

**DEPARTMENT OF EDUCATION****34 CFR Part 361**

RIN 1820-AB12

**The State Vocational Rehabilitation Services Program**

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing The State Vocational Rehabilitation Services Program. These amendments are needed to implement changes to the Rehabilitation Act of 1973 (Act) made by the Rehabilitation Act Amendments of 1992, enacted on October 29, 1992, as amended by the 1993 technical amendments (hereinafter collectively referred to as the 1992 Amendments).

**DATES:** Comments must be received on or before February 23, 1996.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Fredric K. Schroeder, U.S. Department of Education, 600 Independence Avenue SW., Room 3028, Mary E. Switzer Building, Washington, D.C. 20202-2531. Comments transmitted by facsimile should be sent to (202) 205-9772. Comments can be transmitted in an electronic format either through the electronic bulletin board system (BBS) of the Rehabilitation Services Administration (RSA) or through internet. The internet address is "State\_VR@ed.gov". The access number for the RSA BBS is (202) 205-5574 for low speed (2400 BPS or lower) modems and (202) 205-6174 for high speed (9600 BPS and higher) modems. Comments can also be transmitted to the RSA BBS through Fedworld via internet using the telnet command. Telnet to: "Fedworld.gov". All comments transmitted in an electronic format should be sent to the following RSA BBS mailbox: "RSADPPES". To facilitate the analysis of comments, electronic transmission of comments is preferred. Also, comments should be specific and identified by proposed regulatory citation. Comments received by RSA after the due date for comments will not be considered.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Beverlee Stafford, U.S. Department of Education, 600 Independence Avenue SW., Room 3014, Mary E. Switzer Building, Washington, D.C. 20202-2531.

Telephone (202) 205-8831. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205-5538.

**SUPPLEMENTARY INFORMATION:** The State Vocational Rehabilitation Services Program (program) is authorized by Title I of the Act (29 U.S.C. 701-744). This program provides support to each State to assist it in operating a comprehensive, coordinated, effective, efficient, and accountable State program to assess, plan, develop, and provide vocational rehabilitation (VR) services to individuals with disabilities so that those individuals may prepare for and engage in gainful employment, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. The program supports the National Education Goal that, by the year 2000, every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Regulations for this program were last published in their entirety on May 12, 1988 (53 FR 16978) to implement the 1986 amendments to the Act and are codified in 34 CFR Part 361. In addition, a notice of proposed rulemaking (NPRM) for this program was published on July 3, 1991 (56 FR 30620) (1991 NPRM), but it was never finalized.

In the 1991 NPRM, the Secretary proposed amendments to the regulations for this program that were designed to reduce regulatory burden on States and to place greater administrative discretion at the State level. More specifically, the 1991 NPRM proposed to remove or reduce certain State plan, paperwork, and reporting requirements not mandated by statute, to clarify the regulations through more precise definitions, and generally to simplify and condense the regulations. At the request of the Congress, the proposed regulations in the 1991 NPRM were not finalized because the Rehabilitation Act Amendments of 1992 were being developed at that time.

The 1992 Amendments made extensive changes to Title I of the Act that have far-reaching implications for the program. One of the major themes of the 1992 Amendments is the empowerment of individuals with disabilities in terms of influence on the State plan and State vocational rehabilitation policy through membership on the State Rehabilitation Advisory Council or an independent commission and increased participation in the development, implementation,

and evaluation of their individualized written rehabilitation programs through informed choice. The statute also requires that designated State units (DSUs) provide for the use of appropriate modes of communication and accessible formats to ensure equal access for individuals with disabilities who need this assistance.

A related theme is the integration of individuals with disabilities into the full spectrum of American life. The 1992 Amendments requires both that vocational rehabilitation services be provided in the most integrated settings possible and that employment outcomes be in the most integrated settings possible.

Another key theme of the 1992 Amendments is to improve access to the vocational rehabilitation system. The amendments streamline the process for making eligibility determinations by requiring the use of existing information to the extent possible, by adding a presumption of benefit from services, and by providing a 60-day time limit for making eligibility determinations.

The 1992 Amendments also focuses on expanding and improving the quality of services by requiring States to develop a strategic plan, by requiring States to develop a comprehensive system of personnel development to ensure that DSU personnel are adequately trained and meet the State's highest standards, and by requiring the development of standards and indicators to evaluate the performance of State programs. The evaluation standards and performance indicators are being developed separately and are not addressed in this NPRM.

Finally, the 1992 Amendments focuses on expanding and improving services to certain groups of individuals with disabilities. The amendments include new order of selection and eligibility provisions that are designed to increase and improve services for individuals with severe disabilities, particularly individuals with the most severe disabilities. The amendments also contain new outreach requirements that are designed to increase services to individuals with disabilities who are members of groups that are currently unserved and underserved, including members of minority groups. In addition, the amendments contain provisions that are designed to increase coordination between education agencies and DSUs to better serve individuals with disabilities who are transitioning students.

This NPRM proposes changes to implement the 1992 Amendments to Title I Parts A, B, and C of the Act (with the exception of the strengthened order

of selection requirements in sections 12(d) and 101(a)(5)(A) of the Act, the evaluation standards and performance indicator requirements in section 106 of the Act, and the client assistance program requirements in section 112 of the Act, which are being implemented in separate rulemaking documents) and proposes to incorporate some of the changes that were previously proposed in the 1991 NPRM to reduce the administrative burden on States. This NPRM also proposes other changes that the Secretary believes are important to update, consolidate, clarify, and in other ways improve the regulations for this program.

Executive Order 12866 encourages Federal agencies to facilitate meaningful participation in the regulatory development process. Accordingly, prior to drafting this NPRM, RSA, on March 31, 1994, made draft proposed regulations (draft regulations) available in accessible formats, including an electronic format, to a broad spectrum of parties for informal review and comment. Over 600 letters of comments on the draft regulations were analyzed. RSA also gathered public input on the draft regulations through public meetings held in Washington, D.C. on April 19, May 12, and May 17, 1994; Chicago on April 26, 1994; and Oakland, California on May 4 and May 5, 1994; and through public teleconferences on April 20, May 13, May 18, and June 8, 1994. In addition, three separate focus groups were convened in June 1994 to allow for further discussion of three discrete issues: eligibility under the program, informed choice in the selection of services and service providers, and the standards related to the achievement and maintenance of an employment outcome.

The following is a section-by-section summary of the regulations proposed in this NPRM, including an explanation of the major provisions, how they differ from the existing and the draft regulations, and the reasons the Secretary is proposing them. In addition, in order to clarify proposed organizational changes, the summary identifies the sections of the current regulations, as well as the sections of the statute, on which every section of the proposed regulations is based.

Changes to the draft regulations that appear in this NPRM were made in response to public comments received by RSA and input provided during the public meetings, teleconferences, and focus groups. Significant changes to the draft regulations are discussed in the section-by-section summary. However, minor technical and structural changes

that do not significantly alter the provisions of the draft regulations are not discussed.

In response to public commenters who viewed some of the paperwork requirements in the draft regulations as unduly burdensome, the Secretary has proposed in the NPRM eliminating or consolidating documentation requirements wherever feasible. Those requirements that would remain in the proposed regulations are considered essential to the proper administration of the program. Paperwork requirements in the following sections of the draft regulations have been removed or reduced: §§ 361.13(c), 361.19, 361.20(b), 361.21 (a) and (b), 361.22(a)(1), 361.29 (a)(2) and (a)(4), 361.33(b), 361.46, 361.47, 361.52, and 361.53(a)(3).

In addition, the draft regulations have been reviewed and revised in accordance with the Department's principles for regulating, which were developed as part of the Administration's regulatory reinvention initiative under the National Performance Review II. The principles are designed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. As a result of that review, additional non-statutory requirements in the draft regulations have been eliminated or modified to reduce paperwork or process requirements on States and to increase State flexibility in meeting statutory requirements. These proposed changes are identified in the section-by-section summary.

The proposed regulations, like the draft regulations, provide guidance through examples in the following three areas: permissible expenses under the definition of "maintenance"; permissible expenses under the definition of "transportation"; and meeting the final eligibility criterion (an individual with a disability must require VR services) under § 361.42. Some public commenters on the draft regulations opposed the use of examples on the grounds that they would interfere with individual counselor judgment, whereas other commenters supported their use as an effective means of ensuring that counselors had ready access to information typically found in guidance materials. By including the examples in the regulations, the Secretary intends to make the regulations more comprehensive and useful. The Secretary emphasizes, both here and throughout the section-by-section summary, that the examples are provided solely for the purposes of illustration, do not address all situations that a rehabilitation counselor may face,

and are not intended to preclude individual counselor judgment on a case-by-case basis. The examples are merely guidance material to which rehabilitation professionals can quickly refer.

References in the section-by-section summary to the "proposed regulations," as opposed to the "draft regulations," refer to regulatory provisions included in this NPRM.

## Section-by-Section Summary

### *Section 361.1—Purpose*

This proposed new section of the regulations would incorporate the language in section 100(a)(2) of the statute, which emphasizes the goal of gainful employment for individuals with disabilities and the responsibility of States to operate comprehensive, coordinated, effective, efficient, and accountable programs that are designed to assess, plan, develop, and provide vocational rehabilitation services. The Secretary interprets the statutory term "gainful employment" to have the same meaning as the term "employment outcome," as it is defined in the proposed regulations.

### *Section 361.2—Eligibility for a Grant*

This new section is proposed for clarification. A similar section was proposed in the 1991 NPRM.

### *Section 361.3—Authorized Activities*

This new section is proposed to clarify how the funds under this program can be used. A similar section was proposed in the 1991 NPRM. It also incorporates the new statutory provision in section 111(a)(1) of the Act that funds may be used to develop and implement the strategic plan.

### *Section 361.4—Applicable Regulations*

This proposed section would revise § 361.1(b)(1) of the existing regulations to clarify that the reference to 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations) applies only to the award of subgrants by vocational rehabilitation agencies to entities that are not State or local governments or Indian tribal organizations and to remove the reference to 34 CFR Part 78 (The Education Appeal Board) because it has been deleted from the Education Department General Administrative Regulations (EDGAR). In addition, the proposed section would add references to 34 CFR Parts 80, 81, 82, 85, and 86 because those parts have been added to EDGAR since the regulations for this program were last revised, and they are applicable to this program.

### Section 361.5—Applicable Definitions

This proposed section is taken from § 361.1(c) of the existing regulations. It has been revised to incorporate changes in the definitions in section 7 of the Act that were made by the 1992 Amendments. The definitions are organized alphabetically and are numbered for purposes of quick identification.

The following definitions from the current regulations are not included in the proposed regulations since the terms have been removed or replaced in the Act: “employability,” “evaluation of vocational rehabilitation potential,” “initial expenditure,” “rehabilitation facility,” and “time-limited services.” In addition, the term “workshop” is not used or defined in the proposed regulations. Statutory definitions of the following terms have been added to the proposed regulations without substantive change: “assistive technology device,” “assistive technology service,” “extended services,” “impartial hearing officer,” “ongoing support services,” “personal assistance services,” “rehabilitation technology,” “supported employment,” “supported employment services,” and “transition services. In addition, definitions of “American Indian” and “State” have been revised to reflect statutory changes made by the 1992 Amendments.

Definitions of the terms “community rehabilitation program” and “employment outcome,” which are defined in the Act, have been revised to clarify or elaborate on the statutory definitions. The proposed definition of “community rehabilitation program” incorporates the definition in section 7(25) of the Act, but would add a definition of the word “program” to clarify that community rehabilitation programs do not include individual practitioners, such as physicians or physical therapists, who provide VR services but are not affiliated with an agency, organization, or institution that provides VR services as one of its major functions. This clarification is based on the Secretary’s view that Congress did not intend for the assessment of the capacity and effectiveness of community rehabilitation programs and related requirements to include every individual person who provides VR services. However, the Secretary interprets the term community rehabilitation program and the associated requirements to apply to a vocational rehabilitation services unit of a hospital. In addition, in response to public comment on the draft regulations, the Secretary proposes to

broaden the meaning of the term “program” from an entity that provides or facilitates the provision of VR services as its primary function to an entity that provides or facilitates the provision of VR services as one of its major functions. This change would enable, for example, a local affiliate of the United Cerebral Policy Foundation that provides VR services, in addition to disseminating information and providing educational services, to be considered a “community rehabilitation program” under the definition.

The proposed definition of “employment outcome” elaborates on the definition in section 7(5) of the Act by incorporating into the definition the concept in the Act that an employment outcome must be consistent with an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The proposed definition would replace the definition of “employability” in § 361.1 of the existing regulations. In response to the draft regulations, several commenters expressed concern about the scope of permissible employment outcomes under the definition. Although the proposed definition, unlike the current regulatory definition of “employability,” does not identify a full range of permissible employment outcomes under the vocational rehabilitation services program, the Secretary does not intend the proposed definition to exclude any employment outcome that has been permitted in the past. Thus, for example, homemaker, extended employment, and self-employment remain acceptable employment outcomes. The proposed definition does, however, recognize competitive employment as the optimal employment outcome under the program, and language emphasizing this has been added to the definition.

The Secretary proposes new definitions or revisions to the definitions in the existing regulations for the following terms that are not defined in the Act: “administrative costs,” “applicant,” “appropriate modes of communication,” “comparable services and benefits,” “competitive employment,” “construction of a facility for a public or nonprofit community rehabilitation program,” “establishment, development, or improvement of a public or nonprofit community rehabilitation program,” “establishment of a facility for a public or nonprofit community rehabilitation program,” “extended employment,” “family member,” “individual’s representative,” “integrated setting,” “maintenance,” “post-employment services,”

“transitioning student,” and “transportation.”

The proposed definition of “administrative costs” is based on existing RSA subregulatory guidance and definitions of the term that are used in other RSA programs. The definition, which is substantially the same as the definition of “administrative costs” in the draft regulations, lists, as examples, certain types of expenses that would constitute administrative costs. Several commenters on the draft regulations suggested adding other items to the definition. In response, the Secretary has amended the definition of “administrative costs” to clarify that the types of expenses listed in the definition are intended only as examples and that other expenditures would be considered administrative costs as long as those expenditures relate to program planning, development, monitoring, and evaluation.

The Secretary proposes to define “applicant” for clarification by referencing the requirements for submitting an application in § 361.41(b)(2) of the proposed regulations.

In response to public comment on the draft regulations, the Secretary proposes to change the term “special modes of communication” to “appropriate modes of communication” to ensure consistency with the Americans with Disabilities Act (ADA). In addition, the Secretary proposes to eliminate references in the definition to individuals who are blind, deaf, or hearing-impaired to clarify that the proposed definition is not limited by type of disability and that it includes all appropriate modes of communication necessary to enable any individual with a disability to comprehend information being communicated.

Finally, the Secretary has expanded the list of examples of communication services and materials in the proposed definition. However, the Secretary does not consider the list to be all-inclusive and emphasizes that other appropriate modes of communication not specified in the proposed definition are also available.

The proposed definition of “comparable services and benefits” is based on a definition of that term that was proposed in the 1991 NPRM. It is intended to support the statutory purpose of conserving rehabilitation funds, while ensuring the provision of appropriate and timely services in lieu of those provided by the DSU. The proposed definition revises the definition proposed in the 1991 NPRM to remove private agencies (i.e., community, philanthropic, and other

private entities that are not VR service providers but do provide financial or other assistance to individuals with disabilities to help meet VR needs, such as scholarship assistance from a local Lions Club) as one of the sources of comparable services and benefits because the Secretary interprets the reference in the statute to "other programs" to mean other public programs. In addition, the Secretary believes it would be too burdensome to require State agencies to determine the availability of comparable services and benefits from private agencies prior to providing services and benefits under this program. The Secretary would, however, continue to encourage State agencies to use services and benefits that are available from private agencies to the extent they are known. In response to public comment on the draft regulations, the Secretary has further amended the term by clarifying that comparable services and benefits must be available "within a reasonable period of time" and must be commensurate with the services that the individual would otherwise receive from the VR agency.

In response to public comment on the draft regulations, the Secretary has consolidated the definitions of "competitive employment" and "competitive work" from the draft regulations into a single proposed definition of "competitive employment." The consolidated definition recognizes that integration (i.e., an employment outcome in an integrated job setting) is an element of competitive employment, rather than a separate concept. It would establish a general requirement that individuals must receive compensation that is at or above the minimum wage, but not less than the prevailing community wage for non-disabled individuals performing the same or similar work.

The consolidated definition would apply to supported employment as well as to other kinds of competitive employment outcomes. Under the proposed definition, however, an employment outcome in a supported employment setting in which an individual receives wages below the minimum wage in accordance with section 14(c) of the Fair Labor Standards Act (FLSA) (i.e., wages based on individual productivity) would no longer be considered competitive employment. Although this proposed change would represent a significant departure from longstanding RSA regulatory policy, the Secretary agrees with those public commenters who suggested that competitive employment outcomes should be limited to those in

which individuals are compensated at or above the minimum wage. In addition, this proposed change is consistent with section 101(a)(16) of the Act, which requires DSUs annually to review and reevaluate the status of each individual in an employment setting under section 14(c) of the FLSA in order to determine the individual's readiness for competitive employment. This statutory requirement indicates that supported employment settings in which individuals are compensated below minimum wage in accordance with the FLSA do not constitute competitive employment. The Secretary also notes that the proposed change would have the effect of requiring individuals in supported employment to earn at least the minimum wage in order to receive services under Title VI, Part C of the Act. Finally, so that the impact of this proposed change can be appropriately evaluated, the Secretary requests public comment on the extent to which individuals currently in supported employment earn less than the minimum wage.

The proposed definition of the term "construction of a facility for a public or nonprofit community rehabilitation program" is based on the definition of the term "construction of a rehabilitation facility" in § 361.1(c) of the existing regulations and the definition of the term "construction" in section 7(1) of the Act. The proposed regulations also incorporate the 1992 Amendments, which replaced the concept of rehabilitation facilities with "community rehabilitation programs." The word "facility" is used in the proposed regulations only to refer to a "building" or "structure." In addition, the Secretary proposes to fold into this definition all authorized construction expenditures under this program, which are currently contained in § 361.74(a) of the existing regulations.

The Secretary proposes to define the term "eligible individual" for clarification throughout the regulations by referencing the basic eligibility criteria in proposed § 361.42(a).

The proposed definition of the term "establishment, development, or improvement of a public or nonprofit community rehabilitation program" elaborates on the statutory definition of the term "establishment of a community rehabilitation program" by incorporating all of the types of expenditures for which a State unit can receive Federal financial participation. These provisions are taken from § 361.73(a) of the existing regulations and include the limitations on staffing costs initially proposed in the 1991 NPRM.

The Secretary proposes to define separately the term "establishment of a facility for a public or nonprofit community rehabilitation program" for purposes of clarification. The proposed definition covers only those authorized activities contained in the definition of "establishment, development, or improvement of a public or nonprofit community rehabilitation program" that involve facilities. In response to public comment about these three terms, the Secretary wishes to emphasize that funds under this program cannot be used to support community rehabilitation programs that are profitmaking organizations.

In response to public comment on the draft regulations, the Secretary has amended the proposed definition of the term "extended employment" to clarify that it 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 as well as any on-the-job support services the individual might require. In response to several commenters who expressed concern with language in the draft definition that stated that some individuals in extended employment "are not ready for competitive employment," the Secretary has modified the proposed definition to clarify that the purpose of extended employment is to enable individuals to continue to train or otherwise prepare for competitive employment, unless the individual makes an informed choice to remain in extended employment.

In response to public comment, the definition of the term "family member" has been revised to mean any individual (1) who is a relative or guardian, or who lives in the same household as an applicant or eligible individual regardless of their interpersonal relationship; (2) who has a substantial interest in the well-being of that individual; and (3) who needs vocational rehabilitation services to enable the applicant or eligible individual to achieve an employment outcome.

In response to public comment on the draft regulations, the Secretary proposes to amend the definition of the term "impartial hearing officer" to clarify that a member of the DSU's rehabilitation advisory council may not serve as an impartial hearing officer for that same DSU. Under the proposed definition, however, a member of the State Rehabilitation Advisory Council could serve as an impartial hearing officer in cases involving another DSU within the same State. For example, a member of the State Rehabilitation

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

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

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

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

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

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

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

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

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

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

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

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

Secretary proposes to amend the definition of the term "transition services" to clarify that transition services must promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives identified in the transitioning student's IWRP.

In response to public commenters who sought further clarification of the term "transitioning student" in the draft regulations, the Secretary proposes to define the term to mean a student who is eligible to receive vocational rehabilitation services and is receiving "transition services" as defined in the regulations.

The Secretary proposes to define the term "transportation" on the basis of existing subregulatory guidance. In addition, the Secretary has included a note following the proposed definition that provides examples of permissible transportation expenses. One of these examples covers the short-term, travel-related expenses (i.e., food and shelter) of applicants receiving assessment services. These expenses, as discussed previously, cannot be provided under the maintenance authority. The Secretary also emphasizes that these examples are provided solely for the purposes of illustration and do not preclude DSUs from providing transportation costs in other appropriate situations.

Finally, the following nomenclature changes from the Act have been incorporated into the definitions and throughout the regulations: references to all forms of the word "handicap" have been changed to the corresponding form of the word "disability;" certain references to the word "disability" have been replaced by the word "impairment" (e.g., physical or mental impairment); and the word "client" has been removed and replaced with other appropriate terms, including "applicant," "eligible individual," "individual," or "individual with a disability."

The Secretary also notes that proposed changes to supported employment definitions included in this NPRM would also affect those definitions in 34 CFR Parts 363, 376, and 380.

#### *Section 361.10—Submission, Approval, and Disapproval of the State Plan*

Proposed § 361.10 contains certain requirements from §§ 361.2 and 361.3 of the existing regulations relating to the purpose, duration, development, submission, and approval of the State plan. Many of the other requirements in §§ 361.2 and 361.3 of the existing regulations have been relocated to other

sections of the proposed regulations because they deal with the substance and administration of the State plan. Proposed § 361.10 also incorporates the new statutory provision that authorizes the Secretary to approve the submission of a State plan for a period other than three years if it corresponds to the period required for another plan required under Federal law. Proposed paragraph (j) of this section provides the procedures for disapproval of the State plan. The procedural protections would be the same as those that are currently provided when the Secretary withholds funds.

Paragraphs (e) and (f) of § 361.2 of the existing regulations, which contain provisions regarding the designation of and transition to a new State agency or State unit, would be removed from the proposed regulations. The 1991 NPRM proposed removal of these requirements because of the paperwork burden, and they have been omitted in this NPRM for the same reason.

#### *Section 361.11—Withholding of Funds*

Proposed § 361.11 revises § 361.4 of the existing regulations to make withholding hearings under this program subject to the jurisdiction of and the procedural requirements governing the Department's Office of Administrative Law Judges in EDGAR, 34 CFR Part 81, rather than program specific hearing procedures in current §§ 361.170 through 361.186, which would be repealed. This is consistent with the changes proposed in the 1991 NPRM.

#### *Section 361.12—Methods of Administration*

This proposed section is taken from § 361.10 of the existing regulations. The proposed regulations add a clause to clarify that proper and efficient administration of the State plan includes procedures to ensure accurate data collection and financial accountability.

#### *Section 361.13—State Agency for Administration*

This proposed section consolidates information contained in §§ 361.5, 361.6, and 361.8 of the existing regulations regarding the designation of the State agency, the organizational level and status of the State unit, and the full-time director requirement.

In an effort to reduce the regulatory burden and increase State flexibility in accordance with the Department's principles for regulating, the Secretary proposes to delete the requirement in § 361.13(a)(1)(i) of the draft regulations and § 361.5(b)(1) of the current

regulations that a designated State agency that has as its major function vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities also "have the authority, subject to the supervision of the Governor, if appropriate, to define the scope of the program within the provisions of State and Federal law and to direct its administration without external administrative controls." Elimination of this non-statutory requirement, which applies currently to only one of the three sole State agency options identified in the regulations, is intended to increase State flexibility in locating and administering its vocational rehabilitation program.

Several commenters on the draft regulations requested clarification of the requirement in § 361.13(b)(1)(iii) that at least 90 percent of the State unit staff work full-time on the rehabilitation work of the organizational unit, which must be primarily concerned with vocational rehabilitation or vocational rehabilitation and other rehabilitation. This requirement means that if the organizational unit provides other rehabilitation services, in addition to vocational rehabilitation, the 90 percent staffing requirement applies to all unit staff providing rehabilitation services, not just the vocational rehabilitation staff. "Other rehabilitation" includes, but is not limited to, other programs that provide medical, psychological, educational, or social services to individuals with disabilities. For example, a State unit with 90 percent of its staff working on independent living services, programs for the developmentally disabled, disabled children's services, services for individuals who are deaf or hearing-impaired, services for individuals who are blind or visually impaired, Social Security disability determinations, or some other type of program related to individuals with disabilities, in addition to vocational rehabilitation, would satisfy the 90 percent requirement. The Secretary also notes that Federal funds under this program may be used only to pay the salaries of the State unit staff that are working full-time or part-time on vocational rehabilitation.

In accordance with the Department's principles for regulating, the Secretary also proposes to delete the requirement in § 361.13(c) of the draft regulations and § 361.6(a) of the current regulations that the State plan describe the organizational structure of the State agency and its organizational units. The Secretary instead would rely on an assurance, required by statute, that a State agency that is required to have a vocational rehabilitation unit locate that

unit at an organizational level comparable to other organizational units within the State agency. This proposed change is intended to reduce paperwork burdens on State agencies in developing their State plans.

The Secretary is not proposing any substantive changes in paragraph (d) of this section to the requirements in current § 361.5(e) with regard to the responsibility of the designated State unit for administration of the vocational rehabilitation program, but is soliciting public comment on the need for changes.

The current regulations specify certain program functions or activities (determinations of eligibility, development of IWRPs, and decisions regarding the provision of services) that must be the responsibility of the DSU and that cannot be delegated to any other agency or individual. This non-delegation provision has been interpreted by RSA to mean that the DSU must carry out these functions or activities using its own staff. The draft proposed regulations, consistent with RSA subregulatory policy, specified additional program functions that must be carried out by the DSU: determinations that service recipients have achieved appropriate employment outcomes, the formulation and implementation of program policy, and the allocation and expenditure of program funds. The draft proposed regulations also would have strengthened the role of the State unit by requiring that the unit have a substantial role in all decisions affecting the administration of the VR program whenever management functions within the State agency are centralized.

Public comment on these draft proposed changes was neither extensive nor consistent. Some State VR directors supported a strengthening of the role and authority of the DSU but thought the draft proposed regulations were not strong enough, while other commenters thought the regulations were too prescriptive and believed that the only program function that must be carried out directly by DSU staff is eligibility determinations.

In light of the mixed public comment received thus far and the Administration's regulatory reinvention initiative, which is intended to increase State flexibility in administering Federally funded programs whenever permitted by statute, the Department is soliciting additional public comment on the following questions: Should the regulations expand or otherwise clarify essential program functions for which the DSU must be responsible in order to meet the statutory requirement in

section 101(a)(2)(A) that it be responsible for the VR program? Must these essential program functions be carried out by DSU staff or should the regulations provide States as much flexibility as possible to determine how to carry out these functions as long as the DSU retains administrative oversight in these areas? Any changes made to provide increased flexibility to States would not require DSUs to change their current administrative practices but would provide States additional flexibility to restructure, consolidate, or contract out program operations as long as the DSU retains ultimate responsibility.

#### *Section 361.14—Substitute State Agency*

This proposed section revises certain requirements regarding the selection of a substitute State agency (§ 361.7 of the existing regulations) in order to simplify the process and reduce the paperwork burden. The existing regulations permit applications from a potentially unlimited number of substitute State agency applicants, from which the Secretary selects the substitute State agency based on detailed criteria in the existing regulations. The proposed regulations place the authority and responsibility for the selection of a substitute State agency on the State so that the Secretary would need only to review and approve a State plan from one substitute State agency prior to providing funds.

#### *Section 361.15—Local Administration*

This proposed section simplifies § 361.9 of the current regulations by removing the requirements related to a written agreement between a sole local agency and the State unit in order to reduce the paperwork burden on States. It proposes to replace the written agreement requirements with assurances from the State unit in the State plan relating to the administration and supervision of a sole local agency.

#### *Section 361.16—Establishment of an Independent Commission or a State Rehabilitation Advisory Council*

This proposed new section implements the new requirements related to the State Rehabilitation Advisory Council (Council) in section 101(a)(36) of the Act. The proposed section clarifies that a State does not need to establish a Council or meet the requirements related to a Council if the State agency is a consumer-controlled independent commission. The proposed section also clarifies that if the State has a separate State agency for individuals who are blind, four options regarding

the possible combinations of the two State agencies exist. Although only three options are identified in the Act, the section-by-section analysis of the Act in the Conference Report clarifies that the fourth option, a mirror image of the third combination identified in the Act, is also acceptable. This option is contained in proposed paragraph (b)(4) of this section.

#### *Section 361.17—Requirements for a State Rehabilitation Advisory Council*

This proposed new section incorporates the new statutory requirements in section 105 of the Act with the clarification that the director of the DSU is a nonvoting member of the State Rehabilitation Advisory Council. Since the purpose of the Council is to advise the State unit, and the statute is clear that the director is an ex-officio member of the Council, the Secretary does not believe that Congress intended that the director of the State unit provide advice to herself or himself by voting on Council decisions. Similarly, the Secretary has clarified the regulations to state that any employee of the designated State agency may serve only as a nonvoting member of the Council.

Several commenters on the draft regulation sought clarification with respect to the appointment of Council representatives from the Client Assistance Program (CAP) and the Statewide Independent Living Council (SILC). In response, the Secretary proposes to amend the regulations to clarify that the role of the CAP and SILC is to recommend to the Governor, or other appropriate appointment authority designated by State law, Council representatives for their respective organizations. Based on these recommendations, the Governor or other State-designated authority determines who will be the Council appointees, since the statute clearly vests appointment authority in those entities. The Secretary also notes that those individuals recommended for Council membership by the CAP or SILC need not be CAP or SILC members.

In addition, in response to public comment on the draft regulations, the Secretary emphasizes that, although the Council must be composed of at least 13 members (unless the State qualifies for an exception under paragraph (b)(4) of this section), a State is not precluded from having more than 13 individuals serve on its Council.

The Secretary also encourages States to consider appointing Council members from minority backgrounds consistent with the 1992 Amendments to the Act, which emphasizes outreach

to individuals from minority backgrounds and the need for rehabilitation programs to better reflect the culturally diverse population of the United States.

Finally, in response to public comment on the draft regulations, the Secretary proposes to amend the annual reporting requirements of the Council by requiring the Council to submit to the Governor, or other appropriate State entity, and to the Secretary an annual report of the status of the State's vocational rehabilitation programs within 90, rather than 60, days from the end of the fiscal year and by requiring that the report be available through appropriate modes of communication.

*Section 361.18—Comprehensive System of Personnel Development*

This proposed new section incorporates the new statutory requirements in sections 101(a)(7) and 101(a)(35) of the Act. The requirements in section 101(a)(7) of the Act are virtually identical to requirements for a comprehensive system of personnel development under the Individuals with Disabilities Education Act (IDEA). For this reason, this section of the proposed regulations closely tracks the regulations implementing the IDEA requirements (34 CFR 300.380 through 300.383), with modifications to better reflect the context of the State Vocational Rehabilitation Services Program.

Some commenters on the draft regulations questioned the basis for requiring the involvement of the State Rehabilitation Advisory Council in the development of personnel standards. The Act requires that the Council generally advise the State unit in connection with the carrying out of its programmatic responsibilities. In addition, the State agency is required to consult, and seek advice from, the Council on issues affecting the development of the State plan. Because an effective system of personnel development is an essential part of the State plan and a critical element to the success of the State Vocational Rehabilitation Services Program, the Secretary considers it necessary for the Council to participate in the development of State personnel standards.

Paragraph (a) of this section requires that the State plan include, on an annual basis, a description of a system for collecting and analyzing personnel data. Several commenters on the draft regulations expressed concern about the amount of data that must be provided to the Secretary under this provision. In response, the Secretary emphasizes that,

although annual data collection and analysis requirements are statutorily imposed, the proposed regulations require only that the State plan include a description of the system used to collect the data on personnel needs and personnel development and do not require the State to submit the actual data to the Secretary.

In response to public comment on the draft regulations, the Secretary proposes to broaden the definition of the term "highest requirements in the State applicable to that profession or discipline," as used in the development and maintenance of personnel standards by the State, to mean the highest entry-level academic degree or equivalent experience needed to meet any national- or State-recognized certification, licensing, registration, or other comparable requirements that apply to a profession or discipline. The purpose of this change is to recognize that some States base their personnel standards, in part, on relevant work experience by substituting equivalent work experience for certain academic credentials. State standards of this type would meet this definition. This change, however, would not allow work experience to substitute for academic requirements if the existing State standard is based only on academic credentials.

The Secretary also believes that permitting States to base highest personnel standards in the State on equivalent experience, as well as on academic degrees, stresses the significance of relevant work experience and will diversify further the pool from which qualified personnel can be selected.

Several commenters on the draft regulations suggested areas of training in addition to rehabilitation technology that should be required in the regulations as part of the State's program of staff development. The Secretary believes that the specific training areas for staff development adopted by a State unit must be based on the particular needs of that State unit. The Secretary recognizes, however, that staff development may include, but is not limited to, training with respect to the requirements of the Americans with Disabilities Act, IDEA, and Social Security incentive programs, training to facilitate informed choice under this program, and training to improve the provision of services to culturally diverse populations. A provision to this effect has been added to the proposed regulations.

In response to public comment on the draft regulations, the Secretary proposes to change the reference in paragraph (e) of this section from "special

communication needs personnel" to "personnel to address individual communication needs" and has clarified this provision by requiring the State unit to describe in the State plan how it includes among its personnel, or obtains the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability. That personnel may include State agency staff, family members of an applicant or eligible individual, community volunteers, and other individuals able to communicate in the appropriate native language. The State unit also must describe how it ensures that appropriate modes of communication are used for all applicants and eligible individuals.

In response to public comment on the draft regulations, the Secretary wishes to stress the importance of requiring in the State plan a description of the State's personnel performance evaluation system that facilitates, and does not impede, the purposes and policies of the vocational rehabilitation services program outlined in the Act. More precisely, the proposed regulations require that the evaluation system further the statutory policy of serving individuals with the most severe disabilities. In support of this requirement, the Senate Committee on Labor and Human Resources states in its report that it "is concerned that in some States, procedures used for evaluating performance of counselors may have the unintended consequence of providing a disincentive to serve individuals with the most severe disabilities and those clients requiring complex services." The performance evaluation system required under the Act and included in the proposed regulations is designed to address these disincentives.

The Secretary proposes to modify paragraph (g) of this section to track section 101(a)(7)(A)(ii) of the Act, which requires the State agency to describe the activities it will undertake to coordinate its comprehensive system of personnel development with personnel development under IDEA. This proposed change is intended to increase the flexibility of State agencies to implement the most effective procedures for coordinating the development of personnel under both statutes. An example of how a State may address this coordination requirement would be to establish a joint continuing education program for both DSU personnel and personnel under IDEA that deals with the provision of VR services, including transition services, to transitioning students.

*Section 361.19—Affirmative Action for Individuals With Disabilities*

This proposed section, which is based on section 101(a)(6)(A) of the Act and § 361.15 of the existing regulations, requires the State agency to take affirmative action to employ and advance in employment qualified individuals with disabilities. In accordance with the Department's principles for regulating, the Secretary proposes to delete the non-statutory requirement in the draft regulations and the current regulations that the State unit develop an affirmative action plan that provides for specific goals, action steps, timetables, evaluation criteria for measuring progress, and complaint and enforcement procedures. By not requiring a formal affirmative action plan or specifying the minimum requirements a State must incorporate into that plan, the proposed provision would give State agencies greater flexibility to take those steps it considers most appropriate for increasing the number of qualified individuals with disabilities that it employs or advances in employment. The proposed changes also would reduce State paperwork burdens.

*Section 361.20—State Plan Development*

This proposed section revises § 361.18 of the existing regulations to implement new requirements in section 101(a)(23) of the Act.

Consistent with section 101(a)(23) of the Act, paragraph (a)(1) of this section of the regulations would require the State unit to conduct public meetings throughout the State to provide all segments of the public, including interested groups, organizations, and individuals, an opportunity to comment on the State plan prior to its development and to comment on any revisions to the State plan. In accordance with the Department's principles for regulating, the Secretary believes that States should have the latitude to develop their own procedures for ensuring that interested parties are afforded a meaningful opportunity to comment on the State plan before it is developed and when it is revised. Additionally, in order to satisfy the statutory requirement that the State unit, prior to conducting public meetings throughout the State, provide appropriate and sufficient notice of the public meetings, the proposed regulations would require the State unit to follow notice requirements established under State law or, in the absence of those requirements, to consult with the State Rehabilitation

Advisory Council to develop notice procedures. The proposed regulations would not impose any specific minimum Federal requirements for what constitutes "appropriate and sufficient notice."

In response to those commenters who sought regulatory clarification of the public participation and notice requirements of this section, the Secretary provides the following examples as suggested ways a DSU might meet these requirements. A State unit could satisfy the public participation requirement, for example, by soliciting input from the public before developing a preliminary draft State plan and making the preliminary draft plan available to the public 30 days prior to the public meetings. An example of "appropriate and sufficient notice" of public meetings would be notice that is provided at least 30 days prior to a public meeting through various media available to the general public, such as newspapers and public service announcements, and through specific contacts with appropriate constituency groups and organizations identified by the State unit, in consultation with the State Rehabilitation Advisory Council. An example of how a State unit could meet the statutory requirement that it "conduct public meetings throughout the State," would be to hold public meetings in at least two different geographic locations that are among the State's most densely populated areas and at sites that are accessible to individuals with disabilities.

Some commenters on the draft regulations suggested that larger States be required to hold a greater number of public meetings than smaller States, while other commenters suggested that States make use of emerging technologies that enable individuals to participate in public meetings without having to be in attendance. The Secretary encourages each State to hold as many public meetings as are necessary to ensure meaningful participation of all interested persons and organizations in that State. The Secretary also urges States to consider using alternative or emerging technologies that allow for wider public participation. The proposed regulations are intended to provide each State with the flexibility to choose the manner in which it conducts public meetings (e.g., in person, satellite broadcasts, teleconferences, or a combination thereof) as long as the meetings are truly interactive and are designed to maximize the opportunity for meaningful participation.

The proposed section also would implement the new statutory provision in section 105(c)(2) of the Act that requires the State Rehabilitation Advisory Council to advise the State unit on the preparation of the State plan by requiring the State unit to consult with the Council in the development of the State plan. Finally, the proposed section implements the new statutory requirement in section 101(a)(32) of the Act that the State plan describe the manner in which it will modify State policy and procedures in response to consumer satisfaction surveys.

*Section 361.21—Consultations Regarding the Administration of the State Plan*

This proposed section is also taken from § 361.18 of the existing regulations. It incorporates section 101(a)(18) of the Act, including the new statutory requirement regarding consultation with the director of the CAP. It would also require consultation with the State Rehabilitation Advisory Council, consistent with the Council functions in new section 105(c) of the Act. It proposes to remove provisions in the existing regulations that list examples of matters of general policy development and implementation. Finally, this proposed section, as well as the previous section, would implement new section 101(a)(32) of the Act, which requires the State plan to describe the manner in which the State will modify State policy and procedures in response to consumer satisfaction surveys.

*Section 361.22—Cooperation With Agencies Responsible for Transitioning Students*

This proposed new section combines § 361.19(b) of the existing regulations, which requires the State plan to provide for the coordination of services for individuals who are eligible both for vocational rehabilitation services and for services under IDEA, with the new statutory provisions in sections 101(a)(11) and (a)(24) of the Act. The new statutory provisions require formal interagency agreements to facilitate the transfer of responsibilities for transitioning students who are receiving special education services from the agency responsible for providing a free appropriate public education to the State unit responsible for providing vocational rehabilitation services. In addition, proposed paragraph (b) of this section implements the new requirement in section 101(a)(30) of the Act regarding the availability of vocational rehabilitation services to students who are individuals with

disabilities and who are not in special education programs.

Some commenters on the draft regulations viewed the required content of formal interagency agreements between State units and State educational agencies as unduly burdensome. In response, the Secretary proposes to amend the regulations to require that formal interagency agreements need only identify provisions for determining State lead agencies and qualified personnel responsible for transition services, in addition to identifying those policies and practices that can be coordinated between the agencies, including eligibility standards, referral policies, outreach procedures, and evaluation procedures. The formal interagency agreement may, as appropriate, identify available resources, the financial responsibilities of each agency, dispute resolution procedures, and other cooperative policies.

Other commenters expressed concern that the draft regulations required State agencies to shoulder more of the responsibility for transitioning students than is contemplated under the Act. In response, the Secretary proposes to add a note in the regulations to clarify the roles of the rehabilitation and educational agencies in facilitating the transition of students who are eligible for VR services. As stated by the Senate Committee on Labor and Human Resources, the role of the State agency is primarily one of planning for the student's years after leaving school.

#### *Section 361.23—Cooperation With Other Public Agencies*

This proposed section is taken from paragraphs (a), (c), and (d) of § 361.19 of the existing regulations and has been revised to incorporate the new requirements in section 101(a)(11) of the Act regarding the content of formal interagency cooperative agreements. The proposed section is also reorganized to clarify that the long list of programs under existing § 361.19(a) refers to Federal, State, and local public programs and agencies providing services related to the rehabilitation of individuals with disabilities.

#### *Section 361.24—Coordination With the Statewide Independent Living Council*

This proposed new section incorporates the new requirement in section 101(a)(33) of the Act that the State unit coordinate and establish working relationships with the Statewide Independent Living Council and independent living centers within the State.

#### *Section 361.25—Statewide*

This proposed new section contains the requirement in § 361.2(a) of the existing regulations that the State plan be in effect in all political subdivisions of the State.

#### *Section 361.26—Waiver of Statewide*

This proposed section revises § 361.12 of the existing regulations to clarify that a waiver of statewide is necessary if the State unit wants to provide through local financing increased services or an expanded scope of services that is different from the services available statewide. The procedural requirements relating to a request for a waiver would remain substantially the same.

#### *Section 361.27—Shared Funding and Administration of Joint Programs*

This proposed section revises § 361.11 of the existing regulations to clarify that these programs involve shared funding and administrative responsibility, that a request for the Secretary's approval must be included in the State plan, and that a request for waiver of statewide also must be included in the State plan, if necessary. The proposed regulations would also remove the specific requirements relating to a written agreement that are in the existing regulations. The 1991 NPRM proposed to remove the written agreement requirements as part of the effort to reduce paperwork burden, and the requirements are omitted in this NPRM for the same reason.

#### *Section 361.28—Third-Party Cooperative Arrangements Involving Funds From Other Agencies*

This proposed section revises § 361.13 of the existing regulations to reduce the requirements related to third-party cooperative arrangements, including the requirements for a written agreement, an annual program budget, and an annual review of program operations. The proposed regulations would also clarify that applicants, as well as eligible individuals, can receive services under these cooperative arrangements. This section would be placed organizationally in the regulations next to the proposed section on shared funding and administration to emphasize the differences between joint programs and third-party cooperative arrangements.

Some commenters on the draft regulations suggested that third-party cooperative arrangements be jointly administered by the State unit and the cooperating agency, i.e., administered in the same way as joint programs under proposed § 361.27. In response, the

Secretary notes that section 101(a)(2) of the Act requires the designated State unit to be responsible for the vocational rehabilitation program. Third-party cooperative arrangements provide a framework for cooperating agencies to provide vocational rehabilitation services and contribute to the State's non-Federal financial share under the program. Thus, third-party arrangements are considered part of the vocational rehabilitation program for which the State unit must retain administrative responsibility. In contrast, State units that are parties to joint programs share funding and administrative responsibility with other agencies.

In response to public comment on the draft regulations, the Secretary has clarified that services provided by the cooperating agency under a cooperative arrangement must either be new services that have a vocational rehabilitation focus or existing services that have been modified, adapted, expanded, or reconfigured to have a VR focus. These requirements are consistent with longstanding RSA subregulatory guidance.

#### *Section 361.29—Statewide Studies and Evaluations*

This proposed section revises and expands § 361.17 of the existing regulations to identify and clarify the timelines for all of the study and evaluation requirements, some of which are currently contained in other sections. It also expands the requirement in § 361.2(a)(2)(i) of existing regulations that the State plan describe changes in policy resulting from the statewide studies and the annual evaluation to also require a description of activities undertaken and changes in the State plan, the strategic plan, and plan amendments that result from the studies and evaluations. Proposed paragraph (d) of this section incorporates the new requirement in section 105(c)(2) of the Act regarding the role of the State Rehabilitation Advisory Council in the preparation of the statewide studies and evaluation.

#### *Section 361.30—Services to Special Groups of Individuals With Disabilities*

This proposed section combines §§ 361.37 and 361.38 of the existing regulations regarding special services for civil employees of the United States and for American Indians, along with paragraph (c) of § 361.36 of the existing regulations, which provides for special consideration for public safety officers. In addition, the Secretary proposes to clarify in this section that special consideration means that a public safety

officer would receive priority for services over other individuals in the same priority category of an order of selection. The proposed section would also incorporate the statutory definitions of "criminal act" and "public safety officer" from section 7 of the Act.

*Section 361.31—Utilization of Community Resources*

This proposed section is substantially the same as § 361.56 of the existing regulations. It has been relocated to group it with other utilization sections in the part of the regulations that contains general administration requirements, rather than in the part of the regulations that addresses provision of services requirements.

*Section 361.32—Utilization of Profitmaking Organizations for On-The-Job Training in Connection With Selected Projects*

This proposed section revises § 361.57 of the existing regulations to increase State unit flexibility by authorizing, rather than requiring, a State unit to use profitmaking organizations if it determines that those organizations are better qualified to provide needed services than nonprofit agencies, organizations, or facilities in the State.

*Section 361.33—Utilization of Community Rehabilitation Programs*

This proposed section revises §§ 361.21 and 361.22 of the existing regulations and replaces the term "rehabilitation facilities" with the term "community rehabilitation programs," consistent with the 1992 Amendments. It also incorporates changes in the State plan requirements in sections 101(a)(5) and 101(a)(15) of the Act and new requirements in sections 101(a)(27) and 101(a)(28) of the Act.

In accordance with the Department's principles for regulating, the Secretary proposes to eliminate current non-statutory requirements for a rehabilitation facilities plan and for an inventory of community rehabilitation programs and requirements in the draft regulations for a justification in the State plan for using funds for the support of community rehabilitation programs, including the construction of facilities, and for a prioritized list in the State plan of proposed activities. The removal of these provisions would substantially reduce paperwork burdens on designated State units.

*Section 361.34—Supported Employment Plan*

This proposed new section incorporates sections 101(a)(25) and

635(a) of the Act, which require a State to assure that it has an acceptable plan for providing supported employment services and to submit that plan as a State plan supplement.

*Section 361.35—Strategic Plan*

This proposed new section would require that the strategic plan to expand and improve vocational rehabilitation services be provided as a supplement to the State plan. Section 101(a)(34)(A) of the Act requires the State plan to include an assurance that the State has a strategic plan to expand vocational rehabilitation services in accordance with Part C of Title I. In addition, section 120 of the Act requires States to submit their strategic plans to the Secretary prior to receiving funding under Part B of the Act, which includes the allotment for this program. The Secretary believes that requiring the strategic plan as a supplement to the State plan is the simplest and least burdensome approach.

*Section 361.36—Reserved*

This section is reserved for the order of selection regulations, which are being implemented in a separate rulemaking document.

*Section 361.37—Establishment and Maintenance of Information and Referral Resources*

The provision proposed in the draft regulations was substantially the same as § 361.20 of the existing regulations. However, commenters on both the draft regulations and the July 16, 1993 NPRM on order of selection have requested that State units operating under an order of selection be permitted to provide non-purchased services (e.g., information and referral) to eligible individuals who do not qualify for services under the State unit's priority categories. An order of selection is required under section 101(a)(5)(A) of the Act if a State unit determines that it is unable to provide services to all eligible individuals who apply for services. In response to public comment, the Secretary proposes to address this concern by amending the regulations to authorize any State unit that has implemented an order of selection to establish an expanded information and referral program that includes the provision of job referral services to eligible individuals who are not being served under a State unit's order of selection, provided that certain State plan requirements are met. These requirements include a description in the State plan of the level of commitment of staff and other resources for this purpose and an assurance that in carrying out this program, the State

unit will not use case services funds that are needed to provide VR services to eligible individuals who are able to be served under the State unit's order of selection.

*Section 361.38—Protection, Use, and Release of Personal Information*

This proposed section is substantially the same as § 361.49 of the existing regulations with the clarification in proposed paragraph (e)(3) that a State unit is required to release personal information if required by Federal regulations or Federal law.

In addition, some commenters on the draft regulations expressed concern that the State unit could release harmful personal information to a representative not chosen by the applicant or eligible individual. In response, the Secretary has clarified that the State unit may release information that it determines to be harmful to the individual only to 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.

In response to public comment on the draft regulations, the Secretary also proposes to amend the regulations by clarifying that State units shall release personal information in response to an "order issued by a judicial officer." The Secretary believes that the use of the term "judicial order" in both the current and draft regulations is confusing and that the clarification is necessary to ensure that a judge, magistrate, or other authorized judicial officer appropriately weighs the factors necessitating release of personal information against the individual's rights to privacy and protection from unauthorized use before ordering a State unit to release the information.

In addition, the proposed section has been relocated to group it with other sections of the regulations that contain the administrative requirements since it does not relate to the provision and scope of services.

While the confidentiality of personal information from applicants and eligible individuals under this program is considered essential to protect individual privacy, the Secretary specifically requests public comment on whether the provisions of this section are unduly burdensome or inconsistent with State laws governing the protection, use, or release of personal information.

*Section 361.39—State-Imposed Requirements*

This proposed section is taken from § 361.25 of the existing regulations. The

draft regulations would have required State units to identify State-imposed requirements at the public meetings to develop and revise the State plan. In response to public comment, the Secretary proposes to clarify this section of the regulations by requiring State units to identify upon request those regulations and policies relating to the administration or operation of the vocational rehabilitation program that are State-imposed. In making these changes the Secretary recognizes that the scope of State-imposed requirements is broader than those included in the State plan and that the Act requires the application of any State rule or policy relating to the administration or operation of the vocational rehabilitation program to be identified as a State-imposed requirement. The proposed section would require State units to identify those requirements upon request, including, but not limited to, requests made at public meetings.

#### *Section 361.40—Reports*

This proposed section is substantially the same as § 361.23 of the current regulations, except that it would add cross-references to sections 13, 14, and 101(a)(10) of the Act to distinguish the reporting requirements under this section from the reporting requirements related to statewide studies and evaluations under proposed § 361.29.

#### *Section 361.41—Processing Referrals and Applications*

This section expands § 361.30 of the current regulations to incorporate the new statutory requirement in section 102(a)(5)(A) of the Act that an eligibility determination be made within 60 days of the date on which an application is submitted, with limited exceptions. The Secretary proposes to require the State unit to establish timelines for making good faith efforts to contact individuals who have been referred for services to minimize delay at the pre-application stage.

Under the draft regulations, an individual was considered to have "submitted an application" if the individual, or the individual's representative, as appropriate, had submitted a completed agency application or a signed written request for services. In an effort to ensure that agencies are provided with all information necessary to make eligibility determinations, some commenters on the draft regulations stated that completion of an agency application should be the sole method for requesting services. In contrast, other commenters supported the use of alternative methods for requesting

services as a means of avoiding unnecessary delays if a particular application form was not used. In response, the Secretary proposes to clarify the regulations by interpreting the term "submitted an application" to include any request for services as long as the individual has provided information necessary for the DSU to initiate an assessment to determine eligibility and priority for services. Once an individual or the individual's representative, as appropriate, requests services, it is expected that State units will make good faith efforts to obtain this information as quickly as possible. For example, if a potential applicant has requested services in writing, the State unit may need to telephone the individual in order to obtain the necessary information in a timely manner. In addition, the proposed regulations require State units to make application forms readily available throughout the State.

#### *Section 361.42—Assessment for Determining Eligibility and Priority for Services*

This section combines §§ 361.31 and 361.32 of the existing regulations, which are the sections on eligibility and preliminary diagnostic study. The 1992 Amendments combined in the statute all of the evaluation steps that are currently required by those sections and by §§ 361.33 and 361.40 of the existing regulations into one assessment for determining eligibility and vocational rehabilitation needs, which is defined in section 7(22) of the Act. The Secretary proposes to divide that assessment into two steps in the regulations—an assessment for determining eligibility and priority for services, addressed in this section, and an assessment for determining vocational rehabilitation needs through the development of the IWRP, addressed by proposed § 361.45.

In response to public comment on the draft regulations, the Secretary proposes to amend this section by requiring that the assessment for determining eligibility and priority for services be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice.

Proposed paragraph (a) of this section incorporates the changes in the eligibility criteria that were made by the 1992 Amendments, including the presumption that an individual with an impairment that constitutes a substantial impediment to employment can benefit from vocational rehabilitation services, the presumption that Social Security beneficiaries meet the first two eligibility criteria, and the new requirement that an individual

with a disability require vocational rehabilitation services in order to achieve an employment outcome consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

Some commenters questioned the absence of a regulatory provision identifying who is qualified to determine the existence of a physical or mental impairment. Section 361.32 of the existing regulations requires that the preliminary diagnostic study, for purposes of determining an individual's eligibility for services, must include medical information and, in the case of individuals with mental and emotional disorders, an examination by a physician or by a licensed or certified psychologist. Proposed paragraph (a)(1)(i) of this section is based on amendments to section 103(a) of the Act, which substituted the standard that "qualified personnel in accordance with State licensure laws" make these determinations in lieu of particular medical professionals. The proposed regulatory provision broadens this concept to also encompass individuals who are certified under State law and individuals licensed or certified under State regulations. The Secretary believes that this broader interpretation is necessary to ensure that existing data and determinations made by other agencies, particularly education agencies, are used by DSUs in determining whether an individual is an individual with a disability under section 7(8)(A) of the Act or an individual with a severe disability under section 7(15)(A) of the Act. Under the proposed regulations, the determination of who is qualified to determine the existence of an impairment will vary from State to State depending on State licensure and certification requirements. Although the proposed regulations do not require a medical diagnosis for a DSU to determine that an impairment exists, the Secretary anticipates that in most instances those determinations will be supported by medical documentation.

Paragraph (a)(2) of § 361.42 in the draft regulations required a DSU to presume that an applicant can benefit in terms of an employment outcome unless it determines, based on clear and convincing evidence, that the applicant is incapable of benefitting from VR services as a result of the severity of his or her disability. In response to public comment, the Secretary proposes to delete the phrase "as a result of the severity of his or her disability" from the NPRM in order to clarify that individuals may be found incapable of

benefitting from VR services for reasons other than severity of disability. This change is consistent with section 102(a)(4)(A) of the Act. Nevertheless, the Secretary expects that the overwhelming majority of determinations under this requirement will be based on the severity of the individual's disability and specifically requests public commenters to identify reasons other than severity of disability that would support a determination that an individual is incapable of benefitting from VR services. If a determination that an individual cannot benefit from VR services is based on the severity of the individual's disability, section 102(a)(4)(B) of the Act and proposed paragraph (d)(1) of this section would also require the DSU to conduct an extended evaluation before reaching this conclusion. Finally, the Secretary proposes to further amend paragraph (a)(2) of this section to clarify that the presumption of benefit applies only to those applicants who meet the first two eligibility criteria.

In response to public comment on paragraph (b)(1) of this section of the draft regulations, the Secretary proposes to amend the regulations to prohibit States from imposing any duration of residence requirement for the receipt of services on any applicant who is present, rather than resides, in the State. The amended provision closely tracks the statutory language of section 101(a)(14) of the Act.

Paragraph (c) of this section incorporates the new statutory provisions that require the State unit to use existing data, to the extent possible, to determine eligibility and vocational rehabilitation needs.

Some public commenters on the draft regulations inquired as to the scope of vocational rehabilitation services that DSUs must provide during an extended evaluation. In response, the Secretary proposes to amend the regulations to require the State unit to develop a written plan during the extended evaluation period for determining eligibility and for determining the nature and scope of services required to achieve an employment outcome. The provision of services under the plan must be limited to those services needed to make these two determinations. It should be noted that this change represents a departure from the current regulations, which required DSUs to develop an IWRP for individuals in extended evaluation. The Act, however, requires only that IWRPs be developed for eligible individuals. The written plan requirements of this section are, therefore, intended to lessen the burden on State units of developing IWRPs for

individuals in an extended evaluation, while ensuring that the specific services to be provided during an extended evaluation are clearly identified.

The proposed regulations also contain a note on clear and convincing evidence that is based on legislative history from the Senate Committee Report. In response to public comment, the Secretary proposes to amend the note to clarify that determinations under the "clear and convincing evidence" standard must be made on a case-by-case basis.

Finally, the Secretary views the new eligibility criterion that an individual must require vocational rehabilitation services in order to achieve or retain an employment outcome as a limiting factor that is intended to screen out individuals who can prepare for, enter into, engage in, or retain gainful employment consistent with their strengths, resources, priorities, concerns, abilities, and capabilities without assistance from the vocational rehabilitation program. The proposed regulations contain a second note that provides several examples for guidance to State agencies regarding situations in which an individual may or may not require vocational rehabilitation services. The Secretary emphasizes that the examples are provided solely for the purposes of illustration, do not address all situations under which an individual may be eligible or ineligible for services, and are not intended to substitute for individual counselor judgment on a case-by-case basis.

#### *Section 361.43—Procedures for Ineligibility Determination*

The Secretary proposes this new section to consolidate overlapping provisions relating to procedures for ineligibility determinations that are currently contained in several different sections of the regulations. Specifically, it would consolidate paragraph (e) of current § 361.34, which contains termination provisions for an extended evaluation to determine rehabilitation potential, paragraph (c) of current § 361.35, which contains the requirements for a certification of ineligibility, and paragraph (d) of current § 361.40, which contains the requirements regarding review of ineligibility determinations.

The Secretary proposes to require DSUs to review all ineligibility determinations once within 12 months unless exceptions apply. In response to public comment on the draft regulations, the Secretary also proposes to amend paragraph (d) of this section to clarify that each year after the initial review, DSUs must, upon request,

review any ineligibility determination that is based on the inability of the individual to achieve an employment outcome.

#### *Section 361.44—Closure Without Eligibility Determination*

The Secretary proposes to create this new section from the provisions contained in paragraph (e) of § 361.35 of the current regulations, which is the section that contains the certification requirements. Although the certification requirements have been removed from the proposed regulations because they overlap with the documentation requirements in the case record (referred to as record of services in proposed § 361.47), the substantive requirements related to closure without an eligibility determination are substantially the same as they are in existing § 361.35(e).

In response to public comment on the draft regulations, the Secretary has clarified the regulations to authorize the State unit to close an applicant's case if the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services. In either situation, the State unit is required to make a reasonable number of attempts to contact the individual or, if appropriate, the individual's representative prior to closing the applicant's case.

#### *§ 361.45—Development of the Individualized Written Rehabilitation Program*

In response to public comment, this section, entitled "Assessment for determining vocational rehabilitation needs" in the draft regulations, has been renamed for purposes of clarification. The Secretary believes this proposed retitling better reflects the full scope of requirements under the IWRP development process, of which the assessment represents an essential part. The Secretary also proposes to clarify the purpose clause under paragraph (a) of this section for the same reason.

This proposed section would combine the provisions in §§ 361.33 and 361.40 of the current regulations regarding thorough diagnostic study and IWRP procedures. It incorporates new statutory requirements created by the 1992 Amendments, including requirements regarding informed choice, integrated settings, and the use of existing data.

Some public commenters suggested that the term "counseling and guidance" be defined in the proposed regulations. The Secretary declines to define the term, but proposes to revise paragraph (b)(1) of this section to

emphasize the development of a counseling and guidance relationship between the vocational rehabilitation counselor and the individual during assessment. That relationship is intended as a means of fostering collaboration between the counselor and the individual in identifying, preparing for, and achieving meaningful vocational outcomes for the individual. The Secretary envisions that the counselor, based on his or her expertise, will provide the individual with comprehensive information relevant to the individual needs of the individual and that the counselor and individual will jointly discuss the values, needs, desires, and realities facing both individuals. It also should be noted that, in response to public comment, the Secretary has deleted the requirement in the draft regulations that counseling and guidance be provided throughout the development and implementation of the IWRP. As discussed in the following paragraph, IWRPs are developed on an individual basis, and while some individuals may request or require counseling and guidance services throughout the development and implementation of their IWRPs, others may not. By making this change, the Secretary emphasizes that the provision of counseling and guidance during the development and implementation of the IWRP is dependent on the particular circumstances affecting each individual.

Several commenters on the draft regulations were concerned that this section required State units to impose strict timelines for developing IWRPs without considering the particular needs of the individual. In response, the Secretary proposes to amend the regulations to require State units to establish and implement standards for the prompt development of IWRPs, including timelines that take individual needs into consideration. The Secretary agrees that the development of the IWRP is a highly individualized process and must be conducted in a manner consistent with the individual's strengths, priorities, concerns, abilities, capabilities, and career interests. Nevertheless, the Secretary believes that these timelines, which are not absolute and operate as guidelines, are consistent with the legislative intent that individuals with disabilities receive services as quickly as possible and, therefore, are necessary to guard against delays in the development of the IWRP once an individual is determined eligible for VR services.

#### *Section 361.46—Content of the IWRP*

This proposed section contains the IWRP content requirements, which are in § 361.41 of the existing regulations.

Several commenters on the draft regulations viewed certain requirements under this section and § 361.47 (Record of services) as duplicative of one another and, therefore, unduly burdensome. In response, the Secretary proposes to reduce the paperwork requirements in each section of the regulations by eliminating certain requirements that are non-statutory or redundant. The Secretary emphasizes, however, that the elimination of certain documentation requirements in these sections is intended solely as a means of reducing paperwork burdens on the State unit and does not diminish the responsibility of the State unit to fully develop the IWRP and to be able to document or otherwise support its determinations affecting each individual should those determinations be questioned within the context of a compliance review or audit. Each IWRP content or record of services requirement eliminated from the draft regulations is, the Secretary believes, sufficiently addressed elsewhere in the regulations.

For example, the Secretary proposes to delete the requirement that the IWRP include statements supporting the basis on which individuals are determined eligible or ineligible for services. The Secretary agrees that those statements are burdensome given comparable case record requirements in proposed § 361.47 (a) and (b) that the State unit maintain documentation supporting determinations of eligibility and ineligibility.

In paragraph (c) of this section, the Secretary proposes to clarify the regulations by consolidating the IWRP content requirements that relate to post-employment services.

Some public commenters on the draft regulations suggested that the State unit attach the Individualized Education Plan (IEP) to the IWRP, rather than summarize the IEP, when coordinating with education agencies to serve transitioning students. In response, the Secretary emphasizes that the Secretary does not consider coordination between the IWRP and IEP to represent a documentation requirement. Rather, the requirement in the draft regulations that the IWRP include a summary of the transitioning student's IEP was intended to ensure that the State unit review the vocational goals, rehabilitation objectives, and nature and scope of services identified in the transitioning student's IEP during the course of

developing the IWRP. Requiring that review is consistent with the legislative intent that State units coordinate with education agencies to serve transitioning students in the most effective and efficient manner possible. In an effort to clarify the regulations, however, the Secretary proposes to amend this section to require the State unit to ensure that the transitioning student's IWRP is consistent with the student's IEP in terms of goals, objectives, and services. Although the IWRP need not include a summary or an attached copy of the IEP, it is expected that, for transitioning students, State units will closely review the IEP in the course of IWRP development. In addition, the Secretary proposes to amend § 361.47(f) to require the State unit to maintain documentation from the needs assessment to support the goals, objectives, and services identified in the IWRP and in the IEP of transitioning students.

Finally, in response to public comment, the Secretary proposes to add paragraph (e) to this section to require State units to ensure that a determination that an individual is ineligible for services after an IWRP has been developed is made in accordance with the procedures in proposed § 361.43 and is included as an amendment to the IWRP.

#### *Section 361.47—Record of Services*

This proposed section revises § 361.39 of the existing regulations. References to the "case record" would be replaced with the term "record of services" to discourage characterizing individuals with disabilities as "cases." The proposed section would incorporate the choice and integration requirements in the 1992 Amendments.

As previously discussed, the Secretary has significantly revised this section to reduce paperwork requirements in response to commenters on the draft regulations who viewed many of the record of services requirements as unduly burdensome or duplicative of other requirements in the regulations.

In response to public comment, the Secretary proposes to simplify paragraphs (a) and (b) of this section to require State units to maintain documentation to support determinations of eligibility or non-eligibility made in accordance with proposed § 361.42 or § 361.43. The Secretary also proposes to require State units to include, as part of an individual's record, documentation supporting the determination that an individual has a severe or most severe disability. This requirement is

particularly important to support an individual's receipt of services from a State unit operating under an order of selection or to support the individual's placement in a supported employment setting. In addition, this requirement is consistent with the intent of the Act to expand and improve services to individuals with the most severe disabilities.

In paragraph (d) of this section, the Secretary proposes to simplify the requirements relating to extended evaluations by requiring State units to maintain documentation to support the need for an extended evaluation and to support the periodic assessments conducted during the extended evaluation. Documentation maintained under this paragraph would also include the written plan developed during the extended evaluation in accordance with § 361.42(d)(3).

In an effort to better coordinate rehabilitation services for transitioning students, the Secretary also proposes to amend paragraph (f) of this section to specify that the State unit must document the development of the individual's long-term vocational goal, intermediate rehabilitation objectives, and nature and scope of services, as identified in the transitioning student's IWRP and IEP.

Finally, the Secretary proposes to delete a number of requirements from the draft regulations on the basis that the requirements are unduly burdensome or unnecessarily duplicative of other provisions in the regulations. For example, because the IWRP is included as part of the individual's record of services that must be maintained under this section, requirements that are duplicative of IWRP content requirements in proposed § 361.46 have been deleted from the record of services. For each record of services requirement that the Secretary considers duplicative of other requirements in the regulations, specific references to those other requirements are provided.

Accordingly, the Secretary proposes to delete the following documentation requirements from this section of the draft regulations: (1) Documentation of the manner in which the individual was provided information necessary to make informed choices as to vocational goals, rehabilitation services, and service providers (addressed by § 361.46(a)(6) and § 361.52). (2) Documentation of the manner in which the individual was provided information regarding the level of integration of service provision and job placement options (addressed by § 361.46(a)(7)(iii) and § 361.52). (3) Documentation supporting the

determination that the clinical status of the individual is stable or slowly progressive if physical and mental restoration services are provided (addressed by § 361.46(a)(3)). (4) Documentation to support any decision to provide services to family members (addressed by § 361.46(a)(3)). (5) Documentation relating to the individual's participation in the cost of any vocational rehabilitation services, the eligibility of the individual for any comparable services and benefits, and the availability and use of those comparable service and benefits (addressed by § 361.46(a)(7)). (6) Documentation that the individual has been advised of the confidentiality of all information pertaining to the individual and that any information about the individual has been released with the individual's informed written consent (addressed by § 361.46(a)(7) and § 361.38). (7) Documentation of any plans to provide post-employment services after the employment outcome has been achieved (addressed by § 361.46(c)). (8) Documentation of any review of the determination that an individual is no longer capable of achieving an employment outcome after services under an IWRP have already been provided (addressed by § 361.43(d)).

The Secretary is particularly interested in public comment on whether the proposed provisions cover all key decision points in the rehabilitation process for which documentation is needed.

#### *Section 361.48—Scope of Vocational Rehabilitation Services for Individuals With Disabilities*

This proposed section revises § 361.42 of the existing regulations.

The phrase "counseling and guidance" in the current regulations has been changed in proposed § 361.48(a)(3) to "vocational counseling and guidance" in order to clarify that counseling and guidance services that are provided as discrete vocational rehabilitation services are vocational in nature and specifically designed to assist the individual in reaching an employment outcome. Vocational counseling and guidance is, therefore, distinguishable from the more generalized counseling and guidance that an individual may need at any point during the rehabilitation process in connection with the provision of services.

A number of paragraphs from the current regulatory section have been revised to remove definitional text, and definitions for those services have been added to proposed § 361.5. For example,

proposed § 361.48(a)(5), providing for physical and mental restoration services, has been revised to remove all definitional material, which is now in proposed § 361.5(b)(35). Proposed paragraph (a)(7) of this section, providing for maintenance, has been modified to remove the current regulatory provisions that describe maintenance in terms of subsistence or basic living expenses, and a proposed definition of maintenance has been included in proposed § 361.5(b)(31) to clarify that maintenance costs are those expenses that are in excess of normal living expenses and that are necessitated by participation in a vocational rehabilitation program. Similarly, proposed paragraph (a)(8) of this section provides for transportation in connection with the rendering of any vocational rehabilitation service, and a definition of transportation has been added to proposed § 361.5(b)(49), which clarifies that transportation must be necessary to enable an applicant or eligible individual to participate in a program of vocational rehabilitation services. This change was proposed in the 1991 NPRM.

Proposed paragraph (a)(9) of this section clarifies that the services available to family members are vocational rehabilitation services necessary to enable the applicant or eligible individual to achieve an employment outcome.

Some commenters on the draft regulations requested that the provision of "note-taking services" not be limited to individuals who are deaf or blind. In response, the Secretary agrees that note-taking services should be available to any eligible individual in need of those services to achieve an employment outcome. Therefore, the Secretary proposes to delete "note-taking" from proposed paragraphs (a)(10) and (a)(11) of this section and emphasizes that these services are available under proposed paragraph (a)(20) of this section as "other services" whenever necessary for an eligible individual to achieve an employment outcome.

Proposed paragraph (a)(13) of this section, which provides for job search, placement assistance, and job retention services, clarifies the scope of services currently available under existing paragraph (a)(12) of § 361.42, which provides for placement in suitable employment. Proposed paragraphs (a)(14) and (a)(15) of this section incorporate new requirements in the statute for supported employment and personal assistance services. Proposed paragraph (a)(16) of this section revises the paragraph in the existing regulations on post-employment services by

referring to the proposed definition of post-employment services in § 361.5(b)(37). That definition incorporates the language in the 1992 Amendments regarding advancement in employment and individual choice. Finally, proposed paragraph (a)(18) of this section revises the paragraph in the existing regulations on rehabilitation engineering services, consistent with the 1992 Amendments, to provide for rehabilitation technology services.

*Section 361.49—Scope of Vocational Rehabilitation Services for Groups of Individuals With Disabilities*

This proposed section would consolidate provisions from several sections of the existing regulations, including the definition of vocational rehabilitation services for the benefit of groups of individuals in § 361.1(c) of the existing regulations and §§ 361.50, 361.51, 361.52, and 361.53 of the existing regulations. In addition, it would incorporate new requirements imposed by the 1992 Amendments, such as replacing the concept of the “establishment of a rehabilitation facility” with the concept of the “establishment, development, or improvement of a public or other nonprofit community rehabilitation program,” restricting the construction of a rehabilitation facility to special circumstances, and adding the newly authorized service of technical assistance and support services for businesses that are not subject to the Americans with Disabilities Act and are seeking to employ individuals with disabilities.

In response to public comment on the draft regulations, the Secretary proposes to amend paragraph (a)(5) of this section to clarify that the establishment of small business enterprises operated by individuals with the most severe disabilities under the State unit’s supervision includes vending facilities established under the Randolph-Sheppard program. In addition, the Secretary proposes to amend this paragraph to clarify that management services and supervision in support of a small business enterprise may be provided by the State unit beyond the initial establishment period of six months. The Secretary also proposes to clarify the draft regulations to state that initial stock and supplies and operational costs for small business enterprises may be provided only during the initial six-month establishment period. These changes are consistent with section 103(b)(1) of the Act, as well as with the Randolph-Sheppard Act and its implementing regulations in 34 CFR Part 395.

*Section 361.50—Written Policies Governing the Provision of Services*

This section contains material from paragraph (b) of § 361.42 of the existing regulations, which requires written State policies on the scope of vocational rehabilitation services for individuals, and § 361.44 of the existing regulations, which is the section on authorization of services. The Secretary proposes to require that a State unit have policies regarding the provision of services for groups of individuals with disabilities, as well as the availability of services for individuals with disabilities.

In the draft regulations, this proposed section incorporated new provisions, based on existing policy and subregulatory guidance, to clarify that no absolute caps or limits, in terms of location, cost, or duration, could be placed on the availability of services that would effectively deny an individual a necessary service. Although these provisions are maintained in the proposed regulations, some public commenters were concerned that insufficient emphasis was placed on the requirement that policies governing the provision of services must be designed to meet the rehabilitation needs of each individual served by the State unit. In response, the Secretary proposes to amend the regulations to specify that the policies required to be developed under this section must ensure that the provision of services is based on the individual’s rehabilitation needs as identified in the IWRP. As in the draft regulations, the proposed section would also prohibit State units from arbitrarily limiting the nature or scope of vocational rehabilitation services needed by any eligible individual to achieve an employment outcome.

Some commenters on the draft regulations opposed the ability of State units to establish preferences for in-State services on the basis that those preferences are inconsistent with principles of individual choice. In response, the Secretary proposes to amend the regulations to permit individuals to choose out-of-State services over in-State services. However, if an individual selects an out-of-State service at a higher cost than an in-State service, if either service would meet the individual’s rehabilitation needs, the designated State unit would be required to pay only an amount equal to the cost of the in-State service.

The draft regulations would have required State units to provide written authorization of services either before or at the same time as the purchase of services, except in emergency situations

when oral authorization, followed by prompt written confirmation, was permitted. In response to those commenters on the draft regulations who believed that the State unit should have greater flexibility in developing policies governing the authorization of services to individuals, the Secretary proposes to simplify the regulations to require State units to establish policies related to the timely authorization of services, including conditions under which verbal authorization can be given.

*Section 361.51—Written Standards for Facilities and Providers of Services*

This proposed section would incorporate § 361.45 of the existing regulations, would expand the requirement for standards to ensure accessibility of facilities, and would require new standards regarding qualified personnel and fraud, waste, and abuse, consistent with the 1992 Amendments.

In response to public comment on the draft regulations, the Secretary interprets the accessibility of facilities requirement broadly so as not to prevent any individual with a disability, including the multi-chemically disabled, from receiving services at a facility. In response to public comment, the Secretary also proposes to amend the qualified personnel requirements in paragraph (b)(1) of this section to reflect the personnel standards included in the State agency’s comprehensive system of personnel development under section 361.18(c).

*Section 361.52—Opportunity To Make Informed Choices Regarding the Selection of Services and Providers*

This proposed new section would implement section 12(e)(1) of the Act, which was added by the 1992 Amendments and requires the Secretary to promulgate regulations establishing criteria pertaining to the selection of vocational rehabilitation services and providers by an individual with a disability.

In response to public comment on the draft regulations, the Secretary proposes to amend this section of the regulations to clarify that the concept of informed choice applies to all aspects of the vocational rehabilitation process, including the selection of vocational goals, intermediate objectives, VR services, and service providers. This provision is closely related to the requirement in proposed § 361.46(a)(6) that the IWRP include a statement from the individual describing the manner in which the individual exercised informed choice in selecting among

alternative goals, objectives, services, providers, and methods used to procure or provide services. The proposed regulations also would require that the State unit consult with its State Rehabilitation Advisory Council, if it has one, when developing its policies for facilitating informed choice.

Several commenters opposed the requirement in the draft regulations that State units develop indicators regarding the quality of service providers on the basis that such a requirement is overly burdensome and likely to lead to disputes, and potentially litigation, between State units and providers of VR services. In response, the Secretary proposes to amend the regulations to require State units to provide individuals, or assist individuals in acquiring, information necessary to make an informed choice about the specific services, including the providers of those services, that are needed to achieve the individual's vocational goal. Thus, it is expected that State units will provide, or facilitate access to, information concerning cost and accessibility of services, level of consumer satisfaction with services, qualifications of service providers, and other information necessary to enable the individual to make an informed choice among alternative services and providers.

It should also be noted that in response to public comment and in the interest of reducing the burden on State units, the proposed regulations would not require DSUs to provide a list of available services and the potential providers of those services to each individual. Lists of this type, as well as resource materials such as consumer satisfaction surveys, are, however, included in the regulations as examples of possible sources of information that may be used by DSUs to satisfy the information requirements of this section.

*Section 361.53—Availability of Comparable Services and Benefits*

This proposed section revises § 361.47(b) of the existing regulations.

As provided for in the draft regulations, the availability of comparable services and benefits is based on whether services and benefits exist under another program for the individual and whether the individual is eligible for those services or benefits. However, the use of comparable services and benefits under the draft regulations was dependent upon whether the comparable services and benefits were "currently available" to the individual. In response to public commenters who expressed confusion as to the meaning

of this phrase, the Secretary proposes to delete the word "currently" from this section and to amend the regulations to require DSUs to use comparable services and benefits if available to the eligible individual within a reasonable period of time that is appropriate for the achievement of the intermediate rehabilitation objectives identified in the individual's IWRP. What constitutes a reasonable period of time would vary according to the services identified in each individual's IWRP. By making this change, the Secretary emphasizes that the use of comparable services and benefits should not unreasonably delay the individual in meeting his or her rehabilitation objectives.

In the event comparable services and benefits exist but are not available to the individual within a reasonable period of time, the proposed regulations would require the State unit to provide VR services during the interim period until they become available. In an effort to respond to public comment and reduce the burden on DSUs, the Secretary proposes to delete the requirement in the draft regulations that State units obtain reimbursement for any overlap in benefits once the comparable services and benefits become available.

In response to public comment on the draft regulations, the Secretary also proposes to revise the regulations to clarify that a determination as to the availability of comparable services and benefits is not required in connection with the provision of those services listed under paragraph (b) of this section. Although DSUs are free to provide these services without pursuing the availability of comparable services and benefits, the Secretary encourages State units to use known comparable services and benefits whenever possible in order to maximize the use of funds provided under this program.

In response to public comment on the draft regulations, the Secretary also proposes to amend paragraph (b) of this section by including taped texts and computer accessible formats (sometimes referred to as E-text) among those services for which comparable services and benefits do not need to be sought. This addition is consistent with the Act's legislative history, specifically Conference Report No. 102-973.

*Section 361.54—Participation of Individuals in Cost of Services Based on Financial Need*

This proposed section is taken from § 361.47(a) of the existing regulations. It would clarify the requirements that a State unit must meet if it chooses to consider the financial need of individuals to determine the extent of

their participation in the cost of vocational rehabilitation services. The Secretary proposes to clarify the draft regulations to require State units to ensure that its policies governing financial need be applied uniformly to all individuals in similar circumstances. The Secretary interprets this provision, which is modeled after existing regulations, to require a State unit to apply its financial needs test to each individual in need of a service covered by the test without regard to the type of the individual's disability. The proposed regulations would also clarify that this uniform application requirement does not prohibit setting different levels of need for different geographic regions in the State, but requires uniform application of the standard to all individuals within each geographic region or to all individuals within the State if the State unit does not establish geographical differentials. Finally, the proposed regulations would clarify that the level of an individual's financial participation in the cost of VR services must be reasonable, based on the individual's financial need and ability to pay, and must not be so high as to effectively deny the individual a necessary service.

*Section 361.55—Review of Extended Employment in Community Rehabilitation Programs or Other Employment Under Section 14(c) of the Fair Labor Standards Act*

This proposed section is taken, in part, from § 361.58 of the existing regulations. In addition to the review of extended employment outcomes, the 1992 Amendments require the review of employment outcomes in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act to determine the individual's needs and interests related to competitive employment. This section would also incorporate the emphasis in the 1992 Amendments on employment and training in integrated settings and would elaborate on the meaning of the "maximum effort" required of State units in the existing regulations to clarify that State units are required to provide services to promote movement from extended employment to integrated employment.

*Section 361.56—Individuals Determined To Have Achieved an Employment Outcome*

This proposed section, which has been renamed to conform to the changes discussed in the following paragraphs, is taken from § 361.43 of the existing regulations. It has been revised to make the requirements in the current

regulations more outcome-oriented, rather than process-oriented, and to incorporate the new statutory emphases on choice and integrated settings.

In an effort to better reflect whether an individual has successfully achieved an employment outcome, the draft regulations would have extended the period for which an employment outcome must be maintained from 60 to 180 days. Several commenters, however, opposed the 180-day standard as unduly burdensome and inconsistent with individual choice. Some commenters believed that the standard for closing an individual's case should be based on the particular circumstances of the individual's employment situation, while others indicated that the determination as to whether the individual is successfully employed should be made jointly by the individual, the rehabilitation counselor or coordinator, and, in some cases, the employer. In response to these comments and to the views expressed by members of the focus group that discussed this issue, the Secretary proposes to delete the draft requirement that an employment outcome must be maintained for 180 days. In its place, the Secretary proposes a standard under which the individual must maintain the employment outcome for the duration of any probationary period that the employer has established for its employees, or, if the employer does not have an established probationary period, for a period of at least 90 days. In addition, the individual and the rehabilitation counselor or coordinator must agree that the employment outcome is satisfactory and that the individual is performing well on the job. Like the draft regulations, this section would also require the State unit to assure that the employment outcome is in the most integrated setting possible and is consistent with the individual's abilities, capabilities, interests, and informed choice. Finally, in response to public comment, the Secretary proposes to amend this section to require that the provision of services under the individual's IWRP contribute to, rather than result in, the achievement of the employment outcome.

The proposed standard, like that in the draft regulations, is intended to strengthen the current minimum 60-day standard for maintaining a job placement in an effort to better reflect whether an individual has, in fact, successfully achieved an employment outcome. The Secretary agrees with those commenters who suggested that achievement of an employment outcome should be based, in part, on the stability of the individual's employment. In

addition, the proposed changes from the current regulations are also intended to condition the achievement of an employment outcome on the satisfaction of the individual, the counselor, and the employer. The Secretary believes that the best measure of an employer's satisfaction with an individual's job performance is whether the individual has met the employer's probationary period. For those individuals whose employers have not established a customary probationary period, the Secretary views the 90-day minimum as an adequate safeguard to ensure that the individual is performing well and is likely to maintain the employment outcome. Consistent with the Act's emphasis on informed choice, the proposed regulations would also base the decision that an individual has achieved an employment outcome on the individual's, as well as the counselor's or coordinator's, satisfaction with the employment outcome. The Secretary emphasizes that a satisfactory employment outcome, at a minimum, must meet the provisions of this section, and the Secretary is particularly interested in public comment concerning whether further standards for defining "satisfactory" should be developed at the Federal level.

The Secretary is continuing to consider issues concerning outcome measures for the vocational rehabilitation program, including the proposed time standard in these regulations for maintaining a job placement in order to achieve an employment outcome (the duration of the employer's probationary period or, in the absence of an employer policy in this area, at least 90 days). The Secretary believes that the high level of Federal funding for this program—over 78 percent—warrants close attention to accountability measures to ensure that employment outcomes are maintained over time. The Secretary is particularly interested in receiving comments on whether the proposed job retention standard is strong enough to achieve this result.

The Secretary is also interested in receiving comments about the relationship between closure requirements for the vocational rehabilitation program and other programs, including those under the Job Training Partnership Act (13 weeks), the Social Security beneficiary rehabilitation program (9 months of substantial gainful activity), and other State manpower development and job training programs. Finally, the Secretary is interested in comments on the impact of the proposed new employment outcome standard and whether, in

comparison to the current standard, it would likely increase or decrease the number of individuals with disabilities achieving long-term employment outcomes.

#### *Section 361.57—Review of Rehabilitation Counselor and Coordinator Determinations*

This proposed section is taken from § 361.48 of the existing regulations.

In accordance with the Department's principles for regulating, the Secretary proposes to delete all non-statutory timelines from this section of the draft regulations. In place of specific time limits, the proposed regulations would require each DSU, in consultation with its State Rehabilitation Advisory Council, if it has one, to develop reasonable timelines for key stages of the appeal process to ensure that appeals are handled promptly. Specifically, DSU's would be required to develop timelines to ensure that hearings are held within a reasonable time after an individual's request for review, that the initial decision of the impartial hearing officer is rendered within a reasonable time after the hearing is completed, and that the final decision of the DSU director is rendered within a reasonable time after notifying the individual of the director's intent to review the initial decision. These changes are intended to provide DSU's with increased flexibility to develop appropriate timelines, while protecting individuals against unreasonable delays in the review process. Like the current regulations, this proposed provision also would permit a DSU to establish an informal process to resolve a request for review without conducting a formal hearing, but would require the DSU to conduct a hearing within the relevant State-developed timeline if informal resolution is unsuccessful. The Secretary particularly requests public comment on whether a specific overall time limit for completing the entire formal review process (e.g., 125 days) should be required under the regulations.

This section would incorporate the requirement in the 1992 Amendments that prohibits the State unit from instituting a suspension, reduction, or termination of services pending a final State hearing determination unless the agency has evidence that the services were obtained through fraud, misrepresentation, collusion, or criminal conduct on the part of the individual, or the individual so requests. The Secretary interprets this provision to mean that services may be suspended, reduced, or terminated

pending a final determination if there is "substantial evidence" of that conduct.

This proposed section also incorporates the requirement in the 1992 Amendments that the director not overturn or modify the decision of an impartial hearing officer unless the director concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous because it is "contrary to Federal or State law, including policy." The Secretary interprets this statutory language to include a decision that is contrary to the approved State plan, the Act, or Federal or State vocational rehabilitation regulations or policy.

It should be noted that the Secretary has changed the term "calendar day" from the draft regulations to "day" in the proposed regulations in response to public commenters who inquired as to the difference in meaning between the two terms. Procedural time limits in this section and throughout the regulations are, therefore, measured in terms of "days," which the Secretary intends to mean "calendar days" rather than "working days."

Finally, in response to public comment on the draft regulations, the Secretary proposes to add to paragraph (f) of this section a requirement that the DSU inform applicants and eligible individuals of the manner in which it selects impartial hearing officers.

#### *Section 361.60—Matching Requirements*

This proposed new section would clarify the matching requirements by consolidating all of the Federal and non-Federal share provisions. Proposed paragraph (a) of this section contains the general Federal share provision, which is in § 361.86(a) of the existing regulations and was revised by the 1992 Amendments to be 78.7 percent. Proposed paragraph (a) of this section also contains the 50 percent Federal share provision for construction projects, which is in § 361.74(b) of the existing regulations, and the 90 percent Federal share provision for innovation and expansion grant activities, which is addressed in § 361.153 of the existing regulations.

In accordance with the Department's principles for regulating, the Secretary proposes to simplify the requirements relating to the non-Federal share in the draft regulations by removing from the regulations a list of permissible sources of expenditures to meet the non-Federal share and instead cross-referencing the applicability of the matching or cost sharing requirements in 34 CFR 80.24 of EDGAR with certain exceptions. The proposed regulations would specify that third party in-kind contributions, which

are a permissible source of matching funds under EDGAR, may not be used as part of the non-Federal share under the VR program. In addition, the proposed regulations would continue, but clarify, existing regulatory requirements that prohibit earmarked donations that benefit the donor from being used to meet the non-Federal share. The Secretary wishes to emphasize that the changes proposed with regard to meeting the non-Federal share would not prohibit the use of any funding sources that are currently allowable.

#### *Section 361.61—Limitation on Use of Funds for Construction Expenditures*

This proposed new section sets out in a separate section the requirement in paragraph (d) of § 361.85 of the existing regulations that no more than 10 percent of a State's allotment may be used for construction.

#### *Section 361.62—Maintenance of Effort Requirements*

This proposed section is taken from § 361.86 of the existing regulations. It incorporates provisions in the 1992 Amendments, which changed the standard on which the maintenance of effort level is based from the average of the three prior fiscal years to the second prior fiscal year. It also folds into the same section a separate maintenance of effort requirement relating to the construction of facilities that is contained in both § 361.52(e) and § 361.85(d) of the existing regulations. This proposed section clarifies the procedures the Secretary follows for determining whether maintenance of effort requirements have been met and for reducing the amount payable in the case of a maintenance of effort deficit if there is a separate State agency for vocational rehabilitation services for individuals who are blind.

#### *Section 361.63—Program Income*

This proposed new section consolidates in one place all of the provisions related to program income. Proposed paragraph (a) of this section incorporates the definition of program income from EDGAR (34 CFR 80.25(b)). Proposed paragraph (b) of this section incorporates existing subregulatory guidance regarding the sources of program income. Proposed paragraph (c)(1) of this section incorporates the general EDGAR requirement that program income must be used in the program in which it is earned, but makes an exception for Social Security reimbursements as provided in section 108 of the Act. Proposed paragraph (c)(1) of this section would clarify that

program income is considered earned when it is received.

In response to public comment on the draft regulations, the Secretary proposes to delete from proposed paragraph (c)(3)(ii) of this section the requirement that the State notify the Secretary prior to using the deduction method for accounting for program income. By removing this condition, the Secretary emphasizes that the State is free either to use program income to expand its vocational rehabilitation program or to deduct it from its total allowable costs, without seeking prior Federal approval.

Proposed paragraph (c)(4) of this section would clarify that program income may not be used to meet the non-Federal share requirement.

#### *Section 361.64—Obligation of Federal Funds and Program Income*

This proposed new section incorporates the amendment to section 19 of the Act, which clarifies that both Federal funds, including reallocated funds, and program income from all sources may be carried over for obligation from the year in which the funds are received until the end of the following year.

In response to public comments on the draft regulations, the Secretary proposes to amend paragraph (b) of this section to clarify that the State unit may carry over any portion of unobligated Federal funds that it has matched by obligating non-Federal funds during the fiscal year for which the Federal funds were appropriated. This clarification is consistent with section 19 of the Act, which allows for carryover of Federal funds "to the extent" that recipients comply with Federal share requirements.

#### *Section 361.65—Allotment and Payment of Federal Funds for Vocational Rehabilitation Services*

This proposed section is taken from §§ 361.85 and 361.87 of the existing regulations.

#### *Section 361.70—Purpose of the Strategic Plan*

This proposed section implements new section 120 of the Act, which makes grants under Part B of the Act, as well as innovation and expansion grants under Part C of the Act, contingent on the preparation and submission of a statewide strategic plan.

#### *Section 361.71—Procedures for Developing the Strategic Plan*

This proposed new section implements new section 122 of the Act, which requires the State to hold public forums and meet with members of the

State Rehabilitation Advisory Council and the Statewide Independent Living Council prior to developing the strategic plan. The Secretary interprets the public forum requirement in the statute to require the same procedures for public input on the strategic plan that are required for the development of the State plan under § 361.20 of the proposed regulations.

*Section 361.72—Content of the Strategic Plan*

This proposed new section incorporates the new requirements in section 121 of the Act with no substantive changes.

*Section 361.73—Use of Funds*

This proposed new section incorporates the requirements in new sections 101(a)(34)(B) and 123 of the Act. The Secretary interprets 101(a)(34)(B) to require that at least 1.5 percent of the funds received under Part B of the Act be used for the activities identified in section 123. The Secretary has clarified that all funds received under Part C of the Act must be used for activities identified in a State's strategic plan, which may include, but are not limited to, the activities identified in section 123 of the Act.

*Section 361.74—Allotment of Federal Funds*

This proposed new section incorporates by reference the requirements of new section 124 of the Act without substantive change.

Executive Order 12866

*1. Assessment of Costs and Benefits*

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1995*.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs. A further discussion of the potential costs and benefits of these proposed

regulations is contained in the summary at the end of this section of the preamble.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

*Summary of potential benefits relative to potential costs of the regulatory provisions discussed previously in this preamble:*

The Secretary believes that the NPRM would substantially improve The State VR Services Program and would yield substantial benefits in terms of program management, efficiency, and effectiveness. The Secretary also believes that the proposed regulations represent the least burdensome way to implement the 1992 Amendments to Title I of the Act and fulfill important policy objectives that the Secretary considers essential to the success of the program. As stated previously in this preamble, the NPRM has been revised consistent with the Department's principles for regulating, which were developed during the Administration's regulatory reinvention initiative, to further reduce paperwork or process requirements and to enhance the flexibility of DSUs to meet non-statutory requirements. Increased flexibility of DSUs and other benefits resulting from the proposed regulations are discussed in the following paragraphs of this section and throughout the section-by-section summary of the preamble.

**Improved Organization of Regulations**

The NPRM would substantially reorganize and clarify the current program regulations in order to make the regulations easier to understand and more useful. In response to requests from members of the vocational rehabilitation community, the proposed regulations also would include definitions of a number of previously undefined terms, including "comparable services and benefits," "maintenance," and "post-employment services."

**Notes and Examples**

The Secretary has provided additional clarifying information in the proposed

regulations through the use of notes and examples. Many commenters to the draft regulations stated that they find this information more accessible and more useful when it is included in the regulations rather than issued separately by RSA as subregulatory guidance. As stated previously throughout this preamble, the Secretary emphasizes that the limited notes and examples in the proposed regulations are purely illustrative and are not intended to restrict State flexibility.

**Reduction of Grantee Burden**

Non-statutory paperwork requirements have been eliminated or consolidated throughout the NPRM in an effort to reduce the regulatory burden on States. For example, previously duplicative requirements under § 361.46 (Content of the IWRP) and § 361.47 (Record of services) have been consolidated to reduce the paperwork burden on States and to ensure efficient administration of the program. A list of other sections in which paperwork burden on grantees has been removed or reduced in response to public comment on the draft regulations precedes the section-by-section summary in this preamble. Also, additional burden-reducing steps taken by the Secretary in accordance with the Department's principles for regulating are explained throughout the section-by-section summary in the preamble. For example, the proposed deletion of the requirement that the State plan describe the organizational structure of the State agency and its organizational units is discussed under § 361.13 (State agency for administration) in the section-by-section summary. Those paperwork requirements that would remain in the proposed regulations are considered essential to the proper administration of the program.

**Enhanced Protections for Individuals With Disabilities**

The proposed regulations include provisions intended to ensure that individuals with disabilities are not improperly denied necessary VR services. In particular, § 361.50 (Written policies governing the provision of services) would require DSUs to ensure that the provision of VR services for an eligible individual is based on the individual's particular rehabilitation needs and would prevent DSUs from arbitrarily limiting the nature or scope of vocational rehabilitation services needed by any eligible individual to achieve an employment outcome. In addition, § 361.54 (Participation of individuals in cost of services based on financial need) would require DSUs to

apply a State financial needs test to each individual in need of a service covered by the test without regard to type of disability. This section would also require DSUs to ensure that the level of an individual's financial participation in the cost of VR services is reasonable, based on the individual's ability to pay, and not so high as to effectively deny the individual a necessary service.

#### Increased Flexibility of Grantees to Satisfy Statutory Requirements

A number of provisions in the proposed regulations have been revised in an effort to enhance the flexibility of States in meeting specific statutory requirements. For example, proposed § 361.20 (State plan development) would allow States to determine what constitutes appropriate and sufficient notice under the Act for purposes of providing notice of public meetings on State plan development. Although the proposed regulations would not impose any specific minimum Federal requirements for what constitutes "appropriate and sufficient notice," the section-by-section summary of this proposed section identifies suggested ways a DSU might meet these requirements. Similarly, § 361.52 (Opportunity to make informed choices regarding the selection of services and providers) of the proposed regulations identifies possible methods a DSU may follow or sources of information a DSU may maintain to ensure that each eligible individual is afforded an opportunity, as required under the Act, to make an informed choice in selecting vocational rehabilitation services and providers. Finally, proposed § 361.57 (Review of rehabilitation counselor and coordinator determinations) would allow States to establish their own timelines for key stages of the statutorily-mandated fair hearing process.

#### Additional Benefits

The proposed regulations reflect the policy in the 1992 Amendments of ensuring that individuals are provided necessary information through appropriate modes of communication to enable them to participate in a rehabilitation program or to influence DSU rehabilitation policy development. For example, proposed § 361.20(d) requires a DSU, in developing its State plan, to provide, through appropriate modes of communication, the notices of the public meetings, any materials furnished prior to or during the public meetings, and the approved State plan.

#### 2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 361.5 Applicable definitions.) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 5100, FB-10B), Washington, D.C. 20202-2241.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because these proposed regulations would affect only States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

#### Paperwork Reduction Act of 1995

Sections 361.10, 361.13, 361.14, 361.15, 361.16, 361.17, 361.18, 361.19, 361.20, 361.21, 361.22, 361.26, 361.27, 361.29, 361.33, 361.34, 361.35, 361.37, 361.40, 361.46, 361.48, 361.49, 361.50, 361.51, 361.52, 361.54, 361.57, 361.71, and 361.72 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

#### Collection of Information: The State Vocational Rehabilitation Services Program

States are eligible to apply for grants under these regulations. The information to be collected includes State plan assurances and descriptions to meet statutory requirements. The Department needs and uses the information to review State plans to determine whether they can be approved. Approval of a State plan is necessary to receive a grant under this program.

All information is to be collected and reported once every three years, with the exception of the following information, which is required annually: advice provided by the State Rehabilitation Advisory Council under § 361.16; collection and analysis of data on qualified personnel needs and personnel development under § 361.18; analysis of characteristics of individuals determined to be ineligible for services and reasons for their ineligibility, evaluation of the effectiveness of the State's vocational rehabilitation program, any changes adopted in State policy or in the State plan as a result of statewide studies and the annual program evaluation, and the methods used to expand and improve vocational rehabilitation services to individuals with the most severe disabilities under § 361.29; revisions to the supported employment plan under § 361.34; a description of the manner in which rehabilitation technology services will be provided throughout the rehabilitation process, the personnel training that will be provided to facilitate the provision of rehabilitation technology services, and the manner in which personal assistance services will be provided to individuals with disabilities under § 361.48. Annual reporting and recordkeeping burden for this collection of information is estimated to average 221.2 hours per response for 82 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 18,138.4 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Laura Oliven.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

#### *Intergovernmental Review*

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3214, 330 C Street SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

#### *Assessment of Educational Impact*

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

#### List of Subjects in 34 CFR Part 361

Reporting and recordkeeping requirements, State-administered grant program—education, Vocational rehabilitation.

Dated: August 28, 1995.

Richard W. Riley,

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number 84.126—The State Vocational Rehabilitation Services Program)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 361 to read as follows:

### **PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM**

#### **Subpart A—General**

Sec.

- 361.1 Purpose.
- 361.2 Eligibility for a grant.
- 361.3 Authorized activities.
- 361.4 Applicable regulations.
- 361.5 Applicable definitions.

#### **Subpart B—State Plan for Vocational Rehabilitation Services**

- 361.10 Submission, approval, and disapproval of the State plan.
- 361.11 Withholding of funds.

#### **State Plan Content: Administration**

- 361.12 Methods of administration.
- 361.13 State agency for administration.
- 361.14 Substitute State agency.
- 361.15 Local administration.
- 361.16 Establishment of an independent commission or a State Rehabilitation Advisory Council.
- 361.17 Requirements for a State Rehabilitation Advisory Council.
- 361.18 Comprehensive system of personnel development.
- 361.19 Affirmative action for individuals with disabilities.
- 361.20 State plan development.
- 361.21 Consultations regarding the administration of the State plan.
- 361.22 Cooperation with agencies responsible for transitioning students.
- 361.23 Cooperation with other public agencies.
- 361.24 Coordination with the Statewide Independent Living Council.
- 361.25 Statewide diversity.
- 361.26 Waiver of state diversity.
- 361.27 Shared funding and administration of joint programs.

- 361.28 Third-party cooperative arrangements involving funds from other public agencies.
- 361.29 Statewide studies and evaluations.
- 361.30 Services to special groups of individuals with disabilities.
- 361.31 Utilization of community resources.
- 361.32 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.
- 361.33 Utilization of community rehabilitation programs.
- 361.34 Supported employment plan.
- 361.35 Strategic plan.
- 361.36 [Reserved].
- 361.37 Establishment and maintenance of information and referral resources.
- 361.38 Protection, use, and release of personal information.
- 361.39 State-imposed requirements.
- 361.40 Reports.

#### **State Plan Content: Provision and Scope of Services**

- 361.41 Processing referrals and applications.
- 361.42 Assessment for determining eligibility and priority for services.
- 361.43 Procedures for ineligibility determination.
- 361.44 Closure without eligibility determination.
- 361.45 Development of the individualized written rehabilitation program.
- 361.46 Content of the individualized written rehabilitation program.
- 361.47 Record of services.
- 361.48 Scope of vocational rehabilitation services for individuals with disabilities.
- 361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities.
- 361.50 Written policies governing the provision of services.
- 361.51 Written standards for facilities and providers of services.
- 361.52 Opportunity to make informed choices regarding the selection of services and providers.
- 361.53 Availability of comparable services and benefits.
- 361.54 Participation of individuals in cost of services based on financial need.
- 361.55 Review of extended employment in community rehabilitation programs or other employment under section 14(c) of the Fair Labor Standards Act.
- 361.56 Individuals determined to have achieved an employment outcome.
- 361.57 Review of rehabilitation counselor or coordinator determinations.

#### **Subpart C—Financing of State Vocational Rehabilitation Programs**

- 361.60 Matching requirements.
- 361.61 Limitation on use of funds for construction expenditures.
- 361.62 Maintenance of effort requirements.
- 361.63 Program income.
- 361.64 Obligation of Federal funds and program income.
- 361.65 Allotment and payment of Federal funds for vocational rehabilitation services.

**Subpart D—Strategic Plan for Innovation and Expansion of Vocational Rehabilitation Services**

- 361.70 Purpose of the strategic plan.  
 361.71 Procedures for developing the strategic plan.  
 361.72 Content of the strategic plan.  
 361.73 Use of funds.  
 361.74 Allotment of Federal funds.  
 Authority: 29 U.S.C. 711(c), unless otherwise noted.

**Subpart A—General**

**§ 361.1 Purpose.**

Under the State Vocational Rehabilitation Services Program (program), the Secretary provides grants to assist States in operating a comprehensive, coordinated, effective, efficient, and accountable program that is designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, so that they may prepare for and engage in gainful employment.

(Authority: Sections 12(c) and 100(a)(2) of the Act; 29 U.S.C. 711(c) and 720(a)(2))

**§ 361.2 Eligibility for a grant.**

Any State that submits to the Secretary a 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 Act; 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 State plan;  
 (b) Administrative costs under the State plan; and  
 (c) The costs of developing and implementing the strategic plan.

(Authority: Section 111(a)(1) of the Act; 29 U.S.C. 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 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), with respect to subgrants to entities that are not State or local governments or Indian tribal organizations.

(2) 34 CFR Part 76 (State-Administered Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), except for § 80.24(a)(2).

(6) 34 CFR Part 81 (General Education Provisions Act-Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 361.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

**§ 361.5 Applicable definitions.**

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Department  
 EDGAR  
 Fiscal year  
 Nonprofit  
 Private  
 Public  
 Secretary

(b) *Other definitions.* The following definitions also apply to this part:

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

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(2) *Administrative costs under the State plan* means expenses related to program planning, development, monitoring, and evaluation, including, but not limited to, quality assurance; budgeting, accounting, financial management, statistical systems, and related data processing; providing information about the program to the public; technical assistance to other State agencies, private nonprofit organizations, and businesses and industries; the State Rehabilitation Advisory Council and other advisory committees; professional organization membership dues for State unit employees; the removal of architectural barriers in State agency offices and facilities; operating and maintaining State unit facilities, equipment, and grounds; supplies; administration of the comprehensive system of personnel development, including personnel administration, administration of affirmative action plans, and training

and staff development; administrative salaries, including clerical and other support staff salaries, in support of these functions; travel costs related to carrying out the program, other than travel costs related to the provision of services; and legal expenses required in the administration of the program.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(3) *American Indian* means an individual who is a member of an Indian tribe.

(Authority: Section 7(20) of the Act; 29 U.S.C. 706(20))

(4) *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 Act; 29 U.S.C. 711(c))

(5) *Appropriate modes of communication* means specialized media systems and devices for individuals with disabilities that enable an individual 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, and augmentative communication devices.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(6) *Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

(Authority: Section 7(23) of the Act; 29 U.S.C. 706(23))

(7) *Assistive technology service* means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including—

(i) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his or her customary environment;

(ii) Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;

(iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(v) Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

(vi) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

(Authority: Sections 7(24) and 12(c) of the Act; 29 U.S.C. 706(24) and 711(c))

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

(P) Personal assistance services.

(Q) Services similar to the services described in paragraphs (A) through (P) of this definition.

(ii) *For the purposes of this definition, the word program* means an agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions.

(Authority: Sections 7(25) and 12(c) of the Act; 29 U.S.C. 706(25) and 711(c))

(9) *Comparable services and benefits* means services and benefits that are—

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

(ii) Available to the individual within a reasonable period of time in accordance with § 361.53; and

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

(Authority: Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

(10) *Competitive employment* means work—

(i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(ii) For which an individual is compensated at or above the minimum wage, but not less than the prevailing wage for the same or similar work in the local community performed by individuals who are not disabled.

(Authority: Sections 7(5), 7(18), and 12(c) of the Act; 29 U.S.C. 706(5), 706(18), and 711(c))

(11) *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 acquisition of existing buildings;

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

(iv) The construction of new buildings and expansion of existing buildings;

(v) Architect's fees, site surveys, and soil investigation, if necessary, in connection with the construction project;

(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

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

(Authority: Sections 7(1) and 12(c) of the Act; 29 U.S.C. 706(1) and 711(c))

(12) *Designated State agency or State agency* means the sole State agency, designated in accordance with § 361.13(a), to administer, or supervise local administration of, the State plan for vocational rehabilitation services. 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 plan relating to the vocational rehabilitation of individuals who are blind.

(Authority: Sections 7(3)(A) and 101(a)(1)(A) of the Act; 29 U.S.C. 706(3)(A) and 721(a)(1)(A))

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

(i) The State agency 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 independent State commission, board, or other agency that has vocational rehabilitation, or vocational and other rehabilitation, as its primary function.

(Authority: Sections 7(3)(B) and 101(a)(2)(A) of the Act; 29 U.S.C. 706(3)(B) and 721(a)(2)(A))

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

(Authority: Sections 7(8)(a) and 102(a)(1) of the Act; 29 U.S.C. 706(8) and 722(a)(1))

(15) *Employment outcome* means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 7(5) and 12(c) of the Act; 29 U.S.C. 706(5) and 711(c))

(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 (b)(17) of this section;

(ii) Staffing, if necessary to establish, develop, or improve a community rehabilitation program 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.

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

(iii) Other expenditures related to the establishment, development, or improvement of a community rehabilitation program that are necessary to make the program functional or increase its effectiveness, but are not ongoing operating expenses of the program.

(Authority: Sections 7(6) and 12(c) of the Act; 29 U.S.C. 706(6) and 711(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 the 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: Section 12(c) of the Act; 29 U.S.C. 711(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 and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(19) *Extended services*, as used in the definition of "Supported employment," means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most severe disability in supported employment and that are provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this part, 34 CFR part 363, 34 CFR part 376, or 34 CFR part 380, after an individual with a most severe disability has made the transition from support provided by the designated State unit.

(Authority: Section 7(27) of the Act; 29 U.S.C. 706(27))

(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) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

(21) *Family member*, for purposes of receiving vocational rehabilitation services in accordance with § 361.48(a)(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)(3) of the Act; 29 U.S.C. 711(c) and 723(a)(3))

(22) *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 Advisory Council for the designated State unit;

(C) Has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual;

(D) Has knowledge of the delivery of vocational rehabilitation services, the 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 would be in conflict with the objectivity of the individual.

(ii) An individual shall not be 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: Section 7(28) of the Act; 29 U.S.C. 706(28))

(23) *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).

(Authority: Section 7(21) of the Act; 29 U.S.C. 706(21))

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

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(25) *Individual with a disability*, except in §§ 361.17(a), (b), (c), and (j), 361.19, 361.20, and 361.51(b)(2), 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(8)(A) of the Act; 29 U.S.C. 706(8)(A))

(26) *Individual with a disability*, for purposes of §§ 361.17 (a), (b), (c), and (j), 361.19, 361.20, and 361.51(b)(2), 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(8)(B) of the Act; 29 U.S.C. 706(8)(B))

(27) *Individual with a most severe disability* means an individual with a severe disability who meets the designated State unit's criteria for an individual with a most severe disability. This criteria must be consistent with the requirements in § 361.36(c)(3).

(Authority: Section 101(a)(5) of the Act; 29 U.S.C. 721(a)(5))

(28) *Individual with a severe 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 retardation, 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(15)(A) of the Act; 29 U.S.C. 708(15)(A))

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

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(30) *Integrated setting*, with respect to the provision of services or an employment outcome, means a setting typically found in the community in which applicants or eligible individuals have the opportunity to interact on a regular basis with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(31) *Maintenance* means monetary support provided to an eligible individual or an individual receiving extended evaluation services for those living expenses, such as food, shelter, and clothing, that are in excess of the normal living expenses of the individual and that are necessitated by the individual's participation in a program of vocational rehabilitation services.

(Authority: Sections 12(c) and 103(a)(5) of the Act; 29 U.S.C. 711(c) and 723(a)(5))

Note: The following are examples of expenses that would meet the definition of maintenance.

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

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

*Example:* 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.

*Example:* The costs of food, clothing, and shelter for homeless or recently deinstitutionalized individuals until other financial assistance is secured for those costs.

(32) *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 1954.

(Authority: Section 7(10) of the Act; 29 U.S.C. 706(10))

(33) *Ongoing support services*, as used in the definition of "Supported employment"—

(i) Means services that are—

(A) Needed to support and maintain an individual with a most severe disability in supported employment;

(B) Identified based on a determination by the designated State unit of the individual's needs as

specified in an individualized written rehabilitation program; and

(C) 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 or multiple placements if those placements are being provided under a program of transitional employment;

(ii) Must 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 special circumstances, especially at the request of the individual, the individualized written rehabilitation program provides for off-site monitoring, twice-monthly meetings with the individual;

(iii) Consist of—

(A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in this part;

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

(C) Job development and placement;

(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; or

(I) Any service similar to the foregoing services.

(Authority: Sections 7(33) and 12(c) of the Act; 29 U.S.C. 706(33) and 711(c))

(34) *Personal assistance services* means a range of services provided by one or more persons 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. The services must be necessary to the achievement of an employment outcome and may be 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(11) and 103(a)(15) of the Act; 29 U.S.C. 706(11) and 29 U.S.C. 723)

(35) *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, orthotic, or other assistive devices, including hearing aids;

(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.

(Authority: Sections 12(c) and 103(a)(4) of the Act; 29 U.S.C. 711(c) and 723(a)(4))

(36) *Physical or mental impairment* means an injury, disease, or other condition that materially limits, or if not

treated will probably result in materially limiting, mental or physical functioning.

(Authority: Sections 7(8)(A) and 12(c) of the Act; 29 U.S.C. 706(8)(A) and 711(c))

(37) *Post-employment services* means one or more of the services identified in § 361.48 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 strengths, resources, priorities, concerns, abilities, capabilities, and interests.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

Note: Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests. 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 written rehabilitation program; 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; 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 strengths, resources, priorities, concerns, abilities, capabilities, and interests.

(38) *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(13) and 12(c) of the Act; 29 U.S.C. 706(13) and 711(c))

(39) *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(13) of the Act; 29 U.S.C. 706(13))

(40) *Reservation* means a Federal or State Indian reservation, public domain Indian allotment, 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.

(Authority: Section 130(c) of the Act; 29 U.S.C. 750(c))

(41) *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 State plan.

(Authority: Section 7(9) of the Act; 29 U.S.C. 706(9))

(42) *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(16) of the Act; 29 U.S.C. 706(16))

(43) *State plan* means the State plan for vocational rehabilitation services or the vocational rehabilitation services part of a consolidated rehabilitation plan under § 361.10(c).

(Authority: Sections 12(c) and 101 of the Act; 29 U.S.C. 711(c) and 721)

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

(Authority: Sections 7(8)(A) and 12(c) of the Act; 29 U.S.C. 706(8)(A) and 711(c))

(45) *Supported employment* means—  
(i) Competitive employment in an integrated setting with ongoing support services for individuals with the most severe disabilities—

(A) For whom competitive employment has not traditionally occurred or for whom competitive

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

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

(ii) Transitional employment for individuals with the most severe disabilities due to mental illness.

(Authority: Section 7(18) of the Act; 29 U.S.C. 706(18)(A))

(46) *Supported employment services* means ongoing support services and other appropriate services needed to support and maintain an individual with a most severe disability in supported employment that are provided by the designated State unit—

(i) For a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time in order to achieve the rehabilitation objectives identified in the individualized written rehabilitation program; and

(ii) 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(34) and 12(c) of the Act; 29 U.S.C. 706(34) and 711(c))

(47) *Transition services* means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include 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. Transition services must promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives identified in the student's individualized written rehabilitation program (IWRP).

(Authority: Section 7(35) and 103(a)(14) of the Act; 29 U.S.C. 706(35) and 723(a)(14))

(48) *Transitional employment*, as used in the definition of "Supported employment," means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most severe disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

(Authority: Sections 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c))

(49) *Transitioning student* means a student who is an eligible individual in accordance with the requirements of § 361.42(a)(1) and who is receiving transition services as defined in paragraph (b)(47) of this section. (Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

(50) *Transportation* means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in any vocational rehabilitation service.

(Authority: Sections 12(c) and 103(a)(10) of the Act; 29 U.S.C. 711(c) and 723(a)(10))

Note: The following are examples of expenses that would meet the definition of transportation.

Example: 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: Short-term travel-related expenses, such as food and shelter, incurred by an applicant participating in evaluation or assessment services that necessitates travel.

Example: 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.

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

(51) *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, also means those services listed in § 361.49.

(Authority: Sections 103(a) and (b) of the Act; 29 U.S.C. 723(a) and (b))

## Subpart B—State Plan for Vocational Rehabilitation Services

### § 361.10 Submission, approval, and disapproval of the State plan.

(a) *Purpose.* In order for a State to receive a grant under this part, the designated State agency shall submit to the Secretary, and obtain approval of, a State plan that contains a description of the State's vocational rehabilitation services program, the plans and policies to be followed in carrying out the program, and other information requested by the Secretary, in accordance with the requirements of this part.

(b) *Separate part relating to rehabilitation of individuals who are blind.* If a separate State agency administers or supervises the administration of a separate part of the State plan relating to the rehabilitation of individuals who are blind, that part of the State plan must separately conform to all requirements under this part that are applicable to a State plan.

(c) *Consolidated rehabilitation plan.* The State may choose to submit a consolidated rehabilitation plan that includes the State plan for vocational rehabilitation services and the State's plan for its program for persons with developmental disabilities. The State planning and advisory council for developmental disabilities and the agency administering the State's program for persons with developmental disabilities must concur in the submission of a consolidated rehabilitation plan. A consolidated rehabilitation plan must comply with, and be administered in accordance with, the Act and the Developmental Disabilities Assistance and Bill of Rights Act, as amended.

(d) *Public participation.* The State shall develop the State plan with input from the public, through public meetings, in accordance with the requirements of § 361.20.

(e) *Duration.* The State plan must cover a three-year period or, with the prior approval of the Secretary, some other period that corresponds to the period for which the State submits a plan under another Federal law, such as Part B of the Individuals with Disabilities Education Act (IDEA).

(f) *Submission of the State plan.* The State shall submit the State plan to the Secretary for approval—

(1) No later than July 1 of the year preceding the first fiscal year for which the State plan is submitted; or

(2) With the prior approval of the Secretary, no later than the date on which the State is required to submit a State plan under another Federal law.

(g) *Revisions to the State plan.* The State shall submit to the Secretary for approval revisions to the State plan in accordance with the requirements of this part and 34 CFR 76.140.

(h) *Interim State plan.* The Secretary may require a State to submit an interim State plan for a period of less than three years following a reauthorization of the Act and prior to the publication of final regulations.

(i) *Approval.* The Secretary approves a State plan and revisions to the State plan that conform to the requirements of this part and section 101(a) of the Act.

(j) *Disapproval.* The Secretary disapproves a State plan that does not conform to the requirements of this part and section 101(a) of the Act, in accordance with the following procedures:

(1) *Informal resolution.* Prior to disapproving a State plan, the Secretary attempts to resolve disputes informally with State officials.

(2) *Notice.* If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to disapprove the State plan and of the opportunity for a hearing.

(3) *State plan hearing.* If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing in accordance with the provisions of 34 CFR Part 81, Subpart A.

(4) *Initial decision.* The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(5) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR 81.42.

(6) *Review by the Secretary.* The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(7) *Final decision of the Department.* The final decision of the Department is made in accordance with 34 CFR 81.44.

(8) *Judicial review.* A State may appeal the Secretary's decision to disapprove the State plan by filing a petition for review with the United States Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: Sections 6, 101(a) and (b), and 107(d) of the Act; 29 U.S.C. 705, 721(a) and (b), and 727(d))

#### § 361.11 Withholding of funds.

(a) *Basis for withholding.* The Secretary may withhold or limit

payments under sections 111, 124, or 632(a) of the Act, as provided by section 107(c) and (d) of the Act, if the Secretary determines that—

(1) The State plan, including the supported employment supplement and the strategic plan supplement, has been so changed that it no longer conforms with the requirements of this part or 34 CFR part 363; or

(2) In the administration of the State plan, there has been a failure to comply substantially with any provision of that plan or a program improvement plan established in accordance with section 106 of the Act.

(b) *Informal resolution.* Prior to withholding or limiting payments in accordance with this section, the Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice.* If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to withhold or limit payments and of the opportunity for a hearing.

(d) *Withholding hearing.* If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(e) *Initial decision.* The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(f) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR 81.42.

(g) *Review by the Secretary.* The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(h) *Final decision of the Department.* The final decision of the Department is made in accordance with 34 CFR 81.44.

(i) *Judicial review.* A State may appeal the Secretary's decision to withhold or limit payments by filing a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: Sections 101(b), 107(c), and 107(d) of the Act; 29 U.S.C. 721(b), 727(c)(1) and (2), and 727(d))

#### State Plan Content: Administration

##### § 361.12 Methods of administration.

The State plan must assure that the State agency, and the designated State unit if applicable, employs methods of administration found necessary by the Secretary for the proper and efficient

administration of the plan and for carrying out all functions for which the State is responsible under the plan and this part. These methods must include procedures to ensure accurate data collection and financial accountability.

(Authority: Section 101(a)(6) of the Act; 29 U.S.C. 721(a)(6))

#### § 361.13 State agency for administration.

(a) *Designation of State agency.* The State plan must designate a State agency as the sole State agency to administer the State plan, or to supervise its administration in a political subdivision of the State by a sole local agency, in accordance with the following requirements:

(1) *General.* Except as provided in paragraphs (a)(2) and (3) of this section, the State plan must provide that the designated State agency is one of the following types of agencies:

(i) A State agency that is an independent State commission, board, or other agency that has as its major function vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities.

(ii) The State agency administering or supervising the administration of education or vocational education in the State, provided that it includes a vocational rehabilitation unit as provided in paragraph (b) of this section.

(iii) A State agency that includes a vocational rehabilitation unit, as provided in paragraph (b) of this section, and at least two other major organizational units, each of which administers one or more of the State's major programs of public education, public health, public welfare, or labor.

(2) *American Samoa.* In the case of American Samoa, the State plan must designate the Governor.

(3) *Designated State agency for individuals who are blind.* If a State commission or other agency that provides assistance or services to individuals who are blind is authorized under State law to provide vocational rehabilitation services to individuals who are blind, and this commission or agency is primarily concerned with vocational rehabilitation or includes a vocational rehabilitation unit as provided in paragraph (b) of this section, the State plan may designate that agency as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for individuals who are blind or to supervise its administration in a political subdivision of the State by a sole local agency.

(b) *Designation of State unit.* (1) If the designated State agency is of the type

specified in paragraph (a)(1)(ii) or (a)(1)(iii) of this section, or if the designated State agency specified in paragraph (a)(3) of this section does not have as its major function vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities, the State plan must assure that the agency (or each agency if two agencies are designated) includes a vocational rehabilitation bureau, division, or unit that—

(i) Is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State agency's vocational rehabilitation program under the State plan, including those responsibilities specified in paragraph (d) of this section;

(ii) Has a full-time director;

(iii) Has a staff, at least 90 percent of whom are employed full time on the rehabilitation work of the organizational unit; and

(iv) Is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency or, in the case of an agency described in paragraph (a)(1)(ii) of this section, is so located and has that status or has a director who is the executive officer of the State agency.

(2) In the case of a State that has not designated a separate State agency for individuals who are blind, as provided for in paragraph (a)(3) of this section, the State may assign responsibility for the part of the plan under which vocational rehabilitation services are provided to individuals who are blind to one organizational unit of the designated State agency and may assign responsibility for the rest of the plan to another organizational unit of the designated State agency, with the provisions of paragraph (b)(1) of this section applying separately to each of these units.

(c) *Responsibility for administration.* The State plan must assure that all decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of these services are made by the designated State unit or the sole local agency under the supervision of the State unit. This responsibility may not be delegated to any other agency or individual.

(Authority: Sections 101(a)(1) and 101(a)(2) of the Act; 29 U.S.C. 721(a)(1) and 721(a)(2))

#### **§ 361.14 Substitute State agency.**

(a) *General provisions.*

(1) If the Secretary has withheld all funding from a State under § 361.11, the

State may designate another agency to substitute for the designated State agency in carrying out the State's program of vocational rehabilitation services.

(2) Any public or nonprofit private organization or agency within the State or any political subdivision of the State is eligible to be a substitute agency.

(3) The substitute agency shall submit a State plan that meets the requirements of this part.

(4) The Secretary makes no grant to a substitute agency until the Secretary approves its plan.

(b) *Substitute agency matching share.* The Secretary does not make any payment to a substitute agency unless it has provided assurances that it will contribute the same matching share as the State would have been required to contribute if the State agency were carrying out the vocational rehabilitation program.

(Authority: Section 107(c)(3) of the Act; 29 U.S.C. 727(c)(3))

#### **§ 361.15 Local administration.**

(a) If the State plan provides for local administration, it must—

(1) Identify each local agency;

(2) Assure that each local agency is under the supervision of the designated State unit and is the sole local agency responsible for the administration of the program within the political subdivision that it serves; and

(3) Describe the methods each local agency will use to administer the vocational rehabilitation program, in accordance with the State plan.

(b) A separate local agency serving individuals who are blind may administer that part of the plan relating to vocational rehabilitation of individuals who are blind, under the supervision of the designated State unit for individuals who are blind.

(Authority: Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

#### **§ 361.16 Establishment of an independent commission or a State Rehabilitation Advisory Council.**

(a) *General requirement.* Except as provided in paragraph (b) of this section, the State plan must contain one of the following two assurances:

(1) An assurance that the State agency is an independent State commission that—

(i) Is primarily concerned with vocational rehabilitation or vocational and other rehabilitation services, in accordance with § 361.13(a)(1)(i);

(ii) Is consumer-controlled by persons who—

(A) Are individuals with physical or mental impairments that substantially limit major life activities; and

(B) Represent individuals with a broad range of disabilities;

(iii) Includes individuals representing family members, advocates, and authorized representatives of individuals with mental impairments; and

(iv) Conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers in the State, in accordance with the provisions in § 361.17(h)(3).

(2) An assurance that—

(i) The State has established a State Rehabilitation Advisory Council (Council) that meets the requirements of § 361.17;

(ii) The designated State unit seeks and seriously considers, on a regular and ongoing basis, advice from the Council regarding the development, implementation, and amendment of the State plan, the strategic plan, and other policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services in the State;

(iii) The designated State unit transmits to the Council—

(A) All plans, reports, and other information required under the Act to be submitted to the Secretary;

(B) Copies of all written policies, practices, and procedures of general applicability provided to or used by rehabilitation personnel; and

(C) Copies of due process hearing decisions in a manner that preserves the confidentiality of the participants in the hearings; and

(iv) The State plan summarizes annually the advice provided by the Council, including recommendations from the annual report of the Council, the survey of consumer satisfaction, and other reports prepared by the Council, and the State agency's response to the advice and recommendations, including the manner in which the State will modify its policies and procedures based on the survey of consumer satisfaction and explanations of reasons for rejecting any advice or recommendations of the Council.

(b) *Exception for separate State agency for individuals who are blind.* In the case of a State that designates a separate State agency, under § 361.13(a)(3), to administer the part of the State plan under which vocational rehabilitation services are provided to individuals who are blind, the State plan must contain one of the following four assurances:

(1) An assurance that an independent commission in accordance with paragraph (a)(1) of this section is responsible under State law for

operating or overseeing the operation of the vocational rehabilitation program of both the State agency that administers the part of the State plan under which vocational rehabilitation services are provided to individuals who are blind and the State agency that administers the remainder of the State plan.

(2) An assurance that—

(i) An independent commission that is consumer-controlled by, and represents the interests of, individuals who are blind and conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers, in accordance with the provisions of § 361.17(h)(3), is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State for individuals who are blind; and

(ii) An independent commission that is consumer-controlled in accordance with paragraph (a)(1)(i) of this section and conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers, in accordance with § 361.17(h)(3), is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State for all individuals with disabilities, except individuals who are blind.

(3) An assurance that—

(i) An independent commission that is consumer-controlled by, and represents the interests of, individuals who are blind and that conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers, in accordance with § 361.17(h)(3), is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State for individuals who are blind; and

(ii) The State has established a State Rehabilitation Advisory Council that meets the criteria in § 361.17 and carries out the duties of a Council with respect to functions for, and services provided to, individuals with disabilities, except for individuals who are blind.

(4) An assurance that—

(i) An independent commission that is consumer-controlled in accordance with paragraph (a)(1)(i) of this section and conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers, in accordance with the provisions of § 361.17(h)(3), is responsible under State law for operating or overseeing the operation of the vocational

rehabilitation services for all individuals in the State, except individuals who are blind; and

(ii) The State has established a State Rehabilitation Advisory Council that meets the criteria in § 361.17 and carries out the duties of a Council with respect to functions for, and services provided to, individuals who are blind.

(Authority: Sections 101(a)(32) and 101(a)(36) of the Act; 29 U.S.C. 721(a)(32) and 721(a)(36))

**§ 361.17 Requirements for a State Rehabilitation Advisory Council.**

If the State plan contains an assurance that the State has established a Council under § 361.16(a)(2), (b)(3)(ii), or (b)(4)(ii), the State plan must also contain an assurance that the Council meets the following requirements:

(a) *Appointment.* (1) The members of the Council shall be—

(i) Appointed by the Governor; or  
(ii) If State law vests appointment authority in an entity other than, or in conjunction with, the Governor (such as one or more houses of the State legislature or an independent board that has general appointment authority), appointed by that entity or entities.

(2) The appointing authority shall select members of the Council after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities.

(b) *Composition.* (1) *General.* Except as provided in paragraph (b)(3) of this section, the Council shall be composed of at least 13 members, including—

(i) At least one representative of the Statewide Independent Living Council, who must be the chairperson of, or other individual recommended by, the Statewide Independent Living Council;

(ii) At least one representative of a parent training and information center established pursuant to section 631(e)(1) of IDEA;

(iii) At least one representative of the Client Assistance Program (CAP), established under 34 CFR part 370, who must be the director of, or other individual recommended by, the CAP;

(iv) At least one vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member if employed by the designated State agency;

(v) At least one representative of community rehabilitation program service providers;

(vi) Four representatives of business, industry, and labor;

(vii) Representatives of disability groups that include a cross section of—

(A) Individuals with physical, cognitive, sensory, and mental disabilities; and

(B) Parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities who have difficulty representing themselves due to their disabilities;

(viii) Current or former applicants for, or recipients of, vocational rehabilitation services; and

(ix) The director of the designated State unit as an ex officio, nonvoting member.

(2) *Employees of the designated State agency.* Employees of the designated State agency may serve only as nonvoting members of the Council.

(3) *Composition of a separate Council for a separate State agency for individuals who are blind.* Except as provided in paragraph (b)(4) of this section, if the State establishes a separate Council for a separate State agency for individuals who are blind, that Council must—

(i) Conform with all of the composition requirements for a Council under paragraph (b)(1) of this section, except the requirements in paragraph (b)(1)(vii), unless the exception in paragraph (b)(4) of this section applies; and

(ii) Include—

(A) At least one representative of a disability advocacy group representing individuals who are blind; and

(B) At least one parent, family member, guardian, advocate, or authorized representative of an individual who is blind, has multiple disabilities, and has difficulty representing himself or herself due to disabilities.

(4) *Exception.* If State law in effect on October 29, 1992 requires a separate Council under paragraph (b)(3) of this section to have fewer than 13 members, the separate Council is deemed to be in compliance with the composition requirements in paragraphs (b)(1)(vi) and (b)(1)(viii) of this section if it includes at least one representative who meets the requirements for each of those paragraphs.

(c) *Majority.* A majority of the Council members shall be individuals with disabilities who are not employed by the designated State unit.

(d) *Chairperson.* The chairperson shall be—

(1) Selected by the members of the Council from among the voting members of the Council, subject to the veto power of the Governor; or

(2) If the Governor does not have veto power pursuant to State law, selected by the Governor, or by the Council if required by the Governor, from among the voting members of the Council.

(e) *Terms of appointment.* (1) Each member of the Council shall be appointed for a term of no more than three years and may serve for no more than two consecutive full terms.

(2) A member appointed to fill a vacancy occurring prior to the end of the term for which the predecessor was appointed shall be appointed for the remainder of the predecessor's term.

(3) The terms of service of the members initially appointed must be for varied numbers of years to ensure that terms expire on a staggered basis.

(f) *Vacancies.* (1) A vacancy in the membership of the Council must be filled in the same manner as the original appointment.

(2) No vacancy affects the power of the remaining members to execute the duties of the Council.

(g) *Conflict of interest.* No member of the Council shall cast a vote on any matter that would provide direct financial benefit to the member or the member's organization or otherwise give the appearance of a conflict of interest under State law.

(h) *Functions.* The Council shall—

(1) Review, analyze, and advise the designated State unit regarding the performance of the State unit's responsibilities under this part, particularly responsibilities related to—

(i) Eligibility, including order of selection;

(ii) The extent, scope, and effectiveness of services provided; and

(iii) Functions performed by State agencies that affect or potentially affect the ability of individuals with disabilities to achieve rehabilitation goals and objectives under this part;

(2) Advise and, at the discretion of the State agency, assist the State unit in the preparation of applications, the State plan, the strategic plan, and amendments to the plans, reports, needs assessments, and evaluations required by this part;

(3) To the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with—

(i) The functions performed by State agencies and other public and private entities responsible for serving individuals with disabilities; and

(ii) The vocational rehabilitation services provided by State agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities from funds made

available under the Act or through other public or private sources;

(4) Prepare and submit to the Governor, or appropriate State entity, and to the Secretary no later than 90 days after the end of the Federal fiscal year an annual report on the status of vocational rehabilitation programs operated within the State and make the report available to the public through appropriate modes of communication;

(5) Coordinate with other councils within the State, including the Statewide Independent Living Council established under 34 CFR part 364, the advisory panel established under section 613(a)(12) of IDEA, the State Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, and the State mental health planning council established under section 1916(e) of the Public Health Service Act;

(6) Advise the designated State agency and provide for coordination and the establishment of working relationships between the designated State agency and the Statewide Independent Living Council and centers for independent living within the State; and

(7) Perform other comparable functions, consistent with the purpose of this part, that the Council determines to be appropriate.

(i) *Resources.*

(1) The Council, in conjunction with the designated State unit, shall prepare a plan for the provision of resources, including staff and other personnel, that may be necessary for the Council to carry out its functions under this part.

(2) In implementing the resources plan, the Council must rely on existing resources to the maximum extent possible.

(3) Any disagreements between the designated State unit and the Council regarding the amount of resources necessary must be resolved by the Governor or other appointing entity, consistent with paragraphs (i)(1) and (2) of this section.

(4) The Council shall, consistent with State law, supervise and evaluate the staff and personnel that are necessary to carry out its functions.

(5) Those staff and personnel that are assisting the Council in carrying out its functions may not be assigned duties by the designated State unit or any other agency or office of the State that would create a conflict of interest.

(j) *Meetings.* The Council shall—

(1) Convene at least four meetings a year to conduct Council business that are publicly announced, open and accessible to the public, including individuals with disabilities, unless

there is a valid reason for an executive session; and

(2) Conduct forums or hearings, as appropriate, that are publicly announced, open and accessible to the public, including individuals with disabilities.

(k) *Compensation.* Funds appropriated under Title I of the Act, except funds to carry out sections 112 and 130 of the Act, may be used to compensate and reimburse the expenses of Council members in accordance with section 105(g) of the Act.

(Authority: Section 105 of the Act; 29 U.S.C. 725)

#### **§ 361.18 Comprehensive system of personnel development.**

The State plan must describe the procedures and activities the State agency will undertake to establish and maintain a comprehensive system of personnel development designed to ensure an adequate supply of qualified rehabilitation personnel, including professionals and paraprofessionals, for the designated State unit. If the State agency has a State Rehabilitation Advisory Council, this description must, at a minimum, provide for the involvement of the Council in the development of personnel standards in accordance with paragraph (c) of this section. This description must also conform with the following requirements:

(a) *Data system on personnel and personnel development.* The State plan must describe the development and maintenance of a system by the State agency for collecting and analyzing on an annual basis data on qualified personnel needs and personnel development, in accordance with the following requirements:

(1) Data on qualified personnel needs must include—

(i) The number of personnel who are employed by the State agency in the provision of vocational rehabilitation services in relation to the number of individuals served, broken down by personnel category;

(ii) The number of personnel currently needed by the State agency to provide vocational rehabilitation services, broken down by personnel category; and

(iii) Projections of the number of personnel, broken down by personnel category, who will be needed by the State agency to provide vocational rehabilitation services in the State in five years based on projections of the number of individuals to be served, including individuals with severe disabilities, the number of personnel

expected to retire or leave the field, and other relevant factors.

(2) Data on personnel development must include—

(i) A list of the institutions of higher education in the State that are preparing vocational rehabilitation professionals, by type of program;

(ii) The number of students enrolled at each of those institutions, broken down by type of program; and

(iii) The number of students who graduated during the prior year from each of those institutions with certification or licensure, or with the credentials for certification or licensure, broken down by the personnel category for which they have received, or have the credentials to receive, certification or licensure.

(b) *Plan for recruitment, preparation, and retention of qualified personnel.* The State plan must describe the development, updating, and implementation of a plan to address the current and projected needs for personnel who are qualified in accordance with paragraph (c) of this section. The plan must identify the personnel needs based on the data collection and analysis system described in paragraph (a) of this section and must provide for the coordination and facilitation of efforts between the designated State unit and institutions of higher education and professional associations to recruit, prepare, and retain personnel who are qualified in accordance with paragraph (c) of this section, including personnel from minority backgrounds and personnel who are individuals with disabilities.

(c) *Personnel standards.* (1) The State plan must include the State agency's policies and describe the procedures the State agency will undertake to establish and maintain standards to ensure that professional and paraprofessional personnel needed within the State unit to carry out this part are appropriately and adequately prepared and trained, including—

(i) Standards that are consistent with any national or State-approved or recognized certification, licensing, registration, or other comparable requirements (including State personnel requirements) that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services; and

(ii) To the extent those standards are not based on the highest requirements in the State applicable to that profession or discipline, the steps the State is currently taking and the steps the State plans to take to retrain or hire personnel to meet standards that are based on the

highest requirements in the State, including measures to notify State unit personnel, the institutions of higher education identified under paragraph (a)(2)(i) of this section, and other public agencies of these steps and the timelines for taking each step.

(2) As used in this section—

(i) "Highest requirements in the State applicable to that profession or discipline" means the highest entry-level academic degree or equivalent experience needed for any national or State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline. The current requirements of all State statutes and regulations of other agencies in the State applicable to that profession or discipline must be considered and must be kept on file by the designated State unit and available to the public.

(ii) "Profession or discipline" means a specific occupational category, including any paraprofessional occupational category, that—

(A) Provides rehabilitation services to individuals with disabilities;

(B) Has been established or designated by the State; and

(C) Has a specified scope of responsibility.

(d) *Staff development.* (1) The State plan must include the State agency's policies and describe the procedures and activities the State agency will undertake to ensure that all personnel employed by the State unit receive appropriate and adequate training, including a description of—

(i) A system of staff development for rehabilitation professionals and paraprofessionals within the State unit, particularly with respect to rehabilitation technology; and

(ii) Procedures for acquiring and disseminating to rehabilitation professionals and paraprofessionals within the designated State unit significant knowledge from research and other sources, including procedures for providing training regarding the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1992.

(2) The specific training areas for staff development must be based on the needs of each State unit and may include, but are not limited to, training with respect to the requirements of the Americans with Disabilities Act, IDEA, and Social Security work incentive programs, training to facilitate informed choice under this program, and training to improve the provision of services to culturally diverse populations.

(e) *Personnel to address individual communication needs.* The State plan must describe how the State unit—

(1) Includes among its personnel, or obtains the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability; and

(2) Includes among its personnel, or obtains the services of, individuals able to communicate with applicants and eligible individuals in appropriate modes of communication.

(f) *Performance evaluation system.* The State plan must describe how the system for evaluating the performance of rehabilitation counselors, coordinators, and other personnel used in the State unit facilitates, and in no way impedes, the accomplishment of the purpose and policy of the program as described in sections 100(a)(2) and 100(a)(3) of the Act, including the policy of serving, among others, individuals with the most severe disabilities.

(g) *Coordination with personnel development under IDEA.* The State plan must describe the procedures and activities the State agency will undertake to coordinate its comprehensive system of personnel development under the Act with personnel development under IDEA.

(Authority: Sections 101 (a)(7) and (a)(35) of the Act; 29 U.S.C. 721 (a)(7) and (35))

Note: Under the Act and the regulations in this part, the State agency is required to collect and analyze data regarding personnel needs by type or category of personnel. The personnel data must be collected and analyzed according to personnel category breakdowns that are based on the major categories of staff in the State unit. Similarly, the data from institutions of higher education must be broken down by type of program to correspond as closely as possible with the personnel categories of the State unit.

#### **§ 361.19 Affirmative action for individuals with disabilities.**

The State plan must assure that the State agency takes affirmative action to employ and advance in employment qualified individuals with disabilities.

(Authority: Section 101(a)(6)(A) of the Act; 29 U.S.C. 721(a)(6)(A))

#### **§ 361.20 State plan development.**

(a) *Public participation requirements.*  
(1) *Plan development and revisions.* The State plan must assure that the State unit conducts public meetings throughout the State to provide all segments of the public, including interested groups, organizations, and individuals, an opportunity to comment on the State plan prior to its

development and to comment on any revisions to the State plan.

(2) *Notice requirements.* The State plan must assure that the State unit, prior to conducting public meetings, provides appropriate and sufficient notice throughout the State of the meetings in accordance with—

(i) State law governing public meetings; or

(ii) In the absence of State law governing public meetings, procedures developed by the State unit in consultation with the State Rehabilitation Advisory Council.

(3) *Plan revisions based on consumer satisfaction surveys.* The State plan must describe the manner in which the State plan will be revised based on the results of consumer satisfaction surveys conducted by the State Rehabilitation Advisory Council under § 361.17(h)(3) or by the State agency if it is an independent commission in accordance with the requirements of § 361.16.

(b) *Special consultation requirements.* The State plan must assure that, as appropriate, the State unit actively consults in the development and revision of the State plan with the CAP director, the State Rehabilitation Advisory Council, and, as appropriate, those Indian tribes, tribal organizations, and native Hawaiian organizations that represent significant numbers of individuals with disabilities within the State.

(c) *Summary of public comments.* The State plan must include a summary of the public comments on the State plan, including comments on revisions to the State plan and the State unit's response to those comments.

(d) *Appropriate modes of communication.* The State unit shall provide, through appropriate modes of communication, the notices of the public meetings, any materials furnished prior to or during the public meetings, and the approved State plan.

(Authority: Sections 101(a)(20), 101(a)(23), 101(a)(32), and 105(c)(2) of the Act; 29 U.S.C. 721(a)(20), (23), and (32) and 725(c)(2))

#### **§ 361.21 Consultations regarding the administration of the State plan.**

(a) The State plan must assure that, in connection with matters of general policy development and implementation arising in the administration of the State plan, the State unit seeks and takes into account the views of—

(1) Individuals who receive vocational rehabilitation services or, as appropriate, the individuals' representatives;

(2) Personnel working in the field of vocational rehabilitation;

(3) Providers of vocational rehabilitation services;

(4) The CAP director; and

(5) The State Rehabilitation Advisory Council, if the State has a Council.

(b) The State plan must specifically describe the manner in which the State unit will take into account the views regarding State policy and administration of the State plan that are expressed in the consumer satisfaction surveys conducted by the State Rehabilitation Advisory Council under § 361.17(h)(3) or by the State agency if it is an independent commission in accordance with the requirements of § 361.16(a)(1).

(Authority: Sections 101(a)(18), 101(a)(32), and 105(c)(2) of the Act; 29 U.S.C. 721(a)(18), 721(a)(32), and 725(c)(2))

#### **§ 361.22 Cooperation with agencies responsible for transitioning students.**

(a) *Transitioning students who are receiving special education services.* (1) *General.* The State plan must contain plans, policies, and procedures that are designed to facilitate the transition of students who are receiving special education services from the provision of a free appropriate public education under the responsibility of an educational agency to the provision of vocational rehabilitation services under the responsibility of the designated State unit. These plans, policies, and procedures must be designed to facilitate the development and accomplishment of long-term rehabilitation goals, intermediate rehabilitation objectives, and goals and objectives related to enabling a transitioning student to live independently before leaving a school setting, to the extent the goals and objectives are included in an individualized education program of the transitioning student.

(2) *Formal interagency agreement.* The State plan must assure that the State unit enters into formal interagency agreements with the State education agency and, as appropriate, with local education agencies, that are responsible for the free appropriate public education of transitioning students who are receiving special education services.

(i) Formal interagency agreements must, at a minimum, identify—

(A) Policies, practices, and procedures that can be coordinated between the agencies, including definitions, standards for eligibility, policies and procedures for making referrals, procedures for outreach to and identification of youth who are receiving special education services and are in need of transition services, and procedures and timeframes for

evaluation and follow-up of those transitioning students; and

(B) The roles of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services.

(ii) Formal interagency agreements may, as appropriate, identify—

(A) Available resources, including sources of funds for the development and expansion of services;

(B) The financial responsibility of each agency in providing services to transitioning students who are receiving special education services, consistent with State law;

(C) Procedures for resolving disputes between the agencies that are parties to the agreement; and

(D) All other components necessary to ensure meaningful cooperation among agencies, including procedures to facilitate the development of local teams to coordinate the provision of services to individuals, sharing data, and coordinating joint training of staff in the provision of transition services.

Note: The following excerpt from page 33 of Senate Report No. 102-357 further clarifies the provision of transition services by the State vocational rehabilitation agency:

The committee intends that students with disabilities who are eligible for, and who need, vocational rehabilitation services will receive those services as soon as possible, consistent with Federal and State law. These provisions are not intended in any way to shift the responsibility of service delivery from education to rehabilitation during the transition years. School officials will continue to be responsible for providing a free and appropriate public education as defined by the IEP. The role of the rehabilitation system is primarily one of planning for the student's years after leaving school. (S. Rep. No. 357, 102d Cong., 2d Sess. 33 (1992))

(b) *Transitioning students who are not receiving special education services.* The State plan must contain plans, policies, and procedures, including cooperation with appropriate agencies, designed to ensure that transitioning students who are not receiving special education services have access to and can receive vocational rehabilitation services, if appropriate, and to ensure outreach to and identification of those individuals.

(Authority: Sections 101(a)(11)(C), 101(a)(24) and 101(a)(30) of the Act; 29 U.S.C. 721(a)(11), (a)(24), and (a)(30))

#### **§ 361.23 Cooperation with other public agencies.**

(a) *Coordination of services with vocational education and Javits-Wagner-O'Day programs.* The State plan must assure that specific arrangements or

agreements are made for the coordination of services for any individual who is eligible for vocational rehabilitation services and is also eligible for services under the Carl D. Perkins Vocational and Applied Technology Education Act or the Javits-Wagner-O'Day Act.

(b) *Cooperation with other Federal, State, and local public agencies providing services related to the rehabilitation of individuals with disabilities.* (1) The State plan must assure that the State unit cooperates with other Federal, State, and local public agencies providing services related to the rehabilitation of individuals with disabilities, including, as appropriate, establishing interagency working groups or entering into other interagency cooperative agreements with, and using the services and facilities of—

(i) Federal agencies providing services related to the rehabilitation of individuals with disabilities, including the Social Security Administration, the Office of Workers' Compensation Programs of the Department of Labor, and the Department of Veterans Affairs; and

(ii) State and local public agencies providing services related to the rehabilitation of individuals with disabilities, including State and local public agencies administering the State's social services and financial assistance programs and other State programs for individuals with disabilities, such as the State's developmental disabilities program, veterans programs, health and mental health programs, education programs (including adult education, higher education, and vocational education programs), workers' compensation programs, job training and placement programs, and public employment offices.

(2) Interagency cooperation under paragraph (b)(1) of this section, to the extent practicable, must provide for training for staff of the agencies as to the availability, benefits of, and eligibility standards for vocational rehabilitation services.

(3) Interagency cooperation under paragraph (b)(1) of this section also must identify policies, practices, and procedures that can be coordinated among the agencies (particularly definitions, standards for eligibility, the joint sharing and use of evaluations and assessments, and procedures for making referrals); identify available resources and define the financial responsibility of each agency for paying for necessary services (consistent with State law) and procedures for resolving disputes

between agencies; and include all additional components necessary to ensure meaningful cooperation and coordination.

(c) *Reciprocal referral services with a separate agency for individuals who are blind.* If there is a separate State unit for individuals who are blind, the State plan must assure that the two State units establish reciprocal referral services, use each other's services and facilities to the extent feasible, jointly plan activities to improve services in the State for individuals with multiple impairments, including visual impairments, and otherwise cooperate to provide more effective services, including, if appropriate, entering into a written cooperative agreement.

(Authority: Sections 101(a)(11) and 101(a)(22) of the Act; 29 U.S.C. 721(a)(11) and 721(a)(22))

#### **§ 361.24 Coordination with the Statewide Independent Living Council.**

The State plan must assure that the State unit will coordinate and establish working relationships with the Statewide Independent Living Council established under 34 CFR part 364 and with independent living centers within the State.

(Authority: Section 101(a)(33) of the Act; 29 U.S.C. 721(a)(33))

#### **§ 361.25 Statewide.**

The State plan must assure that services provided under the State plan will be available in all political subdivisions of the State, unless a waiver of statewide is requested and approved in accordance with § 361.26.

(Authority: Section 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

#### **§ 361.26 Waiver of statewide.**

(a) *Availability.* The State unit may provide services in one or more political subdivisions of the State that increase services or expand the scope of services that are available statewide under the State plan if—

(1) The non-Federal share of the cost of these services is met from funds provided by a local public agency, including funds contributed to a local public agency by a private agency, organization, or individual;

(2) The services are likely to promote the vocational rehabilitation of substantially larger numbers of individuals with disabilities or of individuals with disabilities with particular types of impairments; and

(3) The State includes in its State plan, and the Secretary approves, a request for a waiver of the statewide requirement, in accordance with the

requirements of paragraph (b) of this section.

(b) *Request for waiver.* The request for a waiver of statewide must—

(1) Identify the types of services to be provided;

(2) Contain a written assurance from the local public agency that it will make available to the State unit the non-Federal share of funds;

(3) Contain a written assurance that State unit approval will be obtained for each proposed service before it is put into effect; and

(4) Contain a written assurance that all other State plan requirements, including a State's order of selection requirements, will apply to all services approved under the waiver.

(Authority: Section 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

#### **§ 361.27 Shared funding and administration of joint programs.**

(a) In order to carry out a joint program involving shared funding and administrative responsibility with another State agency or a local public agency to provide services to individuals with disabilities, the designated State unit must request approval from the Secretary in the State plan.

(b) If a proposed joint program does not comply with the statewide requirement in § 361.25, the State unit shall obtain a waiver of statewide, in accordance with § 361.26.

(Authority: Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

#### **§ 361.28 Third-party cooperative arrangements involving funds from other public agencies.**

(a) If the designated State unit enters into a third-party cooperative arrangement for providing or administering vocational rehabilitation services with another State agency or a local public agency that is furnishing part or all of the non-Federal share, the State plan must assure that—

(1) The services provided by the cooperating agency are not the customary or typical services provided by that agency but are new services that have a vocational rehabilitation focus or existing services that have been modified, adapted, expanded, or reconfigured to have a vocational rehabilitation focus;

(2) The services provided by the cooperating agency are only available to applicants for, or recipients of, services from the designated State unit;

(3) Program expenditures and staff providing services under the cooperative arrangement are under the administrative supervision of the designated State unit; and

(4) All State plan requirements, including a State's order of selection, will apply to all services provided under the cooperative program.

(b) If a third party cooperative agreement does not comply with the statewideness requirement in § 361.25, the State unit shall obtain a waiver of statewideness, in accordance with § 361.26.

(Authority: Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

**§ 361.29 Statewide studies and evaluations.**

(a) *Statewide studies.* The State plan must assure that the State unit conducts continuing statewide studies to determine the current needs of individuals with disabilities within the State and the best methods to meet those needs. The continuing statewide studies, at a minimum, must include—

(1) A triennial comprehensive assessment, as part of the development of the State plan, of the rehabilitation needs of individuals with severe disabilities who reside in the State;

(2) A review of the effectiveness of outreach procedures used to identify and serve individuals with disabilities who are minorities and individuals with disabilities who are unserved and underserved by the vocational rehabilitation system;

(3) An annual analysis of the characteristics of individuals determined to be ineligible for services and the reasons for the ineligibility determinations; and

(4) A review of a broad variety of methods to provide, expand, and improve vocational rehabilitation services to individuals with the most severe disabilities, including individuals receiving supported employment services under 34 CFR Part 363.

(b) *Annual evaluation.* The State plan must assure that the State unit conducts an annual evaluation of the effectiveness of the State's vocational rehabilitation program in providing vocational rehabilitation and supported employment services, especially to individuals with the most severe disabilities. The annual evaluation must analyze the extent to which—

(1) The State has achieved the goals and priorities established in the State plan and annual amendments to the plan;

(2) The State has achieved the objectives of the strategic plan and revisions to the plan developed under Subpart D of this part;

(3) The State is in compliance with the evaluation standards and performance indicators established by

the Secretary, pursuant to section 106 of the Act; and

(4) The State unit has adopted and is implementing procedures and activities to improve staff effectiveness and has made reasonable progress toward meeting the personnel standards established in accordance with § 361.18(c).

(c) *Reporting requirements.* (1) The State plan must describe annually those changes that have been adopted in policy, in the State plan and its amendments, and in the strategic plan and its amendments as a result of the statewide studies and the annual program evaluation.

(2) The State plan must contain an annual description of the methods used to expand and improve vocational rehabilitation services to individuals with the most severe disabilities, including the State unit's criteria for determining which individuals are individuals with the most severe disabilities.

(3) The State unit shall submit summaries or copies of the statewide studies and the annual evaluations as attachments to the State plan.

(d) *Role of the State Rehabilitation Advisory Council.* The State plan must assure that the State unit seeks the advice of the State Rehabilitation Advisory Council, if the State has a Council, regarding the continuing statewide studies and the annual evaluation and, at the discretion of the State agency, seeks assistance from the Council in the preparation and analysis of the studies and evaluation.

(Authority: Sections 101(a)(5) (A) and (B), 101(a)(9)(D), 101(a)(15) (B) and (D), 101(a)(19), and 105(c)(2) of the Act; 29 U.S.C. 721(a) (5), (9), (15), and (19) and 725(c)(2))

**§ 361.30 Services to special groups of individuals with disabilities.**

(a) *Civil employees of the United States.* The State plan must assure that vocational rehabilitation services are available to civil employees of the U.S. Government who are disabled in the line of duty, under the same terms and conditions applied to other individuals with disabilities.

(b) *Public safety officers.* (1) The State plan must assure that special consideration will be given to those individuals with disabilities whose disability arose from an impairment sustained in the line of duty while performing as a public safety officer and the immediate cause of that impairment was a criminal act, apparent criminal act, or a hazardous condition resulting directly from the officer's performance of duties in direct connection with the enforcement, execution, and

administration of law or fire prevention, firefighting, or related public safety activities.

(2) For the purposes of paragraph (b) of this section, "special consideration" for States under an order of selection means that those public safety officers who meet the requirements of paragraph (b)(1) of this section must receive priority for services over other eligible individuals in the same priority category of the order of selection.

(3) For the purposes of paragraph (b) of this section, "criminal act" means any crime, including an act, omission, or possession under the laws of the United States, a State, or a unit of general local government that poses a substantial threat of personal injury, notwithstanding that by reason of age, insanity, intoxication, or otherwise, the person engaging in the act, omission, or possession was legally incapable of committing a crime.

(4) For the purposes of paragraph (b) of this section, "public safety officer" means a person serving the United States or a State or unit of local government, with or without compensation, in any activity pertaining to—

(i) The enforcement of the criminal laws, including highway patrol, or the maintenance of civil peace by the National Guard or the Armed Forces;

(ii) A correctional program, facility, or institution if the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees;

(iii) A court having criminal or juvenile delinquent jurisdiction if the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees; or

(iv) Firefighting, fire prevention, or emergency rescue missions.

(c) *American Indians.* (1) The State plan must assure that vocational rehabilitation services are provided to American Indians with disabilities residing in the State to the same extent that these services are provided to other significant groups of individuals with disabilities residing in the State.

(2) The State plan also must assure that the designated State unit continues to provide vocational rehabilitation services, including, as appropriate, services traditionally used by Indian tribes, to American Indians with disabilities who reside on reservations and are eligible for services by a special tribal program under 34 CFR part 371.

(Authority: Sections 7, 101(a)(13), 101(a)(20), and 130(b)(3) of the Act; 29 U.S.C. 706, 721(a)(13), 721(a)(20), and 750(b)(3))

**§ 361.31 Utilization of community resources.**

The State plan must assure that, in providing vocational rehabilitation services, public or other vocational or technical training programs or other appropriate community resources are used to the maximum extent feasible.

(Authority: Section 101(a)(12)(A) of the Act; 29 U.S.C. 721(a)(12)(A))

**§ 361.32 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.**

The State plan must assure that the State unit has the authority to enter into contracts with profitmaking organizations for the purpose of providing on-the-job training and related programs for individuals with disabilities under the Projects With Industry program, 34 CFR part 379, if it has been determined that they are better qualified to provide needed services than nonprofit agencies, organizations, or programs in the State.

(Authority: Section 101(a)(21) of the Act; 29 U.S.C. 721(a)(21))

**§ 361.33 Utilization of community rehabilitation programs.**

(a) The State plan must assure that the designated State unit uses community rehabilitation programs to the maximum extent feasible to provide vocational rehabilitation services in the most integrated settings possible, consistent with the informed choices of the individuals.

(b) The State plan must contain a description of—

(1) The capacity and effectiveness of community rehabilitation programs, including programs under the Javits-Wagner-O'Day Act, based on the utilization patterns of those programs; and

(2) The methods used to ensure the appropriate use of community rehabilitation programs, including methods for entering into agreements with the operators of those programs and for entering into cooperative agreements with private nonprofit vocational rehabilitation service providers.

(Authority: Sections 101(a)(5)(A), 101(a)(12)(B), 101(a)(15)(B), 101(a)(27), and 101(a)(28) of the Act; 29 U.S.C. 721(a)(5), (12), (15), (27), and (28))

**§ 361.34 Supported employment plan.**

(a) The State plan must assure that the State has an acceptable plan under 34 CFR part 363 that provides for the use of funds under that part to supplement funds under this part for the cost of services leading to supported employment.

(b) The supported employment plan, including annual revisions, must be submitted as a supplement to the State plan.

(Authority: Sections 101(a)(25) and 635(a) of the Act; 29 U.S.C. 721(a)(25))

**§ 361.35 Strategic plan.**

(a) The State plan must assure that the State—

(1) Has developed and implemented a strategic plan for expanding and improving vocational rehabilitation services for individuals with disabilities on a statewide basis in accordance with subpart D of this part; and

(2) Will use at least 1.5 percent of its allotment under this program for expansion and improvement activities in accordance with § 361.73(b).

(b) The strategic plan must be submitted as a supplement to the State plan.

(Authority: Sections 101(a)(34) and 120 of the Act; 29 U.S.C. 721(a)(34) and 740)

**§ 361.36 [Reserved]****§ 361.37 Establishment and maintenance of information and referral resources.**

(a) *General provisions.* The State plan must assure that—

(1) The designated State unit will establish and maintain information and referral programs adequate to ensure that individuals with disabilities within the State are given accurate information about State vocational rehabilitation services, independent living services, vocational rehabilitation services available from other agencies, organizations, and community rehabilitation programs, and, to the extent possible, other Federal and State services and programs that assist individuals with disabilities, including client assistance and other protection and advocacy programs;

(2) The State unit will refer individuals with disabilities to other appropriate Federal and State programs that might be of benefit to them; and

(3) The State unit will use existing information and referral systems in the State to the greatest extent possible.

(b) *Appropriate modes of communication.* The State plan further must assure that information and referral programs use appropriate modes of communication.

(c) *Special Circumstances.* If the State unit is operating under an order of selection for services, the State unit may elect to establish an expanded information and referral program that includes referral for job placements for those eligible individuals who are not in the priority category or categories to receive vocational rehabilitation

services under the State's order of selection. If a State unit elects to establish this kind of program, the State plan must include—

(1) A description of how the expanded information and referral program will be established and how it will function, including the level of commitment of State unit staff and resources;

(2) An assurance that, in carrying out this program, the State unit will not use case services funds that are needed to provide vocational rehabilitation services under individualized written rehabilitation programs for eligible individuals in the priority category or categories receiving services under the State unit's order of selection; and

(3) A description of the method to be used by the State unit to track the results of the expanded information and referral program, including the State unit's procedures for identifying those eligible individuals who achieve an employment outcome through participation in the expanded information and referral program.

(Authority: Section 101(a)(22) of the Act; 29 U.S.C. 721(a)(22))

**§ 361.38 Protection, use, and release of personal information.**

(a) *General provisions.*

(1) The State plan must assure that the State agency and the State unit will adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that—

(i) Specific safeguards protect current and stored personal information;

(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 State unit 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 State unit intends to use or release the information;

(C) Explanation of whether providing requested information to the State unit is mandatory or voluntary and the

effects of not providing requested information;

(D) Identification of those situations in which the State 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 State 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 State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and shall establish policies and procedures governing access to records.

(b) *State program use.* All personal information in the possession of the State agency or the designated State unit must be used only for the purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the program, the State 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 (c)(3) of this section, if requested in writing by an applicant or eligible individual, the State unit shall release all requested information in that individual's record of services to the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided 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.

(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.

(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 vocational rehabilitation program, or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if 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 State unit may release personal information to another agency or organization 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 State unit determines may be harmful to the individual may be released if the other agency or organization assures the State 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 State unit shall release personal information if required by Federal law or regulations.

(4) The State unit shall 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 judicial officer.

(5) The State 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 101(a)(6)(A) of the Act; 29 U.S.C. 711(c) and 721(a)(6)(A))

#### § 361.39 State-imposed requirements.

The State plan must assure that the designated State unit identifies upon request those regulations and policies relating to the administration or operation of its vocational rehabilitation program that are State-imposed, including any regulations or policy based on State interpretation of any Federal law, regulations, or guideline.

(Authority: Section 17 of the Act; 29 U.S.C. 716)

#### § 361.40 Reports.

The State plan must assure that the State unit—

(a) Will submit reports in the form and detail and at the time required by the Secretary, including reports required under sections 13, 14, and 101(a)(10) of the Act; and

(b) Will comply with any requirements necessary to ensure the correctness and verification of those reports.

(Authority: Section 101(a)(10) of the Act; 29 U.S.C. 721(a)(10))

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#### § 361.41 Processing referrals and applications.

(a) *Referrals.* The State plan must assure that the designated State unit has established and implemented standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services. The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

(b) *Applications.* (1) The State plan must assure that once an individual has submitted an application for vocational rehabilitation services, an eligibility determination will be made within 60 days, unless—

(i) Exceptional and unforeseen circumstances beyond the control of the agency preclude a determination within 60 days and the individual is so notified and agrees that an extension of time is warranted; or

(ii) An extended evaluation is necessary, in accordance with § 361.42(d).

(2) An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate, has completed and signed an agency application form or has otherwise requested services and has provided

information necessary to initiate an assessment to determine eligibility and priority for services.

(3) The designated State unit shall ensure that its application forms are widely available throughout the State.

(Authority: Sections 101(a)(6)(A) and 102(a)(5)(A) of the Act; 29 U.S.C. 721(a)(6)(A) and 722(a)(5)(A))

**§ 361.42 Assessment for determining eligibility and priority for services.**

The State plan must assure that, in order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the State is operating under an order of selection), the designated State unit will conduct an assessment for determining eligibility and priority for services. The assessment must be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the following provisions:

(a) *Eligibility requirements.* (1) *Basic requirements.* The State plan must assure that the State unit's determination of an applicant's eligibility for vocational rehabilitation services is based only on the following requirements:

(i) A determination that the applicant has a physical or mental impairment, as determined by qualified personnel licensed or certified in accordance with State law or regulation.

(ii) A determination that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant.

(iii) A determination, in accordance with paragraph (a)(2) of this section, that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(iv) A determination that the applicant requires vocational rehabilitation services to prepare for, enter into, engage in, or retain gainful employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

(2) *Presumption of benefit.* The State plan must assure that the designated State unit will presume that an applicant who meets the eligibility requirements in paragraphs (a)(1) (i) and (ii) of this section can benefit in terms of an employment outcome unless it determines, based on clear and convincing evidence, that the applicant is incapable of benefitting in terms of an

employment outcome from vocational rehabilitation services.

(3) *Limited presumption for Social Security beneficiaries.* The State plan must assure that, if an applicant has appropriate evidence, such as an award letter, that establishes the applicant's eligibility for Social Security benefits under Title II or Title XVI of the Social Security Act, the designated State unit will presume that the applicant—

(i) Meets the eligibility requirements in paragraphs (a)(1) (i) and (ii) of this section; and

(ii) Has a severe physical or mental impairment that seriously limits one or more functional capacities in terms of an employment outcome.

(b) *Prohibited factors.* The State plan must assure that—

(1) No duration of residence requirement is imposed that excludes from services any applicant who is present in the State;

(2) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability;

(3) The eligibility requirements are applied without regard to the age, gender, race, color, creed, or national origin of the applicant; and

(4) The eligibility requirements are applied without regard to the particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

(c) *Review and assessment of data for eligibility determination.* Except as provided in paragraph (d) of this section, the designated State unit shall base its determination of each of the basic eligibility requirements in paragraph (a) of this section on—

(1) A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, information used by the Social Security Administration, and determinations made by officials of other agencies; and

(2) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including assistive technology devices and services and worksite assessments, that are necessary to determine whether an individual is eligible.

(d) *Extended evaluation for individuals with severe disabilities.* (1) Prior to any determination that an individual with a severe disability is

incapable of benefitting from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability, the State unit shall conduct an extended evaluation to determine whether or not there is clear and convincing evidence to support such a determination.

(2) During the extended evaluation period, which may not exceed 18 months, vocational rehabilitation services must be provided in the most integrated setting possible, consistent with the informed choice of the individual.

(3) During the extended evaluation period, the State unit shall develop a written plan for determining eligibility and for determining the nature and scope of services required to achieve an employment outcome. The State unit may provide during this period only those services that are necessary to make these two determinations.

(4) The State unit shall assess the individual's progress as frequently as necessary, but at least once every 90 days, during the extended evaluation period.

(5) The State unit shall terminate extended evaluation services at any point during the 18-month extended evaluation period if the State unit determines that—

(i) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or

(ii) There is clear and convincing evidence that the individual is incapable of benefitting from vocational rehabilitation services in terms of an employment outcome.

(e) *Data for determination of priority for services under an order of selection.* If the State unit is operating under an order of selection for services, as provided in § 361.36, the State unit shall base its priority assignments on—

(1) A review of the data that was developed under paragraphs (c) and (d) of this section to make the eligibility determination; and

(2) An assessment of additional data, to the extent necessary.

(Authority: Sections 7(22)(A)(ii), 7(22)(C)(iii), 101(a)(9)(A), 101(a)(14), 101(a)(31), 102(a)(1), 102(a)(2), 102(a)(3), and 102(a)(4) of the Act; 29 U.S.C. 706(22)(A)(ii), 706(22)(C)(iii), 721(a)(9)(a), 721(a)(14), 721(a)(31), 722(a)(1), 722(a)(2), 722(a)(3), and 722(a)(4))

Note: "Clear and convincing evidence" means that the designated State unit must have a high degree of certainty before it can conclude that an individual is incapable of benefitting from services in terms of an employment outcome. The "clear and convincing" standard constitutes the highest standard used in our civil system of law and

is to be individually applied on a case-by-case basis. The term "clear" means unequivocal. Given these requirements, a review of existing information generally would not provide clear and convincing evidence. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of "clear and convincing evidence" must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings.

Note: Under the statute and paragraph (a)(1)(iv) of § 361.42, an individual with a disability is not eligible for vocational rehabilitation services if the individual does not require the services to prepare for, enter, engage in, or retain gainful employment. The following examples illustrate how an individual with a disability may or may not meet this final eligibility criterion. The examples are purely illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment. State units shall determine eligibility for vocational rehabilitation services on a case-by-case basis, taking into account those individual circumstances relating to an individual's strengths, resources, priorities, concerns, abilities, and capabilities.

*Example:* An individual with a disability who is not currently employed and is unable to obtain employment consistent with the individual's abilities and capabilities would likely meet this eligibility criterion.

*Example:* An individual with a disability who is already employed in a setting consistent with the individual's abilities and capabilities, but who desires to change jobs for reasons unrelated to the individual's disability, would likely not meet this eligibility criterion.

*Example:* An individual with a disability who is already employed, but not in a setting consistent with the individual's abilities and capabilities, and who desires to obtain new employment that is consistent with his or her abilities and capabilities, would meet this eligibility criterion.

*Example:* An individual with a disability who is currently employed, but is in jeopardy of losing that employment due to disability-related factors (e.g., the individual's disability is progressive and results in additional functional limitations), would meet this eligibility criterion.

*Example:* An individual with a disability who was previously employed in a setting consistent with the individual's abilities and capabilities, who lost that employment for reasons unrelated to the disability, and whose job skills are transferable would likely not meet this eligibility criterion.

*Example:* An individual with a disability whose disability is of a temporary nature (e.g., an allowed Social Security beneficiary

who has been assigned a diared date (date of a follow-up review to determine whether the individual has recovered medically) because his or her disability is expected to improve within 12 months) might not meet this eligibility criterion.

#### **§ 361.43 Procedures for ineligibility determination.**

The State plan must assure that if the State unit determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized written rehabilitation program is no longer eligible for services, the State unit shall—

(a) Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;

(b) Inform the individual in writing, or by appropriate modes of communication, of the ineligibility determination, including the reasons for that determination, the requirements under this section, and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of a determination by the rehabilitation counselor or coordinator in accordance with § 361.57;

(c) Provide the individual with a description of services available from a client assistance program established under 34 CFR part 370 and information on how to contact that program; and

(d) Review the ineligibility determination—  
(1) Within 12 months, unless the individual has refused the review, is no longer present in the State, or the individual's whereabouts are unknown; or

(2) In the case of an ineligibility determination based on a determination that the individual is incapable of achieving an employment outcome, within 12 months in accordance with paragraph (d)(1) of this section and annually thereafter if requested by the individual or, if appropriate, by the individual's representative.

(Authority: Sections 101(a)(9)(D), 102(a)(6), and 102(c) of the Act; 29 U.S.C. 721(a)(9), 722(a)(6), and 722(c))

#### **§ 361.44 Closure without eligibility determination.**

The State plan must assure that the State unit may not close an applicant's case prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete an assessment for determining eligibility and priority for services, and the State unit has made a reasonable number of attempts to

contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

(Authority: Sections 12(c) and 101(a)(6)(A) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

#### **§ 361.45 Development of the individualized written rehabilitation program.**

(a) *Purpose.* The State plan must assure that the State unit conducts an assessment for determining vocational rehabilitation needs for each eligible individual or, if the State is operating under an order of selection, for each eligible individual to whom the State is able to provide services. The purpose of this assessment is to determine the long-term vocational goal, intermediate rehabilitation objectives, and the nature and scope of vocational rehabilitation services to be included in the IWRP, which must be designed to achieve an employment outcome that is consistent with the individual's unique strengths, priorities, concerns, abilities, capabilities, and career interests.

(b) *Procedural requirements.* The State plan must assure that—

(1) The IWRP is developed jointly, agreed to, and signed by the vocational rehabilitation counselor or coordinator and the individual or, as appropriate, the individual's representative within the framework of a counseling and guidance relationship;

(2) The State unit has established and implemented standards for the prompt development of IWRPs for the individuals identified under paragraph (a) of this section, including timelines that take into consideration the needs of the individual;

(3) The State unit advises each individual or, as appropriate, the individual's representative of all State unit procedures and requirements affecting the development and review of an IWRP, including the availability of appropriate modes of communication;

(4) In developing an IWRP for a transitioning student, the State unit considers the student's individualized education program;

(5) The State unit reviews the IWRP with the individual or, as appropriate, the individual's representative as often as necessary, but at least once each year to assess the individual's progress in meeting the objectives identified in the IWRP;

(6) The State unit incorporates into the IWRP any revisions that are necessary to reflect changes in the individual's vocational goal, intermediate objectives, or vocational rehabilitation needs, after obtaining the agreement and signature of the individual or, as appropriate, the

agreement and signature of the individual's representative; and

(7) The State unit promptly provides each individual or, as appropriate, the individual's representative, a copy of the IWRP and its amendments in the native language, or appropriate mode of communication, of the individual or, as appropriate, of the individual's representative.

(c) Data for preparing the IWRP.

(1) *Preparation without comprehensive assessment.* To the extent possible, the vocational goal, intermediate objectives, and the nature and scope of rehabilitation services to be included in the individual's IWRP must be determined based on the data used for the assessment of eligibility and priority for services under § 361.42.

(2) *Preparation based on comprehensive assessment.*

(i) If additional data are necessary to prepare the IWRP, the designated State unit shall conduct a comprehensive assessment of the unique strengths, resources, priorities, interests, and needs, including the need for supported employment services of an eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual.

(ii) The comprehensive assessment must be limited to information that is necessary to identify the rehabilitation needs of the individual and develop the IWRP and may, to the extent needed, include—

(A) An analysis of pertinent medical, psychiatric, psychological, neuropsychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, and related functional limitations, that affect the employment and rehabilitation needs of the individual;

(B) An analysis of the individual's personality, career interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities;

(C) An appraisal of the individual's patterns of work behavior and services needed to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance; and

(D) An assessment, through provision of rehabilitation technology services, of the individual's capacities to perform in a work environment, including in an integrated setting, to the maximum extent feasible and consistent with the individual's informed choice.

(iii) In preparing a comprehensive assessment, the State unit shall use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information, including information that is provided by the individual, the family of the individual, and education agencies.

(Authority: Sections 7(22)(B), 102(b)(1)(A), and 102(b)(2); 29 U.S.C. 706(5), 721(a)(9), 722, and 723(a)(1))

**§ 361.46 Content of the individualized written rehabilitation program.**

(a) *General requirements.* The State plan must assure that each IWRP includes, as appropriate, statements concerning—

(1) The specific long-term vocational goal, which must be based on the assessment for determining vocational rehabilitation needs, including the individual's career interests, and must be, to the extent appropriate and consistent with the informed choice of the individual, in an integrated setting;

(2) The specific and measurable intermediate rehabilitation objectives related to the attainment of the long-term vocational goal, based on the assessment for determining vocational rehabilitation needs and consistent with the informed choice of the individual;

(3) The specific rehabilitation services under § 361.48 to be provided to achieve the established intermediate rehabilitation objectives, including, if appropriate, rehabilitation technology services and on-the-job and related personal assistance services;

(4) The projected dates for the initiation of each vocational rehabilitation service, the anticipated duration of each service, and the projected date for the achievement of the individual's vocational goal;

(5) A procedure and schedule for periodic review and evaluation of progress toward achieving intermediate rehabilitation objectives based upon objective criteria and a record of these reviews and evaluations;

(6) How, in the words of the individual or, as appropriate, in the words of the individual's representative, the individual was—

(i) Informed about and involved in choosing among alternative goals, objectives, services, providers, and methods used to procure or provide services; and

(ii) Provided information regarding the availability and qualifications of alternative providers of services;

(7) The terms and conditions for the provision of vocational rehabilitation services, including—

(i) The responsibilities of the individual in implementing the IWRP;

(ii) The extent of the individual's participation in the cost of services;

(iii) The extent to which goods and services will be provided in the most integrated settings possible, consistent with the informed choices of the individual;

(iv) The extent to which comparable services and benefits are available to the individual under any other program; and

(v) The entity or entities that will provide the services and the process used to provide or procure the services;

(8) The rights of the individual under this part and the means by which the individual may express and seek remedy for any dissatisfaction, including the opportunity for a review of rehabilitation counselor or coordinator determinations under § 361.57;

(9) The availability of a client assistance program established under 34 CFR part 370; and

(10) The basis on which the individual has been determined to have achieved an employment outcome.

(b) *Supported employment placements.* The State plan must assure that the IWRP for individuals with the most severe disabilities for whom a vocational goal in a supported employment setting has been determined to be appropriate will also contain—

(1) A description of the supported employment services to be provided by the State unit; and

(2) A description of the extended services needed and identification of the source of extended services or, in the event that identification of the source is not possible at the time the IWRP is developed, a statement explaining the basis for concluding that there is a reasonable expectation that services will become available.

(c) *Post-employment services.* The State plan must assure that the IWRP for each individual contains statements concerning—

(1) The expected need for post-employment services, based on an assessment during the development of the IWRP;

(2) A reassessment of the need for post-employment services prior to the determination that the individual has achieved an employment outcome;

(3) A description of the terms and conditions for the provision of any post-employment services, including the anticipated duration of those services, subsequent to the achievement of an employment outcome by the individual; and

(4) If appropriate, a statement of how post-employment services will be provided or arranged through cooperative agreements with other service providers.

(d) *Coordination of services for transitioning students.* The State plan must assure that the IWRP for a transitioning student is coordinated with the individualized education program (IEP) for that individual in terms of the goals, objectives, and services identified in the IEP.

(e) *Ineligibility.* The State plan must assure that the decision that an individual is not capable of achieving an employment outcome and is no longer eligible to receive services under an IWRP is made in accordance with the requirements in § 361.43. The decision, and the reasons on which the decision was based, must be included as an amendment to the IWRP.

(Authority: Sections 101(a)(9), 102(b)(1), 102(c), and 635(b)(6) of the Act; 29 U.S.C. 721(a)(9), 722, and 795n)

#### § 361.47 Record of services.

The State plan must assure that the designated State unit maintains for each applicant or eligible individual a record of services that includes, to the extent pertinent, the following documentation:

(a) If an applicant has been determined to be an eligible individual, documentation supporting that determination in accordance with the requirements in § 361.42.

(b) If an applicant has been determined to be ineligible, documentation supporting that determination in accordance with the requirements of § 361.43.

(c) Documentation supporting the determination that an individual has a severe disability or a most severe disability.

(d) If an individual with a severe disability requires an extended evaluation in order to determine whether the individual is an eligible individual, documentation supporting the need for an extended evaluation, documentation supporting the periodic assessments conducted during the extended evaluation, and the written plan developed during the extended evaluation, in accordance with the requirements in § 361.42(d).

(e) The IWRP, and any amendments to the IWRP, containing the information required under § 361.46.

(f) In accordance with § 361.45(a), documentation supporting the development of the long-term vocational goal, intermediate rehabilitation objectives, and nature and scope of services included in the individual's IWRP and, for individuals who are

transitioning students, in the individual's IEP.

(g) In the event that an individual's IWRP provides for services or a job placement in a non-integrated setting, a justification for that non-integrated setting.

(h) Documentation of the reason for terminating services to an individual and, if an individual has achieved an employment outcome, the basis on which the requirements of § 361.56 were determined to be met.

(i) Documentation concerning any action and decision resulting from a request by an individual for review of a rehabilitation counselor or coordinator determination under § 361.57.

(Authority: Sections 101(a)(6) and 101(a)(9) of the Act; 29 U.S.C. 721(a)(6) and 721(a)(9))

#### § 361.48 Scope of vocational rehabilitation services for individuals with disabilities.

(a) The State plan must assure that, as appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, the following vocational rehabilitation services are available:

(1) Assessment for determining eligibility and priority for services in accordance with § 361.42.

(2) Assessment for determining vocational rehabilitation needs in accordance with § 361.45.

(3) Vocational counseling and guidance.

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

(5) Physical and mental restoration services in accordance with the definition of that term in § 361.5(b)(35).

(6) Vocational and other training services, including personal and vocational adjustment training, 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) may be paid for with funds under this part unless maximum efforts have been made by the State unit to secure grant assistance in whole or in part from other sources to pay for that training.

(7) Maintenance, in accordance with the definition of that term in § 361.5(b)(31).

(8) Transportation in connection with the rendering of any vocational rehabilitation service and in accordance

with the definition of that term in § 361.5(b)(50).

(9) 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.

(10) Interpreter services for individuals who are deaf and tactile interpreting services for individuals who are deaf-blind.

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

(12) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate public service employment.

(13) Job search and placement assistance and job retention services.

(14) Supported employment services in accordance with the definition of that term in § 361.5(b)(46).

(15) Personal assistance services in accordance with the definition of that term in § 361.5(b)(34).

(16) Post-employment services in accordance with the definition of that term in § 361.5(b)(37).

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

(18) Rehabilitation technology in accordance with the definition of that term in § 361.5(b)(39), including vehicular modification, telecommunications, sensory, and other technological aids and devices.

(19) Transition services in accordance with the definition of that term in § 361.5(b)(47).

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

(b) The State plan also must describe annually—

(1) The manner in which a broad range of rehabilitation technology services will be provided at each stage of the rehabilitation process and on a statewide basis;

(2) The training that will be provided to vocational rehabilitation counselors, client assistance personnel, and other related services personnel on the provision of rehabilitation technology services; and

(3) The manner in which on-the-job and other related personal assistance services will be provided to assist individuals while they are receiving vocational rehabilitation services, including a description of strategies for developing statewide capacity to provide those services to an increasing number of individuals to improve their employment potential.

(Authority: Sections 101(a)(5)(C), 101(a)(26), and 103(a) of the Act; 29 U.S.C. 721(a)(5)(C), 721(a)(26), and 723(a))

**§ 361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities.**

(a) The State plan may also provide for the following vocational rehabilitation services for the benefit of groups of individuals with disabilities:

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

(2) 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, satellite, tactile-vibratory devices, and similar systems, as appropriate.

(3) Special services to provide recorded material for individuals who are blind, captioned television, films or video cassettes for individuals who are deaf, tactile materials for individuals who are deaf-blind, and other special services that provide information through tactile, vibratory, auditory, and visual media.

(4) Technical assistance and support services, such as job site modification and other reasonable accommodations, to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990 and that are seeking to employ individuals with disabilities.

(5) In the case of small business enterprises operated by individuals with the most severe disabilities under the supervision of the State unit, including enterprises established under the Randolph-Sheppard program, management services and supervision, initial stocks and supplies, and initial operating expenses, in accordance with the following requirements:

(i) "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 the most severe disabilities. "Management services and supervision" may be provided throughout the operation of the small business enterprise.

(ii) "Initial stocks and supplies" includes those items necessary to the establishment of a new business enterprise during the initial establishment period, which shall not exceed six months.

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

(iv) If the State plan provides for these services, it must contain an assurance that only individuals with the most severe disabilities will be selected to participate in this supervised program.

(v) If the State plan provides for these services and the State unit chooses to set aside funds from the proceeds of the operation of the small business enterprises, the State plan also must assure that the State unit maintains 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.

(6) Other services that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the IWRP of any one individual. Examples of those other services might include the purchase or lease of a bus to provide transportation to a group of applicants or eligible individuals or the purchase of equipment or instructional materials that would benefit a group of applicants or eligible individuals.

(b) If the State plan provides for vocational rehabilitation services for groups of individuals, the State plan must assure that the designated State unit maintains 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 benefitting from those services.

(Authority: Section 103(b) of the Act; 29 U.S.C. 711(c), 723(b), 721(a)(6))

**§ 361.50 Written policies governing the provision of services.**

The State plan must assure that the State unit develops and maintains

written policies covering the nature and scope of each of the vocational rehabilitation services specified in § 361.48 and § 361.49 and the criteria under which each service is provided. The policies must ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual's IWRP. 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 employment outcome. The policies must be developed in accordance with the following provisions:

(a) *Out-of-State services.* (1) The State unit may establish a preference for in-State services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an out-of-State service at a higher cost than an in-State service, if either service would meet the individual's rehabilitation needs, the designated State unit is not responsible for those costs in excess of the cost of the in-State service.

(2) The State unit may not establish an absolute prohibition on the provision of out-of-State services.

(b) *Payment for services.* (1) The State unit shall establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

(2) The State unit may establish a reasonable fee schedule designed to ensure the lowest reasonable cost to the program for each service, provided that the schedule is—

(i) Not so low as to effectively deny an individual a necessary service; and

(ii) Not absolute and permits exceptions so that individual needs can be addressed.

(3) The State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.

(c) *Duration of services.* (1) The State unit may establish reasonable time periods for the provision of services provided that the time periods are—

(i) Not so short as to effectively deny an individual a necessary service; and

(ii) Not absolute and permit exceptions so that individual needs can be addressed.

(2) The State unit may not establish absolute 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 an individual basis and reflected in that individual's IWRP.

(d) *Authorization of services.* The State unit shall establish policies related to the timely authorization of services, including conditions under which verbal authorization can be given.

(Authority: Sections 12(c), 12(e)(2)(A), and 101(a)(6) of the Act and 29 U.S.C. 711(c), 711(e)(2)(A), and 721(a)(6))

**§ 361.51 Written standards for facilities and providers of services.**

The State plan must assure that the designated State unit establishes, maintains, makes available to the public, and implements written minimum standards for the various types of facilities and providers of services used by the State unit in providing vocational rehabilitation services, in accordance with the following requirements:

(a) *Accessibility of facilities.* Any facility in which vocational rehabilitation services are provided must be accessible to individuals receiving services and must comply with the requirements of the Architectural Barriers Act of 1968, the Uniform Accessibility Standards and their implementing regulations in 41 CFR part 101, subpart 101-19.6, the American National Standards Institute, No. A117.1-1986, the Americans with Disabilities Act of 1990, and section 504 of the Act.

(b) *Personnel standards.* (1) *Qualified personnel.* Providers of vocational rehabilitation services shall use qualified personnel, in accordance with any applicable national or State-approved or recognized certification, licensing, registration or other comparable requirements (including State personnel requirements) that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services.

(2) *Affirmative action.* Providers of vocational rehabilitation services shall take affirmative action to employ and advance in employment qualified individuals with disabilities.

(3) *Special communication needs personnel.* Providers of vocational rehabilitation services shall—

(i) Include among their personnel, or obtain the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability; and

(ii) Ensure that appropriate modes of communication for all applicants and eligible individuals are used.

(c) *Fraud, waste, and abuse.* Providers of vocational rehabilitation services shall have adequate and appropriate

policies and procedures to prevent fraud, waste, and abuse.

(Authority: Sections 12(e)(2) (B), (D), and (E) and 101(a)(6)(B) of the Act; 29 U.S.C. 711(e) and 721(a)(6)(B))

**§ 361.52 Opportunity to make informed choices regarding the selection of services and providers.**

The State plan must describe the manner in which the State unit will provide each applicant, including individuals who are receiving services during an extended evaluation, and each eligible individual the opportunity to make informed choices throughout the vocational rehabilitation process in accordance with the following requirements:

(a) Each State unit, in consultation with its State Rehabilitation Advisory Council, if it has one, shall develop and implement policies and procedures that enable each individual to make an informed choice with regard to the selection of a long-term vocational goal, intermediate rehabilitation objectives, vocational rehabilitation services, including assessment services, and service providers.

(b) In developing an individual's IWRP, the State unit shall provide the individual, or assist the individual in acquiring, information necessary to make an informed choice about the specific services, including the providers of those services, that are needed to achieve the individual's vocational goal. This information must include, at a minimum, information relating to the cost, accessibility, and duration of potential services, the level of consumer satisfaction with those services, the qualifications of potential service providers, the types of services offered by those providers, and the degree to which services are provided in integrated settings.

(c) In providing, or assisting the individual in acquiring, the information required under paragraph (b) of this section, the State unit may use, but is not limited to, the following methods or sources of information:

(1) State or regional lists of services and service providers.

(2) Periodic consumer satisfaction surveys and reports.

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

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

(Authority: Sections 12(e)(1) and 12(e)(2)(C) of the Act; 29 U.S.C. 711(e))

**§ 361.53 Availability of comparable services and benefits.**

(a) The State plan must assure that—

(1) Prior to providing any vocational rehabilitation services to an eligible individual, or to members of the individual's family, except those services listed in paragraph (b) of this section, the State unit shall determine whether comparable services and benefits exist under any other program and whether those services and benefits are available to the individual;

(2) If comparable services or benefits exist under any other program and are available to the eligible individual within a reasonable period of time so that the intermediate rehabilitation objectives of the individual's IWRP can be met, the State unit shall use those comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation services; and

(3) If comparable services or benefits exist under any other program, but are not available to the individual within a reasonable period of time, the State unit shall provide vocational rehabilitation services until those comparable services and benefits become available.

(b) A prior determination of the availability of comparable services and benefits is not required in connection with the provision of any of the following services:

(1) Assessment for determining eligibility and priority for services.

(2) Assessment for determining vocational rehabilitation needs.

(3) Vocational counseling, guidance, and referral services.

(4) Vocational and other training services, such as personal and vocational adjustment training, books (including alternative format books accessible by computer and taped books), tools, and other training materials in accordance with § 361.48(a)(6).

(5) Placement services.

(6) Rehabilitation technology.

(7) Post-employment services consisting of the services listed under paragraphs (b) (1) through (6) of this section.

(c) The requirements of paragraph (a) of this section also do not apply if—

(1) The determination of the availability of comparable services and benefits under any other program would delay the provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional; or

(2) An immediate job placement would be lost due to a delay in the

provision of comparable services and benefits.

(Authority: Section 101(a)(8) of the Act; 29 U.S.C. 721(a)(8))

**§ 361.54 Participation of individuals in cost of services based on financial need.**

(a) *No Federal requirement.* There is no Federal requirement that the financial need of individuals be considered in the provision of vocational rehabilitation services.

(b) *State unit requirements.* (1) The State unit may choose to consider the financial need of eligible individuals or individuals who are receiving services during an extended evaluation for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, other than those services identified in paragraph (b)(3) of this section.

(2) If the State unit chooses to consider financial need—

(i) It shall maintain written policies covering the determination of financial need;

(ii) The State plan must specify the types of vocational rehabilitation services for which the unit has established a financial needs test;

(iii) The policies must be applied uniformly to all individuals in similar circumstances;

(iv) The policies may require different levels of need for different geographic regions in the State, but must be applied uniformly to all individuals within each geographic region; and

(v) The policies must ensure that the level of an individual's participation in the cost of vocational rehabilitation services is—

(A) Reasonable;

(B) Based on the individual's financial need; and

(C) Not so high as to effectively deny the individual a necessary service.

(3) The State plan must assure that no financial needs test is applied and no financial participation is required as a condition for furnishing the following vocational rehabilitation services:

(i) Assessment for determining eligibility and priority for services, except those non-assessment services that are provided during an extended evaluation for an individual with a severe disability under § 361.42(d).

(ii) Assessment for determining vocational rehabilitation needs.

(iii) Vocational counseling, guidance, and referral services.

(iv) Placement services.

(Authority: Section 12(c) of the Act; 29 U.S.C. 711(c))

**§ 361.55 Review of extended employment in community rehabilitation programs or other employment under section 14(c) of the Fair Labor Standards Act.**

The State plan must assure that the State unit—

(a) Reviews and re-evaluates at least annually the status of each individual determined by the State unit to have achieved an employment outcome in an extended employment setting in a community rehabilitation program or other employment setting in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act. This review or re-evaluation must include input from the individual or, in an appropriate case, the individual's representative to determine the interests, priorities, and needs of the individual for employment in, or training for, competitive employment in an integrated setting in the labor market;

(b) Makes maximum effort, including the identification of vocational rehabilitation services, reasonable accommodations, and other support services, to enable the eligible individual to benefit from training in, or to be placed in employment in, an integrated setting; and

(c) Provides services designed to promote movement from extended employment to integrated employment, including supported employment, independent living, and community participation.

(Authority: Section 101(a)(16) of the Act; 29 U.S.C. 721(a)(16))

**§ 361.56 Individuals determined to have achieved an employment outcome.**

The State plan must assure that an individual is determined to have achieved an employment outcome only if the following requirements are met:

(a) The provision of services under the individual's IWRP has contributed to the achievement of the employment outcome.

(b) The employment outcome is consistent with the individual's abilities, capabilities, interests, and informed choice.

(c) The employment outcome is in the most integrated setting possible, consistent with the individual's informed choice.

(d) The individual has maintained the employment outcome for the duration of the probationary period established by the employer for its employees or, if the employer does not have an established probationary period, for a period of at least 90 days.

(e) The individual and the rehabilitation counselor or coordinator consider the employment outcome to be

satisfactory and agree that the individual is performing well on the job.

(Authority: Sections 12(c), 101(a)(6), and 106(a)(2) of the Act; 29 U.S.C. 711(c), 721(a)(6), and 726(a)(2))

**§ 361.57 Review of rehabilitation counselor or coordinator determinations.**

The State plan must contain procedures established by the director of the designated State unit to ensure that any applicant or eligible individual who is dissatisfied with any determinations made by a rehabilitation counselor or coordinator concerning the furnishing or denial of services may request timely review of those determinations. The procedures established by the director of the State unit must be in accordance with the following provisions:

(a) *Informal resolution.* The State unit may establish an informal process to resolve a request for review without conducting a formal hearing. However, a State's informal process must be conducted and concluded within the time period established under paragraph (c)(1) of this section for holding a formal hearing. If informal resolution is not successful, a formal hearing must be conducted by the end of this same period, unless the parties jointly agree to a delay.

(b) *Formal hearing procedures.* Except as provided in paragraph (e) of this section, the State unit shall establish formal review procedures that provide that—

(1) A hearing by an impartial hearing officer, selected in accordance with paragraph (d) of this section, must be held within the time period established under paragraph (c)(1) of this section, unless informal resolution was achieved prior to the expiration of the time period or the parties jointly agreed to a delay;

(2) The State unit may not institute a suspension, reduction, or termination of services being provided under an IWRP pending a final determination of the formal hearing under this paragraph or informal resolution under paragraph (a) of this section, unless the individual or, in an appropriate case, the individual's representative so requests or the agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual;

(3) The individual or, if appropriate, the individual's representative shall be afforded an opportunity to present additional evidence, information, and witnesses to the impartial hearing officer, to be represented by counsel or other appropriate advocate, and to examine all witnesses and other

relevant sources of information and evidence;

(4) The impartial hearing officer shall make a decision based on the provisions of the approved State plan, the Act, and Federal and State vocational rehabilitation regulations and policies and shall provide to the individual or, if appropriate, the individual's representative and to the director of the designated State unit a full written report of the findings and grounds for the decision within the time period established under paragraph (c)(2) of this section;

(5) If the director of the designated State unit decides to review the decision of the impartial hearing officer, the director shall notify in writing the individual or, if appropriate, the individual's representative of that intent within 20 days of the mailing of the impartial hearing officer's decision;

(6) If the director of the designated State unit fails to provide the notice required by paragraph (b)(5) of this section, the impartial hearing officer's decision becomes a final decision;

(7) The decision of the director of the designated State unit to review any impartial hearing officer's decision must be based on standards of review contained in written State unit policy;

(8) If the director of the designated State unit decides to review the decision of the impartial hearing officer, the director shall provide the individual or, if appropriate, the individual's representative an opportunity to submit additional evidence and information relevant to the final decision;

(9) The director may not overturn or modify a decision, or part of a decision, of an impartial hearing officer that supports the position of the individual unless the director concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous because it is contrary to the approved State plan, the Act, or Federal or State vocational rehabilitation regulations or policy;

(10) The director of the designated State unit shall make a final decision and provide a full report in writing of the decision, and of the findings and grounds for the decision, to the individual or, if appropriate, the individual's representative within the time period established under paragraph (c)(3) of this section;

(11) The director of the designated State unit may not delegate responsibility to make any final decision to any other officer or employee of the designated State unit; and

(12) Except for the time limitations established in paragraphs (b)(5) and

(c)(1) of this section, each State's review procedures may provide for reasonable time extensions for good cause shown at the request of a party or at the request of both parties.

(c) *Timelines.* Each State unit, in consultation with its State Rehabilitation Advisory Council, if it has one, shall develop and implement reasonable timelines for the prompt handling of appeals, including, at a minimum, timelines for—

(1) Holding a formal hearing after an individual's request for review;

(2) Rendering the decision of the impartial hearing officer after completion of the formal hearing; and

(3) Rendering the final decision of the director of the designated State unit after providing notice of intent to review the decision of the impartial hearing officer in accordance with paragraph (b)(5) of this section.

(d) *Selection of impartial hearing officers.* Except as provided in paragraph (e) of this section, the impartial hearing officer for a particular case must be selected—

(1) From among the pool of persons qualified to be an impartial hearing officer, as defined in § 361.5(b)(22), who are identified by the State unit, if the State unit is an independent commission, or jointly by the designated State unit and the State Rehabilitation Advisory Council, if the State has a Council; and

(2)(i) On a random basis; or  
(ii) By agreement between the director of the designated State unit and the individual or, if appropriate, the individual's representative.

(e) *State fair hearing board.* The provisions of paragraphs (b), (c), and (d) of this section are not applicable if the State has a fair hearing board that was established before January 1, 1985, that is authorized under State law to review rehabilitation counselor or coordinator determinations and to carry out the responsibilities of the director of the designated State unit under this section.

(f) *Informing affected individuals.* The State unit shall inform, through appropriate modes of communication, all applicants and eligible individuals of—

(1) Their right to review under this section, including the names and addresses of individuals with whom appeals may be filed; and

(2) The manner in which an impartial hearing officer will be selected consistent with the requirements of paragraph (d) of this section.

(g) *Data collection.* The director of the designated State unit shall collect and submit, at a minimum, the following data to the Secretary for inclusion each

year in the annual report to Congress under section 13 of the Act:

(1) The number of appeals to impartial hearing officers and the State director, including the type of complaints and the issues involved.

(2) The number of decisions by the State director reversing in whole or in part a decision of the impartial hearing officer.

(3) The number of decisions affirming the position of the dissatisfied individual assisted through the client assistance program, when that assistance is known to the State unit.

(Authority: Sections 102(b) and 102(d) of the Act; 29 U.S.C. 722(b) and 722(d))

### Subpart C—Financing of State Vocational Rehabilitation Programs

#### § 361.60 Matching requirements.

(a) *Federal share.* (1) *General.* Except as provided in paragraphs (a)(2) and (a)(3) of this section, the Federal share for expenditures made by the State unit under the State plan, including expenditures for the provision of vocational rehabilitation services, administration of the State plan, and the development and implementation of the strategic plan, is 78.7 percent.

(2) *Construction projects.* The Federal share for expenditures made for the construction of a facility for community rehabilitation program purposes may not be more than 50 percent of the total cost of the project.

(3) *Innovation and expansion grant activities.* The Federal share for the cost of innovation and expansion grant activities funded by appropriations under Part C of Title I of the Act is 90 percent.

(b) *Non-Federal share.* (1) *General.* Except as provided in paragraphs (b)(2) and (b)(3) of this section, expenditures made under the State plan to meet the non-Federal share under this section must be consistent with the provisions of 34 CFR 80.24.

(2) *Third party in-kind contributions.* Third party in-kind contributions specified in 34 CFR 80.24(a)(2) may not be used to meet the non-Federal share under this section.

(3) *Contributions by private entities.* Expenditures made from contributions by private organizations, agencies, or individuals that are deposited in the account of the State agency or sole local agency in accordance with State law and that are earmarked, under a condition imposed by the contributor, may be used as part of the non-Federal share under this section if the following requirements are met:

(i) The funds are earmarked for meeting in whole or in part the State's

share for establishing a community rehabilitation program or constructing a particular facility for community rehabilitation program purposes.

(ii) If the funds are earmarked for any other purpose under the State plan, the expenditures do not benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest. The Secretary does not consider a donor's receipt from the State unit of a grant, subgrant, or contract with funds allotted under this part to be a benefit for the purposes of this paragraph if the grant, subgrant, or contract is awarded under the State's regular competitive procedures.

(Authority: Sections 7(7), 101(a)(3), and 104 of the Act; 29 U.S.C. 706(7), 721(a)(3) and 724)

Note: The Secretary notes that contributions may be earmarked in accordance with paragraph (b)(3)(ii) of this section for providing particular services (e.g., rehabilitation technology services); serving individuals with certain types of disabilities (e.g., individuals who are blind), consistent with the State's order of selection, if applicable; providing services to special groups that State or Federal law permits to be targeted for services (e.g., transitioning students), consistent with the State's order of selection, if applicable; or carrying out particular types of administrative activities permissible under State law. Contributions also may be restricted to particular geographic areas to increase services or expand the scope of services that are available statewide under the State plan. However, if a contribution is earmarked for a restricted geographic area, expenditures from that contribution may be used to meet the non-Federal share requirement only if the State unit requests and the Secretary approves a waiver of statewideness, in accordance with § 361.26.

**§ 361.61 Limitation on use of funds for construction expenditures.**

No more than 10 percent of a State's allotment for any fiscal year under section 110 of the Act may be spent on the construction of facilities for community rehabilitation program purposes.

(Authority: Section 101(a)(17)(A) of the Act; 29 U.S.C. 721(a)(17)(A))

**§ 361.62 Maintenance of effort requirements.**

(a) *General requirements.* (1) The Secretary reduces the amount otherwise payable to a State for a fiscal year by the amount by which the total expenditures from non-Federal sources under the State plan for the previous fiscal year were less than the total of those

expenditures for the fiscal year two years prior to the previous fiscal year. For example, for fiscal year 1996, a State's maintenance of effort level is based on the amount of its expenditures from non-Federal sources for fiscal year 1994. Thus, if the State's non-Federal expenditures in 1996 are less than they were in 1994, the State has a maintenance of effort deficit, and the Secretary reduces the State's allotment in 1997 by the amount of that deficit.

(2) If, at the time the Secretary makes a determination that a State has failed to meet its maintenance of effort requirements, it is too late for the Secretary to make a reduction in accordance with paragraph (a)(1) of this section, then the Secretary recovers the amount of the maintenance of effort deficit through audit disallowance.

(b) *Specific requirements for construction of facilities.* If the State plan provides for the construction of a facility for community rehabilitation program purposes, the amount of the State's share of expenditures for vocational rehabilitation services under the plan, other than for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation purposes, must be at least equal to the expenditures for those services for the second prior fiscal year. If a State fails to meet the requirements of this paragraph, the Secretary recovers the amount of the maintenance of effort deficit through audit disallowance.

(c) *Separate State agency for vocational rehabilitation services for individuals who are blind.* If there is a separate part of the State plan administered by a separate State agency to provide vocational rehabilitation services for individuals who are blind—

(1) Satisfaction of the maintenance of effort requirements under paragraphs (a) and (b) of this section are determined based on the total amount of a State's non-Federal expenditures under both parts of the State plan; and

(2) If a State fails to meet any maintenance of effort requirement, the Secretary reduces the amount otherwise payable to the State for that fiscal year under each part of the plan in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan in the previous fiscal year were less than they were for that part of the plan for the fiscal year two years prior to the previous fiscal year.

(d) *Waiver or modification.* (1) The Secretary may waive or modify the maintenance of effort requirement in paragraph (a)(1) of this section if the

Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that—

(i) Cause significant unanticipated expenditures or reductions in revenue; and

(ii) Result in—

(A) A general reduction of programs within the State; or

(B) The State making substantial expenditures in the vocational rehabilitation program for long-term purposes due to the one-time costs associated with the construction of a facility for community rehabilitation program purposes, the establishment of a facility for community rehabilitation program purposes, or the acquisition of equipment.

(2) The Secretary may waive or modify the maintenance of effort requirement in paragraph (b) of this section or the 10 percent allotment limitation in § 361.61 if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster, that result in significant destruction of existing facilities and require the State to make substantial expenditures for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation program purposes in order to provide vocational rehabilitation services.

(3) A written request for waiver or modification, including supporting justification, must be submitted to the Secretary as soon as the State determines that an exceptional or uncontrollable circumstance will prevent it from making its required expenditures from non-Federal sources.

(Authority: Sections 101(a)(17) and 111(a)(2) of the Act; 29 U.S.C. 721(a)(17) and 731(a)(2))

**§ 361.63 Program income.**

(a) *Definition.* Program income means gross income received by the State that is directly generated by an activity supported under this part.

(b) *Sources.* Sources of program income include, but are not limited to, payments from the Social Security Administration for rehabilitating Social Security beneficiaries, payments received from workers' compensation funds, fees for services to defray part or all of the costs of services provided to particular individuals, and income generated by a State-operated community rehabilitation program.

(c) *Use of program income.* (1) Except as provided in paragraph (c)(2) of this section, program income, whenever earned, must be used for the provision of vocational rehabilitation services, the administration of the State plan, and developing and implementing the strategic plan. Program income is considered earned when it is received.

(2) Payments provided to a State from the Social Security Administration for rehabilitating Social Security beneficiaries may also be used to carry out programs under Part B of Title I of the Act (client assistance), Part C of Title I of the Act (innovation and expansion), Part C of Title VI of the Act (supported employment) and Title VII of the Act (independent living).

(3) The State is authorized to treat program income as—

(i) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 34 CFR 80.25(g)(2); or

(ii) A deduction from total allowable costs, in accordance with 34 CFR 80.25(g)(1).

(4) Program income may not be used to meet the non-Federal share requirement under § 361.60.

(Authority: Section 108 of the Act; 29 U.S.C. 728; 34 CFR 80.25)

**§ 361.64 Obligation of Federal funds and program income.**

(a) Except as provided in paragraph (b) of this section, any Federal funds, including reallocated funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated by the State unit by the beginning of the succeeding fiscal year and any program income received during a fiscal year that is not obligated by the State unit by the beginning of the succeeding fiscal year must remain available for obligation by the State unit during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year remain available for obligation in the succeeding fiscal year only to the extent that the State unit met the matching requirement for those Federal funds by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(Authority: Section 19 of the Act; 29 U.S.C. 718)

**§ 361.65 Allotment and payment of Federal funds for vocational rehabilitation services.**

(a) *Allotment.* (1) The allotment of Federal funds for vocational rehabilitation services for each State is computed in accordance with the requirements of section 110 of the Act, and payments are made to the State on

a quarterly basis, unless some other period is established by the Secretary.

(2) If the State plan designates one State agency to administer, or supervise the administration of, the part of the plan under which vocational rehabilitation services are provided for individuals who are blind and another State agency to administer the rest of the plan, the division of the State's allotment is a matter for State determination.

(b) *Reallotment.* (1) The Secretary determines not later than 45 days before the end of a fiscal year which States, if any, will not use their full allotment.

(2) As soon as possible, but not later than the end of the fiscal year, the Secretary reallocates these funds to other States that can use those additional funds during the current or subsequent fiscal year, provided the State can meet the matching requirement by obligating the non-Federal share of any reallocated funds in the fiscal year for which the funds were appropriated.

(3) Funds reallocated to another State are considered to be an increase in the recipient State's allotment for the fiscal year for which the funds were appropriated.

(Authority: Sections 110 and 111 of the Act; 29 U.S.C. 730 and 731)

**Subpart D—Strategic Plan for Innovation and Expansion of Vocational Rehabilitation Services**

**§ 361.70 Purpose of the strategic plan.**

The State shall prepare a statewide strategic plan, in accordance with § 361.71, to develop and use innovative approaches for achieving long-term success in expanding and improving vocational rehabilitation services, including supported employment services, provided under the State plan, including the supported employment supplement to the State plan required under 34 CFR part 363.

(Authority: Section 120 of the Act; 29 U.S.C. 740)

**§ 361.71 Procedures for developing the strategic plan.**

(a) *Public input.* (1) The State unit shall meet with and receive recommendations from members of the State Rehabilitation Advisory Council, if the State has a Council, and the Statewide Independent Living Council prior to developing the strategic plan.

(2) The State unit shall solicit public input on the strategic plan prior to or at the public meetings on the State plan, in accordance with the requirements of § 361.20.

(3) The State unit shall consider the recommendations received under

paragraphs (a)(1) and (a)(2) of this section and, if the State rejects any recommendations, shall include a written explanation of the reasons for those rejections in the strategic plan.

(4) The State unit shall develop a procedure to ensure ongoing comment from the Council or Councils, if applicable, as the plan is being implemented.

(b) *Duration.* The strategic plan must cover a three-year period.

(c) *Revisions.* The State unit shall revise the strategic plan on an annual basis to reflect the unit's actual experience over the previous year and input from the State Rehabilitation Advisory Council, if the State has a Council, individuals with disabilities, and other interested parties.

(d) *Dissemination.* The State unit shall disseminate widely the strategic plan to individuals with disabilities, disability organizations, rehabilitation professionals, and other interested persons and shall make the strategic plan available in accessible formats and appropriate modes of communication.

(Authority: Section 122 of the Act; 29 U.S.C. 742)

**§ 361.72 Content of the strategic plan.**

The strategic plan must include—

(a) A statement of the mission, philosophy, values, and principles of the vocational rehabilitation program in the State;

(b) Specific goals and objectives for expanding and improving the system for providing vocational rehabilitation services;

(c) Specific multi-faceted and systemic approaches for accomplishing the objectives, including interagency coordination and cooperation, that build upon state-of-the-art practices and research findings and that implement the State plan and the supplement to the State plan submitted under 34 CFR part 363;

(d) A description of the specific programs, projects, and activities funded under this subpart, including how the programs, projects, and activities accomplish the objectives of the subpart, and the resource allocation and budget for the programs, projects, and activities; and

(e) Specific criteria for determining whether the objectives have been achieved, including an assurance that the State will conduct an annual evaluation to determine the extent to which the objectives have been achieved and, if specific objectives have not been achieved, the reasons that the objectives have not been achieved and a description of alternative approaches that will be taken.

(Authority: Section 121 of the Act; 29 U.S.C. 741)

**§ 361.73 Use of funds.**

(a) A State unit shall use all grant funds received under Title I, Part C of the Act to carry out programs and activities that are identified under the State's strategic plan, including but not limited to those programs and activities that are identified in paragraph (b) of this section.

(b) A State unit shall use at least 1.5 percent of the funds received under section 111 of the Act to carry out one or more of the following types of programs and activities that are identified in the State's strategic plan:

(1) Programs to initiate or expand employment opportunities for individuals with severe disabilities in integrated settings that allow for the use of on-the-job training to promote the objectives of Title I of the Americans with Disabilities Act of 1990.

(2) Programs or activities to improve or expand the provision of employment services in integrated settings to individuals with sensory, cognitive, physical, and mental impairments who traditionally have not been served by the State vocational rehabilitation agency.

(3) Programs or activities to maximize the ability of individuals with disabilities to use rehabilitation technology in employment settings.

(4) Programs or activities that assist employers in accommodating, evaluating, training, or placing individuals with disabilities in the workplace of the employer consistent with the provisions of the Act and Title I of the Americans with Disabilities Act of 1990. These programs or activities may include short-term technical assistance or other effective strategies.

(5) Programs or activities that expand and improve the extent and type of an individual's involvement in the review and selection of his or her training and employment goals.

(6) Programs or activities that expand and improve opportunities for career

advancement for individuals with severe disabilities.

(7) Programs, projects, or activities designed to initiate, expand, or improve working relationships between vocational rehabilitation services provided under Title I of the Act and independent living services provided under Title VII of the Act.

(8) Programs, projects, or activities designed to improve functioning of the system for delivering vocational rehabilitation services and to improve coordination and working relationships with other State agencies and local public agencies, business, industry, labor, community rehabilitation programs, and centers for independent living, including projects designed to—

(i) Increase the ease of access to, timeliness of, and quality of vocational rehabilitation services through the development and implementation of policies, procedures, systems, and interagency mechanisms for providing vocational rehabilitation services;

(ii) Improve the working relationships between State vocational rehabilitation agencies and other State agencies, centers for independent living, community rehabilitation programs, educational agencies involved in higher education, adult basic education, and continuing education, and businesses, industry, and labor organizations, in order to create and facilitate cooperation in—

(A) Planning and implementing services; and

(B) Developing an integrated system of community-based vocational rehabilitation services that includes appropriate transitions between service systems; and

(iii) Improve the ability of professionals, advocates, business, industry, labor, and individuals with disabilities to work in cooperative partnerships to improve the quality of vocational rehabilitation services and job and career opportunities for individuals with disabilities.

(9) Projects or activities that ensure that the annual evaluation of the

effectiveness of the program in meeting the goals and objectives in the State plan, including the system for evaluating the performance of rehabilitation counselors, coordinators, and other personnel used in the State, facilitates and does not impede the accomplishment of the purpose of this part, including serving individuals with the most severe disabilities.

(10) Projects or activities to support the initiation, expansion, and improvement of a comprehensive system of personnel development.

(11) Programs, projects, or activities to support the provision of training and technical assistance to individuals with disabilities, business, industry, labor, community rehabilitation programs, and others regarding the implementation of the Rehabilitation Act Amendments of 1992, of Title V of the Act, and of the Americans with Disabilities Act of 1990.

(12) Projects or activities to support the funding of the State Rehabilitation Advisory Council and the Statewide Independent Living Council.

(Authority: Sections 101(a)(34)(B) and 123 of the Act; 29 U.S.C. 721(a)(34)(B) and 743)

**§ 361.74 Allotment of Federal funds.**

(a) The allotment and any reallocation of Federal funds under Title I, Part C of the Act are computed in accordance with the requirements of section 124 of the Act.

(b) If at any time the Secretary determines that any amount will not be expended by a State in carrying out the purpose of this subpart, the Secretary makes that amount available to one or more other States that the Secretary determines will be able to use additional amounts during the fiscal year. Any amount made available to any State under this paragraph of this section is regarded as an increase in the State's allotment for that fiscal year.

(Authority: Section 124 of the Act; 29 U.S.C. 744)

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