have received these services at least once between the effective date of July 22, 2016, and July 22, 2017, and annually thereafter.

Section 511 Requirements that Fall under the Purview of the U.S. Department of Education

Q5. What requirements must DSUs, SEAs, and LEAs satisfy under Section 511 and its implementing regulations?

The U.S. Department of Education is responsible for ensuring that the DSUs, SEAs, and LEAs comply with the service delivery and documentation requirements, as well as the contract prohibition, imposed by Section 511 as follows:

- a. DSUs and/or LEAs, as appropriate, must provide, transition services under IDEA or pre-employment transition services under Section 113 of the Rehabilitation Act to a youth with a disability who is seeking subminimum wage employment. The DSU must provide documentation to the youth upon the completion of those services (Section 511(a)(2)(A) and (d) of the Rehabilitation Act and 34 C.F.R. §§ 397.10(c), 397.20, and 397.30);
- b. DSUs must provide documentation that a youth with a disability who is seeking subminimum wage employment has applied for and has been determined either ineligible or eligible for VR services. If the DSU determines the youth to be eligible, the youth must be provided the VR services specified in their IPE, reasonable accommodations, and appropriate supports and services for the youth to work toward

- an employment outcome for a reasonable period of time. If a youth is unsuccessful in achieving the employment outcome specified in the IPE, the DSU must provide documentation to the youth upon the completion of services that indicates the youth was unsuccessful in achieving the employment outcome and that the youth's VR case has been closed (Section 511(a)(2)(B) and (d) of the Rehabilitation Act and 34 C.F.R. § 397.20(a)(2) and (b));
- c. DSUs must provide career counseling and information and referral services to youth with disabilities who are known to be seeking employment at subminimum wage, and must provide documentation to the individuals upon the completion of those services (Section 511(a)(2)(B)(ii) and (d) of the Rehabilitation Act and 34 C.F.R. § 397.20(a)(3));
 - d. The DSU, in consultation with the SEA, must develop a process, or use an existing process, that ensures youth with disabilities receive documentation of completion of the required activities, which the youth must provide to employers holding Section 14(c) certificates, prior to being paid a subminimum wage (Section 511(d) of the Rehabilitation Act and 34 C.F.R. § 397.10);
 - e. LEAs must provide DSUs (who, in turn, will provide the documentation to the youth) with documentation demonstrating that a youth with a disability seeking subminimum wage employment has completed transition services under IDEA. The LEA must provide the documentation as soon as possible, but no later than 30 days after completion (or 60 days if additional time is necessary due to extenuating circumstances). The LEA must also provide a cover sheet upon completion that itemizes the documentation provided (Section 511(d)(2)(A)(ii) of the Rehabilitation Act and 34 C.F.R. § 397.30(c));
 - f. LEAs must ensure that all privacy and confidentiality requirements under the Family Educational Rights and Privacy Act (FERPA) and IDEA are satisfied prior to transmitting documentation to the DSU (34 C.F.R. § 397.30(a));
 - g. DSUs must also provide career counseling and information and referral services and, as applicable, information about self-advocacy, self-determination, and peer mentoring training opportunities to individuals with disabilities of any age who are employed at a subminimum wage. DSUs must provide these services at required intervals and must provide documentation to the individuals upon their completion (Section 511(c)(1)(A), (2) and (3), and (d)(2) of the Rehabilitation Act and 34 C.F.R. § 397.40);
 - h. DSUs must provide documentation of completed activities to individuals with disabilities, including a cover sheet that itemizes each of the documents that have been provided to the youth, and the documentation received from LEAs about a youth's completion of transition services under IDEA, as soon as possible, but no later than 45 days after the completion of such activities or, in extenuating circumstances, within 90 days of completion, and must maintain records of this documentation in accordance with 2 C.F.R. § 200.333 (Section 511(d) of the Rehabilitation Act and 34 C.F.R. §§ 397.10(a)(3) and (c)(2) and 397.40(d));
 - i. LEAs and SEAs are prohibited from entering into a contract with an entity holding a Section 14(c) certificate for the purpose of operating a program that compensates youth at a subminimum wage (Section 511(b)(2) of the Rehabilitation Act and 34 C.F.R. § 397.31);

- j. DSUs are authorized to review required individual documentation that is maintained by employers that hold Section 14(c) certificates for all individuals with disabilities who are employed at a subminimum wage (Section 511(e)(2)(B) of the Rehabilitation Act and 34 C.F.R. § 397.50); and
- k. DSUs may refer information about potential compliance issues related to the payment of a subminimum wage to the U.S. Department of Labor, Wage and Hour Division (34 C.F.R. § 397.50(b)).

Q6. What are the timeframes for providing the required services and documentation to individuals with disabilities seeking or already employed at subminimum wage?

For youth with disabilities seeking employment at subminimum wage

Once a youth with a disability seeking employment at subminimum wage becomes known to the DSU, through self-referral, referral from another agency or a certificate holder, through the VR process, or any other means, the DSU must provide the required services (and documentation of the completion of those services) within a reasonable time of learning the identity of the youth interested in seeking subminimum wage employment.

The completion dates of these services and required documentation will vary from youth to youth because the services provided are individualized, meaning that some may take longer than others. In general, DSUs must provide the youth with documentation upon the completion of all activities required by Section 511 as soon as possible, but no later than 45 days after completion or, in extenuating circumstances (e.g., natural disaster or prolonged absence of responsible person), within 90 days. When transmitting documentation of the last activity completed, the DSU must provide a cover sheet that itemizes each of the documents that has been provided to the youth (34 C.F.R. § 397.10(c)(2) and (3)).

- a. LEAs, after ensuring all privacy and confidentiality requirements imposed by FERPA and IDEA are satisfied, must provide DSUs with documentation demonstrating a youth with a disability has completed the requisite transition services under IDEA, as applicable. This documentation must be transmitted to the DSU as soon as possible upon the completion of each of the required actions, but no later than 30 days after the completion of the required activities or, in extenuating circumstances, within 60 days. When transmitting the last documentation regarding the transition services provided to a youth with a disability under IDEA, the LEA must provide a cover sheet that itemizes the documentation that has been provided to the DSU regarding that youth (34 C.F.R. § 397.30).
- b. DSUs must provide pre-employment transition services under Section 113 of the Rehabilitation Act to the youth with a disability who is seeking subminimum wage employment, if appropriate. As noted above, the DSU must generally provide documentation to the youth as soon as possible and within 45 days of completion of those services (Section 511(a)(2)(A) and (d) of the Rehabilitation Act and 34 C.F.R. §§ 397.10(c), 397.20, and 397.30).
- c. The youth with a disability seeking subminimum wage must apply for VR services, and a determination must be made as to whether the youth is eligible. If eligible, the

VR agency must develop an IPE with the youth identifying the VR services needed and provide those services. The youth with a disability must then be found to be unable to achieve an employment outcome after a reasonable period of time and the individual's case record of services must be closed (Section 511(a)(2)(B) of the Rehabilitation Act and 34 C.F.R. § 397.20(a) and (b)).

In addition, the DSU must provide the youth with career counseling and information and referral services (Section 511(a)(2)(B)(ii) of the Rehabilitation Act). The DSU must provide the career counseling and information and referrals within 30 days of the VR ineligibility determination or case closure (34 C.F.R. § 397.20(a)(3)(ii)(C)).

For individuals with disabilities of any age (including youth with disabilities) who are employed at a subminimum wage

Section 511(c)(2) requires that DSUs provide career counseling and information and referral services to these individuals once every six months for the first year of subminimum wage employment and annually thereafter for the duration of their employment at a subminimum wage.

This means the DSU must provide these services to all individuals known to the DSU who are employed at a subminimum wage within a reasonable period of time after learning the identity of these individuals, and at the required intervals thereafter.

The DSU must provide documentation of the completion of these services to the individual with a disability employed at a subminimum wage as soon as possible, but no later than 45 days after completing the services or, in extenuating circumstances, within 90 days (34 C.F.R. § 397.40).

To the extent possible, the date of employment of the individual with a disability at a subminimum wage should be provided to the DSU by the individual or the Section 14(c) certificate holder to ensure that the services can be provided within the first six months of subminimum wage employment as required (Section 511(c) of the Rehabilitation Act and 34 C.F.R. § 397.40).

For individuals with disabilities of any age employed at a subminimum wage by a small business employer (fewer than 15 employees) who are referred to the DSU by the employer

The DSU must also provide these individuals with information about self-advocacy, self-determination, and peer mentoring training opportunities, as well as the career counseling and information and referrals at the required intervals. The DSU must provide the information within 30 calendar days of the referral and must provide documentation of the completion of this service to the individual as soon as possible, but no later than 45 days after completing the service or, in extenuating circumstances, within 90 days (34 C.F.R. § 397.40(b) and (d)).

Q7. What happens if a youth with a disability is found ineligible for the VR program?

If a youth with a disability is determined to be ineligible for the VR program, as defined in Section 102(a)(5)(C) of the Rehabilitation Act, the DSU must provide the youth documentation of that determination (as well as of the provision of the required transition or pre-employment transition services, as appropriate, and career counseling and information and referral services) prior to being employed at a subminimum wage by a Section 14(c) certificate holder (Section 511(a)(2)(B)(i)(I), (ii), and (d)(2) of the Rehabilitation Act).

Q8. When a youth with a disability has applied and been found eligible for VR services, what is the “reasonable period of time” needed to determine if the youth can successfully achieve an employment outcome?

Determining what is a “reasonable period of time” should be based on the needs of the individual and the individual’s disability. A “reasonable period of time” must take into account the disability-related and vocational needs of the youth as well as the anticipated length of time required to complete the services identified in the IPE to achieve an employment outcome.

The timeframe for providing supported employment services, that is, services provided to individuals with the most significant disabilities following job placement, is prescribed in Section 7(39) of the Rehabilitation Act and 34 C.F.R. § 361.5(c)(54), but the Rehabilitation Act does not limit the amount of time for providing any other VR service.

Q9. What happens if an individual with a disability, or the individual’s guardian or representative, chooses not to participate in the required activities and services set forth in Section 511?

Although Section 511 of the Rehabilitation Act and 34 C.F.R. part 397 establish prerequisites for youth with disabilities to work in subminimum wage employment under Section 14(c) and requirements for individuals with disabilities of any age to continue working at subminimum wage, as with any VR service, the youth or individual with a disability, or the individual’s parent, guardian, or representative, as applicable, may exercise informed choice and not participate in the required activities.

The DSU must document the individual’s decision to forgo the required activities under Section 511 and provide such documentation to the individual with the disability and/or to the individual’s parent, guardian, or representative within 10 calendar days in accordance with 34 C.F.R. §§ 397.10(a)(2) and (c)(2)(ii) and 397.40(d)(1)(ii). Furthermore, the DSU must maintain a copy of this documentation in accordance with 34 C.F.R. § 397.10(a)(3). The DSU should also inform the individual that not satisfying the requirements under Section 511 will result in the employer not being permitted to pay a subminimum wage to them.

If a youth or individual with a disability does not complete the activities required by Section 511, an employer holding a Section 14(c) certificate under the FLSA will not be permitted to pay that youth or continue to pay that individual at a subminimum wage. However, the employer holding

a Section 14(c) certificate may employ a youth or individual with a disability if the employer pays the employee minimum wage or higher.

Q10. Can the DSU contract with an independent organization or provider to deliver the services required by Section 511?

Yes. However, a DSU may not contract with a Section 14(c) certificate holder to provide any of the services required under Section 511(c). In addition, any contractor should have the professional skills and knowledge to provide career counseling and information and referral services to individuals with disabilities and/or the knowledge to provide information about local self-advocacy, self-determination, and peer mentoring training opportunities to individual employees of a small business Section 14(c) certificate holder, if contracted to provide such information.

Regardless of whether a DSU contracts with other organizations or providers to deliver services required by Section 511, all documentation of the completion of those services must be signed and provided by the DSU to the individual with a disability (34 C.F.R. § 397.40(d)(3)(iv) and (e)).

Section 511 Requirements Affecting Entities Holding Certificates under Section 14(c) of the FLSA that Fall under the Purview of the U.S. Department of Labor, Wage and Hour Division

Q11. Do the Section 511 requirements apply to all entities that hold a Section 14(c) certificate from the U.S. Department of Labor and to all workers with disabilities receiving a subminimum wage from those entities?

Yes. Certificates under Section 14(c) are issued to employers in various types of employment settings, including work centers, also known as community rehabilitation programs (CRPs); hospital/residential care centers (facilities that employ patient workers); business establishments that are not work centers or employers of patient workers; and schools that place students with disabilities at work sites in the community (School Work Experience Programs).

Section 511 prohibits any entity that holds a Section 14(c) certificate from paying a subminimum wage to an individual with a disability, including a youth with a disability, unless specific requirements are met, regardless of the type of Section 14(c) certificate held by the employer, its funding source, tax status, industry, or any other characteristic.

Additionally, the Section 511 requirements apply to all workers with disabilities paid a subminimum wage by a Section 14(c) certificate holder, regardless of whether the individual is employed on a full- or part-time basis, earns some additional wages above the Federal minimum wage, or also works in competitive integrated employment in addition to working for a Section 14(c) certificate holder (Section 511(a) and (c) of the Rehabilitation Act).

Q12. What are the limitations imposed on Section 14(c) certificate holders by Section 511?

Section 511 limits the ability of employers to pay a subminimum wage to workers with disabilities. These requirements are in addition to, and do not replace, the existing requirements of Section 14(c) of the FLSA. Certificate holders must comply with both sets of requirements.

Section 14(c) certificate holders may no longer pay individuals with disabilities age 24 or younger (i.e., youth with disabilities) at a subminimum wage unless they obtain, verify, and maintain copies of documentation proving that these youth have received and completed all of the activities or services required (Section 511(a) and (e) of the Rehabilitation Act), unless these individuals were employed by the Section 14(c) certificate holder as of July 22, 2016.

In addition, Section 14(c) certificate holders may no longer pay a subminimum wage to any individual with a disability, regardless of age (including a youth with a disability), unless they review and verify documentation that the individual has received career counseling, and information and referrals from the DSU, and the employer (certificate holder) has provided the individual with information about self-advocacy, self-determination, and peer mentoring training opportunities available in the local area.

Both the counseling and the information must be provided to individuals every six months in the first year of subminimum wage employment and annually thereafter for the duration of subminimum wage employment (Section 511(c) and (e) of the Rehabilitation Act). Employers are strongly encouraged to maintain copies of this documentation as the employer will be requested to provide proof that the services were provided to all employees with disabilities being paid a subminimum wage and that verification and review have taken place (Section 511(e) of the Rehabilitation Act and FAB No. 2016-2).

A certificate holder with fewer than 15 employees may refer employees to the DSU for both the career counseling and the training opportunity information at the required intervals (Section 511(c)(3) of the Rehabilitation Act and 34 C.F.R. § 397.40(b) and (c)).

Q13. When must a Section 14(c) certificate holder provide information about self-advocacy, self-determination, and peer mentoring training opportunities, as required by Section 511?

Employers must inform individuals with disabilities (including youth with disabilities) working at a subminimum wage, regardless of age, of self-advocacy, self-determination, and peer mentoring training opportunities available in the community once every six months for the first year of the individual's subminimum wage employment and annually thereafter for the duration of subminimum wage employment (Section 511(c)(1)(B) and (2) of the Rehabilitation Act).

Q14. Are there any other requirements imposed by Section 511 on entities holding Section 14(c) certificates under the FLSA?

Yes. Entities holding Section 14(c) certificates must submit to documentation reviews by the DSU, or its contractor, or the U.S. Department of Labor. The purpose of documentation reviews

is to ensure that the employers are maintaining required documentation (Section 511(e) of the Rehabilitation Act).

It is also important to know that an LEA or SEA may not enter into a contract or other arrangement with an entity holding a Section 14(c) certificate for the purpose of operating a program for youth under which work is paid at a subminimum wage. See Q5 above and Section 511(b)(2) of the Rehabilitation Act.

Q15. If a school holds a Section 14(c) School Work Experience Program (SWEP) certificate to place students in jobs in the community at subminimum wage, must each student with a disability receive documentation of the completion of the services and activities required by Section 511 before the student can be employed at subminimum wage through the SWEP?

Yes. The Section 511 limitations on subminimum wage employment by youth with disabilities apply to all certificate holders and all types of Section 14(c) certificates, including patient worker, CRP, business, and SWEP certificates (Section 511(a) of the Rehabilitation Act).

Q16. What happens if an individual with a disability, or as applicable, the individual's parent, guardian, or representative, chooses not to participate in the required activities and services set forth in Section 511?

If a youth or individual with a disability does not complete the activities required by Section 511, an employer holding a Section 14(c) certificate under the FLSA will not be permitted to pay, or continue to pay, that youth or individual at a subminimum wage.

Although Section 511 of the Rehabilitation Act and 34 C.F.R. part 397 establish prerequisites for youth with disabilities to work in subminimum wage employment and requirements for individuals with disabilities of any age to continue working at subminimum wages, as with any VR service, the youth or individual with a disability, or the individual's parent, guardian, or representative, as applicable, may exercise informed choice and not participate in the required activities.

Not participating in these activities will result in the employer not being permitted to pay a subminimum wage to that youth or individual with a disability.

Q17. What are the consequences to an employee with a disability and a certificate holder if the services required by Section 511 are not provided in a timely manner?

An employer holding a Section 14(c) certificate may not pay a subminimum wage to a youth with a disability until the youth has completed all requisite services, has received documentation demonstrating completion of those activities, and has provided that documentation to the employer for verification (Section 511(a) and (e)(1) of the Rehabilitation Act), unless the youth was employed at a subminimum wage as of July 22, 2016.

A certificate holder also may not pay or continue to pay subminimum wage to an individual with a disability, regardless of age, until the required services and information have been provided to

that individual in accordance with the timeframes established by Section 511, that is, within the first six months of subminimum wage employment for new hires (hired on or after July 22, 2016) and annually for all employees, and until the employer has verified completion of those requirements (Section 511(c) and (e)(2) of the Rehabilitation Act).

If an employer cannot provide documentation or otherwise show that the activities required by Section 511 have been completed in a timely manner for each employee with a disability, the Wage and Hour Division will enforce the Federal minimum wage for all hours worked for that employee. Only after the employee has been provided with the necessary career counseling, information and referral services, and/or information about self-advocacy, self-determination, and peer mentoring training opportunities, may a certificate holder continue to pay below the Federal minimum wage (FAB No. 2016-2).

Q18. What happens if a Section 14(c) certificate holder has contacted the DSU and attempted to obtain the required services for a worker with a disability being paid a subminimum wage, but the DSU is unable to provide all the services in a timely manner?

The certificate holder may not pay a subminimum wage until the services have been provided in accordance with Section 511 of the Rehabilitation Act and its implementing regulations at 34 C.F.R. part 397. Moreover, an employer holding a Section 14(c) certificate may not pay a subminimum wage to a youth with a disability seeking subminimum wage employment until the youth has provided documentation demonstrating completion of all the required services and activities, in accordance with Section 511(a) and (e)(1) of the Rehabilitation Act.

Q19. What documentation should the Section 14(c) certificate holder keep to show the required services have been completed for each worker with a disability?

For individuals with disabilities age 24 or under who were not employed as of July 22, 2016, employers must review, verify, and maintain copies of documentation provided by the youth indicating that the individual has completed all the requirements of Section 511 prior to beginning work at a subminimum wage (Section 511(a) and (e)(1) of the Rehabilitation Act).

For other individuals with disabilities employed at a subminimum wage, including youth with disabilities, employed prior to July 22, 2016, employers will be required to provide proof that the requirements of Section 511 have been met at the required intervals and that verification and review have taken place.

No specific form or method of documentation is required by Section 511. However, 34 C.F.R. part 397 describes minimum requirements for the documentation that the DSU must provide to the individual with a disability, including a youth with a disability, upon the completion of services and activities required (Section 511(c) and (e)(2) of the Rehabilitation Act and 34 C.F.R. §§ 397.10, 397.20, and 397.40).

See also Q5 above for information about the DSU's responsibilities.

Coordination of Efforts to Ensure Section 511 Requirements are Met

Q20. How can DSUs and Section 14(c) certificate holders work together to ensure that the requirements of Section 511 are met?

Coordination between the DSUs and Section 14(c) certificate holders is essential for ensuring the requirements of Section 511 are satisfied. Coordination will help DSUs identify individuals with disabilities and provide them with the required services within the timeframes established by Section 511. Coordination between the DSUs and other State agencies or service providers also could be beneficial in ensuring the requirements of Section 511 are satisfied. Coordination can occur in many ways, such as—

- a. Entities holding Section 14(c) certificates may inform DSUs of the names and contact information for youth with disabilities seeking subminimum wage employment and/or individuals of any age who are employed at subminimum wage;
- b. LEAs, other agencies, or other public or private nonprofit providers upon receiving informed written consent (and satisfying privacy and confidentiality requirements under FERPA and IDEA, as applicable) from the individual or the individual's representative, as appropriate, may inform DSUs of the names and contact information for youth with disabilities seeking subminimum wage employment and/or individuals of any age who are employed at subminimum wage;
- c. Entities holding Section 14(c) certificates, LEAs, other State agencies, and other public and private providers serving individuals with disabilities may inform those individuals about how to contact the appropriate DSU directly for the necessary services;
- d. Entities holding Section 14(c) certificates may permit DSUs to conduct individualized or group career counseling and provide information and referral services during an agreed-upon time at the employer's worksite;
- e. DSUs may provide individualized counseling sessions, in connection with or instead of any group sessions, to offer more personalized information and may provide the necessary documentation to the individual immediately;
- f. DSUs may provide posters or other literature with critical information for individuals with disabilities to employers and offices of other public or private agencies or programs serving individuals with disabilities; and
- g. DSUs may provide a copy of the documentation that is given to the individual directly to the entity holding a Section 14(c) certificate, after getting informed written consent from the individual or the individual's representative, as applicable, to do so. It is important to note that the DSU must transmit the documentation to the individual with a disability because the working relationship is between the DSU and the individual, not the DSU and the employer. However, in the interests of coordination and efficiency, the individual could give permission to the DSU to also provide a copy of the documentation directly to the individual's current employer.

Coordination should take into account that career counseling and information and referral services can be provided to individual workers with disabilities at different times, as long as the

services are provided within the required timeframe (for example, every six months or once a year, depending on when the individual with a disability began employment at a subminimum wage).

Further Assistance and Resources

Rehabilitation Services Administration (RSA) guidance related to WIOA and Section 511 can be found at the RSA website at: <https://rsa.ed.gov>.

Wage and Hour Division (WHD) guidance regarding enforcement of Section 511's requirements can be found at WHD's Workers with Disabilities website at: <https://www.dol.gov/agencies/whd/workers-with-disabilities>.

A list of VR agencies may be found at: <https://rsa.ed.gov/about/states>.

A list of Section 14(c) certificate holders may be found at: <https://www.dol.gov/agencies/whd/workers-with-disabilities/employers>.