

course of a fiscal year, such as a decrease in its fiscal or personnel resources or an increase in its program costs, indicate that it may no longer be able to provide the full range of services, as appropriate, to all eligible individuals, as described in paragraph (a)(2) of this section.

(3) If a designated State unit establishes an order of selection, but determines that it does not need to implement that order at the beginning of the fiscal year, it must continue to meet the requirements of paragraph (a)(2) of this section, or it must implement the order of selection by closing one or more priority categories.

(d) *Establishing an order of selection—*
(1) *Basis for order of selection.* An order of selection must be based on a refinement of the three criteria in the definition of *individual with a significant disability* in section 7(21)(A) of the Act and § 361.5(c)(30).

(2) *Factors that cannot be used in determining order of selection of eligible individuals.* An order of selection may not be based on any other factors, including—

- (i) Any duration of residency requirement, provided the individual is present in the State;
- (ii) Type of disability;
- (iii) Age, sex, race, color, or national origin;
- (iv) Source of referral;
- (v) Type of expected employment outcome;
- (vi) The need for specific services except those services provided in accordance with 361.36(a)(3)(v), or anticipated cost of services required by an individual; or
- (vii) The income level of an individual or an individual's family.

(e) *Administrative requirements.* In administering the order of selection, the designated State unit must—

- (1) Implement the order of selection on a statewide basis;
- (2) Notify all eligible individuals of the priority categories in a State's order of selection, their assignment to a particular category, and their right to appeal their category assignment;
- (3) Continue to provide services to any recipient who has begun to receive services irrespective of the severity of the individual's disability as follows—

(i) The designated State unit must continue to provide pre-employment transition services to students with disabilities who were receiving such services prior to being determined eligible for vocational rehabilitation services; and

(ii) The designated State unit must continue to provide to an eligible individual all needed services listed on the individualized plan for employment if the individual had begun receiving such services prior to the effective date of the State's order of selection; and

(4) Ensure that its funding arrangements for providing services under the vocational rehabilitation services portion of the Unified or Combined State Plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the designated State unit must renegotiate these funding arrangements so that they are consistent with the order of selection.

(f) *State Rehabilitation Council.* The designated State unit must consult with the State Rehabilitation Council, if the State unit has a Council, regarding the—

- (1) Need to establish an order of selection, including any reevaluation of the need under paragraph (c)(2) of this section;
- (2) Priority categories of the particular order of selection;
- (3) Criteria for determining individuals with the most significant disabilities; and
- (4) Administration of the order of selection.

(Approved by the Office of Management and Budget under control number 1205-0522)

(Authority: Sections 12(d); 101(a)(5); 101(a)(12); 101(a)(15)(A), (B) and (C); 101(a)(21)(A)(ii); and 504(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(d), 721(a)(5), 721(a)(12), 721(a)(15)(A), (B) and (C); 721(a)(21)(A)(ii), and 794(a))

§ 361.37 Information and referral programs.

(a) *General provisions.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that—

(1) The designated State agency will implement an information and referral system adequate to ensure that individuals with disabilities, including eligible individuals who do not meet the agency's order of selection criteria for receiving vocational rehabilitation services if the agency is operating on an order of selection, are provided accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) using appropriate modes of communication to assist them in preparing for, securing, retaining, advancing in, or regaining employment; and

(2) The designated State agency will refer individuals with disabilities to other appropriate Federal and State programs, including other components of the statewide workforce development system.

(b) The designated State unit must refer to appropriate programs and service providers best suited to address the specific rehabilitation, independent living and employment needs of an individual with a disability who makes an informed choice not to pursue an employment outcome under the vocational rehabilitation program, as defined in § 361.5(c)(15). Before making the referral required by this paragraph, the State unit must—

(1) Consistent with § 361.42(a)(4)(i), explain to the individual that the purpose of the vocational rehabilitation program is to assist individuals to achieve an employment outcome as defined in § 361.5(c)(15);

(2) Consistent with § 361.52, provide the individual with information concerning the availability of employment options, and of vocational rehabilitation services, to assist the individual to achieve an appropriate employment outcome;

(3) Inform the individual that services under the vocational rehabilitation program can be provided to eligible individuals in an extended employment setting if necessary for purposes of training or otherwise preparing for employment in an integrated setting;

(4) Inform the individual that, if he or she initially chooses not to pursue an employment outcome as defined in § 361.5(c)(15), he or she can seek services from the designated State unit at a

later date if, at that time, he or she chooses to pursue an employment outcome; and

(5) Refer the individual, as appropriate, to the Social Security Administration in order to obtain information concerning the ability of individuals with disabilities to work while receiving benefits from the Social Security Administration.

(c) *Criteria for appropriate referrals.* In making the referrals identified in paragraph (a)(2) of this section, the designated State unit must—

(1) Refer the individual to Federal or State programs, including programs carried out by other components of the statewide workforce development system, best suited to address the specific employment needs of an individual with a disability; and

(2) Provide the individual who is being referred—

(i) A notice of the referral by the designated State agency to the agency carrying out the program;

(ii) Information identifying a specific point of contact within the agency to which the individual is being referred; and

(iii) Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

(d) *Order of selection.* In providing the information and referral services under this section to eligible individuals who are not in the priority category or categories to receive vocational rehabilitation services under the State's order of selection, the State unit must identify, as part of its reporting under section 101(a)(10) of the Act and § 361.40, the number of eligible individuals who did not meet the agency's order of selection criteria for receiving vocational rehabilitation services and did receive information and referral services under this section.

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(Authority: Sections 7(11), 12(c), 101(a)(5)(E), 101(a)(10)(C)(ii), and 101(a)(20) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(11), 709(c), 721(a)(5)(E), 721(a)(10)(C)(ii), and 721(a)(20))