

services for individuals with disabilities, consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that they may prepare for and engage in competitive integrated employment and achieve economic self-sufficiency.

(Authority: Sections 12(c) and 100(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 720(a))

#### § 361.2 Eligibility for a grant.

Any State that submits to the Secretary a vocational rehabilitation services portion of the Unified or Combined State Plan that meets the requirements of section 101(a) of the Act and this part is eligible for a grant under this program.

(Authority: Section 101(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a))

#### § 361.3 Authorized activities.

The Secretary makes payments to a State to assist in—

(a) The costs of providing vocational rehabilitation services under the vocational rehabilitation services portion of the Unified or Combined State Plan; and

(b) Administrative costs under the vocational rehabilitation services portion of the Unified or Combined State Plan, including one-stop infrastructure costs.

(Authority: Sections 12(c) and 111(a)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 731(a)(1))

#### § 361.4 Applicable regulations.

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 76 (State-Administered Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(b) The regulations in this part 361.

(c) 2 CFR part 190 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)) as adopted in 2 CFR part 3485.

(d) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted in 2 CFR part 3474, except the requirements to accept third-party in-kind contributions to meet cost-sharing or matching requirements, as otherwise authorized under 2 CFR 200.306(b).

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

#### § 361.5 Applicable definitions.

The following definitions apply to this part:

(a) Definitions in EDGAR 77.1.

(b) Definitions in 2 CFR part 200, subpart A.

(c) The following definitions:

(1) *Act* means the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 *et seq.*).

(2) *Administrative costs under the vocational rehabilitation services portion of the Unified or Combined State Plan* means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program carried out under this part, including expenses related to program planning, development, monitoring, and evaluation, including, but not limited to, expenses for—

(i) Quality assurance;

(ii) Budgeting, accounting, financial management, information systems, and related data processing;

(iii) Providing information about the program to the public;

(iv) Technical assistance and support services to other State agencies, private nonprofit organizations, and businesses and industries, except for technical assistance and support services described in § 361.49(a)(4);

(v) The State Rehabilitation Council and other advisory committees;

(vi) Professional organization membership dues for designated State unit employees;

(vii) The removal of architectural barriers in State vocational rehabilitation agency offices and State-operated rehabilitation facilities;

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(viii) Operating and maintaining designated State unit facilities, equipment, and grounds, as well as the infrastructure of the one-stop system;

(ix) Supplies;

(x) Administration of the comprehensive system of personnel development described in § 361.18, including personnel administration, administration of affirmative action plans, and training and staff development;

(xi) Administrative salaries, including clerical and other support staff salaries, in support of these administrative functions;

(xii) Travel costs related to carrying out the program, other than travel costs related to the provision of services;

(xiii) Costs incurred in conducting reviews of determinations made by personnel of the designated State unit, including costs associated with mediation and impartial due process hearings under § 361.57; and

(xiv) Legal expenses required in the administration of the program.

(Authority: Sections 7(1) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(1) and 709(c))

(3) *Applicant* means an individual who submits an application for vocational rehabilitation services in accordance with § 361.41(b)(2).

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(4) *Appropriate modes of communication* means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(5) *Assessment for determining eligibility and vocational rehabilitation needs* means, as appropriate in each case—

(i)(A) A review of existing data—

(1) To determine if an individual is eligible for vocational rehabilitation services; and

(2) To assign priority for an order of selection described in § 361.36 in the States that use an order of selection; and

(B) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and assignment;

(ii) To the extent additional data are necessary to make a determination of the employment outcomes and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual. This comprehensive assessment—

(A) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual;

(B) Uses as a primary source of information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements—

(1) Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in § 361.36 for the individual; and

(2) Information that can be provided by the individual and, if appropriate, by the family of the individual;

(C) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual;

(D) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment; and

(E) To the maximum extent possible, relies on information obtained from experiences in integrated employment settings in the community and in other integrated community settings;

(iii) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(iv) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

(Authority: Sections 7(2) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(2) and 709(c))

(6) *Assistive technology terms*—(i) *Assistive technology* has the meaning given such term in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

(ii) *Assistive technology device* has the meaning given such term in section 3 of the Assistive Technology Act of 1998, except that the reference in such section to the term *individuals with disabilities* will be deemed to mean more than one individual with a disability as defined in paragraph (20)(A) of the Act.

(iii) *Assistive technology service* has the meaning given such term in section 3 of the Assistive Technology Act of 1998, except that the reference in such section to the term—

(A) *Individual with a disability* will be deemed to mean an individual with a disability, as defined in paragraph (20)(A) of the Act; and

(B) *Individuals with disabilities* will be deemed to mean more than one such individual.

(Authority: Sections 7(3) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(3) and 709(c))

(7) *Community rehabilitation program*—

(i) *Community rehabilitation program* means a program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

(A) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.

(B) Testing, fitting, or training in the use of prosthetic and orthotic devices.

(C) Recreational therapy.

(D) Physical and occupational therapy.

(E) Speech, language, and hearing therapy.

(F) Psychiatric, psychological, and social services, including positive behavior management.

(G) Assessment for determining eligibility and vocational rehabilitation needs.

(H) Rehabilitation technology.

(I) Job development, placement, and retention services.

(J) Evaluation or control of specific disabilities.

(K) Orientation and mobility services for individuals who are blind.

(L) Extended employment.

(M) Psychosocial rehabilitation services.

(N) Supported employment services and extended services.

(O) Customized employment.

(P) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(Q) Personal assistance services.

(R) Services similar to the services described in paragraphs (c)(7)(i)(A) through (Q) of this section.

(ii) For the purposes of this definition, *program* means an agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the

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provision of vocational rehabilitation services as one of its major functions.

(Authority: Section 7(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(4))

(8) *Comparable services and benefits*—  
(i) *Comparable services and benefits* means services and benefits, including accommodations and auxiliary aids and services, that are—

(A) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

(B) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with § 361.53; and

(C) Commensurate to the services that the individual would otherwise receive from the designated State vocational rehabilitation agency.

(ii) For the purposes of this definition, comparable services and benefits do not include awards and scholarships based on merit.

(Authority: Sections 12(c) and 101(a)(8) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(8))

(9) *Competitive integrated employment* means work that—

(i) Is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that—

(A) Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the rate required under the applicable State or local minimum wage law for the place of employment;

(B) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and

(C) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on

similar tasks and who have similar training, experience, and skills; and

(D) Is eligible for the level of benefits provided to other employees; and

(ii) Is at a location—

(A) Typically found in the community; and

(B) Where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (*e.g.*, customers and vendors), who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons; and

(iii) Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(Authority: Sections 7(5) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(5) and 709(c))

(10) *Construction of a facility for a public or nonprofit community rehabilitation program* means—

(i) The acquisition of land in connection with the construction of a new building for a community rehabilitation program;

(ii) The construction of new buildings;

(iii) The acquisition of existing buildings;

(iv) The expansion, remodeling, alteration, or renovation of existing buildings;

(v) Architect's fees, site surveys, and soil investigation, if necessary, in connection with the acquisition of land or existing buildings, or the construction, expansion, remodeling, or alteration of community rehabilitation facilities;

(vi) The acquisition of initial fixed or movable equipment of any new, newly acquired, newly expanded, newly remodeled, newly altered, or newly renovated buildings that are to be used for community rehabilitation program purposes; and

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(vii) Other direct expenditures appropriate to the construction project, except costs of off-site improvements.

(Authority: Sections 7(6) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(6) and 709(c))

(11) *Customized employment* means competitive integrated employment, for an individual with a significant disability, that is—

(i) Based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability;

(ii) Designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer; and

(iii) Carried out through flexible strategies, such as—

(A) Job exploration by the individual; and

(B) Working with an employer to facilitate placement, including—

(1) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;

(2) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;

(3) Using a professional representative chosen by the individual, or if elected self-representation, to work with an employer to facilitate placement; and

(4) Providing services and supports at the job location.

(Authority: Section 7(7) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(7) and 709(c))

(12) *Designated State agency* or *State agency* means the sole State agency, designated, in accordance with § 361.13(a), to administer, or supervise the local administration of, the vocational rehabilitation services portion of the Unified or Combined State Plan. The term includes the State agency for individuals who are blind, if designated as the sole State agency with respect to that part of the Unified or Combined State Plan relating to the vocational

rehabilitation of individuals who are blind.

(Authority: Sections 7(8)(A) and 101(a)(2)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(8)(A) and 721(a)(2)(A))

(13) *Designated State unit* or *State unit* means either—

(i) The State vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the State agency, as required under § 361.13(b); or

(ii) The State agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities.

(Authority: Sections 7(8)(B) and 101(a)(2)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(8)(B) and 721(a)(2)(B))

(14) *Eligible individual* means an applicant for vocational rehabilitation services who meets the eligibility requirements of § 361.42(a).

(Authority: Sections 7(20)(A) and 102(a)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A) and 722(a)(1))

(15) *Employment outcome* means, with respect to an individual, entering, advancing in, or retaining full-time or, if appropriate, part-time competitive integrated employment, as defined in paragraph (c)(9) of this section (including customized employment, self-employment, telecommuting, or business ownership), or supported employment as defined in paragraph (c)(53) of this section, that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

NOTE TO PARAGRAPH (c)(15): A designated State unit may continue services to individuals with uncompensated employment goals on their approved individualized plans for employment prior to September 19, 2016 until June 30, 2017, unless a longer period of time

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is required based on the needs of the individual with the disability, as documented in the individual's service record.

(Authority: Sections 7(11), 12(c), 100(a)(2), and 102(b)(4)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(11), 709(c), 720(a)(2), and 722(b)(4)(A))

(16) *Establishment, development, or improvement of a public or nonprofit community rehabilitation program* means—

(i) The establishment of a facility for a public or nonprofit community rehabilitation program, as defined in paragraph (c)(17) of this section, to provide vocational rehabilitation services to applicants or eligible individuals;

(ii) Staffing, if necessary to establish, develop, or improve a public or nonprofit community rehabilitation program for the purpose of providing vocational rehabilitation services to applicants or eligible individuals, for a maximum period of four years, with Federal financial participation available at the applicable matching rate for the following levels of staffing costs:

(A) 100 percent of staffing costs for the first year;

(B) 75 percent of staffing costs for the second year;

(C) 60 percent of staffing costs for the third year; and

(D) 45 percent of staffing costs for the fourth year; and

(iii) Other expenditures and activities related to the establishment, development, or improvement of a public or nonprofit community rehabilitation program that are necessary to make the program functional or increase its effectiveness in providing vocational rehabilitation services to applicants or eligible individuals, but are not ongoing operating expenses of the program.

(Authority: Sections 7(12) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(12) and 709(c))

(17) *Establishment of a facility for a public or nonprofit community rehabilitation program* means—

(i) The acquisition of an existing building and, if necessary, the land in connection with the acquisition, if the building has been completed in all respects for at least one year prior to the date of acquisition and the Federal share of the cost of acquisition is not more than \$300,000;

(ii) The remodeling or alteration of an existing building, provided the estimated cost of remodeling or alteration does not exceed the appraised value of the existing building;

(iii) The expansion of an existing building, provided that—

(A) The existing building is complete in all respects;

(B) The total size in square footage of the expanded building, notwithstanding the number of expansions, is not greater than twice the size of the existing building;

(C) The expansion is joined structurally to the existing building and does not constitute a separate building; and

(D) The costs of the expansion do not exceed the appraised value of the existing building;

(iv) Architect's fees, site survey, and soil investigation, if necessary in connection with the acquisition, remodeling, alteration, or expansion of an existing building; and

(v) The acquisition of fixed or movable equipment, including the costs of installation of the equipment, if necessary to establish, develop, or improve a community rehabilitation program.

(Authority: Sections 7(12) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(12) and 709(c))

(18) *Extended employment* 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.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(19) *Extended services* means ongoing support services and other appropriate services that are—

(i) Needed to support and maintain an individual with a most significant disability including a youth with a most significant disability, in supported employment;

(ii) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment;

(iii) Based on the needs of an eligible individual, as specified in an individualized plan for employment;

(iv) Provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the designated State unit; and

(v) Provided to a youth with a most significant disability by the designated State unit in accordance with requirements set forth in this part and part 363 for a period not to exceed four years, or at such time that a youth reaches age 25 and no longer meets the definition of a youth with a disability under paragraph (c)(58) of this section, whichever occurs first. The designated State unit may not provide extended services to an individual with a most significant disability who is not a youth with a most significant disability.

(Authority: Sections 7(13), 12(c), and 604(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(13), 709(c), and 795i(b))

(20) *Extreme medical risk* means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(Authority: Sections 12(c) and 101(a)(8)(A)(i)(III) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(8)(A)(i)(III))

(21) *Fair hearing board* means a committee, body, or group of persons established by a State prior to January 1, 1985, that—

(i) Is authorized under State law to review determinations made by personnel of the designated State unit that affect the provision of vocational rehabilitation services; and

(ii) Carries out the responsibilities of the impartial hearing officer in accordance with the requirements in § 361.57(j).

(Authority: Sections 12(c) and 102(c)(6) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c)(6))

(22) *Family member*, for purposes of receiving vocational rehabilitation services in accordance with § 361.48(b)(9), means an individual—

(i) Who either—

(A) Is a relative or guardian of an applicant or eligible individual; or

(B) Lives in the same household as an applicant or eligible individual;

(ii) Who has a substantial interest in the well-being of that individual; and

(iii) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(Authority: Sections 12(c) and 103(a)(19) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(19))

(23) *Governor* means a chief executive officer of a State.

(Authority: Section 7(15) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(15))

(24) *Impartial hearing officer*—(i) *Impartial hearing officer* means an individual who—

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(B) Is not a member of the State Rehabilitation Council for the designated State unit;

(C) Has not been involved previously in the vocational rehabilitation of the applicant or recipient of services;

(D) Has knowledge of the delivery of vocational rehabilitation services, the vocational rehabilitation services portion of the Unified or Combined State Plan, and the Federal and State regulations governing the provision of services;

(E) Has received training with respect to the performance of official duties; and

(F) Has no personal, professional, or financial interest that could affect the objectivity of the individual.

(ii) An individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.

(Authority: Sections 7(16) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(16) and 709(c))

(25) *Indian; American Indian; Indian American; Indian Tribe*—(i) *In general*. The terms “Indian”, “American Indian”, and “Indian American” mean an individual who is a member of an Indian tribe and include a Native and a

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descendant of a Native, as such terms are defined in subsections (b) and (r) of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(ii) *Indian tribe*. The term “Indian tribe” means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act) and a tribal organization (as defined in section 4(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)(1)).

(Authority: Section 7(19) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(19))

(26) *Individual who is blind* means a person who is blind within the meaning of applicable State law.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(27) *Individual with a disability*, except as provided in paragraph (c)(28) of this section, means an individual—

(i) Who has a physical or mental impairment;

(ii) Whose impairment constitutes or results in a substantial impediment to employment; and

(iii) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(Authority: Section 7(20)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A))

(28) *Individual with a disability*, for purposes of §§ 361.5(c)(13), 361.13(a), 361.13(b)(1), 361.17(a), (b), (c), and (j), 361.18(b), 361.19, 361.20, 361.23(b)(2), 361.29(a) and (d)(8), and 361.51(b), means an individual—

(i) Who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Authority: Section 7(20)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(B))

(29) *Individual with a most significant disability* means an individual with a

significant disability who meets the designated State unit’s criteria for an individual with a most significant disability. These criteria must be consistent with the requirements in § 361.36(d)(1) and (2).

(Authority: Sections 7(21)(E) and 101(a)(5)(C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(21)(E) and 721(a)(5)(C))

(30) *Individual with a significant disability* means an individual with a disability—

(i) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, intellectual disability, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(31) *Individual’s representative* means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual’s representative.

(Authority: Sections 7(22) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(22) and 709(c))

(32) *Integrated setting* means—



(i) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals; and

(ii) With respect to an employment outcome, means a setting—

(A) Typically found in the community; and

(B) Where the employee with a disability interacts, for the purpose of performing the duties of the position, with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (*e.g.*, customers and vendors) who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(33) *Local workforce development board* means a local board, as defined in section 3 of the Workforce Innovation and Opportunity Act.

(Authority: Section 7(25) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(25))

(34) *Maintenance* means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

(Authority: Sections 12(c) and 103(a)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(7))

(i) *Examples*: The following are examples of expenses that would meet the definition of *maintenance*. The examples are illustrative, do not address all possible circumstances, and are not in-

tended to substitute for individual counselor judgment.

*Example 1*: The cost of a uniform or other suitable clothing that is required for an individual's job placement or job-seeking activities.

*Example 2*: The cost of short-term shelter that is required in order for an individual to participate in assessment activities or vocational training at a site that is not within commuting distance of an individual's home.

*Example 3*: The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement.

(ii) [Reserved]

(35) *Mediation* means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies. Mediation under the program must be conducted in accordance with the requirements in § 361.57(d) by a qualified and impartial mediator as defined in § 361.5(c)(43).

(Authority: Sections 12(c) and 102(c)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c)(4))

(36) *Nonprofit*, with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

(Authority: Section 7(26) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(26))

(37) *Ongoing support services*, as used in the definition of *supported employment*, means services that—

(i) Are needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment;

(ii) Are identified based on a determination by the designated State unit of the individual's need as specified in an individualized plan for employment;

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(iii) Are furnished by the designated State unit from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement;

(iv) Include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on—

(A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

(B) If under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice monthly meetings with the individual;

(v) Consist of—

(A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in paragraph (c)(5)(ii) of this section;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(C) Job development and training;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of vocational rehabilitation services for individuals, described in § 361.48(b); or

(I) Any service similar to the foregoing services.

(Authority: Sections 7(27) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(27) and 709(c))

(38) *Personal assistance services* means a range of services, including, among other things, training in managing, su-

pervising, and directing personal assistance services, provided by one or more persons, that are—

(i) Designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability;

(ii) Designed to increase the individual's control in life and ability to perform everyday activities on or off the job;

(iii) Necessary to the achievement of an employment outcome; and

(iv) Provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

(Authority: Sections 7(28), 12(c), 102(b)(4)(B)(i)(I)(bb), and 103(a)(9) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(28), 709(c), 722(b)(4)(B)(i)(I)(bb), and 723(a)(9))

(39) *Physical and mental restoration services* means—

(i) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(ii) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(iii) Dentistry;

(iv) Nursing services;

(v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(vi) Drugs and supplies;

(vii) Prosthetic and orthotic devices;

(viii) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel who are qualified in accordance with State licensure laws;

(ix) Podiatry;

(x) Physical therapy;

(xi) Occupational therapy;

- (xii) Speech or hearing therapy;
- (xiii) Mental health services;
- (xiv) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;
- (xv) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and
- (xvi) Other medical or medically related rehabilitation services.

(Authority: Sections 12(c) and 103(a)(6) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(6))

(40) *Physical or mental impairment* means—

- (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or
- (ii) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(41) *Post-employment services* means one or more of the services identified in § 361.48(b) that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 12(c) and 103(a)(20) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(20))

NOTE TO PARAGRAPH (c)(41): Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and du-

ration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Post-employment services are to be provided under an amended individualized plan for employment; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements in this part as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, *e.g.*, the individual's employment is jeopardized because of conflicts with supervisors or co-workers, and the individual needs mental health services and counseling to maintain the employment, or the individual requires assistive technology to maintain the employment; to regain employment, *e.g.*, the individual's job is eliminated through reorganization and new placement services are needed; and to advance in employment, *e.g.*, the employment is no longer consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(42) *Pre-employment transition services* means the required activities and authorized activities specified in § 361.48(a)(2) and (3).

(Authority: Sections 7(30) and 113(b) and (c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(30) and 733(b) and (c))

(43) *Qualified and impartial mediator—*  
(i) *Qualified and impartial mediator* means an individual who—

- (A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a State office of mediators, or employee of an institution of higher education);
- (B) Is not a member of the State Rehabilitation Council for the designated State unit;
- (C) Has not been involved previously in the vocational rehabilitation of the applicant or recipient of services;
- (D) Is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services;
- (E) Has been trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements; and
- (F) Has no personal, professional, or financial interest that could affect the

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individual’s objectivity during the mediation proceedings.

(ii) An individual is not considered to be an employee of the designated State agency or designated State unit for the purposes of this definition solely because the individual is paid by the designated State agency or designated State unit to serve as a mediator.

(Authority: Sections 12(c) and 102(c)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c)(4))

(44) *Rehabilitation engineering* means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

(Authority: Sections 7(32) and (12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(32) and 709(c))

(45) *Rehabilitation technology* means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(Authority: Section 7(32) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(32))

(46) *Reservation* means a Federal or State Indian reservation, a public domain Indian allotment, a former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*); or a defined area of land recognized by a State or the Federal Government where there is a concentration of tribal members and on which the tribal government is pro-

viding structured activities and services.

(Authority: Section 121(e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 741(e))

(47) *Sole local agency* means a unit or combination of units of general local government or one or more Indian tribes that has the sole responsibility under an agreement with, and the supervision of, the State agency to conduct a local or tribal vocational rehabilitation program, in accordance with the vocational rehabilitation services portion of the Unified or Combined State Plan.

(Authority: Section 7(24) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(24))

(48) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Authority: Section 7(34) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(34))

(49) *State workforce development board* means a State workforce development board, as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102).

(Authority: Section 7(35) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(35))

(50) *Statewide workforce development system* means a workforce development system, as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102).

(Authority: Section 7(36) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(36))

(51) *Student with a disability*—(i) *Student with a disability* means, in general, an individual with a disability in a secondary, postsecondary, or other recognized education program who—

(A)(1) Is not younger than the earliest age for the provision of transition services under section 614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VIII)); or

(2) If the State involved elects to use a lower minimum age for receipt of

pre-employment transition services under this Act, is not younger than that minimum age; and

(B)(1) Is not older than 21 years of age; or

(2) If the State law for the State provides for a higher maximum age for receipt of services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), is not older than that maximum age; and

(C)(1) Is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 *et seq.*); or

(2) Is a student who is an individual with a disability, for purposes of section 504.

(ii) *Students with disabilities* means more than one student with a disability.

(Authority: Sections 7(37) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(37) and 709(c))

(52) *Substantial impediment to employment* means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment consistent with the individual's abilities and capabilities.

(Authority: Sections 7(20)(A) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A) and 709(c))

(53) *Supported employment*—(i) *Supported employment* means competitive integrated employment, including customized employment, or employment in an integrated work setting in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment that is individualized, and customized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities—

(A) For whom competitive integrated employment has not historically occurred, or for whom competitive inte-

grated employment has been interrupted or intermittent as a result of a significant disability; and

(B) Who, because of the nature and severity of their disabilities, need intensive supported employment services and extended services after the transition from support provided by the designated State unit, in order to perform this work.

(ii) For purposes of this part, an individual with a most significant disability, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, as defined in paragraph (c)(9) of this section is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment—

(A) Within six months of achieving a supported employment outcome; or

(B) In limited circumstances, within a period not to exceed 12 months from the achievement of the supported employment outcome, if a longer period is necessary based on the needs of the individual, and the individual has demonstrated progress toward competitive earnings based on information contained in the service record.

(Authority: Sections 7(38), 12(c), and 602 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38), 709(c), and 795g)

(54) *Supported employment services* means ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment that are—

(i) Organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment;

(ii) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment;

(iii) Provided by the designated State unit for a period of time not to exceed 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor jointly

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agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

(iv) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(Authority: Sections 7(39), 12(c), and 103(a)(16) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(39), 709(c), and 723(a)(16))

(55) *Transition services* means a coordinated set of activities for a student or youth with a disability—

(i) Designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation;

(ii) Based upon the individual student's or youth's needs, taking into account the student's or youth's preferences and interests;

(iii) That includes instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation;

(iv) That promotes or facilitates the achievement of the employment outcome identified in the student's or youth's individualized plan for employment; and

(v) That includes outreach to and engagement of the parents, or, as appropriate, the representative of such a student or youth with a disability.

(Authority: Sections 12(c) and 103(a)(15) and (b)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(15) and (b)(7))

(56) *Transportation* means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including ex-

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penses for training in the use of public transportation vehicles and systems.

(Authority: Sections 12(c) and 103(a)(8) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(8))

(i) *Examples*. The following are examples of expenses that would meet the definition of *transportation*. The examples are purely illustrative, do not address all possible circumstances, and are not intended as substitutes for individual counselor judgment.

*Example 1:* Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any vocational rehabilitation service.

*Example 2:* The purchase and repair of vehicles, including vans, but not the modification of these vehicles, as modification would be considered a rehabilitation technology service.

*Example 3:* Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual's current residence.

(ii) [Reserved]

(57) *Vocational rehabilitation services*—

(i) If provided to an individual, means those services listed in § 361.48; and

(ii) If provided for the benefit of groups of individuals, means those services listed in § 361.49.

(Authority: Sections 7(40) and 103 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(40) and 723)

(58) *Youth with a disability*—(i) *Youth with a disability* means an individual with a disability who is not—

(A) Younger than 14 years of age; and  
(B) Older than 24 years of age.

(ii) *Youth with disabilities* means more than one youth with a disability.

(Authority: Section 7(42) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(42))

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