

Advisory Council for a State unit serving individuals who are blind would not be precluded, solely on the basis of that membership, from serving as an impartial hearing officer in cases involving the State unit that serves individuals other than individuals with visual disabilities.

The Secretary proposes to include the term "individual with a most severe disability" in the definitions to clarify that States are required to define the term as a subset of and consistent with the definition of the statutory term "individual with a severe disability."

The Secretary proposes to define the term "individual's representative," consistent with the list of potential representatives in the Act, so that the defined term, rather than the long list of potential representatives, can be referenced throughout the regulations. In response to public comment on the draft regulations, the Secretary proposes to amend the definition to clarify that it means any representative chosen by an applicant or eligible individual, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the interests of the individual, in which case the court-appointed representative is the individual's representative.

The proposed definition of the term "integrated setting" is designed to implement the intent of the statute that individuals receive VR services and achieve employment outcomes in the most integrated settings possible, consistent with the individual's informed choice. In the draft regulations the term was defined broadly to mean a setting in which the majority of individuals with whom individuals with disabilities interact meaningfully, excluding service providers, are non-disabled individuals. In response to public comment on the draft regulations, the Secretary proposes to amend the term by requiring that applicants or eligible individuals need only be given the opportunity to interact with non-disabled individuals, excluding service providers, on a regular basis for a setting to be considered integrated. This proposed change would permit employment at a center for independent living, for example, to be considered integrated as long as the employee has the opportunity to regularly interact with non-disabled persons, even though the Act requires that a majority of a center's employees be disabled. The proposed definition also applies to supported employment placements. A separate definition of "integration" for supported employment placements is, therefore,

no longer needed and is not included in the proposed regulations.

"Maintenance" would be defined to clarify that it includes living expenses (e.g., food, shelter, and clothing) only to the extent that they are in excess of an individual's normal expenses and that it is available only for eligible individuals and individuals receiving extended evaluation services. The proposed definition reflects statutory language in section 103(a)(5) of the Act that limits the provision of maintenance to "additional costs while participating in rehabilitation." The Secretary considers an individual to be participating in rehabilitation if the individual is receiving services under an individualized written rehabilitation program (IWRP) or under a written plan for providing extended evaluation services. The provision of maintenance must be tied to other needed services. Maintenance, however, cannot be used to pay the expenses of all applicants receiving assessment services, as several commenters urged. As discussed later in the definitions section of the preamble, the Secretary believes, however, that the short-term costs of food and shelter of applicants who are required to travel to receive assessment services, and who are not receiving extended evaluation services, could be covered as a transportation expense. In addition, the Secretary proposes a note following the proposed definition of maintenance that provides examples of permissible maintenance expenses. The last example was added in response to public comment and indicates that maintenance can be used to cover the costs of food, shelter, and clothing of homeless or recently deinstitutionalized individuals until other financial assistance can be secured for those costs. The Secretary emphasizes that the examples are provided solely for the purposes of illustration and do not preclude designated State units from providing maintenance in other appropriate situations.

In response to public comment on the draft regulations, the Secretary proposes to amend the definition of the term "ongoing support services" by removing the requirement that the assessment of an individual's employment stability include one monthly contact with the individual's employer whenever the IWRP of an individual in supported employment provides for off-site monitoring. The Secretary emphasizes, however, that contacts with employers are authorized as follow-up services under paragraph (iii)(F) of the proposed definition and could be provided as often as necessary to reinforce a supported employment placement.

In response to public comment on the draft regulations, the Secretary proposes to amend the definition of the term "physical and mental restoration service" by deleting from the proposed definition certain services that are not specifically identified in the statute. For example, "convalescent or nursing home care" has been deleted since it is not specified in section 103(a)(4) of the Act and is viewed as a type of long-term care rather than a restoration service.

In response to public comment on the draft regulations, the Secretary proposes to amend the definition of the term "physical or mental impairment" to mean an injury, disease, or other condition that materially limits, or if not treated will result in materially limiting, mental or physical functioning.

The Secretary proposes to define "post-employment services" based on existing subregulatory guidance. In response to public comment on the draft regulations, the Secretary has amended the proposed definition to clarify that post-employment services are any vocational rehabilitation services for individuals that are provided subsequent to the achievement of an employment outcome and that are necessary to enable the individual to maintain, regain, or advance in employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests. In addition, the Secretary proposes to amend the note following the proposed definition in order to further explain the circumstances under which post-employment services may be provided.

In response to public comment on the draft regulations, the Secretary has amended the definition of the term "substantial impediment to employment," as used in the criteria for determining eligibility under § 361.42(a)(1), to mean a physical or mental impairment that hinders (rather than "prevents") an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities. The Secretary proposes to delete the provision in the draft regulations that the impairment hinder the individual from employment that is consistent with the individual's interests. The purpose of this change is to clarify that an individual with an impairment who is not interested in his or her current employment does not, based on that lack of interest alone, have a substantial impediment to employment.

In response to public comment on the draft regulations and consistent with section 103(a)(14) of the Act, the