

designated representative by telephone at 907-463-2980 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement.* This safety zone may be enforced during the period described in paragraph (f) of this section.

(f) *Enforcement period.* This section may be enforced from 7:30 a.m. on February 25, 2020, until 5 p.m. on February 29, 2020.

Dated: February 19, 2020.

Stephen R. White,

Captain, U.S. Coast Guard, Captain of the Port Southeast Alaska.

[FR Doc. 2020-03648 Filed 2-26-20; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF EDUCATION

34 CFR Part 361

[Docket ID ED-2019-OSERS-0140]

State Vocational Rehabilitation Services Program

AGENCY: Office of Special Education and Rehabilitative Services, U.S. Department of Education.

ACTION: Policy interpretation; request for comments.

SUMMARY: The U.S. Department of Education (Department) issues this interpretation to clarify current policy and announce a change in policy regarding the use of Federal vocational rehabilitation (VR) funds reserved for pre-employment transition services.

DATES: This policy is effective February 28, 2020. We must receive your comments on or before March 30, 2020.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your

comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How to use *Regulations.gov*."

• *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about this notice of interpretation, address them to Carol Dobak, U.S. Department of Education, 400 Maryland Avenue SW, Room 5153, Potomac Center Plaza, Washington, DC 20202-5108.

Privacy Note: The Department's policy for comments received from members of the public is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

Carol Dobak, U.S. Department of Education, 400 Maryland Avenue SW, Room 5153, Potomac Center Plaza, Washington, DC 20202-5108. Telephone: (202) 245-7325. Email: Carol.Dobak@ed.gov.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments on this notice of interpretation. We will consider these comments in determining whether to take any future action.

See **ADDRESSES** for instructions on how to submit comments.

During and after the comment period, you may inspect all public comments about this interpretation by accessing *Regulations.gov*. You may also inspect the comments in person in Room 3W104, 400 Maryland Avenue SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays. If you want to schedule time to inspect comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

The Department published a request for comments in the **Federal Register** on June 22, 2017, inviting the public to

provide comments on identifying regulations and guidance for repeal, replacement, or modification. After extending the closing date from August 21, 2017 to September 20, 2017, the Rehabilitation Services Administration, within the Office of Special Education and Rehabilitative Services, received 847 comments from the public. Of those comments, and others received since September 2017, approximately 30 included questions, suggestions, and implementation concerns regarding the statutory provision requiring States to provide pre-employment transition services.

The Rehabilitation Act of 1973, as amended by title IV of the Workforce Innovation and Opportunity Act (Rehabilitation Act), requires States to reserve at least 15 percent of their VR program allotments to provide, or arrange for the provision of, pre-employment transition services to all students with disabilities in need of such services who are eligible or potentially eligible for the VR program. In response to the many questions and comments about the allowable use of the reserved funds for auxiliary aids and services and other VR services listed in the Rehabilitation Act, the Department issues this notice of interpretation to: (1) Clarify current policy regarding the use of Federal VR funds reserved for the provision of pre-employment transition services to pay for auxiliary aids and services needed by all students with disabilities in order to access or participate in required pre-employment transition services under section 113(b) of the Rehabilitation Act, and (2) announce a change in policy with respect to additional VR services needed by eligible students with disabilities that may be paid for with Federal VR grant funds reserved for the provision of pre-employment transition services and the circumstances under which those funds may be used to pay for those additional VR services.

Background

The amendments to the Rehabilitation Act made by title IV of the Workforce Innovation and Opportunity Act (WIOA) place heightened emphasis on the provision of services to students and youth with disabilities to ensure that they have meaningful opportunities to receive the training and other services they need to achieve employment outcomes in competitive integrated employment. The Rehabilitation Act, as amended by WIOA, expands not only the population of students with disabilities who may receive services under the VR program but also the kinds of services the designated State units

(DSUs) may provide to these students with disabilities who are transitioning from school to postsecondary education and employment.

Most notably, section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) require States to reserve at least 15 percent of their Federal VR grant for the provision of pre-employment transition services. Section 113(a) of the Rehabilitation Act and 34 CFR 361.48(a) require DSUs for the VR program to use the reserved funds to provide, or arrange for the provision of, pre-employment transition services to all students with disabilities in need of such services who are eligible or potentially eligible for services under the VR program.

Section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2) list the five required pre-employment transition services that DSUs, in collaboration with local educational agencies (LEAs), must make available to students with disabilities in need of these services. These services are—

- Job exploration counseling;
- Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that are provided in an integrated environment to the maximum extent possible;
- Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;
- Workplace readiness training to develop social skills and independent living; and
- Instruction in self-advocacy, which may include peer mentoring.

Pre-employment transition services represent the earliest set of services available for students with disabilities under the VR program, are short-term in nature, and are designed to help students identify career interests.

For purposes of this notice of interpretation, the Department focuses its discussion on these five required pre-employment transition services because these are the only pre-employment transition services that DSUs provide directly to students with disabilities as defined in section 7(37) of the Rehabilitation Act and 34 CFR 361.5(c)(51).¹

¹ Section 113(c) of the Rehabilitation Act describes services that are systemic in nature, *i.e.*, strategies the DSUs use in delivering pre-employment transition services, and section 113(d) describes the coordination activities for ensuring that students with disabilities receive the pre-employment transition services they need. This notice of interpretation does not address the pre-employment transition services described in section

Since implementation of the pre-employment transition services requirements, the Department has continued to receive comments from DSUs and other stakeholders regarding: (1) The need for further clarification about the extent to which funds reserved for the provision of pre-employment transition services may be used to pay for auxiliary aids and services; and (2) the ability of States to reserve and expend at least 15 percent of their VR grant allotments on the provision of pre-employment transition services under the Department's general interpretation of the statutory requirements related to the allowable use of funds. Specifically, DSUs and stakeholders have asked if funds reserved for pre-employment transition services may be used to cover the costs of auxiliary aids and services provided directly to students with disabilities as well as other VR services, such as transportation, tuition for postsecondary education, rehabilitation technology, and job coaching. The Department addresses these concerns in this notice of interpretation.

Policy Interpretation Clarification—Use of Reserved Funds for Providing Auxiliary Aids and Services to All Students With Disabilities Receiving Pre-Employment Transition Services

Subsequent to the publication of the State Vocational Rehabilitation Services program; State Supported Employment Services program; and Limitations on Use of Subminimum Wage regulations in the **Federal Register** on August 19, 2016 (81 FR 55630) (August 2016 regulations), it has been the Department's policy interpretation that DSUs may use funds reserved for the provision of pre-employment transition services to pay for auxiliary aids and services for students with disabilities with sensory and communicative disorders who need such aids and services in order to access or participate in pre-employment transition services under section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2) (Rehabilitation Services Administration email to DSUs dated December 28, 2016: <https://www2.ed.gov/policy/speced/guid/rsa/supporting/dear-director-letter-auxiliary-aids-and-services-12-28-2016.pdf>). The Department made clear that DSUs may use the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) to pay for any auxiliary

113(c) and (d) of the Rehabilitation Act because they are not applicable to this interpretation (see also 34 CFR 361.48(a)(3) and (4)).

aids and services needed by any student with a disability with a sensory or communicative disorder who needs those services to access pre-employment transition services, regardless of whether the student has applied or been determined eligible for the VR program.

As public entities, defined in section 12131 of the Americans with Disabilities Act (ADA), and as recipients of Federal funds, DSUs must ensure that no qualified individual with a disability is excluded from participation in or denied the benefits of services, programs, or activities on the basis of the individual's disability (section 12132 of the ADA and section 504(a) of the Rehabilitation Act). Because section 113(a) of the Rehabilitation Act and 34 CFR 361.48(a) make clear that pre-employment transition services must be provided to all students with disabilities who need them, this means that both eligible and potentially eligible students with disabilities meet the essential eligibility requirements² for pre-employment transition services under the VR program in accordance with section 113(a) of the Rehabilitation Act and thus are considered qualified individuals with disabilities for purposes of title II of the ADA and section 504 of the Rehabilitation Act (28 CFR 35.104; 34 CFR 104.3(l)(4)). Therefore, if any student with a disability requires an auxiliary aid or service to access or participate in any of the pre-employment transition services specified in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2), the DSU must pay for such costs if no other public entity is required to provide such aids or services.³

² It is important to note that potentially eligible students with disabilities are eligible to receive pre-employment transition services pursuant to section 113(a) of the Rehabilitation Act. As such, they are considered qualified individuals under the ADA for the receipt of pre-employment transition services. It should not be construed that these students with disabilities have satisfied the eligibility requirements of section 102(a) of the Rehabilitation Act for all other VR services provided under section 103 of the Rehabilitation Act.

³ Please see 34 CFR 361.53(a) for the related assurance that DSUs must include in the VR services portion of the Unified or Combined State Plan. See also Section 101(a)(8)(A)(i) of the Rehabilitation Act. Because DSUs must conduct a search for comparable services and benefits only when providing VR services to eligible individuals, they need not conduct such a search when providing pre-employment transition services and auxiliary aids and services to students with disabilities who have not applied or been determined eligible for VR services, but they would be required to do so for those students with disabilities who have been determined eligible under the VR program pursuant to section 102(a)(1) of the Rehabilitation Act. In addition, rehabilitation technology, including telecommunications, sensory,

Continued

The ADA's title II implementing regulations define "auxiliary aids and services" in 28 CFR 35.104. For purposes of the Department's policy interpretation, auxiliary aids and services ensure equal access to information, materials, services, and activities available to students with disabilities participating in pre-employment transition services. As such, expenditures incurred for the purchase or acquisition of auxiliary aids and services, including, for example, interpreter and reader services under section 103(a)(10) of the Rehabilitation Act and 34 CFR 361.48(b)(10) and (11), for students with disabilities needing such aids or services to access or participate in pre-employment transition services specified in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2) constitute an allowable pre-employment transition services cost. This is true for both potentially eligible and eligible students with disabilities.

Because auxiliary aids and services necessary for students with disabilities to access or participate in pre-employment transition services are an allowable cost, DSUs may use funds reserved for providing pre-employment transition services to pay for those auxiliary aids and services for any student with a disability who needs them, regardless of whether they have applied and been determined eligible for VR services. For example, for a student who is deaf, DSUs could purchase interpreter services or video-based telecommunication products to ensure access to information and activities related to job exploration counseling or other pre-employment transition services. As another example, DSUs could purchase screen reader software programs to enable a student who is blind to access information on a computer during a work-based learning experience. DSUs could purchase the screen reader software for the student's personal laptop or for a laptop that would be available for other students needing the device. In these instances, it is important to note that the screen reader software for individuals who are blind or visually impaired, not the

computer on which it is installed, meets the definition of "auxiliary aids and services" for purposes of the ADA and section 504 of the Rehabilitation Act and, as such, could be paid with funds reserved for the provision of pre-employment transition services. The Department addresses computers and other rehabilitation technology in a later discussion pertaining to section 103(a)(14) of the Rehabilitation Act and 34 CFR 361.48(b)(17).

On the other hand, personal devices and services do not meet the definition of auxiliary aids and services under the ADA or section 504 of the Rehabilitation Act. Personal devices and services include individually prescribed devices, such as prescription eyeglasses or hearing aids, readers for personal use or study, or services of a personal nature (28 CFR 35.135 and 34 CFR 104.44(d)(2)). If a student with a disability requires personal devices or services or individually prescribed assistive technology, the VR agency must determine whether the student meets the eligibility criteria of section 102(a) of the Rehabilitation Act and, if so, develop an IPE in partnership with the student pursuant to section 102(b) of the Rehabilitation Act for the provision of those additional services (see also 34 CFR 361.42(a)(1) and 361.45). DSUs must use funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) to pay for only pre-employment transition services under section 113(b) and 34 CFR 361.48(a)(2), auxiliary aids and services needed by any student with a disability to access or participate in those services, or other VR services necessary for an eligible student to receive pre-employment transition services as discussed elsewhere in this notice of interpretation. DSUs must pay for any other additional VR services using non-reserved VR funds.

Policy Interpretation—Use of Reserved Funds for Providing Certain Other VR Services for Eligible Students With Disabilities Receiving Pre-Employment Transition Services

As explained here for purposes of this policy interpretation, which is separate and distinct from the policy clarification just described regarding auxiliary aids and services, DSUs may use the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) to pay for those pre-employment transition services needed by eligible students with disabilities, plus any other VR service needed by those eligible students to benefit from pre-employment transition services in accordance with an approved IPE. With

respect to those students with disabilities who have not yet been determined eligible for the VR program (*i.e.*, potentially eligible students with disabilities), DSUs may use the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) only to pay for those pre-employment transition services set forth in section 113 and 34 CFR 361.48(a), as well as for auxiliary aids and services needed to access or participate in pre-employment transition services, as described in Department guidance issued to date.

Since the addition of the five required pre-employment transition services, the VR program can be characterized as providing a continuum of services, with pre-employment transition services being most beneficial to students with disabilities in the early stages of employment exploration. The Secretary is committed to ensuring that students with disabilities are held to high expectations and have the resources and supports needed to prepare them for success in postsecondary education or careers. Therefore, we believe that these services should be provided to the broadest population of students with disabilities to ensure that as many students with disabilities as possible are able to receive the services they need to prepare for postschool activities, including postsecondary education and employment. To that end, pre-employment transition services represent the earliest set of services available for students with disabilities under the VR program. These are short-term services designed to help students identify career interests.

Transition services represent the next set of services on the continuum of VR services available to eligible individuals. Transition services, for eligible students⁴ with disabilities, provide for further development and pursuit of career interests with postsecondary education, vocational training, job search, job placement, job retention, job follow-up, and job follow-along services (section 103(a)(4), (5), and (15) of the Rehabilitation Act and 34 CFR 361.48(b)(6), (12), and (18)).

Employment-related services to eligible individuals are next in the continuum of services. These services typically are provided once eligible

and other technological aids and devices, among other VR services, are exempt under Section 101(a)(8)(A)(i) and 34 CFR 361.53(b)(5) from the determination of comparable services and benefits. Therefore, DSUs need not conduct a search for comparable services and benefits when providing auxiliary aids and services to either eligible or potentially eligible students with disabilities to the extent that these aids and services constitute "rehabilitation technology" as defined in Section 7(32) of the Rehabilitation Act and 34 CFR 361.5(c)(45), and are necessary for the student with a disability to participate in pre-employment transition services under section 113 of the Rehabilitation Act.

⁴ Although DSUs may provide transition and other VR services to youth with disabilities, as defined at section 7(42) of the Rehabilitation Act and 34 CFR 361.5(c)(58), the discussion in this notice of interpretation focuses solely on students with disabilities because pre-employment transition services are only available to those individuals who meet the definition of a "student with a disability" at section 7(37) of the Rehabilitation Act and 34 CFR 361.5(c)(51).

students have identified their career interests, have further developed and pursued their career interests through postsecondary education and vocational training offered through transition services, and are pursuing specific employment outcomes. Employment-related services are identified in section 103(a) of the Rehabilitation Act and 34 CFR 361.48(b) and are intended to assist the eligible individual with a disability in preparing for, securing, retaining, advancing in, or regaining an employment outcome that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

While a continuum of services across pre-employment transition services for students with disabilities, and transition services and employment-related services for eligible individuals who have IPEs, exists under the VR program, the five required pre-employment transition services are the only services available to potentially eligible students with disabilities.

In the preamble to the Department's August 2016 regulations, the Department made clear that the term "potentially eligible" students with disabilities, for purposes of receiving pre-employment transition services, includes all students with disabilities (81 FR 55630, 55631, and 55690–55691). Students with disabilities do not need to apply and be determined eligible for the VR program to receive pre-employment transition services. However, these students may not receive any VR services other than pre-employment transition services until they apply, and are determined eligible, for VR services, and have an approved IPE (81 FR 55629 at 55691). On the other hand, eligible students with disabilities, that is, those students who have applied and been determined eligible for the VR program, are able to receive any VR services, including pre-employment transition services, necessary to assist them in achieving their employment outcome, so long as those services are identified on their IPEs in accordance with section 103(a) of the Rehabilitation Act (81 FR 55691).

On May 21, 2014, the Congress of the United States released "Statement of the Managers to Accompany the Workforce Innovation and Opportunity Act." In its statement, Congress made clear that the title IV ". . . amendments established a framework to ensure every young person with a disability, regardless of their level of disability, has the opportunity to experience competitive, integrated employment. The pre-employment transition services will

provide young people with disabilities with the opportunity to develop their skills and to use supports, available through State VR programs to experience competitive integrated employment as they leave school and enter the workforce." The intent of Congress makes clear that the "framework" for VR services includes pre-employment transition services for all students with disabilities and other services and supports for eligible students with disabilities with an approved IPE to develop their skills and experience success when they enter the workforce.

Section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) require each State to reserve at least 15 percent of its Federal VR grant for the provision of pre-employment transition services to students with disabilities. With this statutory provision, coupled with the "Statement of the Managers to Accompany the Workforce Innovation and Opportunity Act," the Department interprets this requirement as meaning that DSUs may use these reserved funds to pay for other VR services under section 103(a) of the Rehabilitation Act and 34 CFR 361.48(b), in accordance with an approved IPE, that are necessary for an eligible student with a disability to participate in pre-employment transition services identified in section 113(b) of the Rehabilitation Act. This means that, for eligible students with disabilities, DSUs may use the reserved funds to pay for the pre-employment transition services and any other VR services necessary for the eligible student to benefit from those pre-employment transition services in accordance with an approved IPE consistent with the requirements of section 103(a) of the Rehabilitation Act. However, for those students with disabilities who have not yet applied or been determined eligible for the VR program (*i.e.*, potentially eligible students), the DSUs may use the reserved funds to pay only those costs incurred in providing the pre-employment transition services identified in section 113 of the Rehabilitation Act and 34 CFR 361.48(a), as well as auxiliary aids and services needed to access or participate in pre-employment transition services, as described in guidance issued by the Department to date.

Although section 113 of the Rehabilitation Act is unique in that it permits VR agencies to provide pre-employment transition services to students with disabilities who have not yet been determined eligible for the VR program, section 103(a) of the Rehabilitation Act does not contain the

same flexibility. Section 103(a) of the Rehabilitation Act makes clear that all VR services provided under that section are provided under an approved IPE that is developed when an individual with a disability has applied and been determined eligible for the VR program in accordance with section 102 of the Rehabilitation Act (see also 34 CFR 361.42 and 361.48(b)).

Section 102(b)(4)(A) of the Rehabilitation Act and 34 CFR 361.46(a)(1) make clear that the IPE for a student with a disability need only contain a "description of the student's projected postschool employment outcome," as opposed to a description of a specific employment outcome. Despite this flexibility available to States, the Department has observed through monitoring that these IPEs for students with disabilities are underutilized. Because DSUs can develop initial IPEs for eligible students with disabilities that are more general in nature, DSUs are able to provide additional supports and services to eligible students as necessary for students to benefit from pre-employment transition services and activities and explore their career interests and, subsequently, refine the IPEs, through the amendment process under section 102(b)(3)(E) of the Rehabilitation Act and 34 CFR 361.45(a)(6), to include a specific employment goal and the VR services necessary to achieve that goal, as appropriate. Eligible students with disabilities are able to access any other VR services needed to participate in pre-employment transition services (as discussed in more detail below) or other VR services that are unrelated to pre-employment transition services, none of which would be available to them without approved IPEs.

This policy interpretation applies only to those students with disabilities who have been determined eligible for services under the VR program and who have an approved IPE. We recognize that some eligible students with disabilities may need certain VR services under section 103(a) of the Rehabilitation Act and 34 CFR 361.48(b) to fully benefit from pre-employment transition services under section 113(b) and 34 CFR 361.48(a)(2). Receiving other VR services and supports, along with the pre-employment transition services, enables eligible students with a disability to develop the skills to experience competitive, integrated employment as they leave school and enter the workforce. Therefore, the Department believes that allowing the funds reserved under section 110(d)(1) and 34 CFR 361.65(a)(3)(i) to be used to

pay for other VR services needed by eligible students with disabilities who have IPEs to benefit from pre-employment transition services is consistent with the “Statement of the Managers to Accompany the Workforce Innovation and Opportunity Act” and with the statutory purpose for the reservation of these funds.

This interpretation regarding the use of the reserved funds for certain other VR services that are necessary for an eligible student with a disability to benefit from pre-employment transition services also is consistent with the Office of Management and Budget’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), codified at 2 CFR part 200. Specifically, 2 CFR 200.403(a) requires that costs paid from a Federal award must be allowable, meaning that they must be necessary, reasonable, and allocable to the award. Costs are reasonable if, in their nature and amount, they do not exceed that which would be incurred by a prudent person under the circumstances that existed at the time the decision was made to incur the cost (2 CFR 200.404). A cost is allocable to a Federal cost objective if the services are assignable to that cost objective in accordance with relative benefits received (2 CFR 200.405(a)). These fiscal requirements not only apply to costs incurred under the VR grant as a whole, but also to those costs incurred with the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i). In other words, costs incurred with these reserved funds must be—

- Necessary for the provision or receipt of pre-employment transition services;
- Reasonable, that is, those that a prudent person would agree are necessary for the provision or receipt of pre-employment transition services; and
- Allocable, that is, those that benefit the provision or receipt of pre-employment transition services.

Under the Department’s interpretation, the reserved funds may be used for costs associated with providing certain VR services to eligible students with disabilities, in accordance with approved IPEs, who need those services to benefit from pre-employment transition services, as well as the costs associated with the pre-employment transition services themselves. As such, these costs would be reasonable, necessary, and allocable to the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i). If eligible students with disabilities need additional VR services that are not within the scope of pre-

employment transition services and, thus, this interpretation, DSUs may still provide those services in accordance with the terms of the approved IPE. However, DSUs must provide those additional VR services with other VR funds that were not reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i).

In an effort to explain the application of this interpretation to the services outlined in section 103(a) of the Rehabilitation Act and 34 CFR 361.48(b), we discuss each of those VR services in light of whether they are within the nature, scope, and purpose of any of the pre-employment transition services available under section 113(b) and 34 CFR 361.48(a)(2) (*i.e.*, are necessary, reasonable, and allocable) and, thus, may be paid with the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) if needed by an eligible student with a disability to benefit from pre-employment transition services. In so doing, we also explain that certain VR services outlined in section 103(a) of the Rehabilitation Act and 34 CFR 361.48(b) fall outside the nature, scope, and purpose of pre-employment transition services and, thus, those services are not reasonable or necessary for an eligible student with a disability to benefit from pre-employment transition services under section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2). Therefore, the costs for such services are not allocable to the provision of pre-employment transition services and may not be paid with the funds reserved under section 110(d)(1) and 34 CFR 361.65(a)(3)(i) for that purpose. Nothing in this interpretation affects the DSU’s responsibility to search for comparable services and benefits, when required by section 101(a)(8) of the Rehabilitation Act and 34 CFR 361.53, before providing any of the VR services discussed herein.

Through this interpretation, the following VR services in section 103(a) of the Rehabilitation Act and 34 CFR 361.48(b) fall within the nature, scope, and purpose of pre-employment transition services when needed by an eligible student with a disability, in accordance with an approved IPE, to benefit from one or more of the pre-employment transition services described in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2). As such, costs incurred in providing these other VR services are allocable to the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i). As discussed here, the examples of when DSUs may use the reserved funds to pay

for additional services in section 103(a) of the Rehabilitation Act and 34 CFR 361.48(b), consistent with both the statutory purpose for these reserved funds and fiscal requirements of the Uniform Guidance, provide DSUs with significantly greater flexibility in delivering pre-employment transition services to eligible students with disabilities than has been allowed under Department guidance issued to date, thereby increasing the availability of pre-employment transition services to these students.

To the extent that a portion of the costs incurred for the additional VR services fall outside the nature, scope, and purpose of pre-employment transition services, DSUs must pay that portion with other VR program funds.

Assessment Services

Section 103(a)(1) and 34 CFR 361.48(b)(2) permit DSUs to provide assessment services to eligible individuals to determine VR needs. These services are generally provided in the very early stages of the VR process with an eligible individual with a disability and, thus, are consistent with the nature, scope, and purpose of pre-employment transition services. As stated in the preamble to the August 2016 regulations (81 FR at 55685), VR services are provided on a continuum, with pre-employment transition services being the earliest set of services available for students with disabilities. Given that the purpose of assessment services under section 103(a)(1) and 34 CFR 361.48(b)(2) is to determine the VR needs of individuals with disabilities, it is reasonable that an eligible student with a disability would need further assessment services while engaging in any of the pre-employment transition services set forth at section 113(b) and 34 CFR 361.48(a)(2) to fully benefit from those activities.

Counseling and Guidance

Section 103(a)(2) and 34 CFR 361.48(b)(3) permit DSUs to provide counseling and guidance services to eligible individuals throughout the VR process. These services are directly connected with the nature, scope, and purpose of two pre-employment transition services, specifically job exploration counseling (section 113(b)(1) and 34 CFR 361.48(a)(2)(i)) and counseling on opportunities for enrollment in comprehensive transition and other postsecondary education programs at institutions of higher education (section 113(b)(3) and 34 CFR 361.48(a)(2)(ii)). Given that counseling and guidance services are specifically listed among the pre-employment

transition services at section 113(b) and 34 CFR 361.48(a)(2), these services clearly fall within the nature, scope, and purpose of pre-employment transition services. Therefore, it is reasonable that an eligible student with a disability could need these services in order to benefit from pre-employment transition services activities.

Referral Services

Section 103(a)(3) and 34 CFR 361.48(b)(4) permit DSUs to provide referral services to eligible individuals with disabilities to secure needed services from other agencies throughout the VR process. While these services are not directly connected to any particular pre-employment transition services activity described in section 113(b) and 34 CFR 361.48(a)(2), section 113(a) of the Rehabilitation Act and 34 CFR 361.48(a) make clear that the VR agency must provide, or arrange for the provision of, pre-employment transition services to students with disabilities in need of such services. The Rehabilitation Act clearly envisioned circumstances in which the DSU itself would not be able to provide the pre-employment transition services and would need to reach agreements with other entities to provide those services. As such, it is reasonable that an eligible student with a disability could need a referral in order to participate in one or more of the pre-employment transition services set forth in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2). In this circumstance, the referral services under section 103(a)(3) and 34 CFR 361.48(b)(4) for that eligible student with a disability would fall squarely within the nature, scope, and purpose of pre-employment transition services.

Maintenance

Section 103(a)(7) and 34 CFR 361.48(b)(7) permit DSUs to provide maintenance to eligible individuals with disabilities to cover additional costs incurred while receiving VR services. DSUs may provide maintenance to eligible individuals with disabilities throughout the VR process, including during the early stages in the continuum of VR services. Maintenance is unique from most other VR services listed in section 103(a) and 34 CFR 361.48(b) because it must be provided in combination with another VR service, such as pre-employment transition services. It is reasonable that an eligible student with a disability who is participating in pre-employment transition services could incur additional costs to participate in those services (e.g., purchase of required

clothing for a work-based learning experience under section 113(b)(2) and 34 CFR 361.48(a)(2)(ii) or the purchase of a talking alarm clock to participate in workplace readiness training under section 113(b)(4) and 34 CFR 361.48(a)(2)(iv)). Therefore, to the extent an eligible student with a disability needs maintenance, in accordance with an approved IPE, to benefit from pre-employment transition services, then such maintenance services fall within the nature, scope, and purpose of pre-employment transition services. However, we clarify that it is not reasonable to provide maintenance services to all eligible students with disabilities in all circumstances with the use of the reserved funds under this interpretation. DSUs must ensure the costs incurred for maintenance are allocable to the pre-employment transition services that the eligible student with a disability is receiving, as opposed to other VR services that the student may be receiving simultaneously. For example, if the DSU agreed to pay for the fee for the eligible student to take a college entrance test preparatory course, this VR service would be beyond the nature, scope, and purpose of all of the pre-employment transition services described in section 113(b) and 34 CFR 361.48(a)(2) and, as such, would not be allocable to those services. In this example, the DSU must pay the costs incurred for maintenance with other VR program funds, not the funds reserved under section 110(d)(1) and 34 CFR 361.65(a)(3)(i) for the provision of pre-employment transition services.

Transportation

Section 103(a)(8) and 34 CFR 361.48(b)(8) permit DSUs to provide transportation services, including training in the use of public transportation, to eligible individuals with disabilities throughout the VR process. As with the maintenance services just described, DSUs must provide transportation services only in combination with another VR service, such as pre-employment transition services. It is reasonable that an eligible student with a disability who is participating in pre-employment transition services could need transportation services to benefit from any of the pre-employment transition services described in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2) (e.g., to attend counseling sessions under section 113(b)(1) and (3) and 34 CFR 361.48(a)(2)(i) and (iii), work-based learning experiences under section 113(b)(2) and 34 CFR 361.48(a)(2)(ii), or self-advocacy training

sessions under section 113(b)(5) and 34 CFR 361.48(a)(2)(v)). It is also reasonable that an eligible student with a disability could need transportation to participate in workplace readiness training under section 113(b)(4) and 34 CFR 361.48(a)(2)(iv) to learn how to travel independently in preparation for eventual employment. As such, to the extent an eligible student with a disability needs transportation services in accordance with an approved IPE to participate in any of the pre-employment transition services, the transportation services clearly fall within the nature, scope, and purpose of those pre-employment transition services. We clarify that it is not reasonable to provide all types of transportation services to all eligible students with disabilities with the use of the reserved funds under this interpretation. As with the maintenance services described earlier, DSUs must ensure the costs incurred for transportation services are allocable to the pre-employment transition services that the eligible student with a disability is receiving, as opposed to other VR services that the eligible student may be receiving simultaneously. For example, if the DSU agreed to pay for a vehicle modification to make it more accessible for the eligible student with a disability while participating in pre-employment transition services and other VR counseling services, as well as a dual enrollment program under the Individuals with Disabilities Education Act, the DSU must determine whether a prudent person would agree that the cost for the vehicle modification is reasonable as a cost associated with the pre-employment transition services the student is receiving and, if so, to what extent the cost is allocable to the pre-employment transition services activity. To make this determination, the DSU should take into account the duration of the pre-employment transition services that the eligible student with a disability is participating in to determine whether, or to what extent, the transportation cost in this circumstance would be allocable to the funds reserved under section 110(d)(1) and 34 CFR 361.65(a)(3)(i) or whether this cost more appropriately should be paid with other VR program funds.

Personal Assistance Services

Section 103(a)(9) and 34 CFR 361.48(b)(14) permit DSUs to provide personal assistance services to eligible individuals with disabilities when needed to participate in another VR service. As with maintenance and transportation services just described, DSUs may provide personal assistance

services only in combination with another VR service, such as pre-employment transition services. It is reasonable that an eligible student with a disability, particularly a student with a significant disability, who is participating in pre-employment transition services could need personal assistance services in order to participate in those services (e.g., personal assistance services during a work-based learning experience under section 113(b)(2) and 34 CFR 361.48(a)(2)(ii)). Therefore, to the extent an eligible student with a disability needs personal assistance services, in accordance with an approved IPE, to participate in pre-employment transition services, such personal assistance services fall within the nature, scope, and purpose of pre-employment transition services. We clarify that, as with the maintenance and transportation services just described, only those personal assistance services identified in an IPE directly related to the eligible student with a disability's participation in pre-employment transition services are allocable and, thus, could be paid with the reserved funds. DSUs must pay for all other personal assistance services needed by the eligible student with other VR program funds.

Rehabilitation Teaching & Orientation and Mobility Services

Section 103(a)(11) and 34 CFR 361.48(b)(11) permit DSUs to provide rehabilitation teaching services and orientation and mobility services to eligible individuals who are blind. These services, particularly the orientation and mobility services, also are offered as pre-employment transition services, namely "workplace readiness" training under section 113(b)(4) of the Rehabilitation Act and 34 CFR 361.48(a)(2). Therefore, it is reasonable and allocable to pre-employment transition services activities for a DSU to use funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) to pay for these services in the event an eligible student with a disability needs them, in accordance with an approved IPE, to benefit from pre-employment transition services. Because these services actually constitute workplace readiness training under section 113(b)(4) and 34 CFR 361.48(a)(2)(iv), the services under section 103(a)(11) and 34 CFR 361.48(b)(11) clearly fall within the scope, nature, and purpose of pre-employment transition services.

Rehabilitation Technology

Section 103(a)(14) and 34 CFR 361.48(b)(17) permit DSUs to provide eligible individuals with disabilities rehabilitation technology throughout the VR process when needed and identified on an approved IPE. It is reasonable that an eligible student with a disability, especially a student with a significant disability, could need rehabilitation technology to benefit from pre-employment transition services, particularly those involving work-based learning experiences under section 113(b)(2) and 34 CFR 361.48(a)(2)(ii), workplace readiness training under section 113(b)(4) and 34 CFR 361.48(a)(2)(iv), and self-advocacy training under section 113(b)(5) and 34 CFR 361.48(a)(2)(v). For example, an eligible student with a disability may need an electronic device (that does not constitute an auxiliary aid or service as discussed elsewhere in this notice of interpretation) to participate in one of the pre-employment transition services training activities. In other words, without the rehabilitation technology, the eligible student with a disability might not be able to participate in the pre-employment transition services activity. Under this circumstance, the rehabilitation technology falls within the nature, scope, and purpose of pre-employment transition services under section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2) and, thus, is allocable to those services. However, DSUs must ensure that the costs incurred for the rehabilitation technology are needed by the eligible student with a disability to participate in pre-employment transition services, as opposed to other VR services the eligible student might be participating in simultaneously. Pursuant to 2 CFR 200.403 through 200.405, the DSUs may use the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) to pay for the costs of rehabilitation technology that is reasonably allocable to the pre-employment transition services activities of the eligible student with a disability. The DSU must use other VR funds to pay for the portion of the cost, or the entire cost if applicable, that is not allocable to the pre-employment transition services activities.

Pre-Employment Transition Services Under Section 103(a)

Section 103(a)(15) and 34 CFR 361.48(b)(18) permit DSUs to provide transition services, including pre-employment transition services, to eligible students with disabilities. For purposes of this interpretation, we

discuss transition services separately in a later section. This discussion focuses solely on the pre-employment transition services available under section 103(a)(15) and 34 CFR 361.48(b)(18). As with the orientation and mobility services discussed above, these pre-employment transition services are at the core of the nature, scope, and purpose of the pre-employment transition services provided under section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2). Therefore, it is reasonable and allocable to pre-employment transition services activities for a DSU to use funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) to pay for these services in the event an eligible student with a disability needs them, in accordance with an approved IPE, to participate in pre-employment transition services under section 113(b) and 34 CFR 361.48(a)(2).

Family Services

Section 103(a)(19) and 34 CFR 361.48(b)(9) permit the DSU to provide services to family members of an eligible individual with a disability when these services are necessary for the eligible individual to achieve an employment outcome. As with certain other services (i.e., maintenance, transportation, and personal assistance services), services to the family, by their very nature, must be provided in combination with another VR service, such as pre-employment transition services. Given that pre-employment transition services represent the earliest set of services available to students with disabilities under the VR program, it is reasonable that a family member could need services to enable the eligible student with a disability to benefit from pre-employment transition services. For example, the parent or guardian may need transportation services to accompany the eligible student with a disability to his or her pre-employment transition services activities or the parent or guardian may need language interpreter services in order to understand consent forms that he or she might need to sign on behalf of the underage eligible student with a disability participating in pre-employment transition services. In such circumstances, the services to family members clearly fall within the nature, scope, and purpose of the pre-employment transition services provided under section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2), thereby making the costs incurred for such services allocable to pre-employment transition services.

Coaching Services

Finally, with respect to those services in section 103(a) of the Rehabilitation Act that fall within the nature, scope, and purpose of pre-employment transition services described in section 113(b) and 34 CFR 361.48(a)(2), the Secretary notes that section 103(a) is not an exhaustive list of services (34 CFR 361.48(b)(21)). DSUs may provide any service that an eligible individual needs to achieve an employment outcome in accordance with an approved IPE. In the context of pre-employment transition services, one such service is coaching services for eligible students with disabilities participating in work-based learning experiences under section 113(b)(2) and 34 CFR 361.48(a)(2)(ii). These coaches perform similar functions as job coaches do in supported employment settings by assisting the eligible student with a disability to perform the tasks assigned during the work-based learning experiences. While these particular coaching services are not specifically listed in section 103(a), they would be considered allowable VR services under section 103(a) and 34 CFR 361.48(b)(21) if needed by an eligible student with a disability, in accordance with an approved IPE, to participate in pre-employment transition services. Given that pre-employment transition services are among the earliest sets of services available to students with disabilities, it is reasonable to expect that these eligible students may need extra assistance through coaching services to participate in these activities. In such circumstances, these coaching services clearly fall within the nature, scope, and purpose of pre-employment transition services, particularly work-based learning experiences under section 113(b)(2) and 34 CFR 361.48(a)(2)(ii), and, thus, would be allocable to those services.

Allocability of Certain Portions of VR Services

Next, the Secretary believes that the following VR services, set forth in section 103(a) and 34 CFR 361.48(b), have aspects of those services that fall within the nature, scope, and purpose of pre-employment transition services when needed by an eligible student with a disability, in accordance with an approved IPE, to benefit from one or more of the pre-employment transition services described in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2). In the narrow circumstances described in this notice of interpretation, costs incurred for certain portions of the following

services could be allocable to pre-employment transition services under the right set of facts; therefore, in these circumstances, DSUs may pay these costs with the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i). However, most aspects of the following services fall outside the nature, scope, and purpose of pre-employment transition services and, thus, are not allocable to those services. In those more common circumstances, DSUs may not use funds reserved under section 110(d)(1) and 34 CFR 361.65(a)(3)(i) to pay for those costs.

Vocational and Other Training Services

Section 103(a)(5) and 34 CFR 361.48(b)(6) permit DSUs to provide vocational and other training services, including books, tools, and other training materials, for eligible individuals in accordance with an approved IPE. This provision also permits DSUs to pay for postsecondary education tuition, so long as maximum efforts have been made to obtain grant assistance. Before discussing these services, the Secretary notes that pre-employment transition services are intended to be an early set of exploration services for students with disabilities that are “designed to help students with disabilities to begin to identify career interests that will be further explored through additional [VR] services, such as transition services. Following the continuum, transition services represent the next set of [VR] services available to students with disabilities. They are outcome-oriented and promote movement from school to post-school activities, including postsecondary education, vocational training, and competitive integrated employment. As such, transition services may include job-related services, such as job search and placement assistance, job retention services, follow-up services, and follow-along services based on the needs of the individual” (81 FR at 55685). Given the clear nature, scope, and purpose of pre-employment transition services as a very early set of career interest and exploration services for students with disabilities, the services available under section 103(a)(5) and 34 CFR 361.48(b)(6) are predominately outside that scope. In fact, most of the services fit squarely within the vocational training purpose of transition services for those individuals transitioning from school to a specific employment outcome, as described by the Department at 81 FR at 55685 and, thus, are not allocable to pre-employment transition services. However, an eligible

student with a disability could need a book, tool, or other training material to participate in pre-employment transition services, specifically a work-based learning experience under section 113(b)(2) and 34 CFR 361.48(a)(2)(ii). While a DSU could use section 103(a)(7) of the Rehabilitation Act and 34 CFR 361.48(b)(7) as the authority to pay for the book, tool, or training material since it would be an additional cost incurred as a result of the participation in the pre-employment transition services, the DSU also could use the authority of section 103(a)(5) and 34 CFR 361.48(b)(6) to pay the costs of the service. To the extent the book, tool, or training material is necessary for the eligible student with a disability to participate in the work-based learning experience under section 113(b)(2) and 34 CFR 361.48(a)(2)(ii), such service and associated cost would be allocable to pre-employment transition services.

Advanced Training

Section 103(a)(18) and 34 CFR 361.48(b)(6) permit DSUs to encourage eligible individuals to pursue advance training in the fields of science, technology, engineering, or mathematics (including computer science), law, medicine, or business. To the extent that a VR counselor or other provider of pre-employment transition services discusses these postsecondary options while discussing all opportunities for enrollment in comprehensive transition and other postsecondary education programs at institutions of higher education under section 113(b)(3) and 34 CFR 361.48(a)(2)(iii), the service under section 103(a)(18) and 34 CFR 361.48(b)(6) is squarely within the nature, scope, and purpose of pre-employment transition services. As such, the service is allocable to pre-employment transition services and could be paid for with funds reserved for that purpose. However, to the extent that the DSU encourages the advanced training under section 103(a)(18) by paying tuition at a postsecondary institution, such service is outside the nature, scope, and purpose of pre-employment transition services and, thus, is not allocable to those services. Once the eligible student has identified this career path and started postsecondary education, the service is one that enables the individual to transition from school to a specific employment outcome, as described at 81 FR at 55685, not simply to explore career interests through pre-employment transition services activities.

VR Services Not Allocable to Pre-Employment Transition Services

Lastly, the Secretary believes that the following VR services, set forth in section 103(a) and 34 CFR 361.48(b), are not allocable to pre-employment transition services in section 113(b) of the Rehabilitation Act and 34 CFR 361.48(a)(2) because they are beyond the nature, scope, and purpose of those services. As such, these services are not allocable to pre-employment transition services, meaning that DSUs may not use funds reserved under section 110(d)(1) and 34 CFR 361.65(a)(3)(i) to pay for those costs even if provided to eligible students with disabilities who are also participating in pre-employment transition services.

Transition Related Services

Sections 103(a)(4), (5), (15), and (18) permit DSUs to provide eligible individuals with a variety of transition-related services in accordance with an approved IPE (see also 34 CFR 361.48(b)(6) and (12)). As discussed earlier, pre-employment transition services represent the earliest set of services available for students with disabilities. These are short-term services designed to help students identify career interests. In contrast, transition services represent the next set of services on the continuum of VR services to eligible individuals. During the receipt of transition services, eligible students with disabilities further develop and pursue their career interests with postsecondary education, vocational training, job search, job placement, job retention, job follow-up, and job follow-along services. By their very nature, transition-related services are beyond the nature, scope, and purpose of pre-employment transition services set forth at section 113(b) and 34 CFR 361.48(a)(2). For this reason, these services, with narrow exceptions described previously, are not allocable to pre-employment transition services. As such, DSUs may not use funds reserved under section 110(d)(1) and 34 CFR 361.65(a)(3)(i) to pay for these costs. Rather, they must use other VR program funds to pay these costs.

Medical Services

Section 103(a)(6) and 34 CFR 361.48(b)(5) permit DSUs to provide certain medical services to eligible individuals, in accordance with an approved IPE, under certain circumstances. Medical services are beyond the nature, scope, and purpose of all the pre-employment transition services described in section 113(b) of the Rehabilitation Act and 34 CFR

361.48(a)(2). While it is possible that an eligible student with a disability could need such a service, it is not reasonable to believe that the need was tied solely to the student's participation in pre-employment transition services. Rather, it is most likely that the need is more general and associated with the eligible student with a disability's VR program as a whole, but not limited to the pre-employment transition services. As such, the service is not allocable to pre-employment transition services and DSUs must pay for the service with other VR program funds.

Employment-Related Services

Sections 103(a)(12), (13), (16), (17), and (20) permit the DSU to provide various employment-related services to eligible individuals (see also 34 CFR 361.48(b)(13), (15), (16), (19), and (20)). These services are next in the continuum of services, once eligible students have identified their career interests through pre-employment transition services and further developed and pursued them through postsecondary education and vocational training offered through transition services that assist them in transitioning from school to specific employment outcomes. These employment-related services are well beyond the continuum of services available as pre-employment transition services and are directly tied to specific occupations. For this reason, these services are beyond the nature, scope, and purpose of pre-employment transition services described in section 113(b) and 34 CFR 361.48(a)(2). Thus, they are not allocable to those services. DSUs must use other VR program funds to pay the costs associated with providing these services.

Conclusion

Through this notice of interpretation, the Secretary clarifies that DSUs may use VR funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) to pay for auxiliary aids and services needed by all students with disabilities (*i.e.*, both eligible and potentially eligible students with disabilities) who have sensory and communicative disorders to access or participate in pre-employment transition services. In addition, the Secretary explains that DSUs may use the reserved funds to pay for pre-employment transition services needed by eligible students with disabilities and certain other VR services in section 103(a) of the Rehabilitation Act and 34 CFR 361.48(b) needed by those eligible students to benefit from pre-employment transition services in accordance with an approved IPE.

Although the Department understands that pre-employment transition services are available for all students with disabilities, not just those determined eligible for the VR program, this interpretation permitting the use of the reserved funds for certain VR services other than pre-employment transition services is applicable only to those students with disabilities who are receiving pre-employment transition services, who have been determined eligible for the VR program, and who have an approved IPE. Under this interpretation, DSUs may use the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) to pay for those pre-employment transition services needed by eligible students with disabilities in accordance with an approved IPE, plus any other VR service needed by eligible students to benefit from pre-employment transition services. With respect to those students with disabilities who have not yet been determined eligible for the VR program (*i.e.*, potentially eligible students with disabilities), DSUs may use the funds reserved under section 110(d)(1) of the Rehabilitation Act and 34 CFR 361.65(a)(3)(i) only to pay for those pre-employment transition services set forth in section 113 and 34 CFR 361.48(a), as well as for auxiliary aids and services needed by those students to access or participate in pre-employment transition services, as described in Department guidance issued to date. The Secretary believes this interpretation is consistent with the "Statement of the Managers to Accompany the Workforce Innovation and Opportunity Act," the statutory purpose for the reservation of these Federal VR funds, and the fiscal requirements of OMB's Uniform Guidance.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or portable document format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov.

Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schultz,

Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2020-03208 Filed 2-27-20; 8:45 am]

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Copyright Royalty Board

37 CFR Part 380

[Docket No. 19-CRB-0005-WR (2021-2025) (Web V)]

Determination of Royalty Rates and Terms for Ephemeral Recording and Digital Performance of Sound Recordings (Web V)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges publish a final rule governing the rates and terms for the digital performances of sound recordings by certain public radio stations and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1, 2021, and ending on December 31, 2025.

DATES: Effective January 1, 2021.

ADDRESSES: *Docket:* For access to the docket to read submitted background documents go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket number 19-CRB-0005-WR (2021-2025).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, Program Specialist, by telephone at (202) 707-0078 or email at crb@loc.gov.

SUPPLEMENTARY INFORMATION: On October 29, 2019, the Copyright Royalty Judges (Judges) published a proposed rule governing the rates and terms for the digital performances of sound recordings by certain public radio stations and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1, 2021, and ending on December 31, 2025. 84

FR 57833. The rates and terms in the proposed rule were the subject of a settlement among SoundExchange, Inc. ("SoundExchange"), National Public Radio, Inc. ("NPR"), and the Corporation for Public Broadcasting ("CPB") (together, the "Settling Parties") of their interests related to Web V¹ royalty rates and terms for certain internet transmissions by public broadcasters, NPR, American Public Media, Public Radio International, Public Radio Exchange, and certain other unnamed public radio stations for the period from January 1, 2021, through December 31, 2025. Joint Motion to Adopt Partial Settlement, Docket No. 19-CRB-0005-WR (2021-2025) ("Web V"). The Judges received no comments on the proposed rule.

The Judges "may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement," only "if any participant [in the proceeding] objects to the agreement and the [Judges] conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates." 17 U.S.C. 801(b)(7)(A)(ii). Because no Web V participant has objected to the settlement, and the Judges find no basis in the record to conclude that the settlement does not provide a reasonable basis for setting statutory terms and rates, the Judges adopt the terms and rates as proposed.

List of Subjects in 37 CFR Part 380

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Final Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges amend 37 CFR part 380 as follows:

PART 380—RATES AND TERMS FOR TRANSMISSIONS BY ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES AND FOR THE MAKING OF EPHEMERAL REPRODUCTIONS TO FACILITATE THOSE TRANSMISSIONS

■ 1. The authority citation for part 380 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

■ 2. Revise subpart D to read as follows:

Subpart D—Public Broadcasters

Sec.

¹ Web V is short for Webcasting V. This proceeding is the fifth since Congress enacted the compulsory sound recording performance license for webcasting.

380.30 Definitions.

380.31 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

380.32 Terms for making payment of royalty fees and statements of account.

Subpart D—Public Broadcasters

§ 380.30 Definitions.

For purposes of this subpart, the following definitions apply:

Authorized website is any website operated by or on behalf of any Public Broadcaster that is accessed by website Users through a Uniform Resource Locator ("URL") owned by such Public Broadcaster and through which website Performances are made by such Public Broadcaster.

CPB is the Corporation for Public Broadcasting.

Music ATH is aggregate tuning hours of website Performances of sound recordings of musical works.

NPR is National Public Radio, Inc.

Originating Public Radio Station is a noncommercial terrestrial radio broadcast station that—

(1) Is licensed as such by the Federal Communications Commission;

(2) Originates programming and is not solely a repeater station;

(3) Is a member or affiliate of NPR, American Public Media, Public Radio International, or Public Radio Exchange, a member of the National Federation of Community Broadcasters, or another public radio station that is qualified to receive funding from CPB pursuant to its criteria;

(4) Qualifies as a "noncommercial webcaster" under 17 U.S.C.

114(f)(4)(E)(i); and

(5) Either—

(i) Offers website Performances only as part of the mission that entitles it to be exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501); or

(ii) In the case of a governmental entity (including a Native American Tribal governmental entity), is operated exclusively for public purposes.

Person is a natural person, a corporation, a limited liability company, a partnership, a trust, a joint venture, any governmental authority or any other entity or organization.

Public Broadcasters are NPR, American Public Media, Public Radio International, and Public Radio Exchange, and up to 530 Originating Public Radio Stations as named by CPB. CPB shall notify SoundExchange annually of the eligible Originating Public Radio Stations to be considered Public Broadcasters per this definition (subject to the numerical limitations set forth in this definition). The number of