

DEPARTMENT OF EDUCATION

34 CFR Part 379

Projects With Industry

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education

ACTION: Final Regulations.

SUMMARY: The Secretary amends the regulations governing the Projects With Industry (PWI) program administered by the Rehabilitation Services Administration (RSA). The Rehabilitation Act Amendments of 1998 (1998 Amendments), Title IV of the Workforce Investment Act of 1998 (WIA), made certain amendments to the Rehabilitation Act of 1973 that affect the PWI program. These regulations implement those amendments to the PWI program.

DATES: These regulations are effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, U.S. Department of Education, 400 Maryland 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.

Individuals with disabilities may obtain this document in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The 1998 Amendments, Pub. L. 105-220, enacted August 7, 1998, makes a number of changes to programs under the Rehabilitation Act of 1973, as amended (Act), intended to increase the employment and employment retention of individuals with disabilities, including streamlined program requirements, enhanced consumer choice, enhanced program accountability, and improved coordination between employment and training programs through statewide and local workforce investment systems.

Statutory amendments to the PWI program change the composition and functions of the Business Advisory Council (BAC), the specific services required to be provided by PWI projects, the eligibility determination process, and data and information collection requirements.

Specifically, the 1998 Amendments require the project's BAC to include a representative of the appropriate designated State unit. In addition, the

functions of the BAC pertaining to the identification of job and career availability have been modified to require that the analysis be consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of WIA. The 1998 Amendments also now gives the BAC the option to prescribe either training programs or job placement programs in fields related to the job and career availability identified previously. These requirements are implemented in §§ 379.10(a), 379.21(a)(1), and 379.30(b)(1) of the regulations.

With respect to project services, PWI projects now are required to provide job development, in addition to providing job placement and career advancement services. However, the 1998 Amendments now require that training in realistic work settings must be provided only to the extent appropriate. The 1998 Amendments also change the eligibility determination process to allow the recipient of a PWI grant to determine an individual's eligibility for services, to the extent that the determination is made consistent with the requirements of section 102(a) of the Act. These requirements are implemented in §§ 379.3(b), 379.10(b) and (c), 379.21(a)(1) through (3), and 379.30(b)(1) and (6) of these regulations.

The 1998 Amendments also now require that data and information collected for use in conducting the annual review and evaluation of the operation of the project be the same types as described in subparagraphs (A) through (C) of section 101(a)(10) of the Act governing the State Vocational Rehabilitation (VR) Services program, as determined appropriate by the Commissioner. These requirements are implemented in §§ 379.21(a)(6), 379.21(b)(5), and 379.30(b)(6) of these regulations. Specific data and information collection requirements were published for comment in a separate notice published in the **Federal Register** on May 25, 1999 (64 FR 28164).

Finally, we also wish to note that new § 379.4 no longer makes 34 CFR part 369 applicable to the PWI program. The Secretary will be deleting part 369 from the Department's regulations in the near future. Therefore, the Secretary has incorporated into these regulations the

following requirements from part 369 that apply to the PWI program:

§ 369.3(a)—The applicability of the Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86 to the PWI program. This requirement is now found in § 379.4(a).

§ 369.4(a)—The following definitions from part 77:
Applicant
Application
Award
Department
EDGAR
Nonprofit
Secretary
These definitions are now found in § 379.5(a).

§ 369.20—Application procedures for this program. This requirement is now found in § 379.22.

§ 369.42(b)—Notification of the availability and purposes of the State's Client Assistance Program. This requirement is now found in § 379.42.

369.46—Special requirements pertaining to the protection, use, and release of personal information. These are now found in § 379.43.

All other requirements in part 369 that were applicable to the PWI program either have been superseded by statutory changes made by the 1998 Amendments, are duplicative of requirements already in part 379, or are not applicable to the PWI program.

Waiver of Notice of Proposed Rulemaking

Section 553(b) of the Administrative Procedure Act (APA) requires the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these amendments merely incorporate statutory changes into the regulations and do not implement substantive policy. Therefore, pursuant to the exception in section 553(b)(B) of the APA, the Secretary has determined that public comment on the regulations is unnecessary and contrary to the public interest.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goal that every adult American will possess the knowledge and skills necessary to

compete in a global economy and exercise the rights and responsibilities of citizenship. The regulations further the objectives of this Goal by implementing a program that affords individuals with disabilities opportunities for job training, job placement, placement in competitive employment, and career advancement.

Regulatory Flexibility Act Certification

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

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected sections of the 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. The order and regulations do not apply to Indian tribes or tribal organizations.

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

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: <http://ocfo.ed.gov/fedreg.htm> <http://www.ed.gov/news.html>

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the

U.S. Government Printing Office (GPO) toll free at 1-888-293-6498; or in the Washington, D.C., area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>

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: August 26, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

The Secretary amends 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 (PWI) 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?
379.22 What are the application procedures for this program?

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 special requirements pertaining to the Client Assistance Program?

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

379.44 What are the requirements for a continuation award?

379.45 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 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 A to Part 379—Evaluation Standards

Appendix B to Part 379—Presumption of Eligibility

Appendix C to Part 379—Calculating Required Matching Amount

Authority: 29 U.S.C. 711(c) and 795, unless otherwise noted.

Subpart A—General

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

The purpose of this program is to

- 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;
- Identify competitive job and career opportunities and the skills needed to perform these jobs;
- Create practical settings for job readiness and job training programs; and
- Provide job placements and career advancement.

(Authority: 29 U.S.C. 795(a)(1))

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

(a) The Secretary may, in consultation with the Secretary of Labor and with the appropriate designated State unit or units, make a grant under this program to any—

- Community rehabilitation program provider;
- Designated State unit (DSU);
- Employer;
- Indian tribe or tribal organization;
- Labor union;
- Nonprofit agency or organization;
- Trade association; or

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

(b) The Secretary may make new awards 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: 29 U.S.C. 795(a)(2) and 795(e)(2))

§ 379.3 Who is eligible for services under this program?

(a) An individual is eligible for services under this program if—

(1) The individual is an individual with a disability or an individual with a significant disability;

(2) The individual requires vocational services to prepare for, secure, retain, or regain employment; and

(3) The determination of eligibility is consistent with section 102(a) of the Rehabilitation Act of 1973, as amended (Act), 29 U.S.C. 701–7961.

(b) The recipient of the grant under which the services are provided may determine an individual's eligibility for services under this program, to the extent that the determination is appropriate and consistent with the requirements of section 102(a) of the Act. See Appendix B to this part for further information.

(c) Except as provided in paragraph (d) of this section, an individual who has a disability or is blind, as determined pursuant to title II or title XVI of the Social Security Act (42 U.S.C. 401–433 and 1381–1385)—

(1) Is considered to be an individual with a significant disability; and

(2) Is presumed to be eligible for vocational rehabilitation (VR) services under this program (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual).

(d) The DSU or recipient of the grant involved may deny an individual services if the DSU or recipient of the grant involved can demonstrate, by clear and convincing evidence, that the individual is incapable of benefiting in terms of an employment outcome from VR services due to the significance of the disability of the individual.

(Authority: 29 U.S.C. 722(a)(3) and 795(a)(3))

§ 379.4 What regulations apply?

The following regulations apply to the Projects With Industry program:

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

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations).

(2) 34 CFR part 75 (Direct Grant 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).

(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 and Alcohol Abuse Prevention).

(b) The regulations in this part 379.

(Authority: 29 U.S.C. 711(c) and 795)

§ 379.5 What definitions apply?

(a) The following terms used in this part are defined in 34 CFR part 361:

Act

Community rehabilitation program

Designated State unit

Individual who is blind

Individual with a disability

Individual with a significant disability

Physical or mental impairment

Substantial impediment to employment

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

(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.

(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 customary or usual wage and terms and benefits provided by the employer for the same or similar work 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 interact with non-disabled individuals, other than non-disabled individuals who are providing services to them, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(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 who has received services from a PWI project and has maintained employment for a period of at least 90 days.

(Authority: 29 U.S.C. 711(c) and 795)

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 must—

(a) Provide for the establishment of a Business Advisory Council (BAC), comprised of representatives of private industry, business concerns, organized labor, individuals with disabilities and their representatives, and a representative of the appropriate DSU, that will—

(1) Identify job and career availability within the community, consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998;

(2) Identify the skills necessary to perform those jobs and careers; and

(3) Prescribe for individuals with disabilities in fields related to the job and career availability identified in § 379.10(a)(1) either—

- (i) training programs designed to develop appropriate job and career skills; or
 - (ii) job placement programs designed to identify and develop job placement and career advancement opportunities;
- (b) Provide job development, job placement, and career advancement services;

(c) To the extent appropriate, arrange for the provision of, or provide for—

(1) Training in realistic work settings to prepare individuals with disabilities for employment and career advancement in the competitive labor market; and

(2) To the extent practicable, the modification of any facilities or equipment of the employer involved that are to be used by individuals with disabilities under this program. However, a project may not be required to provide for this modification if the modification is required as a reasonable accommodation under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101–12213; and

(d) 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.

(Authority: 29 U.S.C. 795)

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

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

- (a) Assist employers in hiring individuals with disabilities; or
- (b) Improve or develop relationships between grant recipients or prospective grant recipients and employers or organized labor; or
- (c) Assist employers in understanding and meeting the requirements of the ADA, as that Act relates to employment of individuals with disabilities.

(Authority: 29 U.S.C. 795)

Subpart C—How Does One Apply for an Award?

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

To apply for a grant, an eligible entity must submit an application to the Secretary in response to an application notice published in the **Federal Register**.

(Approved by the Office of Management and Budget under control number 1820–0566) (Authority: 29 U.S.C. 795(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 responsibilities and membership of the BAC, consistent with section 611(a)(2)(A) of the Act, and how it will interact with the project in carrying out grant activities, including how the BAC will—

(i) Identify job and career availability within the community, consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998;

(ii) Identify the skills necessary to perform the jobs and careers identified; and

(iii) For individuals with disabilities in fields related to the job and career availability identified under paragraph (i) of this section, prescribe either—

(A) Training programs designed to develop appropriate job and career skills; or

(B) Job placement programs designed to identify and develop job placement and career advancement opportunities;

(2) How the project will provide job development, job placement, and career advancement services to project participants;

(3) To the extent appropriate, how the project will provide for—

(i) Training in realistic work settings to prepare individuals with disabilities for employment and career advancement in the competitive market; and

(ii) To the extent practicable, the modification of any facilities or equipment of the employer involved that are used primarily by individuals with disabilities, except that a project will not be required to provide for the modification if the modification is required as a reasonable accommodation under the ADA;

(4) How the project will provide individuals with disabilities with the support services that may be required to maintain the employment and career advancement for which the individuals have received training under this part;

(5) How the project will involve 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 development, job placement, career advancement activities and, to the

extent included as part of the activities to be carried out by the project, job training activities;

(6) A plan to conduct annually a review and evaluation of the operation of the proposed project in accordance with the program compliance indicators and standards established in Subpart F of this part and, in conducting the review and evaluation, to collect data and information of the type described in subparagraphs (A) through (C) of section 101(a)(10) of the Act, as determined to be appropriate by the Secretary;

(7) 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; and

(8) How the project will address the needs of individuals with disabilities from minority backgrounds, as required by section 21(c) of the Act.

(b) The grant application also must 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 not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who are not disabled;

(3) Individuals with disabilities who are placed by the project will—

(i) Be given terms and benefits of employment equal to terms and benefits that are given to similarly situated nondisabled co-workers; and

(ii) Not be segregated from their co-workers;

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

(5) The project will provide to the Secretary an annual evaluation report of project operations as required in § 379.21(a)(6) and will submit reports in the form and detail and at the time required by the Secretary; and

(6) The applicant will comply with any requirements necessary to ensure the correctness and verification of those reports.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 718(c), 795(a), 795(b), and 795(e)(1)(B))

§ 379.22 What are the application procedures for this program?

The Secretary gives the appropriate DSU an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the

applicant and the State are described in §§ 75.155 through 75.159 of EDGAR.

(Authority: 20 U.S.C. 711(c))

Subpart D—How Does the Secretary Make a Grant?

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

(a) The Secretary uses the procedures in 34 CFR part 75 to select applications and award new grants.

(b) The Secretary uses the following selection criteria to evaluate an application:

(1) *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—

(i) The applicant has demonstrated a demand in the competitive labor market of the geographic area to be served for the types of jobs for which project participants will be placed and, if appropriate, trained.

(A) The applicant may demonstrate the demand for those jobs by describing an existing current labor market analysis, other needs assessment, or one that it has performed in collaboration with private industry.

(B) The labor market analysis or needs assessment must be consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998; and

(ii) The job placement and, if appropriate, job training to be provided meets the identified needs for personnel in specific occupations or occupational categories in the geographic area to be served.

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

(i) The extent of the project's proposed collaboration with private industry in the planning, implementation, and evaluation of job development, job placement, career advancement activities, and, to the extent included as part of the activities to be carried out by the project, job training activities; and

(ii) The extent of proposed participation of the BAC in—

(A) The identification of job and career opportunities within the community, consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B)

of the Workforce Investment Act of 1998;

(B) The identification of the skills necessary to perform the jobs and careers identified; and

(C) For individuals with disabilities in fields related to the job and career availability identified under paragraph (b)(1)(i) of this section, prescribing either—

(1) Training programs designed to develop appropriate job and career skills; or

(2) Job placement programs designed to identify and develop job placement and career advancement opportunities.

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

(i) The extent to which the project goals and objectives for achieving competitive employment 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;

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

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

(iv) The extent to which project activities will be coordinated with the DSU and with other appropriate community resources to ensure an adequate number of referrals and a maximum use of comparable benefits and services;

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

(vi) 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 for individuals with disabilities to be served by the project.

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

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

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

(A) The qualifications of the project director;

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

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

(D) 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.

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

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

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

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

(i) Evaluating project operations and outcomes;

(ii) Involving the BAC in evaluating the project's job development, job placement, career advancement activities, and, to the extent included as part of the activities to be carried out by the project, job training activities;

(iii) Meeting the annual evaluation reporting requirements in § 379.21(a)(6);

(iv) Determining compliance with the indicators; and

(v) Addressing any deficiencies identified through project evaluation.

(Approved by the Office of Management and Budget under control number 1820-0566)

(Authority: 29 U.S.C. 711(c) and 795)

§ 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 of this part.

(Authority: 29 U.S.C. 795(e)(2) and 795(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. For assistance in calculating the required matching amount, see Appendix C to this part.

(Authority: 29 U.S.C. 795(c))

§ 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)(5); job training, as defined in § 379.5(b)(6); job placement services; job development and modification; and related support 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 individuals with disabilities served by the project.

(g) To the extent practicable, the modification of any facilities or equipment of the employer involved that are to be used by individuals with disabilities under this program. However, a project may not be required to provide for that modification if the modification is required as a reasonable accommodation under the ADA.

(Authority: 29 U.S.C. 711(c) and 795)

§ 379.42 What are the special requirements pertaining to the Client Assistance Program?

Each grantee under a program covered by this part must advise applicants for or recipients of services under its project, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, of the availability and purposes of the State's Client Assistance Program, including information on seeking assistance from that program.

(Authority: 29 U.S.C. 718a)

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

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project evaluation activities.

(c) This information may not be disclosed, directly or indirectly, other than in the administration of the project,

unless the consent of the agency providing the information and the individual to whom the information applies, or his or her representative, have been obtained in writing.

(d) The Secretary or other Federal or State officials responsible for enforcing legal requirements have access to this information without the written consent of the individual.

(e) The final product of the project may not reveal any personally identifying information without the written consent of the individual or his or her representative.

(Authority: 29 U.S.C. 711(c))

§ 379.44 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 of this part.

(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 makes 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.

(Approved by the Office of Management and Budget under control number 1820-0566)

(Authority: 29 U.S.C. 711(c) and 795(f)(4))

§ 379.45 What are the additional reporting requirements?

Each grantee must 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.

(Approved by the Office of Management and Budget under control number 1820-0566)

(Authority: 29 U.S.C. 711(c) and 795)

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

§ 379.50 What are the requirements for continuation funding?

To receive a continuation award for the third or any subsequent year of a PWI grant, a grantee must adhere to the provisions of its approved application and must receive a minimum composite

score of at least 70 points on the program compliance indicators contained in § 379.53.

(Authority: 29 U.S.C. 795(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: 29 U.S.C. 795(d)(1) and 795(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 qualify for continuation funding.

(Authority: 29 U.S.C. 795(f)(1))

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

(a) *Percent of individuals served whose disabilities are significant.* (3–10 points) A minimum of 50 percent of individuals served by the project are individuals who have significant 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 individuals 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 individuals served by the project have been unemployed for at least 6 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 individuals served by the project does not exceed \$1600.00. The performance ranges and the points assigned to each range are as follows:

- (1) \$1351 to \$1600—8 points.
- (2) \$1000 to \$1350—17 points.
- (3) Less than \$1000—25 points.

(d) *Projected cost per placement.* (5–15 points) The actual average cost per placement of individuals 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 individuals 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 individuals served by the project that are placed into competitive employment is at least 50 percent of the number of individuals that the grantee projected in its grant application 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 individuals 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 significant disabilities.* (3–10 points) At least 50 percent of individuals served by the project who are placed into competitive employment are individuals who have significant 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 individuals served by the project who are placed into competitive employment are individuals who were unemployed for at least 6 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.

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

(Authority: 29 U.S.C. 795(f)(1))

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

(a) To allow the Secretary to determine whether a grantee is eligible to receive continuation funding for the third year of funding (or the second continuation award) or any subsequent year of a PWI grant, each grantee must submit data to the Secretary for the first project year or for the most recent complete project year no later than 60 days after the end of that project year, unless—

- (1) The Secretary authorizes a later submission date; or
- (2) The grantee exercises the option in paragraph (c) of this section.

(b) The Secretary uses the data provided pursuant to paragraph (a) of this section to determine if the grantee has met the program compliance indicators established in this Subpart F.

(c) If the data provided under paragraph (a) of this section for the most recent complete project year shows that a grantee has failed to achieve the minimum composite score required to meet the program compliance indicators (see § 379.52(f)), the grantee may, at its option, submit data from the first six months of the current project year. The data must demonstrate that the grantee's project performance has improved sufficiently to meet the minimum composite score.

(d) The grantee must submit data submitted pursuant to paragraph (c) of

this section no later than 60 days after the end of that 6 month period, unless the Secretary authorizes a later submission date.

(Approved by the Office of Management and Budget under control number 1820–0566) (Authority: 29 U.S.C. 795(f)(2) and 795(f)(4))

Appendix A To Part 379—Evaluation Standards

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

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

priority must be given to individuals with significant disabilities.

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

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

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

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

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

Appendix B To Part 379—Presumption of Eligibility

If a DSU determines that an individual is an eligible individual under section 102(a) of

the Act, including that the individual meets the definition of an "individual with a significant disability," and refers the individual to a PWI project, the PWI grantee may initiate services to that individual without the need for an additional determination of eligibility. In these instances, the PWI grantee should obtain appropriate documentation of this determination from the DSU.

Appendix C To Part 379—Calculating Required Matching Amount

1. The method for calculating the required matching amount may be stated by the following formula:

$$X = (Y \div .8) - Y$$

X = Required Match (provided in cash or through third party in-kind contributions)

Y = Amount of Federal Funds

This equation holds true regardless of the total cost of the project. The amount of

Federal funds spent in a fiscal year (FY) can never be more than 80 percent (hence, the ".8" in the formula) of the total funds (Federal and non-Federal) spent by the project. Thus, the formula is not dependent on knowing the total cost of the project. One needs to know only that the Federal share can be no more than 80 percent of whatever the total costs may turn out to be. In all cases, the matching contribution is calculated by dividing the amount of the Federal grant award by 80 percent (.8) and subtracting from that result the amount of the Federal grant award.

For example: If the amount of the Federal PWI grant award is \$400,000, the amount of the required match is \$100,000, calculated as follows:

Required match	=	(Am't. of Fed. Funds in FY	÷	Max. Fed. % of Total)	-	(Am't. of Fed. Funds in FY)
X	=	(\$400,000	÷	.8)	-	400,000
X	=	\$500,000-400,000.				
X	=	\$100,000.				

The matching contribution is never simply 20 percent of the amount of the Federal grant award (i.e., in the above example, NOT .2 x \$400,000).

2. Another consideration is what happens if a grantee carries over unspent Federal funds it received in a fiscal year. If the grantee spends or obligates less than the amount of its Federal grant award in a particular fiscal year and carries over the unspent or unobligated amount of its Federal grant award, its required matching contribution stays the same because the amount of its required matching expenditures or obligations is based on the amount of Federal dollars received in a particular fiscal year. That is, if the grantee carries over any unspent or unobligated

Federal funds, the grantee must have spent or obligated the amount of non-Federal funds required for its matching contribution in the same fiscal year in which the Federal funds were received.

For example: If a PWI grantee receives a grant award of \$80,000 in FY 2000, its matching requirement for these funds is \$20,000. If the grantee spends and obligates only \$64,000 in FY 2000, it may "carry over" \$16,000 to FY 2001. However, the grantee must spend or obligate \$20,000 in non-Federal funds in FY 2000 to meet its matching requirements for the \$80,000 it received in FY 2000, even though it does not spend or obligate the entire \$80,000 in FY 2000. If the grantee fails to spend or obligate in FY 2000 the entire \$20,000 in non-Federal

funds, the grantee will fail to meet the matching requirement for the \$80,000 it received in FY 2000 and may not carry over the unspent or unobligated \$16,000 to FY 2001.

3. The matching contribution also 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.

[FR Doc. 99-22564 Filed 8-31-99; 8:45 am]

BILLING CODE 4000-01-U