

private entities that are not VR service providers but do provide financial or other assistance to individuals with disabilities to help meet VR needs, such as scholarship assistance from a local Lions Club) as one of the sources of comparable services and benefits because the Secretary interprets the reference in the statute to "other programs" to mean other public programs. In addition, the Secretary believes it would be too burdensome to require State agencies to determine the availability of comparable services and benefits from private agencies prior to providing services and benefits under this program. The Secretary would, however, continue to encourage State agencies to use services and benefits that are available from private agencies to the extent they are known. In response to public comment on the draft regulations, the Secretary has further amended the term by clarifying that comparable services and benefits must be available "within a reasonable period of time" and must be commensurate with the services that the individual would otherwise receive from the VR agency.

In response to public comment on the draft regulations, the Secretary has consolidated the definitions of "competitive employment" and "competitive work" from the draft regulations into a single proposed definition of "competitive employment." The consolidated definition recognizes that integration (i.e., an employment outcome in an integrated job setting) is an element of competitive employment, rather than a separate concept. It would establish a general requirement that individuals must receive compensation that is at or above the minimum wage, but not less than the prevailing community wage for non-disabled individuals performing the same or similar work.

The consolidated definition would apply to supported employment as well as to other kinds of competitive employment outcomes. Under the proposed definition, however, an employment outcome in a supported employment setting in which an individual receives wages below the minimum wage in accordance with section 14(c) of the Fair Labor Standards Act (FLSA) (i.e., wages based on individual productivity) would no longer be considered competitive employment. Although this proposed change would represent a significant departure from longstanding RSA regulatory policy, the Secretary agrees with those public commenters who suggested that competitive employment outcomes should be limited to those in

which individuals are compensated at or above the minimum wage. In addition, this proposed change is consistent with section 101(a)(16) of the Act, which requires DSUs annually to review and reevaluate the status of each individual in an employment setting under section 14(c) of the FLSA in order to determine the individual's readiness for competitive employment. This statutory requirement indicates that supported employment settings in which individuals are compensated below minimum wage in accordance with the FLSA do not constitute competitive employment. The Secretary also notes that the proposed change would have the effect of requiring individuals in supported employment to earn at least the minimum wage in order to receive services under Title VI, Part C of the Act. Finally, so that the impact of this proposed change can be appropriately evaluated, the Secretary requests public comment on the extent to which individuals currently in supported employment earn less than the minimum wage.

The proposed definition of the term "construction of a facility for a public or nonprofit community rehabilitation program" is based on the definition of the term "construction of a rehabilitation facility" in § 361.1(c) of the existing regulations and the definition of the term "construction" in section 7(1) of the Act. The proposed regulations also incorporate the 1992 Amendments, which replaced the concept of rehabilitation facilities with "community rehabilitation programs." The word "facility" is used in the proposed regulations only to refer to a "building" or "structure." In addition, the Secretary proposes to fold into this definition all authorized construction expenditures under this program, which are currently contained in § 361.74(a) of the existing regulations.

The Secretary proposes to define the term "eligible individual" for clarification throughout the regulations by referencing the basic eligibility criteria in proposed § 361.42(a).

The proposed definition of the term "establishment, development, or improvement of a public or nonprofit community rehabilitation program" elaborates on the statutory definition of the term "establishment of a community rehabilitation program" by incorporating all of the types of expenditures for which a State unit can receive Federal financial participation. These provisions are taken from § 361.73(a) of the existing regulations and include the limitations on staffing costs initially proposed in the 1991 NPRM.

The Secretary proposes to define separately the term "establishment of a facility for a public or nonprofit community rehabilitation program" for purposes of clarification. The proposed definition covers only those authorized activities contained in the definition of "establishment, development, or improvement of a public or nonprofit community rehabilitation program" that involve facilities. In response to public comment about these three terms, the Secretary wishes to emphasize that funds under this program cannot be used to support community rehabilitation programs that are profitmaking organizations.

In response to public comment on the draft regulations, the Secretary has amended the proposed definition of the term "extended employment" to clarify that it means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act as well as any on-the-job support services the individual might require. In response to several commenters who expressed concern with language in the draft definition that stated that some individuals in extended employment "are not ready for competitive employment," the Secretary has modified the proposed definition to clarify that the purpose of extended employment is to enable individuals to continue to train or otherwise prepare for competitive employment, unless the individual makes an informed choice to remain in extended employment.

In response to public comment, the definition of the term "family member" has been revised to mean any individual (1) who is a relative or guardian, or who lives in the same household as an applicant or eligible individual regardless of their interpersonal relationship; (2) who has a substantial interest in the well-being of that individual; and (3) who needs vocational rehabilitation services to enable the applicant or eligible individual to achieve an employment outcome.

In response to public comment on the draft regulations, the Secretary proposes to amend the definition of the term "impartial hearing officer" to clarify that a member of the DSU's rehabilitation advisory council may not serve as an impartial hearing officer for that same DSU. Under the proposed definition, however, a member of the State Rehabilitation Advisory Council could serve as an impartial hearing officer in cases involving another DSU within the same State. For example, a member of the State Rehabilitation