# Vocational Rehabilitation Services Manual A-300: Specific Customer Populations Revisions

Revised May 11, 2018

The following section was extensively revised; below is the new content, followed by the original content.

**ADDED CONTENT:**

## A-309: Subminimum Wage Recipients

Section 511 of the Rehabilitation Act of the Workforce Innovation and Opportunity Act (WIOA), requires that employers holding special wage certificates under the Fair Labor Standards Act (FLSA) comply with certain requirements before hiring individuals at subminimum wage (SMW), or to continue paying SMW to participants. Regardless of age, individuals with disabilities referred to VR who are, or are expected to be, employed at SMW must receive career counseling and information and referral services designed to promote opportunities for competitive integrated employment.

### A-309-1: Subminimum Wage Recipient Terminology

The following terminology is specific to the policies and procedures throughout A-309: Subminimum Wage (SMW) Recipients:

#### Career counseling

A discrete set of activities, different from counseling and guidance, that are mandated by Workforce Innovation and Opportunity Act (WIOA) that must be completed by VR staff for all individuals earning SMW in Texas, regardless of their state of residence or severity of disability.

#### 14c Certificate holder

A 14c certificate holder (14c) is any employer that receives a certificate from DOL Employment Standards Administration’s Wage and Hour Division to pay workers with disabilities SMW (wages less than the federal minimum wage).

#### Piece rate

Piece rate is a type of Sub minimum wage.

#### Point of contact

VR staff assigned to provide career counseling sessions to individuals who are working for SMW for a 14c.

#### Subminimum wage

SMW is always less than the minimum wage established by Fair Labor Standards Act (FLSA) or, where applicable, less than the prevailing wage required by a McNamara-O’Hara Service Contract Act wage determination. SMW must be a commensurate wage, based on the productivity of the worker with a disability (no matter how limited), in proportion to the productivity of experienced workers who do not have disabilities that impact their productivity when performing essentially the same work in the same vicinity.

#### Twenty-One Years of Age

An individual who has not yet reached their 22nd birthday.

#### Twenty-Four Years of Age

 An individual who has not yet reached their 25th birthday.

### A-309-2: Individuals Earning Subminimum Wage

There are three groups of individuals who earn subminimum wage that require career counseling and information and referral services. The specific requirements apply to each of the following groups:

#### Group One

All individuals earning SMW or piece rate hired by a 14c before July 22, 2016, regardless of age, must have received, no later than July 22, 2017, and annually thereafter, career counseling services, which include information on and referral to other employment assistance available in the individual’s community.

#### Group Two

Any individual not older than 24 who is hired by a 14c after July 22, 2016, and who earns SMW or piece rate must receive career counseling and information and referral services once within the first six months of employment, once within the second six months of employment, and annually thereafter if he or she continues to earn SMW.

#### Group Three

Group Three is made up of two subgroups—individuals not older than 24 and individuals not older than 21.

The following requirements apply to all individuals in Group Three who want to work at SMW or piece rate, and these individuals cannot earn SMW or piece rate until all requirements are satisfied:

1. All individuals in Group Three must apply for VR services.
2. If the individual or legal guardian states no interest in competitive integrated employment or VR services after application is completed, VR staff must do the following:
	1. Close the case in ReHabWorks (RHW).
	2. Use RHW to auto-generate a letter to the individual saying the case was closed due to no interest in services.
	3. Provide the first session of career counseling.
	4. Open a new case and complete the initial contact and 14c page in RHW, leaving the case open without assignment.
	5. Provide the individual with the closure letter, completed DARS5113, and completed DARS5118.
	6. If the individual is under 21 years of age, in addition to A­–D above:
* Contact the high school that the individual attends or attended and request written proof of transition services; or
* If no transition services were provided, issue written proof of Texas Workforce Commission (TWC) VR preemployment transition services (Pre-ETS); or
* If neither transition services through school or Pre-ETS through TWC VR were provided, mark the applicable box on the DARS5118 Section 511 cover sheet for Group Three; and
* provide the individual with the closure letter, completed DARS5113 and DARS5118, and proof of transition services or Pre-ETS, if applicable.

This individual can now be paid SMW. The individual must provide all required documents to the 14c. Per WIOA, the only individual authorized to receive completed Section 511 documents is this individual.

1. If a Group Three individual is interested in competitive integrated employment, but the VR counselor is uncertain whether the individual will be able to benefit from VR services, in terms of an employment outcome, because of the severity of that individual’s disability or if the individual is ineligible for VR services, VR staff must refer to VRSM B-300, Determining Eligibility, and B-310, Trial Work.

If the individual is found ineligible for VR services, VR staff must do the following:

1. Close the case in RHW.
2. Use RHW to auto-generate a letter to the individual saying the case was closed as ineligible due to severity of disability.
3. Provide the first session of career counseling.
4. Open a new case and complete the initial contact and 14c page, leaving the case open without assignment.
5. Provide the individual with the closure letter, completed DARS5113, and completed DARS5118.
6. If the individual is under 21 years of age, in addition to A–D above:
	* contact the high school that the individual attends or attended and request written proof of transition services; or
	* if no transition services were provided, issue written proof of TWC-VR Pre-ETS; or
	* if neither transition services through school or Pre-ETS through TWC-VR were provided, mark the applicable box on the DARS5118 Section 511 cover sheet for Group Three; and
	* provide the individual with the closure letter, completed DARS5113 and DARS5118, and proof of transition services or Pre-ETS, if applicable.

This individual can now be paid SMW. The individual must provide all required documents to the 14c. Per WIOA, the only individual authorized to receive completed Section 511 documents is this individual.

1. If a Group Three individual is interested in competitive integrated employment and is eligible for services, VR staff must do the following:
2. Follow all regular procedures for development of the Individualized Plan for Employment (IPE) and provision of active services.
3. If, at any time during the VR process, the individual decides he or she is no longer interested in competitive integrated employment, close the case and follow the procedures in 2.
4. The only variation from a regular VR case for Group Three is that to close a case unsuccessfully, individuals in Group Three must have been working toward the IPE employment outcome for a reasonable period (up to 24 months), with appropriate supports, without success.
5. Group Three individuals who obtain competitive integrated employment may still want to earn SMW in addition to competitive employment. For these individuals, VR staff must do the following:
* Close the case in RHW.
* Generate closure letter.
* Provide the first session of career counseling.
* Open a new case and complete the initial contact and 14c page, leaving the case open without assignment.
* Provide the individual with the closure letter, completed DARS5113, and completed DARS5118.
* If the individual is under 21 years of age, in addition to 1–4:
* contact the high school the individual attends or attended and request written proof of transition services; or
* if no transition services were provided, issue written proof of TWC VR Pre-ETS; or
* if neither transition services through school or Pre-ETS through TWC VR were provided, mark the applicable box on the DARS5118 Section 511 cover sheet for Group Three; and
* provide the individual with the closure letter, completed DARS5113 and DARS5118, and the proof of transition services or Pre-ETS, if applicable.

This individual can now be paid SMW. The individual must provide all required documents to the 14c. Per WIOA, the only individual authorized to receive the completed Section 511 documents is the individual.

1. If a Group Three individual obtains competitive integrated employment and does not wish to earn SMW in addition to competitive employment, follow normal procedures for case closure. No Section 511 activities (for example, career counseling) are required.

Note: During the time that a Group Three individual has an open case with VR, the individual cannot earn SMW.

(Authority: Sections 7(5), 7(39), 12(c), 102(a) and (b), 103(a), 113, and 511(a) and (d) of the Rehabilitation Act of 1973, as amended; 29 USC §§705(5), 705(39), 709(c), 722(a) and (b), 723(a), 733, and 794g(a) and (d); Workforce Innovation Technical Assistance Center)

### A-309-3: Process for Complying with Section 511

The point of contact (POC) must do the following:

* Schedule a premeeting at the 14c site with the SMW employer and review the process, VR responsibilities, and career counseling and guardian packets.
* When scheduling the premeeting with the 14c, record the answers to the following questions:
* How many individuals earn SMW or piece rate?
* How many have legal guardians? If the 14c is unsure, explain that the 14c will need to find this out and provide the number to the POC in advance of the premeeting.
* How many individuals of any age were hired before July 22, 2016?
* How many individuals not older than 24 were hired after July 22, 2016? Advise the 14c that this group must be immediately referred to VR services.

#### Preparation for a Premeeting

To prepare for a premeeting, VR staff must determine the approximate number of individuals earning SMW at the facility and do the following:

* Send the appropriate number of DARS1517-2, Authorization for Release of Confidential Customer Records and Information (the approximate number of individuals earning SMW at the facility).
* Send the appropriate number of DARS5060, Permission to Collect Information.
* Send the appropriate number of Career Counseling Data Sheets to be completed by the 14c before the premeeting for each individual earning SMW.
* Print the appropriate number of complete guardian packets to take to the premeeting for the 14c.
* Print the appropriate number of complete career counseling packets to take to the premeeting for the individuals who are their own guardians.
* Print one career counseling packet and one guardian packet for the 14c to review at the premeeting.

#### During the Premeeting

During the premeeting, VR staff must do the following:

* Review the three groups with the 14c, including the timelines for completion of VR activities, and review when individuals not older than 24 can start or continue to earn SMW.
* Review the career counseling process and each document with the 14c, emphasizing what happens if an individual or guardian signs DARS5110, Refusal to Participate.
* Collect completed Career Counseling Data Sheets for each individual earning SMW.
* Provide the 14c with the appropriate number of the following documents:
	+ Two copies (per individual) of the Subminimum Wage Career Counseling and Information and Referral sheet (formal documentation of career counseling and information and referral services, and documentation of whether the individual wants to work in the community);
	+ Career Counseling workbook;
	+ Refusal to Participate form;
	+ Guardian cover letter;
	+ Thank-you card;
	+ Career Counseling Data Sheet that the 14c should have completed before the premeeting, or, if not, have copies available; and
	+ Resource for Guardians document for individuals to give to their guardians.

Note: For additional guidance on documents to be sent to all parties involved, see the WIOA Section 511 Chart, Who Receives Documents and When. VR staff must do the following:

* Provide the 14c with enough packets for all individuals who have guardians.
* Request that the 14c send any documents requiring the guardian’s signature to the guardian before the career counseling sessions.
* Inform the 14c that it is the 14c’s responsibility to get guardian signatures and that VR cannot provide career counseling to individuals with guardians without signed documents.
* Request that the 14c staff invite guardians to the meeting.
* Inform 14c staff members that they must have ample personnel to assist VR staff.
* Schedule career counseling sessions.

#### Career Counseling Sessions

POC must do the following:

* Start with the Subminimum Wage Career Counseling and Information and Referral sheet and follow the general instructions. The Career Counseling workbook is used in conjunction with the form.
* Ensure that all forms are completed.
* Request that the 14c make a copy of all forms.
* Provide one copy to each individual.
* If an individual refuses to sign any form, including page seven of the workbook, then note the refusal on the form and sign the form.
* Provide individuals with the thank-you card.

If an individual is interested in applying for VR services, VR staff must do the following:

* Identify the assigned VR counselor in the unit where the individual will be served by contacting the unit manager.
	+ Explain to the assigned VR counselor that if the individual is not older than 24, the VR counselor must take an application regardless of the severity of the disability, and determine eligibility for VR services, including purchasing a Supported Employment Assessment and scheduling Trial Work Experience, if necessary.
	+ If the individual’s ability to complete multiple trial work experiences is in question, contact the Section 511 state office program specialists for instructions.
* Enter initial contact in RHW.
* Assign it to the appropriate caseload.
* Provide the assigned VR counselor a copy of the workbook.
* Scan and email the following forms to vr.WIOASection511@twc.state.tx.us:
	+ DARS5113 Career Counseling and Information and Referral sheet
	+ DARS5118 Section 511 Cover Sheet for Group Three (if applicable)
	+ DARS1517-2 Authorization for Release of Confidential Consumer Records and Information forms
	+ DARS5060 Permission to Collect Information forms

State-level staff will hold all copies of completed career counseling documents. The VR counselor may destroy the hard copies of these forms after the scanned forms have been sent to state office.

#### A-309-4: Refusal to Participate

If a participant or guardian refuses participation, VR staff must provide documentation to the individual within 10 calendar days of the refusal to participate. VR staff must use the DARS5110 Refusal to Participate in TWS-VRS WIOA Section 511 Required Activities form.

Refusal to participate means that the individual cannot accept SMW. The individual can attend the workshop or go to the facility, but he or she cannot earn less than minimum wage.

#### A-309-5: Additional Guidance Requests for Information about WIOA

If an individual or guardian wants clarification or more information about Section 511 requirements, he or she can contact DOL’s Wage and Hour Division through the agency’s website (https://www.dol.gov/whd/specialemployment/).

If a 14c wants more information on WIOA or needs clarification of responsibilities under the Act, the 14c can contact DOL’s Wage and Hour Division Regional Office in Dallas:

Southwest Regional Office
525 S. Griffin Street, Suite 800
Dallas, Texas 75202

Phone: (972) 850–2550

**RETIRED CONTENT:**

## A-309: Subminimum Wage Recipients

Section 511 of the Rehabilitation Act, as added by the Workforce Innovation and Opportunity Act (WIOA), requires employers that hold special wage certificates under the Fair Labor Standards Act (FLSA) to comply with certain requirements. WIOA mandates that these requirements be satisfied before the employers can hire youth with disabilities at subminimum wages (SMW) (wages less than the federal minimum wage) or continue to employ individuals with disabilities of any age at the SMW level. Regardless of age, individuals with disabilities referred to VR who are expected to be employed at SMW must receive Career Counseling and Information and Referral services designed to promote opportunities for competitive integrated employment.

### A-309-1: Key Terms

Career Counseling

A discrete set of activities, different from career counseling as part of an active case, that are mandated by WIOA to be completed by VR staff for all individuals earning SMW in Texas, regardless of their state of residence or severity of disability.

Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) establishes the minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in federal, state, and local governments. FLSA is administered by the US Department of Labor's (DOL) Employment Standards Administration's Wage and Hour Division.

14c Certificate holder

A 14c certificate holder (14c) is any employer that receives a certificate from DOL's Employment Standards Administration's Wage and Hour Division to pay workers with disabilities SMW (wages less than the federal minimum wage).

Piece rate

Piece rate is a type of subminimum wage.

Point of contact

VR staff assigned to provide career counseling sessions to individuals who are working for subminimum wage for a 14c certificate holder.

Subminimum wage

SMW is always less than the minimum wage established by FLSA or, where applicable, less than the prevailing wage required by a McNamara-O'Hara Service Contract Act wage determination. SMW must be a commensurate wage, based on the productivity of the worker with a disability (no matter how limited), in proportion to the productivity of experienced workers who do not have disabilities that impact their productivity when performing essentially the same work in the same vicinity.

Workforce Innovation and Opportunity Act

WIOA is the federal law that became effective in 2014 and reauthorizes and amends the Workforce Investment Act and the Rehabilitation Act of 1973. WIOA comprises five titles. Title IV pertains to requirements for the VR program.

### A-309-2: Individuals Earning Subminimum Wage

Three groups of individuals require Career Counseling and Information and Referral services. Specific requirements apply to each group.

#### Group One

All individuals earning SMW/piece rate hired by a 14c Certificate holder before July 22, 2016, regardless of age, must have received, no later than July 22, 2017, and annually thereafter, Career Counseling services, which include information on and referral to other VR employment assistance available in each individual's community.

#### Group Two

Any individual not older than 24 years of age hired by a 14c Certificate holder after July 22, 2016, and earning SMW/piece rate, must receive Career Counseling and Information and Referral services within the first six months of employment and annually thereafter.

#### Group Three

* Group Three is made up of two separate age ranges, individuals not older than 24 and individuals not older than 21 years of age.
* The following requirements apply to all individuals in Group Three not older than 24 (which includes individuals not older than 21 years of age) who want to work at SMW/piece rate after July 22, 2016.

Note: These individuals cannot earn SMW/piece rate until all requirements are satisfied:

1. All individuals in Group Three make application for VR services.
2. All individuals in Group Three must have an eligibility determination completed.
3. For individuals who are ineligible for services, staff must:
	1. send a denial letter and document the method of delivery of the letter in a separate Case Note in RHW (entitled "Section 511"); and
	2. provide Career Counseling and information and referral services and complete all Section 511/Career Counseling documents.
4. Individuals seeking VR services must provide proof of ineligibility for VR services before the 14c Certificate holder pays them SMW.
5. Those individuals eligible for services must:
	1. have an approved IPE;
	2. have been working toward the IPE employment outcome for a reasonable period (up to 24 months) and with appropriate supports without success if the case is going to be closed as unsuccessful;
	3. have a closed VR service record; and
	4. have a Receipt of Career Counseling and Information and Referral services.
6. Individuals seeking TWS-VRS services must provide proof of eligibility for TWS-VRS services before the 14c Certificate holder pays them SMW.
7. Individuals not older than 21 years of age must receive VR Career Counseling services in the first six months of employment and annually thereafter.

Note: A determination as to what constitutes a ''reasonable period of time'' must be consistent with the disability-related and vocational needs of the individual, as well as the anticipated length of time required to complete the services identified in the IPE.

For an individual who has a specified employment goal that is in supported employment, such reasonable period is up to 24 months, unless under special circumstances the individual and the VR counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE.

(Authority: Sections 7(5), 7(39), 12(c), 102(a) and (b), 103(a), 113, and 511(a) and (d) of the Rehabilitation Act of 1973, as amended; 29 USC §§705(5), 705(39), 709(c), 722(a) and (b), 723(a), 733, and 794g(a) and (d))

Note: In addition to satisfying the requirements stipulated in 1–7 above, individuals not older than 21 years of age must provide proof of Transition Services through the school system or proof of Pre-ETS through VR before accepting a position at SMW. VR is responsible for collecting the proof of Transition Services from the school system and providing it to the customer.

### A-309-3: Process for Complying with Section 511

The point of contact (POC) with the 14c SMW employer must do the following:

* Schedule a pre-meeting with the 14c Certificate holder in the POC's area to meet at the 14c site and review the process, VR responsibilities, and the Career Counseling and guardian packets.
* When scheduling the pre-meeting with the 14c, record the answers to the following questions:
	+ How many individuals earn SMW or piece rate?
	+ How many have legal guardians? If the 14c is unsure, explain that the 14c will need to find this out and provide the number to the POC in advance of the pre-meeting.
	+ How many individuals of any age were hired before July 22, 2016?
	+ How many individuals not older than 24 were hired after July 22, 2016?
	+ How many individuals not older than 24 years of age were hired after July 22, 2016?  Advise the 14c that this group must be immediately referred to VR services.

#### Preparation for a Pre-meeting

To prepare for a pre-meeting, VR staff must do the following:

1. Send the appropriate number of DARS1517-2, Authorization for Release of Confidential Customer Records and Information (the approximate number of individuals earning SMW at the facility).
2. Send the appropriate number of DARS5060, Permission to Collect Information.
3. Send the appropriate number of Career Counseling Data Sheets to be completed by the 14c for each individual earning SMW before the pre-meeting.
4. Print the appropriate number of complete guardian packets for the 14c to take to the pre-meeting.
5. Print the appropriate number of complete Career Counseling packets for the number of individuals who are their own guardians to take to the pre-meeting.
6. Print one Career Counseling packet and one guardian packet for the 14c to review at the pre-meeting.

#### During the Pre-meeting

During the pre-meeting, staff must do the following:

1. Review the three groups with the 14c, including the timelines for completion of VR activities, and when individuals not older than 24 can start or continue to earn SMW.
2. Review the Career Counseling process and each document with the 14c and emphasize what happens if an individual or guardian signs DARS5110, Refusal to Participate.
3. Collect completed Career Counseling Data Sheets for each individual earning SMW from the 14c.
4. Provide the 14c with the appropriate number of the following documents:
	* Two copies (per individual) of the Subminimum Wage Career Counseling and Information and Referral sheet (formal documentation of Career Counseling and Information and Referral services and documentation of whether the individual wants to work in the community);
	* Career Counseling workbook;
	* Refusal to Participate form;
	* Guardian cover letter;
	* Thank-you card;
	* Career Counseling Data Sheet that the 14c Certificate holder should already have completed or, if not, have copies available; and
	* Resource for Guardians document for individuals to give to their guardians.

Note: For additional guidance on documents to be sent to all parties involved, see the WIOA Section 511 Chart, Who Receives Documents and When. VR staff must do the following:

1. Provide the 14c with enough packets for all individuals who have guardians
2. Request that the 14c send any documents requiring the guardian's signature to the guardian before the Career Counseling session(s)
3. Inform the 14c that it is the 14c's responsibility to get guardian signatures and that VR cannot provide Career Counseling to individuals with guardians without the signed documents
4. Request that the 14c staff invite the individual's guardian to the meeting
5. Inform 14c staff members that they must have ample personnel to assist VR staff
6. Schedule Career Counseling session(s)

#### Career Counseling Session(s)

POC must do the following:

1. Start with the Subminimum Wage Career Counseling and Information and Referral sheet and follow the general Instructions. The Career Counseling workbook is used in conjunction with the form.
2. Ensure that all forms are completed.
3. Request that the 14c make a copy of all forms.
4. Provide one copy to the individual.
5. If the individual refuses to sign any form, including page seven of the workbook, then the POC notes the refusal on the form and signs the form.
6. Provide the individuals with the thank-you card.

If an individual is interested and does want to apply for VR services, staff must do the following:

1. Identify the VR counselor in the unit where the individual will be served by contacting that unit's manager and obtaining the name of the VR counselor assigned to the case.
	* Explain to the assigned VR counselor that if the individual is not older than 24 the VR counselor must take an application regardless of the severity of the disability and determine eligibility for VR services, including purchasing a Supported Employment Assessment and scheduling Trial Work Experience if necessary.
	* If the individual's ability to complete multiple Trial Work Experiences is in question, contact the state office program specialists for Section 511 for instructions.
2. Enter initial contact in RHW;
3. Assign it to the appropriate caseload;
4. Provide the assigned VR counselor a copy of the workbook; and
5. Scan and email the following forms to vr.WIOASection511@twc.state.tx.us:
	* Subminimum Wage Career Counseling and Information and Referral sheet
	* Career Counseling Data sheet
	* Career Counseling workbook
	* DARS1517-2 Authorization for Release of Confidential Consumer Records and Information forms
	* DARS5060 Permission to Collect Information forms

State-level staff will enter and track information.

### A-309-4: Refusal to Participate

If a participant or guardian refuses participation, VR staff must provide documentation to the individual within 10 calendar days of the refusal to participate. Staff must use the Refusal to Participate form.

Refusal to participate means that the individual cannot accept SMW. The individual can attend the workshop or go to the facility, but he or she cannot earn less than minimum wage.

### A-309-5: Additional Guidance Requests for Information about WIOA

If an individual or guardian wants clarification or more information about the new Section 511 requirements, he or she can contact the local DOL Wage and Hour Division. A list of local Wage and Hour Division office locations can be found at [DOL WHD](https://www.dol.gov/whd/america2.htm) (<https://www.dol.gov/whd/america2.htm>).

If a 14c wants more information on WIOA or needs clarification of responsibilities under the Act, the 14c should contact the Wage and Hour Division Regional Office in Dallas:

Southwest Regional Office
525 S. Griffin Street, Suite 800
Dallas, Texas 75202

Betty Campbell, Regional Administrator
(972) 850-2600