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if the Secretary so requests, the identity of, or any other personally identifiable information (*i.e.*, name, address, telephone number, social security number, or any other official code or number by which an individual may be readily identified) related to, any individual requesting assistance under the CAP if—

(1) An audit, evaluation, monitoring review, State plan assurance review, or other investigation produces reliable evidence that there is probable cause to believe that the designated agency has violated its legislative mandate or misused Federal funds; or

(2) The Secretary determines that this information may reasonably lead to further evidence that is directly related to alleged misconduct of the designated agency.

(f) In addition to the protection afforded by paragraph (d) of this section, the right of a person or designated agency not to produce documents or disclose information to the Secretary is governed by the common law of privileges, as interpreted by the courts of the United States.

(Authority: Sections 12(c) and 112(g)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(g)(4))

PART 371—AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICES

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AUTHORITY: Sections 12(c) and 121 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741, unless otherwise noted.

SOURCE: 81 FR 55596, Aug. 19, 2016, unless otherwise noted.

Subpart A—General

§371.1 What is the American Indian Vocational Rehabilitation Services program?

This program is designed to provide vocational rehabilitation services, including culturally appropriate services, to American Indians with disabilities who reside on or near Federal or State reservations, consistent with such eligible individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individual may prepare for,

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and engage in, high-quality employment that will increase opportunities for economic self-sufficiency.

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

§ 371.2 Who is eligible for assistance under this program?

(a) Applications may be made only by Indian tribes and consortia of those Indian tribes located on Federal and State reservations.

(1) The applicant for the grant must be

(i) The governing body of an Indian tribe, either on behalf the Indian tribe or on behalf of a consortium of Indian tribes; or

(ii) A tribal organization that is a separate legal organization from an Indian tribe.

(2) In order to receive a grant under this section, a tribal organization that is not a governing body of an Indian tribe must:

(i) Have as one of its functions the vocational rehabilitation of American Indians with disabilities; and

(ii) Have the approval of the tribe to be served by such organization.

(3) If a grant is made to the governing body of an Indian tribe, either on its own behalf or on behalf of a consortium, or to a tribal organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the making of such a grant.

(b) Applications for awards under Subpart B may be made by State, local or tribal governments, non-profit organizations, or institutions of higher education.

(Authority: Sections 12(c) and 121(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a))

§ 371.3 What types of projects are authorized under this program?

The American Indian Vocational Rehabilitation Services program provides financial assistance for the establishment and operation of tribal vocational rehabilitation services programs for American Indians with disabilities who

reside on or near Federal or State reservations.

(Authority: Sections 12(c) and 121(a) of the Rehabilitation Act of 1973, as amended Act, 29 U.S.C. 709(c) and 741(a))

§ 371.4 What is the length of the project period under this program?

The Secretary approves a project period of up to sixty months.

(Authority: Sections 12(c) and 121(b)(3) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 121(b)(3))

§ 371.5 What regulations apply to this program?

The following regulations apply to this program—

(a) The regulations in this part 371.

(b) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485;

(c) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

(d) 34 CFR part 75 Direct Grant Programs

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

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

(g) 34 CFR part 82 New Restrictions on Lobbying

(h) 34 CFR part 84 Governmentwide Requirements for Drug-Free Workplace

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

§ 371.6 What definitions apply to this program?

(a) The definitions of terms included in the applicable regulations listed in § 371.5;

(b) The following definitions also apply to this program—

Act means the Rehabilitation Act of 1973, as amended.

Assessment for determining eligibility and vocational rehabilitation needs means as appropriate in each case—

(i)(A) A review of existing data—

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

(2) To assign priority for an order of selection described in an approved plan or the approved grant application; and

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(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 an approved plan or the approved grant application 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 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))

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—

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

(ii) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(iii) Recreational therapy;

(iv) Physical and occupational therapy;

(v) Speech, language, and hearing therapy;

(vi) Psychiatric, psychological, and social services, including positive behavior management;

(vii) Assessment for determining eligibility and vocational rehabilitation needs;

(viii) Rehabilitation technology;

(ix) Job development, placement, and retention services;

(x) Evaluation or control of specific disabilities;

- (xi) Orientation and mobility services for individuals who are blind;
- (xii) Extended employment;
- (xiii) Psychosocial rehabilitation services;
- (xiv) Supported employment services and extended services;
- (xv) Customized employment;
- (xvi) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome;
- (xvii) Personal assistance services; or
- (xviii) Services similar to the services described in paragraphs (i) through (xvii) of this definition.

(Authority: Sections 7(4) and 12(c) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(4) and 709(c))

Comparable services and benefits means—

- (i) 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; and
 - (C) Commensurate to the services that the individual would otherwise receive from the Tribal Vocational Rehabilitation unit.
- (ii) For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

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

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;

(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
- (C) 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))

Consortium means two or more eligible governing bodies of Indian tribes that apply for an award under this program by either:

- (i) Designating one governing body to apply for the grant; or
- (ii) Establishing and designating a tribal organization to apply for a grant.

(Authority: Sections 12(c) and 121 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a))

Customized employment means competitive integrated employment, for an

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individual with a significant disability, that is based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability, is designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer, and is carried out through flexible strategies, such as—

- (i) Job exploration by the individual;
- (ii) Working with an employer to facilitate placement, including—
 - (A) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs; and
 - (B) 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;
 - (iii) Using a professional representative chosen by the individual, or if elected self-representation, to work with an employer to facilitate placement; and
 - (iv) Providing services and supports at the job location.

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

Eligible individual means an applicant for vocational rehabilitation services who meets the eligibility requirements of Section 102(a)(1) of the Act.

(Authority: Sections 7(20)(A), 12(c), and 102(a)(1) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(20)(A), 709(c), and 722)

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

(Authority: Sections 7(11) and 12(c) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(11), and 709(c))

Family member for purposes of receiving vocational rehabilitation services 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))

Governing bodies of Indian tribes means those duly elected or appointed representatives of an Indian tribe or of an Alaskan native village. These representatives must have the authority to enter into contracts, agreements, and grants on behalf of their constituency.

(Authority: Sections 12(c) and 121(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a))

Indian; American Indian; Indian American; Indian tribe means—

- (i) *Indian, American Indian, and Indian American* mean an individual who is a member of an Indian tribe and includes a Native and a 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* means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan 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(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)(1)) and this section.

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

Individual with a disability means—
In general any 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))

Individual with a significant disability means—

In general 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, intellectual disability, 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, 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.

(Authority: Section 7(21) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(21))

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 serv-

ices 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))

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 intended 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.

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 that 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.
- (xvii) Services reflecting the cultural background of the American Indian being served, including treatment provided by native healing practitioners in accordance with 34 CFR 371.41(a)(2).

(Authority: Sections 12(c), 103(a)(6), and 121(b)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 723(a)(6), and 741(b)(1)(B))

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 or developmental disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(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))

Post-employment services means one or more of the services 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)(18) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(18))

NOTE TO DEFINITION OF POST-EMPLOYMENT SERVICES: Post-employment services are in-

tended 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 duration. 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.

Representatives of the Tribal Vocational Rehabilitation program means, consistent with 34 CFR 371.21(b), those individuals specifically responsible for determining eligibility, the nature and scope of vocational rehabilitation services, and the provision of those services.

(Authority: Sections 12(c) and 121(b)(1)(D) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 741(b)(1)(D))

Reservation means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act; 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

providing structured activities and services.

(Authority: Sections 12(c) and 121(e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(e))

Subsistence means a form of self-employment in which individuals produce, using culturally relevant and traditional methods, goods or services that are predominantly consumed by their own household or used for noncommercial customary trade or barter and that constitute an important basis for the worker's livelihood.

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

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))

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

(B) Who, because of the nature and severity of their disability, need intensive supported employment services and extended services after the transition from support provided by the Trib-

al Vocational Rehabilitation Unit, in order to perform this work.

(ii) For purposes of this part, an individual with the most significant disabilities, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment 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) 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) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38) and 709(c))

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 Tribal Vocational Rehabilitation Unit for a period of time not to exceed 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly 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

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that are necessary to maintain or regain the job placement or advance in employment.

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

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

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

Tribal organization means the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically

elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

(Authority: Sections 7(19) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(19) and 709(c); Section 4 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450(b))

Tribal Vocational Rehabilitation program means the unit designated by the governing bodies of an Indian Tribe, or consortia of governing bodies, to implement and administer the grant under this program in accordance with the purpose of the grant and all applicable programmatic and fiscal requirements.

(Authority: Sections 12(c) and 121(b)(1) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 741(b)(1))

Vocational Rehabilitation Services for Individuals means any services described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, advancing in or regaining an employment outcome that is consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, including, but not limited to—

(i) An assessment for determining eligibility, priority for services, and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology.

(ii) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice.

(iii) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies and to advise those individuals about client assistance programs established under 34 CFR part 370.

(iv) Physical and mental restoration services, to the extent that financial support is not readily available from a source other than the Tribal Vocational Rehabilitation unit (such as

through health insurance or a comparable service or benefit).

(v) Vocational and other training services, including personal and vocational adjustment training, advanced training (particularly advanced training in a field of science, technology, engineering, or mathematics (including computer science), medicine, law or business); books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing or any other postsecondary education institution) may be paid for with funds under this part unless maximum efforts have been made by the Tribal Vocational Rehabilitation unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

(vi) Maintenance.

(vii) Transportation in connection with the provision of any vocational rehabilitation service.

(viii) Vocational rehabilitation services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(ix) Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel.

(x) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.

(xi) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(xii) Supported employment services.

(xiii) Personal assistance services.

(xiv) Post-employment services.

(xv) Occupational licenses, tools, equipment, initial stocks, and supplies.

(xvi) Rehabilitation technology, including vehicular modification, telecommunications, sensory, and other technological aids and devices.

(xvii) Transition services for students and youth with disabilities that facili-

tate the transition from school to post-secondary life, such as achievement of an employment outcome in competitive integrated employment.

(xviii) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

(xix) Customized employment.

(x) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

Vocational Rehabilitation Services for Groups of Individuals provided for the benefit of groups of individuals with disabilities—

(i) May be provided by the Tribal Vocational Rehabilitation Unit and may include the following:

(A) In the case of any small business enterprise operated by individuals with significant disabilities under the supervision of the Tribal Vocational Rehabilitation unit, management services and supervision provided by the Tribal Vocational Rehabilitation unit, along with the acquisition by the Tribal Vocational Rehabilitation unit of vending facilities or other equipment and initial stocks and supplies in accordance with the following requirements:

(1) Management services and supervision includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by individuals with significant disabilities. Management services and supervision may be provided throughout the operation of the small business enterprise.

(2) Initial stocks and supplies include those items necessary to the establishment of a new business enterprise during the initial establishment period, which may not exceed 6 months.

(3) Costs of establishing a small business enterprise may include operational costs during the initial establishment period, which may not exceed six months.

(4) If the Tribal Vocational Rehabilitation unit provides for these services,

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it must ensure that only individuals with significant disabilities will be selected to participate in this supervised program.

(5) If the Tribal Vocational Rehabilitation unit provides for these services and chooses to set aside funds from the proceeds of the operation of the small business enterprises, the Tribal Vocational Rehabilitation unit must maintain a description of the methods used in setting aside funds and the purposes for which funds are set aside. Funds may be used only for small business enterprises purposes, and benefits that are provided to operators from set-aside funds must be provided on an equitable basis.

(B) The establishment, development, or improvement of a community rehabilitation program that is used to provide vocational rehabilitation services that promote integration into the community and prepare individuals with disabilities for competitive integrated employment, including supported employment and customized employment, and under special circumstances, the construction of a community rehabilitation facility. Examples of "special circumstances" include the destruction by natural disaster of the only available center serving an area or a Tribal Vocational Rehabilitation unit determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are currently able to provide vocational rehabilitation services to individuals.

(C) Telecommunications systems (that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities including telephone, television, video description services, satellite, tactile-vibratory devices, and similar systems, as appropriate.

(D) Special services to provide non-visual access to information for individuals who are blind, including the use of telecommunications, Braille, sound recordings, or other appropriate media; captioned television, films, or video cassettes for individuals who are deaf or hard of hearing; tactile mate-

rials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media.

(E) Technical assistance to businesses that are seeking to employ individuals with disabilities.

(F) Consultation and technical assistance services to assist State educational agencies and local educational agencies, and, where appropriate, Tribal Educational agencies, in planning for the transition of students with disabilities from school to postsecondary life, including employment.

(G) Transition services to youth with disabilities and students with disabilities, for which a vocational rehabilitation counselor works in concert with educational agencies, providers of job training programs, providers of services under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), entities designated by the Tribal Vocational Rehabilitation unit to provide services for individuals with developmental disabilities, centers for independent living (as defined in section 702 of the Act), housing and transportation authorities, workforce development systems, and businesses and employers. These specific transition services are to benefit a group of students with disabilities or youth with disabilities and are not individualized services directly related to a goal in an individualized plan for employment (IPE). Services may include, but are not limited to group tours of universities and vocational training programs, employer or business site visits to learn about career opportunities, career fairs coordinated with workforce development and employers to facilitate mock interviews and resume writing, and other general services applicable to groups of students with disabilities and youth with disabilities.

(H) The establishment, development, or improvement of assistive technology demonstration, loan, reutilization, or financing programs in coordination with activities authorized under the Assistive Technology Act of 1998 (29 U.S.C. 3001 *et seq.*) to promote access to assistive technology for individuals with disabilities and employers.

(I) Support (including, as appropriate, tuition) for advanced training in a field of science, technology, engineering, or mathematics (including computer science), medicine, law, or business, provided after an individual eligible to receive services under this title, demonstrates:

(1) Such eligibility;

(2) Previous completion of a bachelor's degree program at an institution of higher education or scheduled completion of such degree program prior to matriculating in the program for which the individual proposes to use the support; and

(3) Acceptance by a program at an institution of higher education in the United States that confers a master's degree in a field of science, technology, engineering, or mathematics (including computer science), a juris doctor degree, a master of business administration degree, or a doctor of medicine degree, except that—

(i) No training provided at an institution of higher education shall be paid for with funds under this program unless maximum efforts have been made by the Tribal Vocational Rehabilitation unit and the individual to secure grant assistance, in whole or in part, from other sources to pay for such training; and

(ii) Nothing in this paragraph prevents any Tribal Vocational Rehabilitation unit from providing similar support to individuals with disabilities pursuant to their approved IPEs who are eligible to receive support under this program and who are not served under this paragraph.

(ii) If the Tribal Vocational Rehabilitation Unit provides for vocational rehabilitation services for groups of individuals it must —

(A) Develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services it provides and the criteria under which each service is provided; and

(B) Maintain information to ensure the proper and efficient administration of those services in the form and detail and at the time required by the Secretary, including the types of services provided, the costs of those services, and to the extent feasible, estimates of

the numbers of individuals benefiting from those services.

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

Subpart B—Training and Technical Assistance

§ 371.10 What are the requirements for funding training and technical assistance under this subpart?

The Secretary shall first reserve not less than 1.8 percent and not more than 2 percent of funds appropriated and made available to carry out this program to provide training and technical assistance to the governing bodies of Indian tribes and consortia of those governing bodies awarded a grant under this program.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

§ 371.11 How does the Secretary use these funds to provide training and technical assistance?

(a) The Secretary uses these funds to make grants to, or enter into contracts or other cooperative agreements with, entities that have staff with experience in the operation of vocational rehabilitation services programs under this part.

(b) An entity receiving assistance in accordance with paragraph (a) of this section shall provide training and technical assistance with respect to developing, conducting, administering, and evaluating tribal vocational rehabilitation programs funded under this part.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

§ 371.12 How does the Secretary make an award?

(a) To be eligible to receive a grant or enter into a contract or cooperative agreement under section 121(c) of the Act and this subpart, an applicant shall submit an application to the Secretary at such time, in such manner, and containing a proposal to provide such training and technical assistance, and any additional information as the Secretary may require.

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(b) The Secretary shall provide for peer review of applications by panels that include persons who are not Federal or State government employees and who have experience in the operation of vocational rehabilitation services programs under this part.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

§ 371.13 How does the Secretary determine funding priorities?

The Secretary shall conduct a survey of the governing bodies of Indian tribes funded under this part regarding training and technical assistance needs in order to determine funding priorities for such training and technical assistance.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

§ 371.14 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application for a grant, cooperative agreement or contract under this subpart on the basis of the selection criteria chosen from the general selection criteria found in EDGAR regulations at 34 CFR 75.210.

(b) The Secretary may award a competitive preference consistent with 34 CFR 75.102(c)(2) to applications that include as project personnel in a substantive role, individuals that have been employed as a project director or VR counselor by a Tribal Vocational Rehabilitation unit funded under this part.

(c) If using a contract to award funds under this subpart, the Secretary may conduct the application process and make the subsequent award in accordance with 34 CFR part 75.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

Subpart C—How Does One Apply for a Grant?

§ 371.20 What are the application procedures for this program?

(a) In the development of an application, the applicant is required to con-

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sult with the designated State unit (DSU) for the state vocational rehabilitation program in the State or States in which vocational rehabilitation services are to be provided.

(b) The procedures for the review and comment by the DSU or the DSUs of the State or States in which vocational rehabilitation services are to be provided on applications submitted from within the State that the DSU or DSUs serve are in 34 CFR 75.155–75.159.

(Authority: Sections 12(c) and 121(b)(1)(C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(C))

§ 371.21 What are the special application requirements related to the projects funded under this part?

Each applicant under this program must provide evidence that—

(a) Effort will be made to provide a broad scope of vocational rehabilitation services in a manner and at a level of quality at least comparable to those services provided by the designated State unit.

(Authority: Sections 12(c) and 121(b)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(B))

(b) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available vocational rehabilitation services and the provision of such services will be made by a representative of the tribal vocational rehabilitation program funded through this grant and such decisions will not be delegated to another agency or individual.

(Authority: Sections 12(c) and 121(b)(1)(D) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(D))

(c) Priority in the delivery of vocational rehabilitation services will be given to those American Indians with disabilities who are the most significantly disabled.

(Authority: Sections 12(c) and 101(a)(5) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(5))

(d) An order of selection of individuals with disabilities to be served under the program will be specified if

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services cannot be provided to all eligible American Indians with disabilities who apply.

(Authority: Sections 12(c) and 101(a)(5) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709 (c) and 721(a)(5))

(e) All vocational rehabilitation services will be provided according to an individualized plan for employment which has been developed jointly by the representative of the tribal vocational rehabilitation program and each American Indian with disabilities being served.

(Authority: Sections 12(c) and 101(a)(9) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721 (a)(9))

(f) American Indians with disabilities living on or near Federal or State reservations where tribal vocational rehabilitation service programs are being carried out under this part will have an opportunity to participate in matters of general policy development and implementation affecting vocational rehabilitation service delivery by the tribal vocational rehabilitation program.

(Authority: Sections 12(c) and 101(a)(16) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(16))

(g) Cooperative working arrangements will be developed with the DSU, or DSUs, as appropriate, which are providing vocational rehabilitation services to other individuals with disabilities who reside in the State or States being served.

(Authority: Sections 12(c) and 101(a)(11)(F) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(11)(F))

(h) Any comparable services and benefits available to American Indians with disabilities under any other program, which might meet in whole or in part the cost of any vocational rehabilitation service, will be fully considered in the provision of vocational rehabilitation services.

(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))

(i) Any American Indian with disabilities who is an applicant or recipient of services, and who is dissatisfied with a determination made by a representa-

tive of the tribal vocational rehabilitation program and files a request for a review, will be afforded a review under procedures developed by the grantee comparable to those under the provisions of section 102(c)(1)–(5) and (7) of the Act.

(Authority: Sections 12(c) and 102(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c)(1)–(5) and (7))

(j) The tribal vocational rehabilitation program funded under this part must assure that any facility used in connection with the delivery of vocational rehabilitation services meets facility and program accessibility requirements consistent with the requirements, as applicable, of the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, section 504 of the Act, and the regulations implementing these laws.

(Authority: Sections 12(c) and 101(a)(6)(C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6)(C))

(k) The tribal vocational rehabilitation program funded under this part must ensure that providers of vocational rehabilitation services are able to communicate in the native language of, or by using an appropriate mode of communication with, applicants and eligible individuals who have limited English proficiency, unless it is clearly not feasible to do so.

(Authority: Sections 12(c) and 101(a)(6)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6)(A))

Subpart D—How Does the Secretary Make a Grant?

§ 371.31 How are grants awarded?

To the extent that funds have been appropriated under this program, the Secretary approves all applications which meet acceptable standards of program quality. If any application is not approved because of deficiencies in proposed program standards, the Secretary provides technical assistance to the applicant Indian tribe with respect to any areas of the proposal which were judged to be deficient.

(Authority: Sections 12(c) and 121(b)(1)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(A))

§ 371.32 What other factors does the Secretary consider in reviewing an application?

(a) In addition to the selection criteria used in accordance with the procedures in 34 CFR part 75, the Secretary, in making an award under this program, considers the past performance of the applicant in carrying out similar activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

(b) The Secretary may award a competitive preference consistent with 34 CFR 75.102(c)(2) to applications for the continuation of programs which have been funded under this program.

(Authority: Sections 12(c), 121(b)(1)(A), and 121(b)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 741(b)(1)(A)), and 741(b)(4).

Subpart E—What Conditions Apply to a Grantee Under this Program?

§ 371.40 What are the matching requirements?

(a) *Federal share* Except as provided in paragraph (c) of this section, the Federal share may not be more than 90 percent of the total cost of the project.

(b) *Non-Federal share* The non-Federal share of the cost of the project may be in cash or in kind, fairly valued pursuant to match requirements in 2 CFR 200.306.

(c) *Waiver of non-Federal share* In order to carry out the purposes of the program, the Secretary may waive the non-Federal share requirement, in part or in whole, only if the applicant demonstrates that it does not have sufficient resources to contribute the non-Federal share of the cost of the project.

(Authority: Sections 12(c) and 121(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a))

§ 371.41 What are allowable costs?

(a) In addition to those allowable cost established in 2 CFR 200.400–200.475, the following items are allowable costs under this program—

(1) Expenditures for the provision of vocational rehabilitation services and for the administration, including staff development, of a program of vocational rehabilitation services.

(2) Expenditures for services reflecting the cultural background of the American Indians being served, including treatment provided by native healing practitioners who are recognized as such by the tribal vocational rehabilitation program when the services are necessary to assist an individual with disabilities to achieve his or her vocational rehabilitation objective.

(b) Expenditures may not be made under this program to cover the costs of providing vocational rehabilitation services to individuals with disabilities not residing on or near Federal or State reservations.

(Authority: Sections 12(c) and 121(a) and (b)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a) and (b)(1))

§ 371.42 How are services to be administered under this program?

(a) *Directly or by contract.* A grantee under this part may provide the vocational rehabilitation services directly or it may contract or otherwise enter into an agreement with a DSU, a community rehabilitation program, or another agency to assist in the implementation of the tribal vocational rehabilitation program.

(b) *Inter-tribal agreement.* A grantee under this part may enter into an inter-tribal arrangement with governing bodies of other Indian tribes for carrying out a project that serves more than one Indian tribe.

(c) *Comparable services.* To the maximum extent feasible, services provided by a grantee under this part must be comparable to vocational rehabilitation services provided under the State vocational rehabilitation program to other individuals with disabilities residing in the State.

(Authority: Sections 12(c) and 121(b)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(B))

§ 371.43 What other special conditions apply to this program?

(a) Any American Indian with disabilities who is eligible for services

under this program but who wishes to be provided services by the DSU must be referred to the DSU for such services.

(Authority: Sec. 12(c) and 121(b)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(3))

(b) Preference in employment in connection with the provision of vocational rehabilitation services under this section must be given to American Indians, with a special priority being given to American Indians with disabilities.

(Authority: Sections 12(c) and 121(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(2))

(c) The provisions of sections 5, 6, 7, and 102(a) of the Indian Self-Determination and Education Assistance Act also apply under this program (25 U.S.C. 450c, 450d, 450e, and 450f(a)). These provisions relate to grant reporting and audit requirements, maintenance of records, access to records, availability of required reports and information to Indian people served or represented, repayment of unexpended Federal funds, criminal activities involving grants, penalties, wage and labor standards, preference requirements for American Indians in the conduct and administration of the grant, and requirements affecting requests of tribal organizations to enter into contracts. For purposes of applying these requirements to this program, the Secretary carries out those responsibilities assigned to the Secretary of Interior.

(Authority: Sec. 12(c) and 121(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(2))

(d) The Tribal Vocational Rehabilitation unit must develop and maintain written policies regarding the provision of vocational rehabilitation services that ensure that the provision of services is based on the vocational rehabilitation needs of each individual as identified in that individual's IPE and is consistent with the individual's informed choice. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employ-

ment outcome. The policies must be developed in accordance with the following provisions:

(1) *Off-reservation services.* (i) The Tribal Vocational Rehabilitation unit may establish a preference for on- or near-reservation services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an equivalent off-reservation service at a higher cost than an available on- or near-reservation service, the Tribal Vocational Rehabilitation unit is not responsible for those costs in excess of the cost of the on- or near-reservation service, if either service would meet the individual's rehabilitation needs.

(ii) The Tribal Vocational Rehabilitation unit may not establish policies that effectively prohibit the provision of off-reservation services.

(2) *Payment for services* (i) The Tribal Vocational Rehabilitation unit must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

(ii) The Tribal Vocational Rehabilitation unit may establish a fee schedule designed to ensure the program pays a reasonable cost for each service, as long as the fee schedule—

(A) Is not so low as effectively to deny an individual a necessary service; and

(B) permits exceptions so that individual needs can be addressed.

(C) The Tribal Vocational Rehabilitation unit may not place absolute dollar limits on the amount it will pay for specific service categories or on the total services provided to an individual.

(3) *Duration of services* (i) The Tribal Vocational Rehabilitation unit may establish reasonable time periods for the provision of services provided that the time periods—

(A) Are not so short as effectively to deny an individual a necessary service; and

(B) Permit exceptions so that individual needs can be addressed.

(ii) The Tribal Vocational Rehabilitation unit may not place time limits on the provision of specific services or on the provision of services to an individual. The duration of each service

needed by an individual must be determined on the basis of that individual's needs and reflected in that individual's individualized plan for employment.

(4) *Authorization of services.* The Tribal Vocational Rehabilitation unit must establish policies related to the timely authorization of services.

(Authority: Sections 12(c) and 121(b) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 741(b))

(e) *Informed choice.* Each individual who is an applicant for or eligible to receive vocational rehabilitation services must be afforded the opportunity to exercise informed choice throughout the vocational rehabilitation process carried out under programs funded under this part. The Tribal Vocational Rehabilitation unit must develop and maintain written policies and procedures that require it—

(1) To inform each applicant and eligible individual, through appropriate modes of communication, about the availability of, and opportunities to exercise, informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice, throughout the vocational rehabilitation process;

(2) To assist applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;

(3) To develop and implement flexible procurement policies and methods that facilitate the provision of vocational rehabilitation services, and that afford eligible individuals meaningful choices among the methods used to procure vocational rehabilitation services;

(4) To provide or assist eligible individuals in acquiring information that enables them to exercise informed choice in the development of their IPEs and selection of—

(i) The employment outcome;

(ii) The specific vocational rehabilitation services needed to achieve the employment outcome;

(iii) The entity that will provide the services;

(iv) The employment setting and the settings in which the services will be provided; and

(v) The methods available for procuring the services; and

(5) To ensure that the availability and scope of informed choice is consistent with the obligations of the Tribal Vocational Rehabilitation unit.

(6) Information and assistance in the selection of vocational rehabilitation services and service providers: In assisting an applicant and eligible individual in exercising informed choice during the assessment for determining eligibility and vocational rehabilitation needs and during development of the IPE, the Tribal Vocational Rehabilitation unit must provide the individual or the individual's representative, or assist the individual or the individual's representative in acquiring, information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual's employment outcome. This information must include, at a minimum, information relating to the—

(i) Cost, accessibility, and duration of potential services;

(ii) Consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available;

(iii) Qualifications of potential service providers;

(iv) Types of services offered by the potential providers;

(v) Degree to which services are provided in integrated settings; and

(vi) Outcomes achieved by individuals working with service providers, to the extent that such information is available.

(7) Methods or sources of information: In providing or assisting the individual or the individual's representative in acquiring the information required under paragraph (c) of this section, the Tribal Vocational Rehabilitation unit may use, but is not limited to, the following methods or sources of information:

(i) Lists of services and service providers.

(ii) Periodic consumer satisfaction surveys and reports.

(iii) Referrals to other consumers, consumer groups, or disability advisory councils qualified to discuss the services or service providers.

(iv) Relevant accreditation, certification, or other information relating to the qualifications of service providers.

(v) Opportunities for individuals to visit or experience various work and service provider settings.

(Approved by the Office of Management and Budget under control number 1820-0500)

(Authority: Sections 12(c), 102(b)(2)(B), and 102(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 722(b)(2)(B), and 722(d))

§ 371.44 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) *General provisions.* (1) The Tribal Vocational Rehabilitation unit must adopt and implement written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must ensure that—

(i) Specific safeguards are established to protect current and stored personal information, including a requirement that data only be released when governed by a written agreement between the Tribal Vocational Rehabilitation unit and receiving entity under paragraphs (d) and (e)(1) of this section, which addresses the requirements in this section;

(ii) All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

(iii) All applicants or their representatives are informed about the Tribal Vocational Rehabilitation unit's need to collect personal information and the policies governing its use, including—

(A) Identification of the authority under which information is collected;

(B) Explanation of the principal purposes for which the Tribal Vocational Rehabilitation unit intends to use or release the information;

(C) Explanation of whether providing requested information to the Tribal Vocational Rehabilitation unit is man-

datory or voluntary and the effects of not providing requested information;

(D) Identification of those situations in which the Tribal Vocational Rehabilitation unit requires or does not require informed written consent of the individual before information may be released; and

(E) Identification of other agencies to which information is routinely released;

(iv) An explanation of the Tribal Vocational Rehabilitation unit's policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and

(v) These policies and procedures provide no fewer protections for individuals than State laws and regulations.

(2) The Tribal Vocational Rehabilitation unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and must establish policies and procedures governing access to records.

(b) *Tribal Vocational Rehabilitation Program Use.* All personal information in the possession of the Tribal Vocational Rehabilitation unit must be used only for the purposes directly connected with the administration of the Tribal Vocational Rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies or other tribal agencies that do not have official responsibility for administration of the program. In the administration of the program, the Tribal Vocational Rehabilitation unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) *Release to applicants and eligible individuals.* (1) Except as provided in paragraphs (c)(2) and (3) of this section, if requested in writing by an applicant or eligible individual, the Tribal Vocational Rehabilitation unit must make all requested information in that individual's record of services accessible to and must release the information to

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the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the Tribal Vocational Rehabilitation unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(4) An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request that the Tribal Vocational Rehabilitation unit amend the information. If the information is not amended, the request for an amendment must be documented in the record of services.

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the tribal vocational rehabilitation program or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if, in accordance with a written agreement, the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent

of the involved individual or the individual's representative.

(e) *Release to other programs or authorities.* (1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the Tribal Vocational Rehabilitation unit may release personal information to another agency or organization, in accordance with a written agreement, for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

(2) Medical or psychological information that the Tribal Vocational Rehabilitation unit determines may be harmful to the individual may be released if the other agency or organization assures the Tribal Vocational Rehabilitation unit that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The Tribal Vocational Rehabilitation unit must release personal information if required by Federal law or regulations.

(4) The Tribal Vocational Rehabilitation unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

(5) The Tribal Vocational Rehabilitation unit also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: Sections 12(c) and 121(b)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1))

§ 371.45 What notice must be given about the Client Assistance Program (CAP)?

The Tribal Vocational Rehabilitation unit shall use formats that are accessible to notify individuals seeking or receiving services under this part, or as

appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, about—

- (a) The availability of CAP authorized by section 112 of the Act;
- (b) The purposes of the services provided under the CAP; and
- (c) How to contact the CAP.

(Authority: Section 20 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 717)

PART 373—REHABILITATION NATIONAL ACTIVITIES PROGRAM

Subpart A—General

Sec.

- 373.1 What is the purpose of the Rehabilitation National Activities program?
- 373.2 Who is eligible for assistance?
- 373.3 What regulations apply?
- 373.4 What definitions apply?
- 373.5 Who is eligible to receive services and to benefit from activities conducted by eligible entities?
- 373.6 What types of projects may be funded?
- 373.7 What are the priorities and other factors and requirements for competitions?

Subpart B—How Does the Secretary Make a Grant?

- 373.10 What selection criteria does the Secretary use?
- 373.11 What other factors does the Secretary consider when making a grant?

Subpart C—What Conditions Must Be Met By a Grantee?

- 373.20 What are the matching requirements?
- 373.21 What are the reporting requirements under this part?
- 373.22 What are the limitations on indirect costs?
- 373.23 What additional requirements must be met?
- 373.24 What are the special requirements pertaining to the protection, use, and release of personal information?

AUTHORITY: Section 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 773(b); Pub. L. 111-256, 124 Stat. 2643; unless otherwise noted.

SOURCE: 81 FR 55607, Aug. 19, 2016, unless otherwise noted.

Subpart A—General

§ 373.1 What is the purpose of the Rehabilitation National Activities program?

The purpose of this program is to provide competitive grants, including cooperative agreements, to, or enter into contracts with, eligible entities to expand and improve the provision of vocational rehabilitation and other services authorized under the Rehabilitation Act of 1973, as amended (Act), or to further the purposes and policies in sections 2(b) and (c) of the Act by supporting activities that increase the provision, extent, availability, scope, and quality of rehabilitation services under the Act, including related research and evaluation activities.

(Authority: Sections 2(b) and (c), 7(40), 12(c), and 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 701(b) and (c), 705(40), 709(c), and 773(b))

§ 373.2 Who is eligible for assistance?

(a) The following types of organizations are eligible for assistance under this program:

- (1) State vocational rehabilitation agencies.
- (2) Community rehabilitation programs.
- (3) Indian tribes or tribal organizations.
- (4) Other public or nonprofit agencies or organizations, including institutions of higher education.
- (5) For-profit organizations, if the Secretary considers them to be appropriate.
- (6) Consortia that meet the requirements of 34 CFR 75.128 and 75.129.
- (7) Other organizations identified by the Secretary and published in the FEDERAL REGISTER.

(b) In competitions held under this program, the Secretary may limit competitions to one or more types of these organizations.

(Authority: Sections 12(c) and 303(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b)(2))

(b) In competitions held under this program, the Secretary may limit competitions to one or more types of these organizations.

(Authority: Sections 12(c) and 303(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b)(2))

(Authority: Sections 12(c) and 303(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b)(2))

§ 373.3 What regulations apply?

The following regulations apply to this program: