

U.S. DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES  
REHABILITATION SERVICES ADMINISTRATION

March 8, 2021  
FAQ 21-03

Frequently Asked Questions

Criterion for an Integrated Employment Location  
in the Definition of “Competitive Integrated Employment”  
and Participant Choice

**Overview**

The Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for further clarification of the definition of “competitive integrated employment,” particularly with respect to: (1) the criterion for an “integrated employment location” (i.e., the integration standards for the location of the employment) in the definition of “competitive integrated employment” for purposes of the Vocational Rehabilitation (VR) program; and (2) how the criterion for an integrated employment location in the definition affects a VR program participant’s ability to exercise informed choice.

The information in these FAQs provides guidance and technical assistance to VR agencies and community rehabilitation programs (CRPs) so they may assist individuals with disabilities to achieve high-quality employment and exercise their informed choice about the type of employment to pursue, either with assistance from the VR program or from other community resources.

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. In addition, it does not create or confer any rights for or on any person.

The key sections of the Rehabilitation Act of 1973, as amended (Rehabilitation Act), discussed below include the following: Sections 7(5), 7(11), 7(20)(A), 7(38), 100(a), 102(a), 102(b), 102(d), and 111(a)(1) of the Rehabilitation Act (29 U.S.C. §§ 705(5), 705(11), 705(20)(A), 705(38), 720(a), 722(a), 722(b), 722(d), and 731(a)(1)).

In developing these Frequently Asked Questions (FAQs), OSERS met with a variety of stakeholders over the past three years to obtain a better understanding of how VR agencies and CRPs have implemented the criterion for an integrated employment location in “competitive integrated employment,” as defined at Section 7(5) of the Rehabilitation Act, as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA) (29 U.S.C. § 705(5)), and 34 C.F.R. § 361.5(c)(9), and the effect that implementation has had on individual choice. These FAQs respond to many of the concerns we heard during those meetings by clarifying and

updating a similar set of FAQs, issued January 17, 2017, titled [“Frequently Asked Questions: Integrated Location Criteria of the Definition of ‘Competitive Integrated Employment’”](#).

In these updated FAQs, OSERS clarifies the Department’s policy with respect to the criterion for an integrated employment location in the definition of “competitive integrated employment,” set forth at Section 7(5)(B) of the Rehabilitation Act (29 U.S.C. § 705(5)(B)) and 34 C.F.R. § 361.5(c)(9)(ii). Specifically, OSERS recognizes that job opportunities for individuals with disabilities, including individuals with the most significant disabilities, are becoming more diverse and integrated as the 21<sup>st</sup> century labor market continues to evolve. The VR program can play a vital role in identifying these employment opportunities on a case-by-case basis, and in training and preparing individuals with disabilities for those opportunities. Therefore, we encourage State VR agencies to continue to work with employers and other community partners to create employment opportunities that meet all criteria in the definition of “competitive integrated employment,” including the criterion for an integrated employment location.

Nevertheless, we recognize some VR program participants, represented by family members or others as appropriate, may choose to pursue work that does not meet the definition of “competitive integrated employment,” such as those work opportunities that pay subminimum wage or are not integrated in a manner consistent with the definition.

We make clear that nothing in these FAQs is to be interpreted as prohibiting an individual with a disability from exercising informed choice as to the type of work the individual wants to do. The VR program is designed to assist individuals with disabilities who choose to seek competitive integrated employment. To the extent an individual with a disability, through his or her representative as appropriate, chooses to pursue work that is beyond the scope of the VR program, the VR program plays a critical role in making the proper referrals to other community resources.

## **General Information – Definition and its Connection to the VR Program**

### **Q1. What constitutes “competitive integrated employment”?**

To be considered “competitive integrated employment,” a job position must satisfy three criteria related to wages/benefits, integration, and opportunities for advancement (Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)) and 34 C.F.R. § 361.5(c)(9)). Specifically, “competitive integrated employment” means full- or part-time work –

- In which the employee with a disability is compensated (including benefits) at a rate of the higher of the Federal, State, or local minimum wage applicable to the place of 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;
- At a location–
  - That is typically found in the community; and
  - Where the individual with a disability interacts, for the purpose of performing the duties of the job position, with other employees within the work unit and at the entire worksite, and, as appropriate for the work performed, with other persons

(e.g., customers and vendors) who are not individuals with disabilities (and who are not supervisory personnel or service providers) to the same extent that non-disabled employees interact with these persons; and

- That presents opportunities for advancement for individuals with disabilities that are similar to those available to employees without disabilities in similar positions.

Competitive integrated employment also includes work performed by individuals with disabilities who are self-employed.

While all three criteria must be satisfied, these FAQs focus primarily on the criterion for an integrated employment location in the definition. During all of OSERS' meetings with stakeholders and by a review of the inquiries received, the integrated employment location criterion has generated the most questions, particularly as it relates to employment offered by CRPs. We address these questions in these FAQs.

## **Q2. Why is it important to know whether a job position is considered “competitive integrated employment” for purposes of the VR program?**

Section 100(a)(3) of the Rehabilitation Act (29 U.S.C. 720(a)(3)) makes clear that the VR program must be carried out in such a way that individuals with disabilities are provided with the opportunity to obtain competitive integrated employment. To that end, the Department awards grants to States to carry out the VR program and provide VR services (Section 111(a)(1) of the Rehabilitation Act (29 U.S.C. § 731(a)(1))). An individual with a disability is eligible for the VR program if the individual requires VR services to prepare for, secure, retain, advance in, or regain an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice (Sections 7(20)(A) and 102(a)(1) of the Rehabilitation Act (29 U.S.C. §§ 705(20)(A) and 722(a)(1))).

For purposes of the VR program, the definition of an “individual with a disability” makes clear that he or she must be able to “benefit in terms of an employment outcome” from the receipt of VR services (Section 7(20)(A)(ii) of the Rehabilitation Act (29 U.S.C. § 705(20)(A)(ii))). An “employment outcome” means, with respect to an individual, full- or part-time competitive integrated employment (including customized employment, self-employment, telecommuting, or business ownership), or supported employment<sup>1</sup> that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice (Section 7(11) of the Rehabilitation Act (29 U.S.C. § 705(11)) and 34 C.F.R. § 361.5(c)(15)).

Therefore, to be eligible for the VR program, an individual with a disability must intend to achieve an “employment outcome,” as that term is defined (34 C.F.R. § 361.42(a)(4)). This requirement is consistent with the statutory requirements governing the mandatory components of the individualized plan for employment (IPE), which is developed once an applicant is

---

<sup>1</sup> “Supported employment,” as defined at Section 7(38) of the Rehabilitation Act (29 U.S.C. § 705(38)) and 34 C.F.R. § 361.5(c)(53), means competitive integrated employment, including customized employment, or employment in an integrated setting in which an individual with a most significant disability is working on a short-term basis toward competitive integrated employment. As such, “supported employment” constitutes an “employment outcome” under the VR program, as that term is defined at Section 7(11) of the Rehabilitation Act (29 U.S.C. § 705(11)) and 34 C.F.R. § 361.5(c)(15).

determined eligible for the VR program and which provides the approved agreement for the relationship that exists between the VR agency and the eligible individual with a disability. Pursuant to Section 102(b)(4) of the Rehabilitation Act (29 U.S.C. § 722(b)(4)), the IPE must contain, among other things, a description of the eligible individual's employment outcome that is consistent with the general goal of competitive integrated employment and the VR services needed by the individual to achieve that employment outcome.

Because of the heightened emphasis on competitive integrated employment throughout Title I of the Rehabilitation Act -- from the provisions on the purpose and policy of the VR program to requirements governing eligibility determination and IPE development -- it is essential that the VR agency determine whether a job position that an individual with a disability chooses to pursue would be considered "competitive integrated employment." The VR agency must make this determination on a case-by-case basis, as described in more detail in Q18.

**Q3. Must an individual with a disability choose competitive integrated employment?**

No. There is a wide continuum of employment opportunities available for individuals with disabilities, such as subminimum wage work, competitive non-integrated work, and competitive integrated employment, as that term is defined for purposes of the VR program. See Q19 through Q22 for a more detailed discussion on the individual's ability to exercise informed choice and the steps the VR agency must take when an individual with a disability chooses to pursue work other than competitive integrated employment.

**Q4. Who decides whether a job position is "competitive integrated employment" – RSA or the VR agency?**

The VR agency must determine whether a job position satisfies the criteria of "competitive integrated employment." See Q18 for a more detailed discussion of the case-by-case analysis that a VR agency should use in making such a determination.

**Criterion for an Integrated Employment Location – Overview**

**Q5. What standards must an employment location meet to be considered an integrated employment location for purposes of "competitive integrated employment?"**

With respect to an employment outcome for purposes of the VR program, under 34 C.F.R. §§ 361.5(c)(9)(ii) and 361.5(c)(32)(ii), an employment location must be:

- Typically found in the community; and
- Where the employee with a disability interacts, for the purpose of performing the duties of the position, with other employees within the particular work unit and the entire worksite, and, as appropriate to the work performed, other persons (*e.g.*, customers and vendors) who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons.

**Q6. Must an employment location meet both prongs of the criterion to be considered an integrated location for purposes of "competitive integrated employment?"**

Yes. The regulatory definition at 34 C.F.R. § 361.5(c)(9)(ii) uses the word “and” to connect the two requirements. Therefore, if a job position in a location satisfies only one of the two prongs of the criterion for an integrated employment location, the job would not meet the definition of “competitive integrated employment” for purposes of the VR program and, thus, would not be an employment outcome.

**Q7. Is the criterion for an integrated employment location in the regulatory definition of “competitive integrated employment” consistent with the statutory definition?**

Yes. Although the criterion for an integrated employment location in the regulatory definition of “competitive integrated employment” at 34 C.F.R. § 361.5(c)(9)(ii) is not word-for-word the statutory definition at Section 7(5)(B) of the Rehabilitation Act (29 U.S.C. § 705(5)(B)), it is consistent with the statutory definition.

The statutory definition of “competitive integrated employment” in Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)), for the most part, incorporates the prior regulatory definition of “integrated setting” as the criterion for an integrated employment location. The regulatory definition of an “integrated setting” and its standards have existed in the VR program regulations since at least 1997 (62 FR 6308, 6337-6338 (February 11, 1997)), and are consistent with the Rehabilitation Act’s heightened emphasis on ensuring individuals with disabilities are afforded maximum opportunities to engage in training and competitive employment in integrated settings. The Rehabilitation Act as amended by WIOA does not alter the scope of the criterion for an integrated setting that has existed in Department regulations since the term was first defined. Therefore, the definition of “competitive integrated employment” in 34 C.F.R. § 361.5(c)(9)(ii), while not verbatim, is nonetheless consistent with the definition of the term at Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)), prior regulations, and long-standing Department policy. See also 81 FR 55630, 55641 (Aug. 19, 2016).

**Standard for “Typically Found in the Community”**

**Q8. What is meant by “typically found in the community,” as used in the definition of “competitive integrated employment?”**

To be “typically found in the community,” an employment location setting should be:

- Found in the competitive labor market; and
- Not formed for the purpose of employing individuals with disabilities (62 FR at 6310-6311 and 81 FR at 55642-55643).

The Department’s long-standing policy, dating back to the mid-1990s, is that employment settings that are considered “typically found in the community” are those in the competitive labor market (62 FR at 6310-6311 and 81 FR at 55642). This long-standing Department interpretation is consistent with the Rehabilitation Act, as amended by WIOA, as well as with prior legislative history. Specifically, integrated setting “is intended to mean a work setting in a typical labor market site where people with disabilities engage in typical daily work patterns with co-workers who do not have disabilities; and where workers with disabilities are not congregated . . .” (Senate Report 105-166, page 10, March 2, 1998). Therefore, the Department has continued to maintain its long-standing policy interpretation, consistent with the statutory definition of “competitive integrated employment” at Section 7(5) of the Rehabilitation Act (29 U.S.C. §

705(5)), that employment location settings established specifically for the purpose of employing individuals with disabilities are not “typically found in the community” because such settings are not typically found in the competitive labor market. This is the first prong of the criterion for an integrated employment location that must be satisfied for a job position to meet the definition of “competitive integrated employment” at Section 7(5) of the Rehabilitation Act (29 U.S.C. 705(5)) and 34 C.F.R. § 361.5(c)(9) (81 FR at 55642-55643).

**Q9. How does a VR agency know whether a job position was formed for the purpose of employing individuals with disabilities?**

Many CRPs have established businesses within their organizational structure to serve two different functions: (1) to provide training and services to individuals with disabilities; and (2) to employ individuals with disabilities.

One factor that often signals a distinction between those job positions that are “typically found in the community” and those that are not is whether the job position is open to all applicants regardless of disability status. For example, if a job position is required by law to comply with a direct labor-hour ratio of individuals with disabilities, it is likely not considered “typically found in the community” (81 FR at 55643).

**Q10. What job positions could be “typically found in the community”?**

While OSERS provides some examples here, we make clear they must not be used in lieu of the VR agency’s own case-by-case analysis that is based on the unique facts of the particular job position at issue. The examples provided below, though not exhaustive, are job positions that are likely to be considered “typically found in the community”:

- Job positions in CRPs that are designed to provide services to others, even if those other persons are also individuals with disabilities (81 FR at 55643);
- Management staff and administrative staff employed by CRPs (*i.e.*, those staff who supervise and support the CRP’s “direct labor workers”); and
- Job positions that are open to any qualified applicant regardless of disability status.

In addition, the Department has long held that telework opportunities are considered “typically found in the community” (62 FR at 6311 and 81 FR at 55643). A telework option could be beneficial to individuals with disabilities. See Q18 for a more detailed discussion of the criteria to consider when conducting the case-by-case analysis.

**Standard for Interaction in the Work Unit and Worksite**

**Q11. Why is the level of interaction between individuals with and without disabilities important in determining whether a job position is in an integrated employment location for purposes of “competitive integrated employment?”**

The Department maintains its policy that the best measure of integration in an employment setting for individuals with disabilities is to require parity with the integration experienced by workers without disabilities in similar positions. Consequently, the regulations establish a standard of integration with respect to employment outcomes that ensures the same level of interaction by individuals with disabilities with non-disabled persons as that experienced by

workers without disabilities in the same or similar jobs (62 FR at 6311 and 81 FR at 55642-55645). For this reason, this standard must also be met in order for a job position to be considered in an integrated employment location and, thus, “competitive integrated employment.”

**Q12. What level of interaction is needed to satisfy the criterion for an integrated employment location?**

The regulation at 34 C.F.R. § 361.5(c)(9)(ii)(B) requires the interaction be:

- For the purpose of performing the duties of the job position;
- With other employees in the work unit in which the individual with a disability works;
- With other employees at the entire worksite; and
- With others, such as vendors and customers, as appropriate.

These standards help to ensure parity in the level of interaction between employees with disabilities and non-disabled workers.

In determining whether a particular job position satisfies the above interaction requirements and may be considered an integrated employment location, the VR agency must consider whether the employee with a disability interacts with non-disabled persons to the same extent that a non-disabled employee who performs the same work at the same employment location interacts with other individuals. For this reason, it is important to start a case-by-case analysis by looking at the specific work unit in which the individual with a disability is or will be working (*e.g.*, the team, crew, or division within an office). Because of the ability to easily compare interactions between employees with and without disabilities to the interactions between non-disabled workers and all others in the work unit, the level of interaction at the work unit level is a good measure for the VR agency to use in determining whether parity exists for employees with disabilities as compared to their colleagues without disabilities.

Similarly, the level of interaction across the entire worksite (and not just the individual work unit) provides another valuable indicator of parity with respect to interaction between employees with and without disabilities as compared to the interactions between non-disabled workers and others at the worksite. As required by 34 C.F.R. § 361.5(c)(9)(ii)(B), employees with disabilities must be able to interact with non-disabled persons at the entire worksite to the same extent that a non-disabled worker performing the same or similar work would interact with others.

While interactions between employees with disabilities and non-disabled customers and vendors are important, these interactions should not be the sole criterion used to determine whether a job position is an integrated employment location. In other words, when conducting a case-by-case analysis, a State VR agency should not consider only the interactions employees with disabilities have with non-disabled customers and vendors. Interactions with customers and vendors do not provide the same measure of parity as do the interactions between the employees themselves. Specifically, it is possible for employees with disabilities to interact with customers and vendors while also being segregated from, and having little or no interaction with, non-disabled co-workers performing the same job duties at the same employment location.

Such an outcome is not intended when implementing the definition of “competitive integrated employment” at Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)). Therefore, when promulgating regulations in 2016, we emphasized the comparison of interactions between employees with and without disabilities at the work unit and worksite levels at 34 C.F.R. § 361.5(c)(9)(ii)(B) (81 FR at 55644-55645).

**Q13. What does “for the purpose of performing the job duties” mean with respect to the level of interaction needed for “competitive integrated employment?”**

Interactions between employees with disabilities and others without disabilities for the “purpose of performing job duties” include those conversations that are necessary, ordinary, and routine when carrying out the functions of the job position (*i.e.*, those interactions specific to the performance of the job duties (81 at 55644)). Some examples could include:

- With respect to others in the employee’s work unit, collaborating on next steps for a joint project or asking for assistance to solve a problem raised by a customer;
- With respect to others at the worksite, obtaining clarification from management about a new policy decision or obtaining assistance from human resources about a personnel matter; and
- With respect to customers and vendors, placing or receiving an order for delivery or assisting a customer in making a purchase.

OSERS maintains, as has been the long-standing Department policy, that these interactions, for purposes of a case-by-case analysis conducted by the VR agency, should not take into consideration casual and social conversations between individuals with disabilities and non-disabled persons at the workplace (*e.g.*, those conversations that occur in the hallways and lunchroom when the employees are not performing work duties) (81 FR at 55644). While casual conversations are to be expected at any workplace, such conversations are not indicative of the parity of interaction contemplated by Section 7(5)(B) of the Rehabilitation Act (29 U.S.C. § 705(5)(B)). For this reason, as the Department has stated in the past, the best measure of whether an employment setting is integrated is based on the level of interaction that occurs between employees with disabilities and non-disabled persons during the performance of job duties as compared to the interactions that occur between non-disabled workers performing the same or similar work and others (62 FR at 6311 and 81 FR 55644-55645).

**Q14. What do “work unit” and “worksite” mean, as used in the definition of “competitive integrated employment?”**

Work Unit: As used in the regulatory definition of “competitive integrated employment” at 34 C.F.R. § 361.5(c)(9)(ii)(B), “work unit” may refer to all employees in a particular job category or to a group of employees working together to accomplish tasks, depending on the employer’s organizational structure (81 FR at 55643). For example, a work unit could be a team, crew, division in an office, or, depending on the organizational structure of the employer, the entire office. In other words, the work unit refers to those individuals with whom an employee works most closely during the course of performing his or her work duties.

Worksite: The worksite, as used in the standards at 34 C.F.R. § 361.5(c)(9)(ii)(B), depends on the business operations of the CRP and the location or locations where they are performed. In



general, the term refers to the broader location in which the work unit, as described above, performs its work (e.g., the entire warehouse or office building).

Use of the terms “work unit” and “worksite” in the regulation focuses the consideration of the interaction of employees with disabilities with employees without disabilities on the particular job, and the environment in which the work is performed. This focus in these criteria ensures parity exists with respect to the levels of interaction (*i.e.*, with respect to interactions necessary for the performance of job duties, not casual conversation) between employees with disabilities and non-disabled persons in both the work unit and throughout the entire worksite, as compared to the interaction that non-disabled employees have with their non-disabled co-worker peers in their work unit and throughout the entire worksite (81 FR at 55644-55645). The level of integration experienced by all individuals with disabilities employed by a CRP is not the same and is dependent on the circumstances of the particular job within each work unit and worksite of the organization.

**Q15. Do group employment settings, such as janitorial and landscaping crews in which individuals with disabilities earn competitive wages, satisfy the definition of “competitive integrated employment”?**

It depends. VR agencies must determine if any job positions, including those in mobile work units such as janitorial and landscaping crews, satisfy all criteria set forth at Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)) and 34 C.F.R. § 361.5(c)(9). As noted in Q1, only those job positions that satisfy all three criteria related to wages/benefits, integrated employment location, and opportunities for advancement would be considered “competitive integrated employment.”

In conducting its case-by-case analysis of the job position with the janitorial or landscaping crew, VR agencies must:

- Determine whether the employee with a disability is compensated at not less than the Federal, State, or local minimum wage (whichever is applicable) and at the customary rate paid similar to other non-disabled workers performing the same or similar work for the same employer, and is afforded the same opportunities for advancement as his or her non-disabled co-worker peers;
- Determine whether the job position on that janitorial or landscaping crew is “typically found in the community,” as described in more detail in Q8; and
- Analyze the parity in interaction experienced by the employee with a disability with his or her non-disabled co-workers in the work unit and at the worksite, as well as with customers and vendors as appropriate, as compared to the same level of interaction experienced by non-disabled workers performing the same or similar work with others (see Q12 through Q14). In analyzing the parity in the interaction experienced by employees with disabilities in mobile crews, VR agencies should not take into account the casual conversations these individuals have with members of the public working in or visiting the worksite. As noted in Q13, the parity in the level of interaction at both the worksite and work unit levels is based on the interaction that employees with disabilities have with their non-disabled coworkers as they perform their job duties, as compared to the level of interaction that their non-disabled co-workers have with other non-disabled coworkers when performing their job functions.

See also Q18 for a more detailed discussion about the case-by-case analysis VR agencies must conduct to determine whether a job position satisfies the definition of “competitive integrated employment.”

**Q16. Is there a ratio of individuals with disabilities to non-disabled individuals at an employment setting that would cause a job position to satisfy the criterion for an integrated employment location to be considered “competitive integrated employment?”**

No. OSERS maintains, as has been the long-standing Department policy, that it is not appropriate for the Department to compare the number of employees with disabilities to the number of individuals without disabilities for purposes of understanding the criterion for an integrated employment location in the definition of “competitive integrated employment.” Since “integrated setting” was first defined in VR program regulations, we have considered how best to capture in the definition’s criteria the intent of the statute and long-standing Department policy. In doing so, we considered whether to establish a numerical ratio and rejected that as impractical and unworkable. Given the many and varied types of employment settings in today’s economy, we cannot determine a single ratio that could be used to satisfactorily determine the level of interaction required to meet the intent underlying the definition. Rather than using a numerical standard as the measure, an “integrated setting” is best viewed in light of the quality of the interaction among employees with disabilities and persons without disabilities, when compared to that of employees without disabilities in similar positions with other persons (81 FR at 55643).

**Case-by-Case Analysis**

**Q17. Is it possible for a VR agency to determine that a job position at an employment location satisfies the definition of “competitive integrated employment,” but another job position at the same location does not?**

Yes. In conducting a case-by-case analysis, as described in more detail in Q18, the VR agency could determine that one or more job positions for individuals with disabilities meet the definition of “competitive integrated employment” at Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)) and 34 C.F.R. § 361.5(c)(9), while other job positions do not. Therefore, a VR agency should conduct a case-by-case analysis for each job position and should not generalize the analysis across an entire employment location or business.

**Q18. What factors should a VR agency consider when conducting a case-by-case analysis to determine whether a job position is “competitive integrated employment” for purposes of the VR program?**

In Q9, Q13, and Q14, we provide some standards that a VR agency should take into consideration when determining, on a case-by-case basis, whether a job position is typically found in the community, whether the interaction with others for that job position is for the purpose of performing the job duties, and whether parity exists with respect to the interaction between employees with disabilities and non-disabled individuals as compared to non-disabled workers performing the same or similar work at the work unit and the entire worksite, and with customers and vendors as appropriate. The VR agency should apply the criteria of the definition

equally to the position (81 FR at 55642). In addition to those standards, the VR agency may find the following considerations helpful in conducting its case-by-case analysis:

- Is the job position open to any qualified applicant or is it limited to applicants with disabilities?
- If the job position is limited to individuals with disabilities, does the nature of the business and/or the population served by the business necessitate such limitation (for example, a coffee shop that employs individuals who are deaf because it is established for the primary purpose of serving students and faculty of a university who are deaf)?
- Whether a reasonable person observing the ordinary performance of work at an employment setting would consider individuals with disabilities to be segregated from their non-disabled coworker peers, who are doing the same or similar work, while performing their work duties, or would a reasonable person observe employees with disabilities as integrated among and interacting with their non-disabled coworkers while performing their work duties?

The above considerations are just a few that a VR agency may find helpful in conducting a case-by-case analysis, but the list is not exhaustive. The most important considerations, however, will be those that are unique to the job position at issue and which the VR agency will observe while onsite or will know from other information.

### **Informed Choice**

#### **Q19. Do the requirements of “competitive integrated employment” prevent an individual from exercising informed choice in deciding on a job position?**

No. The requirements at Section 7(5) of the Rehabilitation Act (29 U.S.C. § 705(5)) and 34 C.F.R. § 361.5(c)(9) simply establish minimum requirements that a job position must satisfy to be considered “competitive integrated employment.” These requirements must never be construed as limiting an individual with a disability’s choice as to the type of employment the individual chooses to pursue.

Section 100(a)(3)(C) of the Rehabilitation Act (29 U.S.C. § 720(a)(3)(C)) makes clear it is the policy of the United States that the VR program be carried out in a manner that enables applicants and eligible individuals to be “active and full partners” in the VR process, so they may make “meaningful and informed choices” regarding, for example, the services received and the employment outcome to be achieved. Section 102(d) of the Rehabilitation Act (29 U.S.C. § 722(d)) and 34 C.F.R. § 361.52 implement this policy by requiring a VR agency to have policies and procedures in place that ensure each applicant and eligible individual is provided the necessary information and support services to exercise informed choice throughout the entire VR process. This means that an individual with a disability must be provided the necessary information and support to exercise informed choice with respect to employment, as well as all parts of the VR process. Implicit in this requirement is the need to ensure that an individual can exercise informed choice in deciding not to seek an “employment outcome” as that term is defined for purposes of the VR program. See Q2 for a more detailed discussion of the role of the VR program with respect to “competitive integrated employment.”

**Q20. How can a VR agency help an individual with a disability to exercise informed choice in choosing a job position?**

The VR agency should make every effort to assist an applicant for VR services or an eligible individual with a disability in a manner that facilitates independent decision-making and supports informed choice regarding employment opportunities (Sections 102(b)(3)(B) and 102(d) of the Rehabilitation Act (29 U.S.C. §§ 722(b)(3)(B) and 722(d))). Consistent with 34 C.F.R. § 361.37(b), a full discussion between the VR counselor and individual about topics such as the following could assist applicants and eligible individuals in making an informed choice regarding the full range of their employment opportunities:

- The purpose of the VR program;
- The role the VR program can play in assisting individuals with disabilities in achieving competitive integrated employment with reasonable accommodations and appropriate services and supports, including supported employment services and customized employment services;
- The impact working could have on the receipt of any State or Federal means-tested benefits, such as Social Security Administration (SSA) benefits, Medicaid, and Federally-assisted housing benefits; and
- The impact any choice not to pursue competitive integrated employment will have on the individual’s eligibility for, and receipt of, VR services.

Additionally, individuals may find it helpful when exercising informed choice to know that it is permissible under the VR program to participate in both integrated and non-integrated training and work experiences (34 C.F.R. § 361.37(b)(3)).

Despite the Rehabilitation Act’s heightened emphasis on the achievement of competitive integrated employment as an employment outcome under the VR program, we recognize there are times when an individual with a disability, after discussing all available employment options with a VR counselor in accordance with 34 C.F.R. § 361.43(a), will choose to pursue work that is not considered “competitive integrated employment” and will not result in an “employment outcome” under the VR program.

When an individual with a disability makes an informed choice not to pursue competitive integrated employment opportunities, the VR counselor must make a determination that the individual is either not eligible (if he or she is an applicant) or no longer eligible (if he or she was previously determined eligible) for the VR program, in accordance with Section 102(a) of the Rehabilitation Act (29 U.S.C. § 722(a)) and 34 C.F.R. § 361.42. At that point, the VR agency must refer the individual with a disability to other community resources that may be able to assist the individual, as required by 34 C.F.R. § 361.37(b), and described in more detail in Q22 below.

**Training and Referrals**

**Q21. What if an individual with a disability is unsure if he or she wants to pursue a job position in “competitive integrated employment”?**

Nothing in the Rehabilitation Act or its implementing regulations prohibits an individual from receiving VR services, including job training or work experience, in a non-integrated setting. In

fact, before a VR counselor refers an individual with a disability to another community resource because he or she has made an informed choice not to achieve an “employment outcome” (*i.e.*, competitive integrated employment or supported employment) under the VR program, the VR counselor must inform the individual that VR services may be provided in a non-integrated setting if necessary to prepare for employment in an integrated setting (34 C.F.R. § 361.37(b)(3)).

A VR agency may provide job training or work experience to an eligible individual if such services are needed to achieve an employment outcome under the VR program and the service is listed on the individual’s IPE. The VR counselor and eligible individual must agree on the providers of those services, in accordance with Sections 102(b) and (d) of the Rehabilitation Act (29 U.S.C. §§ 722(b) and 722(d)). Because the Rehabilitation Act and its regulations do not mandate that services be provided in an integrated setting, both the VR counselor and eligible individual could agree that job training or work experiences would be provided by a CRP in an activity that would otherwise not be considered “competitive integrated employment.” It is important to note, however, that these opportunities must be treated as training opportunities (*e.g.*, be time limited) that will lead to an employment outcome under the VR program. If that is not the intended choice of the individual, the VR agency must determine the individual as ineligible for the VR program and refer him or her to other community resources.

**Q22. What if an individual with a disability makes an informed choice not to pursue “competitive integrated employment”?**

If the VR counselor, after applying the criteria to the facts related to the particular job position chosen by the individual with a disability, determines it is not “competitive integrated employment,” 34 C.F.R. § 361.37(b) requires the VR counselor to determine the individual ineligible for VR services and refer the individual to other programs, including CRPs, for assistance in obtaining the chosen employment goal. Before making the referral pursuant to 34 C.F.R. § 361.37(b), the VR agency must:

- Explain to the individual that the VR program is designed to assist individuals with disabilities to achieve employment outcomes, as that term is defined at Section 7(11) of the Rehabilitation Act (29 U.S.C. § 705(11)) and 34 C.F.R. § 361.5(c)(15) (34 C.F.R. § 361.37(b)(1));
- Provide information regarding availability of employment options and VR services to assist the individual to achieve an employment outcome under the VR program, consistent with 34 C.F.R. § 361.52 (34 C.F.R. § 361.37(b)(2));
- Inform the individual that services can be provided in an extended (or non-integrated) setting, if necessary, for training or preparing for an employment outcome in an integrated setting (34 C.F.R. § 361.37(b)(3));
- Inform the individual with a disability that he or she can reapply to the VR program at a later date to pursue a job position that would be considered an “employment outcome” under the VR program (34 C.F.R. § 361.37(b)(4)); and
- Refer the individual with a disability to SSA so he or she can receive information about receipt of SSA benefits while working (34 C.F.R. § 361.37(b)(5)).

In making a referral consistent with 34 C.F.R. § 361.37(c), the VR agency must:

- Refer the individual with a disability to other Federal and State programs, including workforce development programs, better suited to assist the individual in achieving the chosen employment goal; and
- Provide the individual –
  - A notice of the referral;
  - Specific information for a contact at the referral agency or program; and
  - Information and advice about the services best suited to assist the individual to prepare for or obtain employment.