

Designated State Agency should be re-designated, the Governor (or legislature) must provide written assurance of compliance within 45 days from receipt of the decision.

(5) During any time of this appeals process the State Developmental Disabilities Council may withdraw such request if resolution has been reached with the Governor (or legislature) on the designation of the Designated State Agency. The Governor (or legislature) must notify the Assistant Secretary in writing of such an occurrence.

(e) The designated State agency may authorize the Council use or contract with State agencies other than the designated State agency to perform functions of the designated State agency.

[61 FR 51160, Sept. 30, 1996]

**§ 1386.35 Allowable and non-allowable costs for Federal Assistance to State Developmental Disabilities Councils.**

(a) Under this subpart, Federal financial participation is available in costs resulting from obligations incurred under the approved State plan for the necessary expenses of the approved State plan for the necessary expenses of the State Council, the administration and operation of the State plan, and training of personnel.

(b) Expenditures which are not allowable for Federal financial participation are:

(1) Costs incurred by institutions or other residential or non-residential programs which do not comply with the Congressional findings with respect to the rights of individuals with developmental disabilities in section 110 of the Act (42 U.S.C. 6009).

(2) Costs incurred for activities not provided for in the approved State plan; and

(3) Costs not allowed under other applicable statutes. Departmental regulations or issuances of the Office of Management and Budget.

(c) Expenditure of funds which supplant State and local funds will be disallowed. Supplanting occurs when State or local funds previously used to fund activities in the developmental disabilities State Plan are replaced by Federal funds which are then used for

the same purpose. However, supplanting does not occur if State or local funds are replaced with Federal funds for a particular activity or purpose in the approved State Plan if the State or local funds are then used for other activities or purposes in the approved State Plan.

(d) For purposes of determining aggregate minimum State share of expenditures, there are three categories of expenditures:

(1) Expenditures for projects or activities carried out directly by the Council and Council staff, as described in section 125A(a)(2) of the Act, require no non-Federal aggregate participation.

(2) Expenditures for projects with activities or products targeted to urban or rural poverty areas but not carried out directly by the Council and Council staff, as described in section 125A(a)(2) of the Act, shall have non-Federal participation of at least 10% in the aggregate.

(3) All other activities not directly carried out by the Council and Council staff, shall have non-Federal participation of at least 25% in the aggregate.

(e) The Council may vary the non-Federal participation required on a project by project, activity by activity basis (both poverty and non-poverty activities), including requiring no non-Federal participation from particular projects or activities as the Council deems appropriate so long as the requirement for aggregate non-Federal participation is met.

[49 FR 11779, Mar. 27, 1984, as amended at 52 FR 44847, Nov. 20, 1987; 54 FR 47985, Nov. 20, 1989; 61 FR 51161, Sept. 30, 1996]

**§ 1386.36 Final disapproval of the State plan or plan amendments.**

The Department will disapprove any State plan or plan amendment only after the following procedures have been complied with:

(a) The State plan has been submitted to the appropriate HHS Regional Office, and the Regional Office and State have been unable to resolve their differences.

(b) The Regional Office has prepared a detailed written analysis of its reasons for recommending disapproval and has transmitted its analyses and all