DEPARTMENT OF EDUCATION

34 CFR Part 379

RIN 1820–AB33

Projects With Industry

AGENCY: Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Projects With Industry (PWI) program (34 CFR Part 379). The PWI program is authorized by section 621 of the Rehabilitation Act, as amended (the Act). The purpose of the PWI program is to create and expand job and career opportunities for individuals with disabilities in the competitive labor market by establishing partnerships between program grantees and private industry to provide job training, job placement, and career advancement activities. The Secretary is proposing to change the regulations governing this program in order to clarify statutory intent, reduce grantee burden, address certain implementation problems, and enhance project accountability.

DATES: Comments must be received on or before March 22, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Fredric K. Schroeder, Commissioner, Rehabilitation Services Administration, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3028, Mary E. Switzer Building, Washington, D.C. 20202–2531. Comments may also be sent through the Internet to ''PWI—Regs@ed.gov''.

To ensure that public comments have maximum effect on the development of the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3315, Mary E. Switzer Building, Washington, D.C. 20202–2575. Telephone: (202) 205–8292. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Overview of Proposed Changes

The Secretary proposes to revise these regulations in order to clarify statutory intent, reduce grantee burden, address demonstrated problems in program administration, and clarify certain program requirements. For example, some of the proposed changes would reduce burden by eliminating unnecessary non-statutory requirements, particularly non-statutory provisions in current regulations in §§ 379.42 through 379.45 relating to grant agreement and on-the-job training requirements.

Other changes are being proposed to address demonstrated problems in the PWI program. For example, the Secretary believes that the program's defining feature, partnership with industry, has not received sufficient emphasis in the program regulations. The present regulations, most notably the selection criteria for new grant awards and the compliance indicators, do not adequately emphasize partnership with industry. To address this, the Secretary is proposing new selection criteria that would add a separate criterion focusing on the extent to which a project has established a working partnership with private industry. In addition, the Secretary is soliciting public comment on whether the compliance indicators require revision in order to assess projects' partnership with industry.

The Secretary also proposes in certain instances to add clarifying language, even if no specific changes to the regulatory text are being proposed. The Secretary has added several explanatory notes to clarify certain requirements that have been misunderstood by some grantees in the past. Following the relevant sections, the Secretary has added explanatory notes to clarify the State vocational rehabilitation (VR) agency's role in the eligibility determination process in § 379.3, the grantee matching requirements in § 379.40, and the compliance indicator reporting requirements in § 379.54.

The Secretary is proposing only one change to the compliance indicators in this notice of proposed rulemaking, but is inviting public comment on how to improve all of the indicators. To better focus public comment, the preamble contains a list of issues pertaining to the current compliance indicators and invites comment on each of them.

Section-by-Section Summary of Proposed Changes

The following is a section-by-section summary of major changes proposed in this notice of proposed rulemaking.

- In § 379.2, the Secretary proposes to remove the reference to ''agreement'' and substitute the term ''grant.'' This terminology change would be made to enhance clarity. In § 379.2(a), the Secretary proposes to add ''nonprofit agencies and organizations'' as eligible applicants to clarify that these entities are also eligible to apply for funding under this program. The Secretary also proposes, for purposes of clarity, to relocate from § 379.31(a) to § 379.2(b) the statutory requirement in section 621(e)(2) of the Act that new awards be made to projects proposing to serve individuals in geographic areas that are unserved or underserved by the PWI program. The Secretary believes this requirement would be more logically placed in § 379.2(b) because it is a condition of eligibility for a new award and not a factor in evaluating a grant application. The Secretary is not proposing to define in regulations ''unserved'' or ''underserved.'' Each applicant has the flexibility in its application to describe how the proposed project area is either unserved (e.g., there are currently no PWI projects in the geographic area) or underserved (e.g., there are one or more PWI projects in the geographic area, but the need for PWI services is not fully met) by the PWI program.
- The Secretary proposes to add a note following § 379.3 to clarify the precise role of the State VR agency in the eligibility determination process. This note would state that a PWI project makes an interim determination of eligibility for project services and that this determination becomes final within 60 days if the State vocational rehabilitation unit does not make a determination that it is inappropriate. The note would also clarify that in those instances when an individual has already been determined eligible for vocational rehabilitation services under section 102(a) of the Act, the individual can be presumed to meet the definition of ''individual with a disability'' for eligibility purposes under the PWI program.
- In § 379.5, the Secretary proposes to conform the definitions of ''competitive employment'' and ''placement'' with changes being proposed in the regulations governing The State Vocational Rehabilitation Services Program in 34 CFR Part 361. The definition of ''competitive employment'' would be revised to add the requirement

that work be performed in an integrated setting and to clarify the current requirement that individuals must be compensated at or above the minimum wage but not less than the prevailing wage for the same or similar work performed by non-disabled individuals in the local community. The definition of ''placement'' would be revised to require that an individual maintain employment for the duration of the employer's probationary period or, in the absence of an established period, at least 90 days. Current regulations provide that a placement does not occur until competitive employment has been maintained for 60 days.

The proposed regulations would also add a definition of ''integrated setting,'' as it is used in the definition of ''competitive employment.'' ''Integrated setting'' would be defined to mean ''a setting typically found in the community in which individuals with disabilities have the opportunity to interact on a regular basis with non-disabled individuals other than non-disabled individuals who are providing services to them.''

The Secretary also proposes adding to this section definitions of ''job readiness training'' and ''job training.'' ''Job readiness training'' would include training in job-seeking skills, training in the preparation of résumés or job applications, training in interviewing skills, participating in a job club, or other related activities that may assist an individual to secure competitive employment. Job readiness training is an authorized activity under the PWI program; however, it must be distinguished from the job training component required of PWI projects. Therefore, the Secretary is also proposing to add a definition of ''job training'' that would require projects to provide, or ensure the provision of, one or more of the following activities prior to placement (as that term is defined in § 379.5(b)(7)): occupational skills training, on-the-job training, workplace training combined with related instruction, job skill upgrading and retraining, training to enhance basic work skills and workplace competencies, or on-site job coaching.

The Secretary wants to ensure that all projects have an identifiable training component and that the training provided by projects focuses on imparting the skills needed for employment and career advancement in the competitive labor market, as the statute intends. The Secretary is concerned that the findings of some PWI on-site compliance reviews conducted by the Department indicated that certain grantees conducting programs of national scope failed to provide this type of training. In addition, other findings indicated that some grantees provided training that primarily taught job-seeking skills and résumé-writing. Although job readiness training is authorized under this program, the Secretary does not believe that this type of training alone meets the statutory requirement that projects provide job training to prepare individuals with disabilities for employment in the competitive labor market.

The Secretary proposes to add a definition of ''career advancement services'' in order to clarify the meaning of this statutorily required activity that must be a part of each project's program of services. The proposed definition would define ''career advancement services'' to mean ''services that develop specific job skills beyond those required by the position currently held by an individual with a disability to assist the individual to compete for a promotion or achieve an advanced position in the same field.''

- Section 379.10 would be amended to clarify that all grantees must conduct all of the activities required under section 621(a)(2) of the Act and listed in this section. The Secretary does not believe the wording in the current regulations is as clear on this point as it could be.

The Secretary is proposing to add a note under this section to clarify how grantees can meet the requirements of § 379.10(a), which requires each grantee to provide job training in a realistic work setting for individuals served by the project. The Secretary believes that projects should have maximum flexibility in determining the precise form of their job training component, but believes that the job training provided must be designed to develop skills that will lead to participants' success in obtaining, retaining, and advancing in competitive employment. The proposed note explains that grantees would have the option of providing job training directly to project participants or by ensuring the provision of that training by other entities through cooperative arrangements while the individual is participating in the project. Job training would be provided as appropriate to the needs of each individual served by the project. The Secretary does not intend that each project participant necessarily receive job training, but that job training be available and accessible to those individuals who need it to achieve competitive employment. However, the Secretary expects that a sizeable number of project participants would need and receive some type of job training.

- The Secretary proposes a new Subpart C, containing information about how to apply for a grant award (proposed § 379.20) and proposed new application content requirements (proposed § 379.21). The new application content section would better reflect statutory requirements, would closely parallel proposed new selection criteria, and would eliminate unnecessary non-statutory grant agreement requirements contained in current §§ 379.42 through 379.45. Section 621(e)(1)(B) of the Act authorizes the Commissioner of the Rehabilitation Services Administration (RSA) to establish any application content requirements that may be necessary.

In order to better assess whether an application meets the statutory requirements of the program (and also to better evaluate an application according to the proposed new selection criteria), the Secretary proposes to require more specific information in the application. Significant new elements of the grant application, all of which stem from statutory provisions, would be as follows:

Section 379.21(a)(1), description of the proposed job training and identification of need for the job training to be provided. As discussed previously, the Secretary believes the training provided by some projects does not meet the requirements of sections 621(a)(1) and (a)(2) of the Act. The Secretary also believes that, consistent with the statute, training should be developed in conjunction with private industry and should be linked to identified local labor market opportunities. The proposed regulations would, therefore, require applicants to describe the job training, as defined in proposed § 379.5(b)(5), that they intend to provide and to demonstrate that the training to be provided meets local labor market needs.

Section 379.21(a)(2) and 379.21(a)(3), description of the involvement of private industry. The Secretary proposes to require these descriptions to ensure that there is adequate private industry involvement in all phases of the project and to ensure that the statutorily required Business Advisory Council (BAC) is involved in all relevant project activities.

Section 379.21(a)(4), explanation of how the geographic area the applicant proposes to serve qualifies as an unserved or underserved area. The Secretary proposes to require information to enable the Department to determine that all applicants meet this eligibility requirement.

In addition to adding certain requirements, the Secretary proposes to simplify and clarify the information and assurances applicants must provide under the current regulations. In the current regulations, these requirements are located in multiple sections (§§ 379.42 through 379.45). The Secretary proposes to repeal most of these provisions, which contain longstanding, primarily non-statutory grant agreement requirements, and place the few remaining statutory requirements in new § 379.21. For example, the description of the annual evaluation plan, required under section 621(a)(5) of the Act and § 379.43(k) of the present regulations, would be moved to this section with the proposed addition that the applicant's evaluation plan include the capacity for collecting data required to establish compliance with the performance indicators in Subpart F of the regulations. Current requirements in § 379.43(h) and (i), which require a project to provide equitable compensation and working conditions for the individuals with disabilities it places in employment, would also be located in new § 379.21.

The proposed new application content provisions would be mandatory for all applicants. In accordance with 34 CFR 75.216(c), the Secretary would not evaluate any application that does not contain all of the information required under proposed § 379.21.

- The Secretary proposes to replace the selection criteria in § 379.30 with new selection criteria. The Secretary believes the current selection criteria do not adequately reflect the statutory purposes and certain key requirements of the program, particularly the requirements relating to job training and partnership with industry, and thus do not facilitate selection of the best applications. The Secretary believes the proposed criteria are better tailored to the unique aspects of the program. The proposed criteria in many instances parallel proposed application content requirements and are designed to evaluate the quality and extent of that information. For example, the Secretary proposes to establish in § 379.30(a) a criterion entitled ''Extent of need for the project'' that would be used to assess the extent to which the applicant's proposed job training meets the requirements and needs of the local labor market by preparing individuals for jobs for which there is a demand. This criterion, which would be weighted 20 points, parallels the application content requirement dealing with job training in proposed § 379.21(a)(1).

Another proposed new criterion in § 379.30(b) entitled ''Partnership with industry'' would be used to evaluate the extent of the proposed project's collaboration with private industry in all aspects of program operations as well as the role of the BAC in identifying job and career opportunities and developing appropriate job training programs. This criterion, which would be weighted 25 points, would track proposed application content requirements in § 379.21(a)(2) and (a)(3).

There are other significant changes in the proposed new selection criteria. The Secretary proposes a new ''Project design and plan of operation for achieving competitive employment outcomes'' criterion in § 379.30(c), which incorporates some elements of the present ''Project design'' criterion. The proposed criterion would be used to assess applicants on project design issues (e.g., goals and objectives, proposed activities, and methods and strategies to achieve competitive employment outcomes for project participants) and would also examine the extent to which the proposed management of the project would further the execution of the proposed design. The Secretary believes the proposed criterion would better enable the selection of projects that, in addition to being well-conceived, have a high probability of successful implementation. A maximum of 25 points would be allocated to this criterion. The Secretary also proposes to make the criterion on ''Project evaluation'' in § 379.30(f) more specific to the evaluation mechanisms used in the PWI program. The revised criterion would examine the applicant's proposed evaluation plan with respect to its capacity for evaluating project operations and outcomes and for generating data needed to meet the annual program evaluation and compliance indicator requirements. This criterion would also evaluate the extent of involvement of the BAC in evaluating the project's job training, placement, and career advancement activities.

- Following § 379.40, the Secretary proposes to add a note to clarify the program matching requirements, which have been misinterpreted by some grantees to mean 20 percent of the Federal grant rather than 20 percent of total project costs. The note would also specify that cash or in-kind contributions, or a combination of the two, may be used to meet this requirement. It would also cross-reference applicable provisions in the Education Department General Administrative Regulations (EDGAR).

- Section 379.41 would be amended to specifically include job readiness training, job training, and placement activities as allowable project costs. In addition, the section would be amended to update cross-references to the allowable costs provisions in EDGAR and to remove bonding fees and liability and insurance premiums from the list of program-specific allowable costs. Bonding and insurance costs are expressly allowable under EDGAR and do not need to be particularly identified in these program regulations.

- A new § 379.42 would be added to the regulations to specify, in a single section, all of the requirements (both statutory and EDGAR-based) that a grantee must meet in order to receive a continuation award under the PWI program. These requirements include—(1) making substantial progress toward meeting the objectives in its approved application in accordance with 34 CFR 75.253(a)(2) of EDGAR; (2) submitting all performance and financial reports required by 34 CFR 75.118 of EDGAR; and (3) submitting data in accordance with section 621(f)(4) of the Act and proposed § 379.54 showing that it has met the program compliance indicators. In addition, proposed § 379.42 would specify two additional conditions that must be met before the Secretary can make a continuation award: Congress must appropriate sufficient funds under the program and continuation of the project must be in the best interest of the Federal Government.

- A new § 379.43 would also be added to the regulations to require each program grantee to submit to the Secretary at a specified time the data it is required to collect as part of the annual evaluation of project operations mandated by section 621(a)(5) of the Act. The proposed regulations would require that this information be reported no later than 60 days after the end of each project year, unless the Secretary authorizes a later submission date. The term ''project year'' is synonymous with the term ''budget period'' and in this program covers a period that is concurrent with the Federal fiscal year, i.e., October 1 through September 30.

- The reporting requirements for the compliance indicators, currently located in § 379.46, would be relocated to a proposed new § 379.54 in Subpart F. Unnecessary references to fiscal year 1990, the effective date of this requirement, would be deleted, and a proposed date for submitting compliance indicator data would be added to the regulations. The proposed date is either 60 days after the end of the project year if the grantee submits data for the most recent complete project

year as provided for in paragraph (a) of this section or 60 days after the end of the first 6 months of the current project year if the grantee avails itself of the option provided for in paragraph (b) of this section—unless the Secretary authorizes a later date for submission of the compliance indicator data. The Secretary would also add a note following this section to clarify that meeting the compliance indicators is a requirement for continuation funding in years three through five of a PWI grant. Continuation funding in the second year is not subject to meeting the indicators because data from the first complete project year are not available until after the second year award is made.

• Section 379.53(c) concerning the performance indicator on cost per placement would be amended to increase the average cost per placement from $1600 or less to $2400 or less. The performance ranges and the points assigned to each range would also be revised to reflect 8 points awarded for a range of $2001 to $2400, 17 points awarded for a range of $1601 to $2000, and 25 points awarded for projects with an average cost per placement of less than $1600.

These proposed changes reflect an overall 50 percent increase in cost per placement as compared to the current performance indicator. Concern has been expressed by current PWI grantees that the dollar threshold for this indicator is too low. Grantees have advised that the current level of $1,600 or less, that was set in 1986, is not realistic given the inflationary costs of services, especially the cost of services for individuals with severe disabilities. The Secretary is proposing this as an interim change prior to a more extensive revision of the evaluation standards and performance indicators for the program as discussed in the following paragraphs.

Program Evaluation Standards and Compliance Indicators

At this time, the Secretary is not proposing any substantive changes to the evaluation standards and performance measures for the PWI program contained in Subpart F of these regulations, other than proposing an increase in the cost per placement indicator. However, a recent assessment of the program suggests a need for revised performance indicators. The report, ''Assessment of Performance Indicators for the Projects With Industry (PWI) Program,'' by Research Triangle Institute (RTI) (June, 1994), suggests that changes are needed not only in the performance indicators, but also in the scoring system and in the quality assurance methods used to validate the data that are reported. Based upon experience in administering this program, the Secretary is also concerned about the implementation of these performance indicators and agrees that changes may be needed.

In light of these concerns, the Secretary is particularly interested in receiving public comments on the following issues to assist the Department in determining what changes need to be made to improve the evaluation standards and performance indicators.

Are the Current Evaluation Standards Appropriate for the PWI Program?

The current evaluation standards are included as an appendix to the regulations in 34 CFR Part 379. The seven standards were developed in response to a Congressional mandate in 1984 and address the broad purposes and activities of the PWI program. Are these standards still appropriate for the program? Should one or more of the standards be revised or modified to better reflect the legislative intent of the program in light of the Rehabilitation Act Amendments of 1992 (the 1992 Amendments)? For example, none of the standards addresses career advancement activities that were mandated in the Amendments. Is a new or revised standard needed to accommodate this change?

Should All of the Evaluation Standards Have Related Performance Indicators?

At the present time, certain evaluation standards for the PWI program do not have corresponding measures of performance. For example, none of the current performance indicators relates to Standard 5, regarding the project's advisory committee (i.e., BAC), or to Standard 6, regarding the project's relationships with other agencies and organizations. Since the establishment of a project BAC and the project's relationship with business and industry are important statutory requirements for the PWI program, the Secretary is considering the establishment of compliance indicators for these standards. What, if any, would be appropriate indicators to measure project performance with regard to the use of the project's BAC and the project's relationship with business and industry?

What Changes Are Needed to the Overall Scoring System for the Performance Indicators?

The RTI report raises concerns about the overall scoring system for the performance indicators and notes that the minimum required composite score of 70 is too low to ensure sufficiently high levels of performance by PWI projects. In addition, the use of composite scores allows projects to receive no points for as many as five of the nine indicators yet still achieve a sufficiently high score to receive continuation funding.

Are changes needed in the scoring system? For example, the Secretary is considering the establishment of a minimum required score for each performance indicator. Should the scoring system continue to allocate points by performance ranges, or should a graduated points allocation system be used instead? For example, under the indicator on percentage of persons placed whose disabilities are severe, points could be allocated for each percentage point over and above a minimum performance level (i.e., 50 percent) rather than allocating a set number of points for performing anywhere within an established performance range—the approach now established under current § 379.53(h). In addition, should all indicators be considered of equal importance, or should a scoring system be developed that establishes different weights for various indicators depending on their importance? Another possibility is the use of a combination of a ''pass-fail'' approach for certain critical indicators and point scores on other indicators.

What Safeguards Should be in Place to Ensure the Validity and Accuracy of Data Reported on the Performance Indicators?

Both RSA's findings in conducting on-site compliance reviews of PWI projects and the RTI report have surfaced concerns about the ability of many PWI projects to collect, maintain, and report accurate data to substantiate performance on the indicators. What safeguards are necessary to ensure that projects are collecting and reporting accurate performance data to meet the indicators and receive continuation funding?

What Specific Changes are Needed in the Current Performance Indicators?

Use of Projections

There are two indicators that measure the project's actual yearly performance against its initial projections. The two indicators address actual costs versus projected costs of placements and actual performance versus projected placement rates. The RTI report points out that the ''promise-performance'' approach is problematic and should be reconsidered. This approach could

encourage projects to set unreasonably low goals in order to earn additional points under the indicators for exceeding those goals. Because of these issues, the Secretary is considering the elimination of these two indicators. Is there a strong rationale for retaining the current indicators that rely on projections, or should the performance indicators measure only the project's actual achievements? Could these indicators be revised to better focus on improvements or progress toward goals and thereby create incentives for achieving meaningful goals?

Cost Per Placement

As noted previously, the Secretary is proposing an interim increase in the performance indicator for cost per placement from the current threshold of $1600 or less to a proposed new threshold of $2400 or less. If the Secretary decides to keep a measure relating to cost per placement, is the proposed new dollar limit reasonable? Should the indicator be modified in some other way? Should the cost per placement threshold amount be adjusted for inflation over the life of a project?

An argument could be made that any indicator that assesses cost per placement conflicts with the existing indicators that focus on serving and placing individuals with severe disabilities. Such an indicator could lead to ''creaming'' and encourage projects to focus on serving individuals who need fewer services and are easier to place into employment. Another issue is that projects may be deterred from providing resource-intensive skills training if cost per placement (and not job retention or career advancement) is an indicator.

If the Secretary were to eliminate this indicator, what would be an appropriate performance measure regarding the efficient use of resources to implement Standard 4 (Funds shall be used to achieve the project's primary objective at minimum cost to the Federal Government)?

Numbers Served

Based on the Government Performance and Results Act of 1994, Federal programs are measuring the achievement of outputs and outcomes and not processes. Given this focus, the Secretary is considering the elimination of the current indicators relating to the percentage of individuals with severe disabilities served and the percentage of unemployed individuals served. Should these performance indicators be retained, or should the indicators focus only on project outcomes such as the number of individuals placed into employment and their earnings? Should new indicators be developed for other project outputs such as the number of project participants who complete a job training program, as defined in proposed § 379.5(b)(5)?

Change in Earnings

Projects can currently earn points under one performance indicator for project participants who have an increase in earnings of at least $75 per week above earnings reported at project entry. This performance level appears to be too low since the indicators also encourage projects to focus on serving individuals who are unemployed.

The Secretary wishes to maintain an indicator or indicators that measure increase in earnings. Is the current level for an increase of at least $75 per week too low? Should it be raised? Should the level be raised to an amount that would equal or exceed the average amount of support provided through Federal income maintenance and insurance programs (i.e., Social Security Disability Insurance program or Supplemental Security Income program), thus encouraging projects to assist individuals to find jobs that would allow them to leave the beneficiary rolls?

Would a more effective approach be to measure the average percentage increase in wages rather than a set amount increase? If so, should there be more than one indicator to allow a differentiation between those project participants who were unemployed at project entry versus those individuals who had some earnings at project entry? Should the performance level (or levels) for such an indicator or indicators be adjusted for economic conditions in the local project area? If so, how could those adjustments be implemented?

Individuals Who Are Unemployed

Recent polls conducted by Lou Harris and Associates have found that almost two-thirds of the individuals with disabilities in this country are not employed. These findings support the program's current emphasis on placing individuals with disabilities who are unemployed. The current indicators focus on individuals who have not worked for a period of at least six months prior to project entry. Is this period of sufficient length, or should the projects be encouraged through this indicator to serve individuals with longer-term unemployment (e.g., individuals who have been continuously unemployed for more than 1 year) or individuals who have never been employed?

In lieu of an indicator that measures a specific time period of unemployment, would it be more appropriate to use the average number of months unemployed as a measure? For example, the number of months since each project participant was last employed could be tallied, and the average (mean) could be computed and reported for the performance indicator. If such an approach were used, should the indicator also include the average number of months since an individual was enrolled full time in school to take into consideration those individuals making the transition from school to work?

Should New Indicators Be Developed to Address Statutory Requirements in the Rehabilitation Act Amendments of 1992?

Career Advancement

The 1992 Amendments required grantees under the PWI program to provide career advancement services to project participants. Should an indicator or indicators be developed for measuring career advancement? Would it be possible and appropriate to measure the number of project participants who are placed in jobs that have career advancement potential? Should the indicators measure the number of underemployed individuals who are assisted by the PWI project to advance in employment? If so, how could the scoring system balance such an indicator against the indicator that focuses on placing individuals who are unemployed? Would these indicators be at cross-purposes?

Long-Term Retention of Jobs

The 1992 Amendments require PWI projects to report on the number of project participants who were terminated from project placements and the duration of those placements. A clear outcome measure for the PWI program would be that project participants maintain employment for a longer period than the current regulatory requirement of 60 days. The Secretary is considering the establishment of a performance indicator related to long-term job retention for project participants beyond the retention standard to achieve a placement under this program. What would be an appropriate length of time for a job retention measure following placement—six months, nine months, one year, or longer? How can job retention be measured for those individuals placed in the fourth and fifth years of a time-limited project?

The Secretary is particularly interested in comments on the above issues and is also interested in

comments regarding any other concerns relating to the evaluation standards and performance indicators for the PWI program.

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 earlier in this preamble:

The Secretary believes the NPRM would substantially improve the PWI program regulations and would yield substantial benefits in terms of improved program management and accountability. As stated in the supplementary information section of this preamble (particularly in the sections entitled ''Overview of Proposed Changes'' and the ''Section-By-Section Summary of Proposed Changes''), the Secretary believes the proposed regulations better reflect the statute, reduce grantee burden by removing unnecessary non-statutory requirements, and improve program administration by clarifying frequently misunderstood program requirements. The Secretary has determined that the potential benefits of these proposed changes outweigh the potential costs to grantees. A brief discussion of the benefits of these proposed regulations, and cross-references to relevant portions of the Supplementary Information section of the preamble, follow.

More Accurate Reflection of Statutory Requirements

The Secretary believes these proposed regulations better reflect statutory intent, particularly with regard to the requirements for partnership with industry and job training. The proposed regulations include changes in the application content requirements (discussed in the sections of the preamble that cover Subpart C) and selection criteria (§ 379.30) in order to place more appropriate emphasis on these features of the PWI program. These changed requirements could entail some additional costs for applicants, in the form of additional resources needed to prepare a grant application. However, the Secretary believes that these costs would be more than offset by the benefit to the PWI program—namely, the selection for funding of projects that better reflect the requirements of the statute.

Reduction of Grantee Burden

As discussed in the ''Section-By-Section Summary'' (in particular the part that describes the proposed Subpart C), the Secretary is proposing to simplify and eliminate many of the existing application requirements. These changes would reduce burden on grant applicants by clarifying and reducing the application requirements. This reduction in burden should more than offset the application requirements being added by these proposed regulations.

Clarification of Program Requirements

The Secretary is proposing to add new definitions and revise existing definitions of statutory terms in order to clarify their meaning. These definitions are described in the part of the ''Section-By-Section Summary'' pertaining to § 379.5. For example, the Secretary has added definitions of the terms ''career advancement services'' and ''job training.'' The addition of these definitions may be perceived as imposing additional costs on grantees, in that they would establish specific requirements for previously undefined required program activities. However, the Secretary believes these definitions would allow for considerable grantee flexibility in project design, while ensuring that projects fulfill the program's statutory intent. In addition, the proposed definitions of ''placement'' and ''competitive employment,'' which conform to the definitions being proposed for The State Vocational Rehabilitation Services Program, would facilitate coordination between the two programs.

As stated in the ''Overview of Proposed Changes'' section of the preamble, in many parts of the proposed regulations the Secretary has provided explanatory notes to clarify several program requirements that have been misunderstood by some grantees in the past. The relevant parts of the ''Section-By-Section Summary'' (specifically the parts dealing with §§ 379.3, 379.10, 379.40, and 379.54) describe the rationale for the addition of each note. The Secretary believes these notes will better elucidate program requirements and facilitate grantee compliance with those requirements.

In addition, the proposed regulations replace confusing terminology contained in the present regulations (see specifically the section of the ''Section-By-Section Summary'' pertaining to § 379.2).

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, § 379.10 What types of project activities are required of each grantee under this program?) (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.

The small entities that would be affected by these proposed regulations are government, nonprofit, and for-profit agencies and organizations that receive Federal funds under this program. However, the regulations would not have a significant economic impact on these entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

Sections 379.20, 379.21, 379.30, 379.42, 379.43, 379.53, and 379.54 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: Projects With Industry

These regulations would affect the following types of entities eligible to apply for grants under the PWI program: for-profit and nonprofit agencies or organizations with the capacity to create and expand job and career opportunities for individuals with disabilities, including designated State units, labor unions, employers, community rehabilitation program providers, trade associations, and Indian tribes and tribal organizations. These information collection requirements would affect applicants for new awards and organizations and entities already receiving assistance under the PWI program.

The Department needs to collect this information in order to fulfill statutory requirements regarding the annual evaluation report and compliance indicators (in sections 621(b)(3) and 621(f)(2) of the Act, respectively). In addition, the Department must collect this information in order to ensure the selection of projects for funding that meet the statutory requirements of the PWI program.

All information is to be collected and reported once each year, with the exception of that which is required of applicants for new awards in §§ 379.21 and 379.30. These sections require responses from every organization or entity that applies for a new award under the program. Annual reporting and recordkeeping burden for these information collection and reporting requirements is estimated to average 40 hours for each response for 411 respondents (310 applicants and 101 grantees), 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 16,440 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 3330, Mary E. Switzer Building, 330 C Street, S.W., 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 379

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number 84.234 Projects With Industry.)

Dated: October 16, 1995.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 379 to read as follows:

PART 379—PROJECTS WITH INDUSTRY

Subpart A—General

Sec.

379.1 What is the Projects With Industry program?
379.2 Who is eligible for a grant award under this program?

379.3 Who is eligible for services under this program?
379.4 What regulations apply?
379.5 What definitions apply?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

379.10 What types of project activities are required of each grantee under this program?
379.11 What additional types of project activities may be authorized under this program?

Subpart C—How Does One Apply for an Award?

379.20 How does an eligible entity apply for an award?
379.21 What is the content of an application for an award?

Subpart D—How Does the Secretary Make a Grant?

379.30 What selection criteria does the Secretary use under this program?
379.31 What other factors does the Secretary consider in reviewing an application?

Subpart E—What Conditions Must Be Met by a Grantee?

379.40 What are the matching requirements?
379.41 What are allowable costs?
379.42 What are the requirements for a continuation award?
379.43 What are the additional reporting requirements?

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet To Receive Continuation Funding?

379.50 What are the compliance indicator requirements for continuation funding?
379.51 What are the program compliance indicators?
379.52 How is grantee performance measured using the compliance indicators?
379.53 What are the weights, minimum performance levels, and performance ranges for each compliance indicator?
379.54 What are the reporting requirements for the compliance indicators?

Appendix—Evaluation Standards

Authority: Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g, unless otherwise noted.

Subpart A—General

§ 379.1 What is the Projects With Industry (PWI) program?

This program is designed to—

(a) Create and expand job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process;

(b) Identify competitive job and career opportunities and the skills needed to perform these jobs;

(c) Create practical settings for job readiness and job training programs; and

(d) Provide job placements and career advancement.

(Authority: Section 621(a)(1) of the Act; 29 U.S.C. 795g(a)(1))

§ 379.2 Who is eligible for a grant award under this program?

(a) The Secretary may make a grant under this program to any—

(1) Community rehabilitation program provider;

(2) Designated State unit;

(3) Employer;

(4) Indian tribe or tribal organization;

(5) Labor Union;

(6) Nonprofit agency or organization;

(7) Trade association; or

(8) Other agency or organization with the capacity to create and expand job and career opportunities for individuals with disabilities.

(b) New awards may be made only to those eligible entities identified in paragraph (a) of this section that propose to serve individuals with disabilities in States, portions of States, Indian tribes, or tribal organizations that are currently unserved or underserved by the PWI program.

(Authority: Section 621(a)(2) and 621(e)(2) of the Act; 29 U.S.C. 795g(a)(2) and 795g(e)(2))

§ 379.3 Who is eligible for services under this program?

(a) An individual is eligible for services under this program if the appropriate State vocational rehabilitation unit determines the individual to be an individual with a disability or an individual with a severe disability, as defined in sections 7(8)(A) and 7(15)(A), respectively, of the Act.

(b) In making the determination under paragraph (a) of this section, the State vocational rehabilitation unit shall rely on the determination made by the recipient of the grant under which the services are provided, to the extent that the determination is appropriate, available, and consistent with the requirements of the Act.

(c) If a State vocational rehabilitation unit does not notify a recipient of a grant within 60 days that the determination of the recipient is inappropriate, the recipient of the grant may consider the individual to be eligible for services.

(Authority: Section 621(a)(3) of the Act; 29 U.S.C. 795g(a)(3))

Note: Under this program, the PWI grantee makes an initial or preliminary determination that an individual is eligible for services because the individual meets the definition of an ''individual with a disability'' or an ''individual with a severe disability.'' The State vocational rehabilitation unit has a maximum of 60 days to assess the appropriateness of the preliminary determination. If the State vocational rehabilitation unit does not decide that the preliminary eligibility determination is inappropriate within this time period, the eligibility determination becomes final. If an individual has already been determined eligible for vocational rehabilitation services under section 102(a) of the Act and is referred by the State vocational rehabilitation unit to the PWI, the PWI grantee can presume that the individual is an ''individual with a disability'' under section 7(8)(A) of the Act. The State vocational rehabilitation unit should provide documentation of that eligibility to the PWI. If the State vocational rehabilitation unit has determined that the eligible individual also meets the definition of an ''individual with a severe disability'' under section 7(15)(A) of the Act, the PWI grantee should be advised of that determination and provided appropriate documentation of that determination.

§ 379.4 What regulations apply?

The following regulations apply to the Projects With Industry program:

(a) The regulations in this part 379; and

(b) The regulations in 34 CFR part 369, except for the regulations in §§ 369.30 and 369.31.

(Authority: Section 621 of the Act; 29 U.S.C. 795g)

§ 379.5 What definitions apply?

(a) The definitions in 34 CFR part 369 apply to this program.

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

(1) *Career advancement services* mean services that develop specific job skills beyond those required by the position currently held by an individual with a disability to assist the individual to compete for a promotion or achieve an advanced position in the same field.

(2) *Competitive employment*, as the placement outcome under this program, 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.

(3) *Integrated setting*, as part of the definition of *competitive employment*, means a setting typically found in the community in which individuals with disabilities have the opportunity to interact on a regular basis with non-disabled individuals other than non-disabled individuals who are providing services to them.

(4) *Job readiness training*, as used in § 379.41(a), means—

(i) Training in job-seeking skills;

(ii) Training in the preparation of resumes or job applications;

(iii) Training in interviewing skills;

(iv) Participating in a job club; or

(v) Other related activities that may assist an individual to secure competitive employment.

(5) *Job training*, as used in this part, means one or more of the following training activities provided prior to placement, as that term is defined in § 379.5(b)(7):

(i) Occupational skills training.

(ii) On-the-job training.

(iii) Workplace training combined with related instruction.

(iv) Job skill upgrading and retraining.

(v) Training to enhance basic work skills and workplace competencies.

(vi) On-site job coaching.

(6) *Person served* means an individual for whom services by a PWI project have been initiated with the objective that those services will result in a placement in competitive employment.

(7) *Placement* means the attainment of competitive employment by a person served by a PWI project who has successfully completed training and maintained employment 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.

(Authority: Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 379.10 What types of project activities are required of each grantee under this program?

Each grantee under the PWI program shall—

(a) Provide individuals with disabilities with job training in a realistic work setting, as appropriate to the needs of each individual served by the project, in order to prepare them for employment and career advancement in the competitive labor market;

(b) Provide individuals with disabilities with job placement and career advancement services;

(c) Provide individuals with disabilities with supportive services that are necessary to permit them to maintain the employment and career advancement for which they have received training under this program;

(d) To the extent appropriate, provide for—

(1) The development and modification of jobs and careers to accommodate the special needs of the individuals with disabilities being trained and employed under this program;

(2) The purchase and distribution of rehabilitation technology to meet the needs of individuals with disabilities at job sites; and

(3) The modification of any facilities or equipment of the employer that are to be used by individuals with disabilities under this program; and

(e) Provide for the establishment of Business Advisory Councils (BAC) comprised of representatives of private industry, business concerns, organized labor, and individuals with disabilities and their representatives who will identify job and career availability within the community, the skills necessary to perform those jobs and careers, and prescribe appropriate training programs.

Note: A PWI grantee can meet the requirements of § 379.10(a) by (1) directly providing job training to project participants, (2) by ensuring the provision of this training through arrangements with other entities, or (3) by a combination of both (1) and (2). The job training provided must meet the definition of job training in § 379.5(b)(5) and must be provided as appropriate to the needs of each individual served by the project. Although each individual served by the project may not need job training, the Secretary expects that each PWI project will have an identifiable job training component that is available to those individuals who need it. In order to meet the requirements of § 379.10(a), the job training must be provided while the individual is participating in the project. Therefore, post-employment training provided by an employer after placement by the PWI project, as defined in § 379.5(b)(7), would not meet this requirement. In addition, a project that provides only job readiness training, as defined in § 379.5(b)(4), would not meet the requirements of § 379.10(a).

(Authority: Section 621(a) of the Act; 29 U.S.C. 795g)

§ 379.11 What additional types of project activities may be authorized under this program?

The Secretary may include, as part of grant agreements with recipients under this program, authority for recipients to provide the following types of technical assistance:

(a) Assisting employers in hiring individuals with disabilities.

(b) Improving or developing relationships between grant recipients or prospective grant recipients and employers or organized labor.

(c) Assisting employers in understanding and meeting the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) as that Act relates to employment of individuals with disabilities.

(Authority: Section 621(a) of the Act; 29 U.S.C. 795g)

Subpart C—How Does One Apply for an Award?

§ 379.20 How does an eligible entity apply for an award?

In order to apply for a grant, an eligible entity shall submit an application to the Secretary in response to an application notice published in the Federal Register.

(Authority: Section 621(e)(1)(B) of the Act; 29 U.S.C. 795g(e)(1)(B))

§ 379.21 What is the content of an application for an award?

(a) The grant application must include a description of—

(1) The proposed job training to prepare project participants for specific jobs in the competitive labor market for which there is a need in the geographic area to be served by the project, as identified by an existing current labor market analysis or other needs assessment conducted by the applicant in collaboration with private industry;

(2) The involvement of private industry in the design of the proposed project and the manner in which the project will collaborate with private industry in planning, implementing, and evaluating job training, job placement, and career advancement activities;

(3) The responsibilities of the BAC and how it will interact with the project in carrying out grant activities;

(4) The geographic area to be served by the project, including an explanation of how the area is currently unserved or underserved by the PWI program;

(5) A plan for evaluating annually the operation of the proposed project, which, at a minimum, provides for collecting and submitting to the Secretary the following information and any additional data needed to determine compliance with the program compliance indicators established in Subpart F:

(i) The numbers and types of individuals with disabilities served.

(ii) The types of services provided.

(iii) The sources of funding.

(iv) The percentage of resources committed to each type of service provided.

(v) The extent to which the employment status and earning power of individuals with disabilities changed following services.

(vi) The extent of capacity building activities, including collaboration with business and industry and other organizations, agencies, and institutions.

(vii) A comparison, if appropriate, of activities in prior years with activities in the most recent year.

(viii) The number of project participants who were terminated from project placements and the duration of those placements; and

(6) A description of the manner in which the project will address the needs of individuals with disabilities from minority backgrounds, as required by 34 CFR 369.21.

(b) The grant application must also include assurances from the applicant that—

(1) The project will carry out all activities required in § 379.10;

(2) Individuals with disabilities who are placed by the project will receive compensation at or above the minimum wage, but no less than the prevailing wage for the same or similar work performed in the local community by individuals who are not disabled;

(3) Individuals with disabilities who are placed by the project will be given terms and benefits of employment equal to those that are given to similarly situated co-workers and will not be segregated from their co-workers; and

(4) The project will maintain any records required by the Secretary and make those records available for monitoring and audit purposes.

(Authority: Sections 621(a)(4), 621(a)(5), 621(b), and 621(e)(1)(B) of the Act; 29 U.S.C. 795g(a)(4), 795g(a)(5), 795g(b), and 795g(e)(1)(B))

Subpart D—How Does the Secretary Make a Grant?

§ 379.30 What selection criteria does the Secretary use under this program?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for project* (20 points). The Secretary reviews each application to determine the extent to which the project meets demonstrated needs. The Secretary looks for evidence that—

(1) The applicant has described an existing current labor market analysis, or has performed in collaboration with private industry a needs assessment, for the geographic area to be served that shows a demand in the competitive labor market for the types of jobs for which project participants will be trained; and

(2) The job training to be provided meets the identified needs of a specific industry or industries in the geographic area to be served by the project.

(b) *Partnership with industry* (25 points). The Secretary looks for information that demonstrates—

(1) The extent of the project's collaboration with private industry in the planning, implementation, and evaluation of job training, placement, and career advancement activities; and

(2) The extent of participation of the BAC in the identification of job and career opportunities, the skills necessary to perform the jobs and careers identified, and the development of training programs designed to develop these skills.

(c) *Project design and plan of operation for achieving competitive employment outcomes* (25 points). The Secretary reviews each application to determine—

(1) The extent to which the project goals and objectives for achieving competitive employment outcomes for individuals with disabilities to be served by the project are clearly stated and meet the needs identified by the applicant and the purposes of the program;

(2) The extent to which the project provides for all services and activities required under § 379.10;

(3) The feasibility of proposed strategies and methods for achieving project goals and objectives for competitive employment outcomes for project participants;

(4) The extent to which project activities will be coordinated with the State vocational rehabilitation unit and with other appropriate community resources in order to ensure an adequate number of referrals and a maximum use of comparable benefits and services;

(5) The extent to which the applicant's management plan will ensure proper and efficient administration of the project; and

(6) Whether the applicant has proposed a realistic timeline for the implementation of project activities to ensure timely accomplishment of proposed goals and objectives to achieve competitive employment outcomes for individuals with disabilities to be served by the project.

(d) *Adequacy of resources and quality of key personnel* (10 points). The Secretary reviews each application to determine—

(1) The adequacy of the resources (including facilities, equipment, and supplies) that the applicant plans to devote to the project;

(2) The quality of key personnel that will be involved in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The experience and training of key personnel in fields related to the objectives and activities of the project; and

(3) The way the applicant plans to use its resources and personnel to achieve the project's goals and objectives, including the time that key personnel will commit to the project.

(e) *Budget and cost effectiveness* (10 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Project evaluation* (10 points). The Secretary reviews each application to determine the quality of the proposed evaluation plan with respect to—

(1) Evaluating project operations and outcomes;

(2) Involving the BAC in evaluating the project's job training, placement, and career advancement activities;

(3) Meeting the annual evaluation reporting requirements in § 379.21(a)(7);

(4) Determining compliance with the indicators; and

(5) Addressing any deficiencies identified through project evaluation.

(Authority: Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

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

In addition to the selection criteria in § 379.30, the Secretary, in making awards under this program, considers—

(a) The equitable distribution of projects among the States; and

(b) The past performance of the applicant in carrying out a similar PWI project under previously awarded grants, as indicated by factors such as compliance with grant conditions, soundness of programmatic and financial management practices, and meeting the requirements of Subpart F.

(Authority: Sections 621(e)(2) and 621(f)(4) of the Act; 29 U.S.C. 795g(e)(2) and 795g(f)(4))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 379.40 What are the matching requirements?

The Federal share may not be more than 80 percent of the total cost of a project under this program.

(Authority: Section 621(c) of the Act; 29 U.S.C. 795g(c))

Note: (a) For example, if the total cost of a project is $500,000, the Federal share would be no more than $400,000 and the grantee's required minimum share (matching contribution) would be $100,000 (provided in cash or through third party in-kind contributions). The matching contribution is

based upon the total cost of the project, not on the amount of the Federal grant award.

(b) The matching contribution must comply with the requirements of 34 CFR 74.23 (for grantees that are institutions of higher education, hospitals, or other nonprofit organizations) or 34 CFR 80.24 (for grantees that are State, local, or Indian tribal governments). The term ''third party in-kind contributions'' is defined in either 34 CFR 74.2 or 34 CFR 80.3, as applicable to the type of grantee.

§ 379.41 What are allowable costs?

In addition to those costs that are allowable in accordance with 34 CFR 74.27 and 34 CFR 80.22, the following items are allowable costs under this program:

(a) The costs of job readiness training, as defined in § 379.5(b)(4); job training, as defined in § 379.5(b)(5); job placement services; and related vocational rehabilitation services and supportive rehabilitation services.

(b) Instruction and supervision of trainees.

(c) Training materials and supplies, including consumable materials.

(d) Instructional aids.

(e) The purchase or modification of rehabilitation technology to meet the needs of individuals with disabilities.

(f) Alteration and renovation appropriate and necessary to ensure access to and use of buildings by persons with disabilities served by the project.

(Authority: Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g))

§ 379.42 What are the requirements for a continuation award?

(a) A grantee that wants to receive a continuation award must—

(1) Comply with the provisions of 34 CFR 75.253(a), including making substantial progress toward meeting the objectives in its approved application and submitting all performance and financial reports required by 34 CFR 75.118; and

(2) Submit data in accordance with § 379.54 showing that it has met the program compliance indicators established in Subpart F.

(b) In addition to the requirements in paragraph (a) of this section, the following other conditions in 34 CFR 75.253(a) must be met before the Secretary can make a continuation award:

(1) Congress must appropriate sufficient funds under the program.

(2) Continuation of the project must be in the best interest of the Federal Government.

(Authority: Sections 12(c) and 621(f)(4) of the Act; 29 U.S.C. 711(c) and 795g(f)(4))

§ 379.43 What are the additional reporting requirements?

Each grantee shall submit the data from its annual evaluation of project operations required under § 379.21(a)(5) no later than 60 days after the end of each project year, unless the Secretary authorizes a later submission date.

(Authority: Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet to Receive Continuation Funding?

§ 379.50 What are the compliance indicator requirements for continuation funding?

In order to receive a continuation award for the third or any subsequent year of a PWI grant, a grantee must receive a minimum composite score of at least 70 points on the program compliance indicators contained in § 379.53.

(Authority: Section 621(f)(4) of the Act; 29 U.S.C. 795g(f)(4))

§ 379.51 What are the program compliance indicators?

The program compliance indicators implement program evaluation standards, which are contained in an appendix to this part, by establishing minimum performance levels and performance ranges in essential project areas to measure the effectiveness of individual grantees.

(Authority: Sections 621(d)(1) and 621(f)(1) of the Act; 29 U.S.C. 795g(d)(1) and 795g(f)(1))

§ 379.52 How is grantee performance measured using the compliance indicators?

(a) Each compliance indicator establishes a minimum performance level.

(b) Each compliance indicator also establishes three performance ranges with points assigned to each range. The higher the performance range, the greater the number of points assigned to that range.

(c) If a grantee does not achieve the minimum performance level for a compliance indicator, the grantee receives no points.

(d) If a grantee achieves or exceeds the minimum performance level, the grantee receives the points assigned to the particular performance range that corresponds to its actual level of performance.

(e) The maximum possible composite score that a grantee can receive is 150 points.

(f) A grantee must receive a composite score of at least 70 points to meet the evaluation standards and to qualify for continuation funding.

(Authority: Section 621(f)(4) of the Act; 29 U.S.C. 795g(f)(4))

§ 379.53 What are the weights, minimum performance levels, and performance ranges for each compliance indicator?

(a) *Percent of persons served whose disabilities are severe.* (3–10 points) A minimum of 50 percent of persons served by the project are persons who have severe disabilities. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—3 points.

(2) 60 percent to 75 percent—7 points.

(3) 76 percent or more—10 points.

(b) *Percent of persons served who have been unemployed for at least six months at the time of project entry.* (5–15 points) A minimum of 50 percent of persons served by the project have been unemployed for at least six months at the time of project entry. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—5 points.

(2) 60 percent to 75 percent—10 points.

(3) 76 percent or more—15 points.

(c) *Cost per placement.* (8–25 points) The average cost per placement of persons served by the project does not exceed $2400.00. The performance ranges and the points assigned to each range are as follows:

(1) $2001 to $2400—8 points.

(2) $1601 to $2000—17 points.

(3) Less than $1600—25 points.

(d) *Projected cost per placement.* (5–15 points) The actual average cost per placement of persons served by the project does not exceed 140 percent of the projected average cost per placement in the grantee's application. The performance ranges and the points assigned to each range are as follows:

(1) 126 percent to 140 percent—5 points.

(2) 111 percent to 125 percent—10 points.

(3) 110 percent or less—15 points.

(e) *Placement rate.* (8–25 points) A minimum of 40 percent of persons served by the project are placed in competitive employment. The performance ranges and the points assigned to each range are as follows:

(1) 40 percent to 49 percent—8 points.

(2) 50 percent to 69 percent—17 points.

(3) 70 percent or more—25 points.

(f) *Projected placement rate.* (5–15 points) The actual number of persons served by the project who are placed into competitive employment is at least 50 percent of the number of persons that the grantee, in the grant application, projected would be placed. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 74 percent—5 points.

(2) 75 percent to 94 percent—10 points.

(3) 95 percent or more—15 points.

(g) *Change in earnings.* (7–20 points) The earnings of persons served by the project who are placed into competitive employment have increased by an average of at least $75.00 a week over earnings at project entry. The performance ranges and the points assigned to each range are as follows:

(1) $75 to $124—7 points.

(2) $125 to $199—14 points.

(3) $200 or more—20 points.

(h) *Percent placed who have severe disabilities.* (3–10 points) At least 50 percent of persons served by the project who are placed into competitive employment are persons who have severe disabilities. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—3 points.

(2) 60 percent to 75 percent—7 points.

(3) 76 percent or more—10 points.

(i) *Percent unemployed placed.* (5–15 points) At least 50 percent of persons served by the project who are placed into competitive employment are persons who were unemployed for at least six months at the time of project entry. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—5 points.

(2) 60 percent to 75 percent—10 points.

(3) 76 percent or more—15 points.

(j) *Summary chart of weights and performance ranges.* The following composite chart shows the weights assigned to the performance ranges for each compliance indicator.

Indicator	Performance ranges—		
	(1)	(2)	(3)
Persons with severe disabilities served	3	7	10
Unemployed served	5	10	15
Cost per placement	8	17	25
Projected cost per placement	5	10	15
Placement rate	8	17	25
Projected placement rate	5	10	15
Change in earnings	7	14	20
Percent placed who have severe disabilities	3	7	10
Percent unemployed placed	5	10	15
Total possible score	49	102	150

(Authority: Section 621(f)(1) of the Act; 29 U.S.C. 795g(f)(1))

§ 379.54 What are the reporting requirements for the compliance indicators?

(a) In order to receive continuation funding for the third or any subsequent year of a PWI grant, each grantee must submit data for the most recent complete project year no later than 60 days after the end of that project year, unless the Secretary authorizes a later submission date, in order for the Secretary to determine if the grantee has met the program compliance indicators established in Subpart F.

(b) If the data for the most recent complete project year provided under paragraph (a) of this section shows that a grantee has failed to achieve the minimum composite score required in § 379.52(f) to meet the program compliance indicators, the grantee may, at its option, submit data from the first 6 months of the current project year no later than 60 days after the end of that 6-month period, unless the Secretary authorizes a later submission date, to demonstrate that its project performance has improved sufficiently to meet the minimum composite score.

(Authority: Section 621(f)(2) of the Act; 29 U.S.C. 795g(f)(2))

Note: A grantee receives its second year of funding (or the first continuation award) under this program before data from the first complete project year is available. Data from the first project year, however, must be submitted and is used (unless the grantee exercises the option in paragraph (b) of this section) to determine eligibility for the third year of funding (or the second continuation award).

Appendix—Evaluation Standards

Standard 1: The primary objective of the project shall be to assist individuals with disabilities to obtain competitive employment. The activities carried out by the project shall support the accomplishment of this objective.

Standard 2: The project shall serve individuals with disabilities that impair their capacity to obtain competitive employment. In selecting persons to receive services, priority shall be given to individuals with severe disabilities.

Standard 3: The project shall ensure the provision of services that will assist in the placement of persons with disabilities.

Standard 4: Funds shall be used to achieve the project's primary objective at minimum cost to the Federal Government.

Standard 5: The project's advisory council shall provide policy guidance and assistance in the conduct of the project.

Standard 6: Working relationships, including partnerships, shall be established with agencies and organizations in order to expand the project's capacity to meet its objectives.

Standard 7: The project shall obtain positive results in assisting individuals with disabilities to obtain competitive employment.

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