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their duly authorized representatives, to—

(a) The records maintained under this part;

(b) Any other books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under this part; and

(c) All individual case records or files or consumer service records of individuals served under this part, including names, addresses, photographs, and records of evaluation included in those individual case records or files or consumer service records.

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

§ 367.71 What records must be maintained?

The DSA and all other service providers shall maintain—

(a) Records that fully disclose and document—

(1) The amount and disposition by the recipient of that financial assistance;

(2) The total cost of the project or undertaking in connection with which the financial assistance is given or used;

(3) The amount of that portion of the cost of the project or undertaking supplied by other sources; and

(4) Compliance with the requirements of this part; and

(b) Other records that the Secretary determines to be appropriate to facilitate an effective audit.

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

PART 369 [RESERVED]

PART 370—CLIENT ASSISTANCE PROGRAM

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AUTHORITY: Section 112 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732, unless otherwise noted.

SOURCE: 81 FR 55590, Aug. 19, 2016, unless otherwise noted.

Subpart A—General

§ 370.1 What is the Client Assistance Program (CAP)?

The purpose of this program is to establish and carry out CAPs that—

(a) Advise and inform clients and client-applicants of all services and benefits available to them through programs authorized under the Rehabilitation Act of 1973, as amended (Act), including activities carried out under sections 113 and 511;

(b) Assist and advocate for clients and client-applicants in their relationships with projects, programs, and community rehabilitation programs providing services under the Act; and

(c) Inform individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of the services and benefits available to them under the Act and under title I of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12111 *et seq.*).

(Authority: Section 112(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(a))

§ 370.2 Who is eligible for an award?

(a)(1) Any State, through its Governor, and the protection and advocacy system serving the American Indian Consortium are eligible for an award under this part if the State or eligible protection and advocacy system submits, and receives approval of, an application in accordance with § 370.20.

(2) For purposes of this part, the terms—

(i) “American Indian Consortium” has the meaning given the term in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act) (42 U.S.C. 15002); and

(ii) “Protection and advocacy system” means a protection and advocacy system established under subtitle C of title I of the DD Act (42 U.S.C. 15041 *et seq.*).

(b) Notwithstanding the protection and advocacy system serving the American Indian Consortium, the Governor of each State shall designate a

public or private agency to conduct the State’s CAP under this part.

(c) Except as provided in paragraph (d) of this section, the Governor shall designate an agency that is independent of any agency that provides treatment, services, or rehabilitation to individuals under the Act.

(d) The Governor may, in the initial designation, designate an agency that provides treatment, services, or rehabilitation to individuals with disabilities under the Act if, at any time before February 22, 1984, there was an agency in the State that both—

(1) Was a grantee under section 112 of the Act by serving as a client assistance agency and directly carrying out a CAP; and

(2) Was, at the same time, a grantee under any other provision of the Act.

(e) An agency designated by the Governor of a State to conduct the State’s CAP or the protection and advocacy system serving the American Indian Consortium under this part may not make a subaward to or enter into a contract with an agency that provides services under this Act either to carry out the CAP or to provide services under the CAP.

(f) A designated agency, including the protection and advocacy system serving the American Indian Consortium, that contracts to provide CAP services with another entity or individual remains responsible for—

(1) The conduct of a CAP that meets all of the requirements of this part;

(2) Ensuring that the entity or individual expends CAP funds in accordance with—

(i) The regulations in this part; and

(ii) The regulations at 2 CFR part 200 applicable to the designated agency identified in paragraph (b) or the protection and advocacy system serving the American Indian Consortium, as described in paragraph (a) of this section; and

(3) The direct day-to-day supervision of the CAP services being carried out by the contractor. This day-to-day supervision must include the direct supervision of the individuals who are

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employed or used by the contractor to provide CAP services.

(Authority: Sections 12(c) and 112(a), (c)(1)(A), and (e)(1)(E) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(a), (c)(1)(A), and (e)(1)(E))

§ 370.3 Who is eligible for services and information under the CAP?

(a) Any client or client-applicant is eligible for the services described in § 370.4.

(b) Any individual with a disability is eligible to receive information on the services and benefits available to individuals with disabilities under the Act and title I of the ADA.

(Authority: Section 112(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(a))

§ 370.4 What kinds of activities may the Secretary fund?

(a) Funds made available under this part must be used for activities consistent with the purposes of this program, including—

(1) Advising and informing clients, client-applicants, and individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of—

(i) All services and benefits available to them through programs authorized under the Act; and

(ii) Their rights in connection with those services and benefits;

(2) Informing individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of the services and benefits available to them under title I of the ADA;

(3) Upon the request of the client or client-applicant, assisting and advocating on behalf of the client or client-applicant in his or her relationship with projects, programs, and community rehabilitation programs that provide services under the Act by engaging in individual or systemic advocacy and pursuing, or assisting and advocating on behalf of the client or client-applicant to pursue, legal, administrative, and other available remedies, if necessary—

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(i) To ensure the protection of the rights of a client or client-applicant under the Act; and

(ii) To facilitate access by individuals with disabilities, including students and youth with disabilities who are making the transition from school programs, to services funded under the Act; and

(4) Providing information to the public concerning the CAP.

(b) In providing assistance and advocacy services under this part with respect to services under title I of the Act, a designated agency may provide assistance and advocacy services to a client or client-applicant to facilitate the individual's employment, including assistance and advocacy services with respect to the individual's claims under title I of the ADA, if those claims under title I of the ADA are directly related to services under title I of the Act that the individual is receiving or seeking.

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

§ 370.5 What regulations apply?

The following regulations apply to the expenditure of funds and the administration of the program under this part:

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

(1) 34 CFR part 75 (Direct Grant Programs) for purposes of an award made under § 370.30(d)(1) when the CAP appropriation equals or exceeds \$14,000,000.

(2) 34 CFR part 76 (State-Administered Programs) applies to the State and, if the designated agency is a State or local government agency, to the designated agency, except for—

(i) Section 76.103;

(ii) Sections 76.125 through 76.137;

(iii) Sections 76.300 through 76.401;

(iv) Section 76.708;

(v) Section 76.734; and

(vi) Section 76.740.

(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 81 (General Education Provisions Act—Enforcement) applies

to both the State and the designated agency, whether or not the designated agency is the actual recipient of the CAP grant. As the entity that eventually, if not directly, receives the CAP grant funds, the designated agency is considered a recipient for purposes of Part 81.

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(b) Other regulations as follows:

(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485.

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

(c) The regulations in this part 370.

NOTE TO § 370.5: Any funds made available to a State under this program that are transferred by a State to a designated agency do not make a subaward as that term is defined in 2 CFR 200.330. The designated agency is not, therefore, in these circumstances a sub-recipient, as that term is defined in 2 CFR 200.330.

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

§ 370.6 What definitions apply?

(a) Definitions in EDGAR at 34 CFR part 77.

(b) Definitions in 2 CFR part 200, subpart A.

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

Act means the Rehabilitation Act of 1973, as amended.

Advocacy means pleading an individual's cause or speaking or writing in support of an individual. Advocacy may be formal, as in the case of a lawyer representing an individual in a court of law or in formal administrative proceedings before government agencies (whether tribal, State, local, or Federal). Advocacy also may be informal, as in the case of a lawyer or non-lawyer representing an individual in negotiations, mediation, or informal administrative proceedings before government agencies (whether tribal, State, local, or Federal), or as in the case of a lawyer or non-lawyer representing an individual's cause before private entities or organizations, or

government agencies (whether tribal, State, local, or Federal). Advocacy may be on behalf of—

(1) A single individual, in which case it is individual advocacy;

(2) More than one individual or a group of individuals, in which case it is systems (or systemic) advocacy, but systems or systemic advocacy, for the purposes of this part, does not include class actions, or

(3) Oneself, in which case it is self-advocacy.

American Indian Consortium means that entity described in § 370.2(a).

Class action means a formal legal suit on behalf of a group or class of individuals filed in a Federal or State court that meets the requirements for a "class action" under Federal or State law. "Systems (or systemic) advocacy" that does not include filing a formal class action in a Federal or State court is not considered a class action for purposes of this part.

Client or client-applicant means an individual receiving or seeking services under the Act, respectively.

Designated agency means the agency designated by the Governor under § 370.2 or the protection and advocacy system serving the American Indian Consortium that is conducting a CAP under this part.

Mediation means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to settle differences or disputes between persons or parties. The third party who acts as a mediator, intermediary, or conciliator may not be any entity or individual who is connected in any way with the eligible system or the agency, entity, or individual with whom the individual with a disability has a dispute. Mediation may involve the use of professional mediators or any other independent third party mutually agreed to by the parties to the dispute.

Protection and Advocacy System has the meaning set forth at § 370.2(a).

Services under the Act means vocational rehabilitation, independent living, supported employment, and other similar rehabilitation services provided under the Act. For purposes of the CAP, the term "services under the Act" does not include activities carried

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out under the protection and advocacy program authorized by section 509 of the Act (*i.e.*, the Protection and Advocacy of Individual Rights (PAIR) program, 34 CFR part 381).

State means, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, The United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, except for purposes of the allotments under § 370.30, in which case “State” does not mean or include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Authority: Sections 7(34), 12(c), and 112 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(34), 709(c), and 732)

§ 370.7 What shall the designated agency do to make its services accessible?

The designated agency shall provide, as appropriate, the CAP services described in § 370.4 in formats that are accessible to clients or client-applicants who seek or receive CAP services.

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

Subpart B—What Requirements Apply to Redesignation?

§ 370.10 When do the requirements for redesignation apply?

(a) The Governor shall redesignate the designated agency for carrying out the CAP to an agency that is independent of any agency that provides treatment, services, or rehabilitation to individuals under the Act if, after August 7, 1998—

(1) The designated State agency undergoes any change in the organizational structure of the agency that results in one or more new State agencies or departments, or results in the merger with one or more other State agencies or departments, and

(2) The designated State agency contains an office or unit conducting the CAP.

(3) For purposes of paragraph (a) of this section, the designated State agency has the meaning given to that term

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at 34 CFR 361.5(c)(12) and described at 34 CFR 361.13.

(b) The Governor may not redesignate the agency designated pursuant to section 112(c) of the Act and § 370.2(b) without good cause and without complying with the requirements of §§ 370.10 through 370.17.

(c) For purposes of §§ 370.10 through 370.17, a “redesignation of” or “to redesignate” a designated agency means any change in or transfer of the designation of an agency previously designated by the Governor to conduct the State’s CAP to a new or different agency, unit, or organization, including—

(1) A decision by a designated agency to cancel its existing contract with another entity with which it has previously contracted to carry out and operate all or part of its responsibilities under the CAP (including providing advisory, assistance, or advocacy services to eligible clients and client-applicants); or

(2) A decision by a designated agency not to renew its existing contract with another entity with which it has previously contracted. Therefore, an agency that is carrying out a State’s CAP under a contract with a designated agency is considered a designated agency for purposes of §§ 370.10 through 370.17.

(d) For purposes of paragraph (b) of this section, a designated agency that does not renew a contract for CAP services because it is following State procurement laws that require contracts to be awarded through a competitive bidding process is presumed to have good cause for not renewing an existing contract. However, this presumption may be rebutted.

(e) If State procurement laws require a designated agency to award a contract through a competitive bidding process, the designated agency must hold public hearings on the request for proposal before awarding the new contract.

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

§ 370.11 What requirements apply to a notice of proposed redesignation?

(a) Prior to any redesignation of the agency that conducts the CAP, the

Governor shall give written notice of the proposed redesignation to the designated agency, the State Rehabilitation Council (SRC), and the State Independent Living Council (SILC) and publish a public notice of the Governor's intention to redesignate. Both the notice to the designated agency, the SRC, and the SILC and the public notice must include, at a minimum, the following:

- (1) The Federal requirements for the CAP (section 112 of the Act).
- (2) The goals and function of the CAP.
- (3) The name of the current designated agency.
- (4) A description of the current CAP and how it is administered.
- (5) The reason or reasons for proposing the redesignation, including why the Governor believes good cause exists for the proposed redesignation.
- (6) The effective date of the proposed redesignation.
- (7) The name of the agency the Governor proposes to administer the CAP.
- (8) A description of the system that the redesignated (*i.e.*, new) agency would administer.

(b) The notice to the designated agency must—

- (1) Be given at least 30 days in advance of the Governor's written decision to redesignate; and
- (2) Advise the designated agency that it has at least 30 days from receipt of the notice of proposed redesignation to respond to the Governor and that the response must be in writing.
- (c) The notice of proposed redesignation must be published in a place and manner that provides the SRC, the SILC, individuals with disabilities or their representatives, and the public with at least 30 days to submit oral or written comments to the Governor.

(d) Following public notice, public hearings concerning the proposed redesignation must be conducted in an accessible format that provides individuals with disabilities or their representatives an opportunity for comment. The Governor shall maintain a written public record of these hearings.

(e) The Governor shall fully consider any public comments before issuing a written decision to redesignate.

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

§ 370.12 How does a designated agency preserve its right to appeal a redesignation?

(a) To preserve its right to appeal a Governor's written decision to redesignate (see § 370.13), a designated agency must respond in writing to the Governor within 30 days after it receives the Governor's notice of proposed redesignation.

(b) The designated agency shall send its response to the Governor by registered or certified mail, return receipt requested, or other means that provides a record that the Governor received the designated agency's response.

(Approved by the Office of Management and Budget under control number 1820-0520)

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

§ 370.13 What are the requirements for a decision to redesignate?

(a) If, after complying with the requirements of § 370.11, the Governor decides to redesignate the designated agency, the Governor shall provide to the designated agency a written decision to redesignate that includes the rationale for the redesignation. The Governor shall send the written decision to redesignate to the designated agency by registered or certified mail, return receipt requested, or other means that provides a record that the designated agency received the Governor's written decision to redesignate.

(b) If the designated agency submitted to the Governor a timely response to the Governor's notice of proposed redesignation, the Governor shall inform the designated agency that it has at least 15 days from receipt of the

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Governor's written decision to redesignate to file a formal written appeal with the Secretary.

(Approved by the Office of Management and Budget under control number 1820-0520)

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

§ 370.14 How does a designated agency appeal a written decision to redesignate?

(a) A designated agency may appeal to the Secretary a Governor's written decision to redesignate only if the designated agency submitted to the Governor a timely written response to the Governor's notice of proposed redesignation in accordance with § 370.12.

(b) To appeal to the Secretary a Governor's written decision to redesignate, a designated agency shall file a formal written appeal with the Secretary within 15 days after the designated agency's receipt of the Governor's written decision to redesignate. The date of filing of the designated agency's written appeal with the Secretary will be determined in a manner consistent with the requirements of 34 CFR 81.12.

(c) If the designated agency files a written appeal with the Secretary, the designated agency shall send a separate copy of this appeal to the Governor by registered or certified mail, return receipt requested, or other means that provides a record that the Governor received a copy of the designated agency's appeal to the Secretary.

(d) The designated agency's written appeal to the Secretary must state why the Governor has not met the burden of showing that good cause for the redesignation exists or has not met the procedural requirements under §§ 370.11 and 370.13.

(e) The designated agency's written appeal must be accompanied by the designated agency's written response to the Governor's notice of proposed redesignation and may be accompanied by any other written submissions or documentation the designated agency wishes the Secretary to consider.

(f) As part of its submissions under this section, the designated agency may request an informal meeting with the Secretary at which representatives of both parties will have an oppor-

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tunity to present their views on the issues raised in the appeal.

(Approved by the Office of Management and Budget under control number 1820-0520)

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

§ 370.15 What must the Governor of a State do upon receipt of a copy of a designated agency's written appeal to the Secretary?

(a) If the designated agency files a formal written appeal in accordance with § 370.14, the Governor shall, within 15 days of receipt of the designated agency's appeal, submit to the Secretary copies of the following:

(1) The written notice of proposed redesignation sent to the designated agency.

(2) The public notice of proposed redesignation.

(3) Transcripts of all public hearings held on the proposed redesignation.

(4) Written comments received by the Governor in response to the public notice of proposed redesignation.

(5) The Governor's written decision to redesignate, including the rationale for the decision.

(6) Any other written documentation or submissions the Governor wishes the Secretary to consider.

(7) Any other information requested by the Secretary.

(b) As part of the submissions under this section, the Governor may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(Approved by the Office of Management and Budget under control number 1820-0520)

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

§ 370.16 How does the Secretary review an appeal of a redesignation?

(a) If either party requests a meeting under § 370.14(f) or § 370.15(b), the meeting is to be held within 30 days of the submissions by the Governor under § 370.15, unless both parties agree to waive this requirement. The Secretary promptly notifies the parties of the date and place of the meeting.

(b) Within 30 days of the informal meeting permitted under paragraph (a) of this section or, if neither party has requested an informal meeting, within 60 days of the submissions required from the Governor under § 370.15, the Secretary issues to the parties a final written decision on whether the redesignation was for good cause.

(c) The Secretary reviews a Governor's decision based on the record submitted under §§ 370.14 and 370.15 and any other relevant submissions of other interested parties. The Secretary may affirm or, if the Secretary finds that the redesignation is not for good cause, remand for further findings or reverse a Governor's redesignation.

(d) The Secretary sends copies of the decision to the parties by registered or certified mail, return receipt requested, or other means that provide a record of receipt by both parties.

(Approved by the Office of Management and Budget under control number 1820-0520)

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

§ 370.17 When does a redesignation become effective?

A redesignation does not take effect for at least 15 days following the designated agency's receipt of the Governor's written decision to redesignate or, if the designated agency appeals, for at least 5 days after the Secretary has affirmed the Governor's written decision to redesignate.

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

Subpart C—What are the Requirements for Requesting a Grant?

§ 370.20 What must be included in a request for a grant?

(a) Each State and the protection and advocacy system serving the American Indian Consortium seeking assistance under this part shall submit to the Secretary, in writing, at the time and in the manner determined by the Secretary to be appropriate, an application that includes, at a minimum—

(1) The name of the designated agency; and

(2) An assurance that the designated agency meets the independence requirement of section 112(c)(1)(A) of the Act and § 370.2(c), or that the State is exempted from that requirement under section 112(c)(1)(A) of the Act and § 370.2(d).

(b)(1) Each State and the protection and advocacy system serving the American Indian Consortium also shall submit to the Secretary an assurance that the designated agency has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of clients or client-applicants within the State or American Indian Consortium.

(2) The authority to pursue remedies described in paragraph (b)(1) of this section must include the authority to pursue those remedies against the State vocational rehabilitation agency and other appropriate State agencies. The designated agency meets this requirement if it has the authority to pursue those remedies either on its own behalf or by obtaining necessary services, such as legal representation, from outside sources.

(c) Each State and the protection and advocacy system serving the American Indian Consortium also shall submit to the Secretary assurances that—

(1) All entities conducting, administering, operating, or carrying out programs within the State that provide services under the Act to individuals with disabilities in the State will advise all clients and client-applicants of the existence of the CAP, the services provided under the program, and how to contact the designated agency;

(2) The designated agency will meet each of the requirements in this part; and

(3) The designated agency will provide the Secretary with the annual report required by section 112(g)(4) of the Act and § 370.44.

(d) To allow a designated agency to receive direct payment of funds under this part, a State or the protection and advocacy system serving the American Indian Consortium must provide to the Secretary, as part of its application for assistance, an assurance that direct payment to the designated agency is

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not prohibited by or inconsistent with State or tribal law, regulation, or policy.

(Approved by the Office of Management and Budget under control number 1820–0520)

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

Subpart D—How Does the Secretary Allocate and Reallocate Funds to a State?

§ 370.30 How does the Secretary allocate funds?

(a) After reserving funds required under paragraphs (c) and (d) of this section, the Secretary shall allot the remainder of the sums appropriated for each fiscal year under this section among the States on the basis of relative population of each State, except that no such entity shall receive less than \$50,000.

(b) The Secretary allocates \$30,000 each, unless the provisions of section 112(e)(1)(D) of the Act are applicable, to American Samoa, Guam, the Virgin Islands, and the Commonwealth of Northern Mariana Islands.

(c) The Secretary shall reserve funds, from the amount appropriated to carry out this part, to make a grant to the protection and advocacy system serving the American Indian Consortium to provide services in accordance with this part. The amount of the grant to the protection and advocacy system serving the American Indian Consortium shall be the same amount as is provided to a territory under paragraph (b) of this section.

(d)(1) For any fiscal year for which the amount appropriated equals or exceeds \$14,000,000, the Secretary may reserve not less than 1.8 percent and not more than 2.2 percent of such amount to provide a grant for training and technical assistance for the programs established under this part.

(2) All training and technical assistance shall be coordinated with activities provided under 34 CFR 381.22.

(3) The Secretary shall make a grant pursuant to paragraph (d)(1) of this section to an entity that has experience in or knowledge related to the provision of services authorized under this part.

(4) An entity receiving a grant under paragraph (d)(1) of this section shall provide training and technical assistance to the designated agencies or entities carrying out the CAP to assist them in improving the provision of services authorized under this part and the administration of the program.

(e)(1) Unless prohibited or otherwise provided by State or tribal law, regulation, or policy, the Secretary pays to the designated agency, from the State allotment under paragraph (a), (b), or (c) of this section, the amount specified in the State's or the eligible protection and advocacy system's approved request. Because the designated agency, including the protection and advocacy system serving the American Indian Consortium, is the eventual, if not the direct, recipient of the CAP funds, 34 CFR part 81 and 2 CFR part 200 apply to the designated agency, whether or not the designated agency is the actual recipient of the CAP grant.

(2) Notwithstanding the grant made to the protection and advocacy system serving the American Indian Consortium under paragraph (c) of this section, the State remains the grantee for purposes of 34 CFR part 76 and 2 CFR part 200 because it is the State that submits an application for and receives the CAP grant. In addition, both the State and the designated agency are considered recipients for purposes of 34 CFR part 81.

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

§ 370.31 How does the Secretary reallocate funds?

(a) The Secretary reallocates funds in accordance with section 112(e)(2) of the Act.

(b) A designated agency shall inform the Secretary at least 45 days before the end of the fiscal year for which CAP funds were received whether the designated agency is making available for reallocation any of those CAP funds that it will be unable to obligate in

that fiscal year or the succeeding fiscal year.

(Approved by the Office of Management and Budget under control number 1820-0520)

(Authority: Sections 12(c), 19, and 112(e)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 716, and 732(e)(2))

Subpart E—What Post-Award Conditions Must Be Met by a Designated Agency?

§ 370.40 What are allowable costs?

(a) The designated agency, including the eligible protection and advocacy system serving the American Indian Consortium, shall apply the regulations at 2 CFR part 200.

(b) Consistent with the program activities listed in § 370.4, the cost of travel in connection with the provision to a client or client-applicant of assistance under this program is allowable, in accordance with 2 CFR part 200. The cost of travel includes the cost of travel for an attendant if the attendant must accompany the client or client-applicant.

(c)(1) The State and the designated agency are accountable, both jointly and severally, to the Secretary for the proper use of funds made available under this part. However, the Secretary may choose to recover funds under the procedures in 34 CFR part 81 from either the State or the designated agency, or both, depending on the circumstances of each case.

(2) For purposes of the grant made under this part to the protection and advocacy system serving the American Indian Consortium, such entity will be solely accountable to the Secretary for the proper use of funds made available under this part. If the Secretary determines it necessary, the Secretary may recover funds from the protection and advocacy system serving the American Indian Consortium pursuant to the procedures in 34 CFR part 81.

(Authority: Sections 12(c) and 112(c)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(3))

§ 370.41 What conflict of interest provision applies to employees of a designated agency?

(a) Except as permitted by paragraph (b) of this section, an employee of a designated agency, or of an entity or individual under contract with a designated agency, who carries out any CAP duties or responsibilities, while so employed, may not—

(1) Serve concurrently as a staff member of, consultant to, or in any other capacity within, any other rehabilitation project, program, or community rehabilitation program receiving assistance under the Act in the State; or

(2) Provide any services under the Act, other than CAP and PAIR services.

(b) An employee of a designated agency under contract with a designated agency, may—

(1) Receive a traineeship under section 302 of the Act;

(2) Provide services under the PAIR program;

(3) Represent the CAP on any board or council (such as the SRC) if CAP representation on the board or council is specifically permitted or mandated by the Act; and

(4) Consult with policymaking and administrative personnel in State and local rehabilitation programs, projects, and community rehabilitation programs, if consultation with the designated agency is specifically permitted or mandated by the Act.

(Authority: Sections 12(c) and 112(g)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(g)(1))

§ 370.42 What access must the CAP be afforded to policymaking and administrative personnel?

The CAP must be afforded reasonable access to policymaking and administrative personnel in State and local rehabilitation programs, projects, and community rehabilitation programs. One way in which the CAP may be provided that access would be to include the director of the designated agency among the individuals to be consulted

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on matters of general policy development and implementation, as required by section 101(a)(16) of the Act.

(Authority: Sections 12(c), 101(a)(16), and 112(g)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(16), and 732(g)(2))

§ 370.43 What requirement applies to the use of mediation procedures?

(a) Each designated agency shall implement procedures designed to ensure that, to the maximum extent possible, good faith negotiations and mediation procedures are used before resorting to formal administrative or legal remedies. In designing these procedures, the designated agency may take into account its level of resources.

(b) For purposes of this section, mediation may involve the use of professional mediators, other independent third parties mutually agreed to by the parties to the dispute, or an employee of the designated agency who—

(1) Is not assigned to advocate for or otherwise represent or is not involved with advocating for or otherwise representing the client or client-applicant who is a party to the mediation; and

(2) Has not previously advocated for or otherwise represented or been involved with advocating for or otherwise representing that same client or client-applicant.

(Authority: Section 112(g)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(g)(3))

§ 370.44 What reporting requirement applies to each designated agency?

In addition to the program and fiscal reporting requirements in 34 CFR 76.720 and 2 CFR 200.327 that are applicable to this program, each designated agency shall submit to the Secretary, no later than 90 days after the end of each fiscal year, an annual report on the operation of its CAP during the previous year, including a summary of the work done and the uniform statistical tabulation of all cases handled by the program. The annual report must contain information on—

(a) The number of requests received by the designated agency for information on services and benefits under the Act and title I of the ADA;

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(b) The number of referrals to other agencies made by the designated agency and the reason or reasons for those referrals;

(c) The number of requests for advocacy services received by the designated agency from clients or client-applicants;

(d) The number of requests for advocacy services from clients or client-applicants that the designated agency was unable to serve;

(e) The reasons that the designated agency was unable to serve all of the requests for advocacy services from clients or client-applicants; and

(f) Any other information that the Secretary may require.

(Approved by the Office of Management and Budget under control number 1820-0520)

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

§ 370.45 What limitation applies to the pursuit of legal remedies?

A designated agency may not bring any class action in carrying out its responsibilities under this part.

(Authority: Section 112(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(d))

§ 370.46 What consultation requirement applies to a Governor of a State?

In designating a client assistance agency under § 370.2, redesignating a client assistance agency under § 370.10, and carrying out the other provisions of this part, the Governor shall consult with the director of the State vocational rehabilitation agency (or, in States with both a general agency and an agency for the blind, the directors of both agencies), the head of the developmental disability protection and advocacy agency, and representatives of professional and consumer organizations serving individuals with disabilities in the State.

(Authority: Section 112(c)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(c)(2))

§ 370.47 What is program income and how may it be used?

(a) *Definition.* (1) Consistent with 2 CFR 200.80 and for purposes of this

part, *program income* means gross income earned by the designated agency that is directly generated by an activity supported under this part.

(2) Funds received through the transfer of Social Security Administration payments from the designated State unit, as defined in 34 CFR 361.5(c)(13), in accordance with 34 CFR 361.63(c)(2) will be treated as program income received under this part.

(b) *Use of program income.* (1) Program income, whenever earned or received, must be used for the provision of services authorized under § 370.4.

(2)(i) The designated agency must use program income to supplement Federal funds that support program activities that are subject to this part. See, for example 2 CFR 200.307(e)(2).

(ii) Notwithstanding 2 CFR 200.305(a) and consistent with 2 CFR 200.305(b)(5), and to the extent that program income funds are available, a designated agency, regardless of whether it is a State agency, must disburse those funds (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional funds from the Department.

(Authority: Sections 12(c) and 108 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 728; and 20 U.S.C. 3474);

§ 370.48 When must grant funds and program income be obligated?

Any Federal funds, including reallocated funds, that are appropriated for a fiscal year to carry out the activities under this part that are not obligated or expended by the designated agency prior to the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated or expended by the designated agency prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation and expenditure by the designated agency during that succeeding fiscal year in accordance with section 19 of the Act.

(Authority: Sections 12(c) and 19 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 716)

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

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

(b) The designated agency's use of information and records concerning individuals must be limited only to purposes directly connected with the CAP, including program evaluation activities. Except as provided in paragraphs (c) and (e) of this section, this information may not be disclosed, directly or indirectly, other than in the administration of the CAP, unless the consent of the individual to whom the information applies, or his or her parent, legal guardian, or other legally authorized representative or advocate (including the individual's advocate from the designated agency), has been obtained in writing. A designated agency may not produce any report, evaluation, or study that reveals any personally identifying information without the written consent of the individual or his or her representative.

(c) Except as limited in paragraphs (d) and (e) of this section, the Secretary or other Federal or State officials responsible for enforcing legal requirements are to have complete access to all—

(1) Records of the designated agency that receives funds under this program; and

(2) All individual case records of clients served under this part without the consent of the client.

(d) For purposes of conducting any periodic audit, preparing or producing any report, or conducting any evaluation of the performance of the CAP established or assisted under this part, the Secretary does not require the designated agency to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the CAP.

(e) Notwithstanding paragraph (d) of this section and consistent with paragraph (f) of this section, a designated agency shall disclose to the Secretary,

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

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

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

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

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

PART 371—AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICES

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

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

Subpart A—General

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

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