



# Federal Register

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**Monday,  
February 28, 2000**

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**Part III**

## **Department of Education**

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**34 CFR Part 361  
The State Vocational Rehabilitation  
Services Program; Proposed Rule**

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

RIN 1820-AB50

**The State Vocational Rehabilitation Services Program**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing the State Vocational Rehabilitation Services Program. These amendments are needed to implement changes to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1998, enacted on August 7, 1998, and as further amended in 1998 by technical amendments in the Reading Excellence Act and the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1998 (hereinafter collectively referred to as the 1998 Amendments).

**DATES:** We must receive your comments on or before April 28, 2000.

**ADDRESSES:** Address all comments about these proposed regulations to Fredric K. Schroeder, U.S. Department of Education, 400 Maryland Avenue, SW., room 3028, Mary E. Switzer Building, Washington, DC 20202-2531. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov.

You must include the term "VR Regulations" in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

**FOR FURTHER INFORMATION CONTACT:** Beverlee Stafford, U.S. Department of Education, 400 Maryland Avenue, SW., room 3014, Mary E. Switzer Building, Washington, DC, 20202-2531.

Telephone (202) 205-8831. If you use a telecommunications device for the deaf (TDD), you may call (202) 205-5538.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director, Alternate Formats Center, U.S. Department of Education, 400 Maryland Avenue, SW., room 1000, Mary E. Switzer Building, Washington, DC.

20202-2531. Telephone (202) 260-9895. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:***Invitation To Comment*

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3014, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

**Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205-8113 or (202) 260-9895. If you use a TDD, you may call the Federal Information Relay Service at 1-800-877-8339.

**Background**

The State Vocational Rehabilitation Services Program (VR program) is authorized by Title I of the Rehabilitation Act of 1973, as amended (Act) (29 U.S.C. 701-744). The VR program provides support to each State to assist it in operating a statewide comprehensive, coordinated, effective, efficient, and accountable State program, as an integral part of a statewide workforce investment system, to assess, plan, develop, and provide

vocational rehabilitation (VR) services for individuals with disabilities so that those individuals may prepare for and engage in gainful employment consistent with their strengths, priorities, concerns, abilities, capabilities, interests, and informed choice.

The 1998 Amendments made substantial changes to Title I of the Act, such as expanding options for individual choice, streamlining administrative procedures, facilitating the development of State goals and strategies to accomplish those goals, modifying due process provisions, requiring trial work experiences as part of the eligibility assessment for certain individuals with significant disabilities, and linking the VR program to a State's workforce investment system under Title I of the Workforce Investment Act of 1998 (WIA). This notice of proposed rulemaking (NPRM) proposes regulatory changes that would implement these and all other provisions in Title I, Parts A and B, of the Act as adopted in the 1998 Amendments, with the exception of the client assistance program (CAP) described in section 112 of the Act. Changes to the CAP regulations (34 CFR part 370) are being implemented through a separate rulemaking document.

In addition, the proposed regulations were developed in light of new requirements related to the VR program under WIA. A designated State unit (DSU or State unit) operating a VR program is a required partner in the State One-Stop service delivery system (One-Stop system) established under Title I of WIA. As a required partner, the State unit must fulfill certain responsibilities related to that system. Those responsibilities, as well as the requirements for coordination between the VR program and other One-Stop system partners, are addressed in § 361.23 of the proposed regulations.

In general, the establishment of a One-Stop system is a cornerstone of reforms to Federal education and training programs. This delivery system streamlines access to numerous workforce investment and educational and other human resource services, activities, and programs. Rather than requiring individuals and employers to seek workforce development information and services at several different locations, which is often costly, discouraging, and confusing, WIA requires States and communities to coordinate multiple workforce development programs and resources for individuals at the "street level" through a user-friendly One-Stop system. This system will simplify and

expand access to services for job seekers, including those with disabilities, and for employers.

In particular, participation in the One-Stop system by State units administering VR programs will result in enhancing the range and quality of services accessible to program participants. The collaboration of the DSU with other partners through the One-Stop system is intended to produce better information, more comprehensive services, easier access to services, and improved long-term employment outcomes. The effective participation of the VR program in the One-Stop system, therefore, is critical to enhancing the VR program itself, as well as the workforce investment system in each State and local area.

Given this close relationship between the partners of the One-Stop service delivery system contemplated under WIA, as well as the non-discrimination requirements in the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act (section 504), and section 188 of WIA, we emphasize that all partner programs, not just the VR program, have a legal responsibility to serve persons with disabilities. To receive services under the VR program, individuals must meet specific program eligibility criteria, including a narrower definition of "individual with a disability" (see § 361.5(b)(28) and § 361.42(a) of the proposed regulations) than the more general definition of that term found in the ADA, section 504, and the regulations implementing section 188 of WIA (29 CFR part 37). The broader definition, which is also specified in § 361.5(b)(29) of the proposed regulations, covers those with an impairment that substantially limits one or more major life activities, those with a record of such an impairment, or those regarded as having such an impairment. It is this broader population of individuals with disabilities that the workforce system has a legal obligation to serve, meaning that some individuals may receive the full scope of needed services through the One-Stop system without accessing the VR program at all, while others may be referred to the State unit for a program of VR services or receive a combination of services from the VR program and other One-Stop system partners. In addition, some individuals who are eligible for VR services may choose not to participate in the VR program and, therefore, also may be served exclusively by other partner programs of the One-stop system. The broader definition in § 361.5(b)(29) of the proposed regulations, which is the same as that in the ADA, section 504,

and 29 CFR part 37, applies to certain areas of the VR program that are unrelated to eligibility (e.g., membership on the State Rehabilitation Council under § 361.17 and organizational requirements in § 361.13).

#### Changes to Current Regulations

Each of the substantive changes to the current VR program regulations proposed in this NPRM are based on statutory changes or are otherwise considered necessary to the effective administration of the VR program. The remaining changes to the current regulations are technical in nature, meaning that they are needed to conform to language used in the Act (e.g., substituting the term "individual with a significant disability" for the previously used term "individual with a severe disability"), remove requirements that were eliminated in the 1998 Amendments, or add provisions that were included as part of the statutory amendments. The following sections of the current regulations either would be unchanged by this NPRM or would include only technical changes and, therefore, are not discussed in the following section-by-section analysis: § 361.1, § 361.2, § 361.3, § 361.4, § 361.11, § 361.12, § 361.14, § 361.16, § 361.17, § 361.19, § 361.20, § 361.21, § 361.25, § 361.32, § 361.34, § 361.40, § 361.55, § 361.61, § 361.63, § 361.64, and § 361.65.

Additionally, in an effort to reduce the paperwork burden associated with developing the State plan for the VR program, the NPRM would significantly reduce the number of descriptions or assurances that must be submitted as part of the State plan. The following sections (which are not otherwise discussed in the section-by-section analysis), in addition to including technical changes as previously explained, also include requirements that would be removed from the State plan under this NPRM: § 361.13, § 361.15, § 361.27, § 361.28, § 361.38, § 361.39, § 361.41, § 361.43, § 361.44, § 361.49, § 361.50, § 361.51, and § 361.62. Because the underlying requirements in these sections are considered essential to the proper and efficient administration of the VR program, however, they would be retained in the NPRM as requirements of the program even though they would no longer be components of the State plan.

In addition, some of the sections of the current regulations that would be substantively amended by the NPRM also would be removed from the content of the State plan. Substantive changes to

those sections, as well as the removal of State plan requirements (where applicable), are outlined in the section-by-section analysis.

The State plan content requirements that remain in the NPRM are those that are required by statute. The same reduced State plan requirements would apply both to VR State plans submitted as part of a State unified plan under section 501 of the Workforce Investment Act and to VR plans submitted separately under Title I of the Act and 34 CFR part 361. In either instance, we believe that the reduced number of State plan requirements will enable State VR agencies to better focus on the needs of its consumers and its program without expending an inordinate amount of time in compiling its State plan.

#### Section-by-Section Summary

##### *Section 361.4 Applicable Regulations*

This proposed section identifies the same list of regulations applicable to the VR program found in the current regulations, with two significant additions—the regulations in 20 CFR part 662 (which implements the One-Stop system requirements under Title I of WIA) and 29 CFR part 37 (which implements the civil rights requirements under section 188 of WIA and applies to activities of the VR program that are conducted as part of the One-Stop system). Thus, in addition to following the proposed regulations and those regulations in the Education Department General Administrative Regulations listed in proposed § 361.4, individuals should consult the WIA implementing regulations, including the nondiscrimination requirements in 29 CFR 37.5 (which, for example, prohibits discrimination on the basis of participation in an activity receiving funds under Title I of WIA), when conducting VR program activities as part of the One-Stop system.

##### *Section 361.5 Applicable Definitions*

###### Fair Hearing Board

The proposed regulations include a new definition of the term "fair hearing board" that is based on the longstanding authority in the Act for State fair hearing boards to review disputes between State units and individual VR consumers. Specifically, section 102(c)(6)(A) of the Act allows a State fair hearing board established prior to 1985 to carry out the responsibilities of an impartial hearing officer in conducting due process hearings under the VR program. The proposed regulatory definition, coupled with the requirements that apply to fair hearing boards under § 361.57(i), is intended to

clarify confusion about the scope of the fair hearing board exception to the due process requirements in section 102(c)(6)(A) of the Act.

The term "fair hearing board" would be defined as "a committee, body, or group of persons" that is authorized by State law to review VR service-related determinations made by designated State unit personnel and that carries out the hearing officer's responsibilities in accordance with § 361.57. The requirement in the definition and, more specifically, in § 361.57(i) that the fair hearing board act as a collective body of persons is designed to address the misunderstanding that a single individual can issue final hearing decisions on behalf of a fair hearing board. The "fair hearing board exception" in section 102(c)(6) of the Act exempts the limited number of States from the statutory due process hearing procedures if a board or group of reviewing officials takes the place of an individual hearing officer.

Some fair hearing boards fulfill their role by appointing an individual board member or other official to conduct due process hearings, reviewing the hearing officer's recommended decision, and issuing the final decision in a given case (subject to review by a civil court). Those arrangements would continue to be appropriate under the proposed regulations. On the other hand, in States in which a sole administrative law judge or other hearing official conducts due process hearings under the VR program, each of the procedural safeguards that apply to due process hearings under the Act must be implemented since a single reviewing official does not constitute a "fair hearing board."

#### Physical or Mental Impairment

The term "physical or mental impairment" as defined in the current regulations has been revised to track the definition of that same term in the ADA and in the regulations implementing section 504 (see 34 CFR 104.3). The revised definition is intended not to alter the scope of physical or mental impairments that are covered under the current regulatory definition, but rather to clarify that an individual who is found to have an impairment for purposes of ADA or section 504 would be considered to have an impairment for purposes of the VR program. We note, however, that this change does not have an impact on the employment-related eligibility criteria under the VR program. For example, the requirement that the individual's impairment constitute or result in a substantial impediment to employment, as well as the rest of the criteria in § 361.42(a), still

must be met for an individual to be found eligible for VR services.

#### Qualified and Impartial Mediator

The proposed regulations also include a new definition of the term "qualified and impartial mediator." This proposed definition identifies the qualifications that we believe are essential for an individual to mediate disputes between applicants or eligible individuals and the designated State unit. The Act requires that mediation, which State units must make available consistent with the procedural requirements in proposed § 361.57(c) of the proposed regulations, be conducted by "qualified and impartial" mediators who are trained in effective mediation techniques. In addition to the statute, the proposed definition draws a number of elements from the current regulatory definition of "impartial hearing officer." The proposed regulations would also require, however, that mediators be trained in effective mediation techniques consistent with any applicable State certification, license, registration, or other requirements in light of the fact that some States have established certification or other criteria for individuals who mediate disputes involving public agencies.

#### Workforce Definitions

The proposed regulations also include several new statutory definitions from WIA. The defined terms—"local workforce investment board," "State workforce investment board," and "Statewide workforce investment system"—are used elsewhere in the proposed regulations to address required coordination between the VR program and other components of the workforce investment system established under WIA.

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

This section of the proposed regulations makes mostly technical changes to the current regulations in order to conform to the statutory amendments. In addition, the proposed regulations would require each State to submit its State plan for the VR program on the same date that it submits either a State plan under section 112 of WIA or a State unified plan under section 501 of that Act. Essentially, a State would have three options for submitting its VR State plan: (1) Submit a separate VR State plan on the same date as the State submits its State plan under section 112 of WIA (see section 101(a)(1)(A)). (2) Include the VR program as part of the State unified plan submitted under section 501 of WIA. (3)

Submit a separate VR State plan on the same date as it submits its State unified plan (that does not include the VR program) under section 501 of WIA.

Those States that choose to submit a State unified plan under section 501 of WIA should consult the "State Unified Plan—Planning Guidance" issued by the U.S. Department of Labor and published in the **Federal Register** on January 14, 2000 (65 FR 2463 through 2489). As stated previously, the State plan content requirements in the proposed regulations are those that are required by statute. The State unified plan guidance also identifies these same State plan requirements for inclusion in a State unified plan. Thus, the State plan for the VR program, whether submitted as part of a State unified plan in an effort to coordinate across programs or submitted as a separate State plan as has been done in the past, would be required to address the same State plan requirements as specified in the proposed regulations. In addition, those States submitting a State plan for the VR program apart from other programs still must coordinate closely with the other partners of the One-Stop service delivery system established under WIA. The interagency coordination requirements throughout the proposed regulations, including those in § 361.23, serve as important standards for improving services to individuals with disabilities across the State's One-Stop system.

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

This section of the proposed regulations is the same as that in the current regulations except for technical changes to conform to the Act and an addition to the list of activities that are the responsibility of the designated State unit. Specifically, § 361.13(c) of the proposed regulations would require that the State unit be responsible for participating as a partner in the One-Stop system under Title I of WIA in accordance with the WIA implementing regulations issued by the U.S. Department of Labor.

#### *Section 361.18(c) Comprehensive System of Personnel Development—Personnel Standards*

Proposed § 361.18(c), which contains the requirements governing DSU personnel standards, includes the sole substantive changes to the comprehensive system of personnel development under the current regulations.

The Act requires the DSU to establish standards to ensure that all State rehabilitation professionals and

paraprofessionals needed to carry out the VR program are qualified consistent with applicable certification, licensing, or registration requirements. The Act also requires that the standards implemented by the DSU be based on "the highest requirements in the State," a term defined in both the current and proposed regulations to refer to the highest entry-level academic degree needed for any national or State certification, licensing, or registration applicable to a given profession. Thus, DSUs must develop personnel standards requiring VR program professionals and paraprofessionals to meet the degree criterion of the certification, license, or registration requirements appropriate to their profession. To the extent that the DSU's current personnel do not meet the degree criterion, or a higher entry-level degree criterion is applied to the same category of personnel by another State agency, section 101(a)(7)(B)(ii) of the Act requires the DSU to take steps to ensure that its personnel meet the highest degree requirement in the State. In an effort to foster State progress in this area, proposed § 361.18(c) would modify the current regulations by requiring the DSU to describe in a written plan its retraining, recruitment, and hiring strategies, timeframes for DSU personnel to meet applicable standards, procedures for evaluating the DSU's progress in employing a staff that is qualified within the meaning of the Act, and other plan components. We believe the written plan is critical to the ability of DSUs to ensure the high quality of its VR staff and, consequently, the high quality of the program that the staff administers. Nevertheless, we are interested in receiving public comment on whether the proposed requirements of the written plan should be reduced, expanded, or modified in any way.

Additionally, the Rehabilitation Services Administration (RSA) has received a number of inquiries from DSUs in States that have established multi-tier certification systems for rehabilitation counselors employed by State Workers' Compensation or other programs. These certification systems include different academic degree requirements depending upon the extent of the individual's experience in the rehabilitation counseling field. For example, State rehabilitation counselor certification may be available to individuals who have a Bachelor's degree and a certain number of years of applicable experience or have a Master's degree and fewer years of experience. If the job functions carried out by counselors employed by the VR and Workers' Compensation programs are

similar, it is permissible for the DSU to base its personnel standards for VR counselors on the multi-tiered certification used by the Workers' Compensation program. However, both research findings and the widely held opinion in the disability community support the position that an advanced degree (e.g., a Master's degree in Rehabilitation Counseling) is important to a VR counselor's capability to assess the specialized needs of individuals with disabilities and to assist those individuals in developing an appropriate program of services to address those needs. Thus, we strongly encourage States not to employ minimally qualified individuals, i.e., those with Bachelor's degrees, by routinely substituting "equivalent experience" for higher-level degree criteria.

We continue to recognize the need to safeguard DSU employment opportunities for individuals who, because of their disability, are prohibited from obtaining the license or certification applicable to their particular profession. As RSA has previously stated, to the extent that certification and licensing requirements are discriminatory on the basis of disability, these issues should be addressed as compliance issues under section 504 of the Act and the Americans with Disabilities Act (ADA). Nevertheless, we remain aware of the particular difficulty experienced by blind individuals who, historically, have been excluded on the basis of their disability from becoming certified orientation and mobility instructors. The proposed regulations, like the current regulations, would not inhibit DSUs or other VR service providers from hiring blind individuals as orientation and mobility instructors, even though those individuals may not meet current certification requirements. To the extent that a DSU employs blind individuals who do not meet the "highest requirements in the State" applicable to the orientation and mobility profession, the State agency's detailed plan under paragraph (c)(1)(ii) of this proposed section would identify the State's strategies, timeframe, and evaluation procedures related to the retraining of these employees to meet the highest requirements. In addition, the Secretary will continue to support the development of alternative certification standards for orientation and mobility instructors in order to ensure that individuals who are blind can meet necessary certification standards within the timeframe outlined

in the DSU's plan under paragraph (c)(1)(ii) of this proposed section.

Finally, RSA has received inquiries concerning whether DSUs should focus their efforts on developing personnel standards for certain professions rather than others. We interpret the Act to require that the DSU establish and implement appropriate, certification-based standards for all categories of professionals and paraprofessionals needed to conduct the VR program. Nevertheless, in light of the difficulty States may experience in developing numerous standards at the same time, we would expect DSUs to give priority to those professions that are generally considered most critical to the success of the VR program. Accordingly, RSA encourages DSUs to give highest priority to establishing standards for vocational rehabilitation counselors. Priority should also be given to vocational evaluators, job coaches for individuals in supported employment or transitional employment, job development and job placement specialists, and personnel who provide medical or psychological services to individuals with disabilities.

#### *Section 361.22 Coordination With Education Officials*

We have amended this section of the current regulations to conform to the revised statutory requirements governing coordination between vocational rehabilitation and education agencies in the State. As in the past, the proposed regulatory requirements are intended to assist in the timely and efficient transition of students with disabilities from the receipt of educational services in school to the receipt of vocational rehabilitation services from the designated State agency. This intent is clearly reflected in the Conference Report (No. 105-659) to the 1998 Amendments, as is the expectation that the transition services provisions in the Act not be used to shift the responsibility of service delivery from education to rehabilitation during the transition years. Rather, those provisions are intended to define the role of the rehabilitation system as primarily one of planning for the student's years after leaving school. To that end, the proposed regulations would require State VR agencies to develop an individualized plan for employment (IPE) for a student determined to be eligible for VR services before the student leaves the school setting.

However, the proposed regulations also incorporate the new statutory components of the interagency agreement, including those under which

the State VR agency assists in transition planning and in the development of the student's individualized education program (IEP) under the Individuals with Disabilities Education Act. The VR agency is authorized to assist educational agencies in these areas, and is encouraged to do so in Conference Report No. 105–659, without determining whether the student is eligible under the VR program or developing an IPE under section 102(b) of the Rehabilitation Act.

*Section 361.23 Requirements Related to the Statewide Workforce Investment System*

This section of the current regulations has been revised significantly to reflect both the VR program's responsibilities as a partner of the One-Stop system under WIA and the requirements in the 1998 Amendments related to interagency coordination between the VR program and other components of the statewide workforce investment system under WIA (*i.e.*, other partners of the One-Stop system).

Specifically, § 361.23(a) would restate the requirements in 20 CFR 662.230 (which, along with the other provisions of part 662, implements the statutory requirements under Title I of WIA related to partners of the One-Stop system) by specifying the specific responsibilities that the VR program must fulfill as a partner in that system. Restating these requirements from the WIA implementing regulations in these proposed regulations is intended to inform State units of their WIA-related responsibilities that are in addition to the responsibilities that apply solely to VR programs. As indicated in the Background section of this preamble, we expect the State unit's participation in the One-Stop system to lead to improved access to better quality and more comprehensive services, including services provided by other entities, and to improved long-term employment outcomes for individuals with disabilities. We note that the VR program's participation in the One-Stop system signifies an important step in improving services overall for individuals with disabilities. We also note, however, that in meeting their One-Stop system responsibilities, State units, like all partners of the One-Stop system, must comply with the requirements of the law authorizing their program, meaning that the requirements of the Act and the proposed regulations must be met in the course of participating in One-stop system activities.

Aside from the other issues that individuals might address in their

comments on the proposed regulations, we recognize that commenters may request additional policy or interpretative guidance on these new One-Stop system responsibilities of the State unit that are specified in Title I of WIA, the WIA implementing regulations (20 CFR 662), and now in 361.23(a) of the proposed regulations. Accordingly, we ask that commenters on the proposed regulations identify specific questions that they consider most pertinent to the State unit's ability to operate an effective VR program as part of the statewide workforce investment system, including questions related to the list of One-Stop system responsibilities. We intend to help inform VR agencies and other One-Stop system partners about the required role of the VR program by responding to appropriate questions in a subsequent policy issuance, possibly an appendix to the final regulations that follow these proposed regulations.

Section 361.23(b) of the proposed regulations largely track the statutory requirements related to cooperative agreements between the designated State agency and other entities that are components of the statewide workforce investment system under Title I of WIA (*i.e.*, other One-Stop system partners). Coupled with the responsibilities in paragraph (a) of this proposed section, proposed paragraph (b) is intended to enhance coordination throughout the One-Stop service delivery system and ensure that interagency coordination between the State unit and other partners of the One-Stop system will enable individuals with disabilities to receive needed services provided by multiple sources. To that end, both the Act and proposed regulations require State units to enter into cooperative agreements with other partners of the One-Stop system and work toward increasing the capacity of those partners, and the One-Stop service delivery system as a whole, to better address the needs of individuals with disabilities.

It also should be noted that proposed § 361.23(b) differs from the current regulations since it follows the Act's emphasis on coordination between employment training programs across the State's One-Stop service delivery and workforce systems. Those Federal, State, and local programs that are not part of the workforce system but, nevertheless, are appropriate parties with which the VR agency should partner are addressed in § 361.24 of the proposed regulations.

*Section 361.24 Cooperation and Coordination With Other Entities*

In following the framework of section 101(a)(11) of the Act, § 361.24 of the proposed regulations does not specify, to the extent done in § 361.23 of the current regulations, the programs with which the designated State agency must cooperate. Rather, the proposed regulations, which largely track the revised Act, rely on the State agency to partner with, and use the facilities and services of, appropriate agencies and programs that it identifies.

*Section 361.26 Waiver of Statewideness*

This section of the proposed regulations is largely unchanged from the current regulations. The chief substantive change, which concerns the authority of States to use geographically earmarked funds (State funds only) without requesting a waiver of statewideness, is more fully discussed in § 361.60 of this section-by-section analysis.

*Section 361.29 Statewide Assessment; Annual Estimates; Annual State Goals and Priorities; Strategies; and Progress Reports*

This section, which closely tracks section 101(a)(15) of the Act, is intended to guide States in developing a comprehensive, forward-thinking plan for administering and improving their VR programs. The logical, systemic framework of this section—the statewide needs assessment, followed by the annual service and cost estimates, the DSU's goals and priorities for the program, its strategies for achieving those goals, and its reports of progress—would replace several sections of the current regulations that address some of the same requirements. This section also takes the place of the strategic plan provisions of the current regulations since those provisions were removed from the Act as part of the 1998 Amendments.

*Section 361.30 Services to American Indians*

Proposed § 361.30 is a newly titled section that tracks section 101(a)(13) of the Act in requiring that DSUs provide vocational rehabilitation services to American Indians who are eligible under the VR program to the same extent that it provides services to other significant populations of individuals with disabilities. Because the American Indian population is the sole "special group" listed in § 361.30 of the current regulations (*i.e.*, American Indians, U.S. civil employees, and public safety officers) that is specified in the 1998

Amendments, we have changed the title and scope of this proposed section.

*Section 361.31 Cooperative Agreements With Private Nonprofit Organizations*

Proposed § 361.31 would revise the current regulations to implement section 101(a)(24)(B) of the Act, which requires a description in the State plan of the manner in which the DSU will establish cooperative agreements with private nonprofit vocational rehabilitation service providers. This section of the current regulations addresses the use of community resources in providing vocational rehabilitation services, a requirement that was removed from the Act and, therefore, this proposed section.

*Section 361.33 [Reserved]*

We propose to remove § 361.33 of the current regulations and reserve that section for future use. The requirements in the current regulatory section regarding the use, assessment, and support of community rehabilitation programs are fully addressed in other reorganized sections of the proposed regulations. For example, the requirement that DSUs assess the need to establish, develop, and improve community rehabilitation programs in the State, and the DSUs' strategies for addressing those needs, are contained in the comprehensive assessment and strategy provisions in proposed § 361.29(a)(1)(i) and (d)(3), respectively. Moreover, proposed § 361.31 requires the DSU to establish cooperative agreements with private nonprofit vocational rehabilitation service providers, such as community rehabilitation programs. Consequently, § 361.33 of the current regulations is considered redundant and, therefore, no longer necessary.

*Section 361.35 Innovation and Expansion Activities*

Although the separate funding authority and other provisions related to the strategic plan have been removed from the Act, section 101(a)(18) of the Act, in part, retains a requirement that the State reserve a portion of its allotment under section 110 of the Act to further innovation and expansion of its VR program. Proposed § 361.35 would revise the current regulations to track this statutory requirement.

*Section 361.36 Ability To Serve All Eligible Individuals; Order of Selection for Services*

This proposed section largely tracks § 361.36 of the current regulations, except that the proposed State plan

content requirements that remain from this section of the current regulations are those that are specified in the Act. The proposed regulations also would incorporate additional requirements adopted as part of the 1998 Amendments, including the requirement that individuals who do not meet the State's order of selection criteria for receiving services be provided access to the DSU's information and referral system under § 361.37.

*Section 361.37 Information and Referral Services*

Proposed § 361.37 would implement the requirements in sections 101(a)(5) and (20) of the Act regarding information and referral systems. The Act applies several new criteria for information and referral programs under the VR program, including procedures for referring individuals to those components of the statewide workforce investment system best suited to meet the individual's employment needs and informational requirements that specify the type of information individuals must receive as part of their referrals (e.g., notice to the agency receiving the referral, a contact person in the receiving agency, etc.). These requirements are addressed in paragraph (b) of this proposed section.

Section 361.37(c) of the current regulations authorized the State unit to establish an expanded information and referral services program for providing counseling, guidance, and referral for job placement to eligible individuals who do not meet the priority category or categories for receiving vocational rehabilitation services under the order of selection established by a State. This authority, which was discretionary under the current regulations, has been modified in the 1998 Amendments to require the DSU to provide access to the information and referral services that it establishes under this section to those eligible individuals who do not meet the State's order of selection criteria. Thus, a DSU operating under an order of selection must assist eligible individuals who otherwise would not receive services from the State unit to secure needed employment assistance from other entities, particularly other program components of the statewide workforce investment system.

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

We propose to modify § 361.42 to implement new provisions in the Act regarding presumptive eligibility for Social Security recipients and

beneficiaries (section 102(a)(3) of the Act) and the use of trial work experiences as part of the assessment for determining eligibility (sections 7(2)(D) and 102(a)(2)(B) of the Act). In addition, we propose to revise the requirements in § 361.42(d) of the current regulations concerning extended evaluation and to clarify the current regulatory requirement in § 361.42(a)(1) by identifying the type of personnel that must conduct eligibility determinations. We also propose to remove from the State plan several assurances from the current regulations related to the eligibility criteria and procedures.

Section 361.42 specifies the requirements related to assessments for determining eligibility for vocational rehabilitation services and priority for services under an order of selection. As in current regulations, proposed § 361.42(a) specifies the criteria for determining eligibility under the VR program. Specifically, this section would require, as it has in the past, that an individual's eligibility be based on the following determinations: (1) The individual has a physical or mental impairment. (2) The impairment results in a substantial impediment to employment. (3) The individual requires vocational rehabilitation services to prepare for, enter into, engage in, or retain gainful employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. The Act requires that assessments for determining eligibility be conducted both by qualified personnel (section 103(a)(1) of the Act) and by the DSU (section 102(a)(6) of the Act). Consistent with these statutory emphases (and RSA policy that key programmatic decisions, including those related to eligibility determinations, be made by qualified personnel employed by the State), the proposed regulations would specify that qualified personnel must determine the existence of an impairment and whether the impairment results in a substantial impediment to employment, and that qualified vocational rehabilitation counselors employed by the DSU must determine whether the individual requires vocational rehabilitation services.

Section 361.42(a)(3) of the proposed regulations would implement the new statutory requirement in section 102(a)(3) of the Act concerning presumptive eligibility for Supplemental Security Income (SSI) recipients and Social Security Disability Insurance (SSDI) beneficiaries. Prior to the 1998 Amendments, disabled SSI recipients and SSDI beneficiaries were



statutorily presumed to have both a physical or mental impairment that constituted a substantial impediment to employment (*i.e.*, that these individuals satisfy the first two of the three eligibility criteria) and a severe disability. Section 102(a)(3) of the Act expanded the first of these two presumptions by requiring that disabled SSI recipients and SSDI beneficiaries be presumed eligible for vocational rehabilitation services. These individuals satisfy all of the previously mentioned three eligibility criteria, including the criterion that the individual requires VR services; *i.e.*, that the individual requires VR services in order to prepare for, enter into, or retain employment consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. This change was intended to streamline eligibility for a specific population of individuals who have already satisfied stringent disability-related assessments under the Social Security Act. The proposed regulations reflect the statutory changes.

The Act states that individuals with disabilities receiving SSI or SSDI benefits are presumed eligible under the VR program provided they intend to achieve an employment outcome consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The Conference Report for the 1998 Amendments (Conference Report 105-659, pp. 354-355) interprets this language to mean that SSI- or SSDI-eligible individuals must demonstrate their desire to work in order to receive vocational rehabilitation services. Because we believe all applicants for VR services must intend to work to receive services, the proposed regulations would implement the Conference Report language by requiring DSUs to inform individuals, through the application process for VR services, that individuals receiving VR services must intend to achieve an employment outcome. Consequently, an individual's completion of the application process would demonstrate the individual's desire to achieve an employment outcome.

We believe that these proposed regulatory requirements strike an appropriate balance between ensuring that applicants are fully aware of the employment-related purpose of the VR program (as opposed to entitlement programs like SSI and SSDI) and fulfilling the statutory mandate that SSI recipients and SSDI beneficiaries be considered presumptively eligible for the VR program. We note that the

expectation that an applicant receiving SSI or SSDI support, like any applicant, intends to become employed or maintain employment by receiving VR services does not constitute a new or additional criterion of eligibility. The eligibility criteria for the VR program specified in section 102(a)(1) of the Act were unchanged by the 1998 Amendments. The proposed regulations give meaning to congressional intent that SSI recipients and SSDI beneficiaries, in particular, be given ready access to services necessary for the achievement of an appropriate employment outcome by avoiding unnecessary and duplicative assessments.

Proposed § 361.42(b) would expressly authorize States to provide VR services to individuals with disabilities through more immediate determinations of eligibility. Specifically, this proposed provision would allow DSUs to make interim determinations of eligibility for individuals who the DSU reasonably believes will be eligible for VR services at the end of the statutory 60-day period for making eligibility decisions. If a DSU elects to implement this option, the proposed regulations would require the DSU to make a final determination of eligibility within 60 days from the time the individual applies for VR services, as required under § 361.41(b)(1) of the current regulations. In addition, the DSU must establish criteria for using interim eligibility determinations (*e.g.*, interim eligibility given if the DSU is awaiting documentation from another agency), develop procedures for making those determinations, and determine the scope of services that would be available pending final eligibility determinations. States may find this authority particularly useful with regard to SSI or SSDI recipients who, by virtue of section 102(a)(3) of the Act, are presumed eligible under the VR program and may begin to receive VR services prior to the end of the 60-day period while the DSU awaits documentation from the Social Security Administration.

Section 101(a)(12) of the Act, which would be implemented in § 361.42(c) of the proposed regulations, states that the State plan must include an assurance that the State will not impose a residence requirement that excludes from services any individual who is present in the State. This provision preexisted, and was left unchanged by, the 1998 Amendments. However, we believe it is important to clarify, as explained in the Senate Committee Report on the Rehabilitation Act Amendments of 1998, that the requirement for an individual to be

present in the State in order to be eligible to receive services should not be interpreted in any way to circumvent an individual's choice of an out-of-State provider (Senate Report 105-166, p.13). The committee further stated that, with regard to out-of-State placements, the requirement that an individual be present in the State must be imposed at the time of the eligibility determination and may not be used as a means of denying the continuation of services that are being provided in an out-of-State setting.

Paragraph (d) of this proposed section would clarify the extent to which DSUs can rely on determinations made by other agencies as a basis for eligibility determinations under the VR program. Section 101(a)(4)(B) of the Act specifies that determinations made by officials of other agencies regarding whether an applicant is an individual with a disability or an individual with a significant disability are to be used, to the extent appropriate and consistent with applicable statutory requirements, to assist the DSU in making determinations related to eligibility for VR services. In order to implement this provision in a manner that is consistent with the specific statutory mandate in section 102(a)(3)(A)(ii) of the Act that SSI recipients and SSDI beneficiaries be presumed eligible under the VR program, § 361.42(d)(2) of the proposed regulations would expand upon section 104(a)(4)(B) of the Act as it applies to determinations made by officials of the Social Security Administration. Specifically, paragraph (d)(2) would require that the DSU use determinations made by the Social Security Administration as evidence that an individual is receiving SSI or SSDI benefits and, therefore, is presumed to meet each criterion of eligibility under the VR program. We note that this proposed paragraph would constitute an exception to the general requirement in proposed § 361.42(a) that a VR counselor employed by the DSU determine that an individual requires VR services. This interpretation is essential, we believe, to ensure that SSI and SSDI recipients be considered presumptively eligible for VR services and receive VR services in a timely manner.

Section 7(2) of the Act revised the definition of "assessment for determining eligibility and vocational rehabilitation needs" by changing the statutory emphasis on "extended evaluation" to a new approach referred to as an exploration of the individual's abilities, capabilities, and capacity to perform in work situations, through the use of trial work experiences. If a DSU



believes that an applicant for VR services is incapable of benefiting in terms of an employment outcome from VR services due to the severity of the individual's disability (and, therefore, would be ineligible under section 102(a)(2)(A) of the Act), the DSU must, in most instances, assess whether the individual can work by placing the individual in a trial work setting with appropriate supports. The Act requires that trial work experiences be of sufficient variety and over a sufficient period of time to determine the eligibility of the individual or to determine the existence of clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome from VR services due to the severity of the individual's disability (section 102(a)(2)(B) of the Act). The Senate Committee Report accompanying S. 1579, from which the requirements came, notes that the trial work experiences may include supported employment, on-the-job training, and other experiences using realistic work settings (Senate Report 105-166, p. 9).

Proposed § 361.42(e) would implement the requirements for trial work experiences by requiring the DSU to develop a written plan for assessing an individual's ability to perform in a real work setting and requiring that trial placements for assessment purposes be as realistic as possible, meaning that the trial work must occur in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual. We are particularly interested in public comments identifying other types of trial work experiences, in addition to supported employment and on-the-job training, that may be appropriate. We consider the requirement for trial work experiences a critical element in determining eligibility in instances in which the DSU is concerned that the severity of an individual's disability indicates that the individual may be unable to benefit in terms of an employment outcome from VR services.

We emphasize that an individual may not be determined to be ineligible for VR services due to the unavailability of trial work settings since an inability to find suitable trial work would not constitute clear and convincing evidence that the individual cannot benefit from VR services in terms of an employment outcome. In these limited circumstances, the DSU may conduct an extended evaluation to determine the individual's eligibility for services. Though the Act emphasizes the use of trial work experiences for assessment purposes, the Congress recognized the

need to allow extended evaluation as an alternative if a real work test is impossible or if the State VR agency has exhausted other options without reaching a determination of eligibility (See Senate Report 105-166, pp. 9-10). Accordingly, proposed § 361.42(f) would retain limited requirements for an extended evaluation that would be based on a written plan for determining eligibility and would provide for VR services in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

Finally, we recognize that this section of the current regulations includes a note explaining how to interpret the term "clear and convincing evidence." The information in that note—*e.g.*, that clear and convincing evidence be determined on a case-by-case basis, constitutes the highest standard used in our civil system of law, and requires that the designated State unit have a high degree of certainty before concluding that an individual is incapable of benefiting from services in terms of an employment outcome—still includes useful guidance material for purposes of satisfying the clear and convincing evidentiary standard. Thus, as specified in the note, the review of existing information still would not provide clear and convincing evidence, meaning that, for example, the use of an intelligence test result alone would not constitute clear and convincing evidence. On the other hand, clear and convincing evidence could include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. Also, under the proposed regulations, a demonstration of clear and convincing evidence requires that the designated State unit explore the applicant's abilities, capabilities, and capacity to perform in work situations and provide appropriate supports. Nevertheless, the note in the current regulations has been removed from the proposed regulations, and the content of the note has been discussed here in this preamble in order to distinguish between regulatory requirements and guidance material. We are interested in commenters' views on whether this information should be reinserted into the final regulations.

#### *Section 361.45 Development of the Individualized Plan for Employment*

We propose to revise § 361.45 to implement new provisions in section 102(b)(1) of the Act. Like the statute, the

proposed regulations expand an eligible individual's options for developing the IPE, enable individuals to receive technical assistance in developing their IPEs, and specify the information that the DSU must provide to the eligible individual during IPE development. This proposed section tracks section 102(b)(2) of the Act by prescribing procedural requirements related to the development of IPEs, including the requirement that the IPE and any amendments to the IPE be approved and signed by a qualified vocational rehabilitation counselor employed by the DSU. In addition, several portions of this proposed section (as well as other proposed sections) have been removed from the State plan in an effort to both streamline the State plan and reduce paperwork burden on State agencies.

Proposed § 361.45(b)(1) reflects the new statutory requirement in section 102(b)(1) of the Act authorizing an eligible individual or, as appropriate, an individual's representative to develop all or part of the IPE without any assistance, with assistance from a qualified VR counselor (who may or may not be employed by the DSU), or with technical assistance from additional resources outside of the DSU. Additional resources may include independent living centers, community rehabilitation programs, family members, friends, or other programs and individuals.

The statutory options for developing the IPE were adopted from the changes proposed by the Senate in S. 1579. In the report accompanying S. 1579, the Senate committee stated that these changes enable eligible individuals to determine the extent to which the State VR agency would assist in the development of their IPEs (Senate Report 105-166, pp. 22-23). The committee noted that, although the plan's effect is conditioned on the approval and signature of both the eligible individual and a qualified VR counselor employed by the DSU, the new requirements were intended to empower individuals with disabilities to have greater control in developing their IPEs to address their unique needs. In addition, the committee noted its intent that, in many instances, rehabilitation counselors are likely to serve more as facilitators of plan development than they did in the past.

Consistent with the language in the Senate Report, the proposed regulations place the responsibility on the eligible individual or, as appropriate, the individual's representative to decide whether, and to what extent, the DSU or other entity will assist in the development of the individual's IPE.

Regardless of the option chosen, however, the DSU counselor does retain approval (and signature) authority. In addition, it should be noted that the DSU is responsible for ensuring that each IPE is reviewed annually by the individual and a qualified VR counselor who, at the individual's request, may or may not be employed by the DSU. This responsibility is reflected in § 361.45(d)(5).

Proposed § 361.45(b)(2) describes other information that the DSU must provide to an eligible individual or, as appropriate, the individual's representative, including descriptions of the full range of components that must be included in an IPE, the rights and remedies available to the individual, the availability of a client assistance program, and information on how to contact that program. The DSU must also provide, as appropriate, an explanation of agency guidelines and criteria associated with financial commitments concerning an IPE, information on the availability of assistance in completing DSU forms required as part of the IPE, and any additional information that the eligible individual requests or the DSU determines to be necessary.

As in section 102(b)(2)(B) of the Act, proposed § 361.45(c) requires that the IPE be developed in a manner that gives the individual the opportunity to exercise informed choice in selecting the employment outcome, the specific VR services needed to achieve the employment outcome, the entity or entities that will provide the services, and the methods available for procuring the services. We note that informed choice also applies to the selection of both the employment setting and the setting in which VR services are provided as part of the selection of the employment outcome and services respectively. Several of the remaining provisions in this proposed section simply track statutory requirements. In addition, proposed § 361.45(c)(8)—requiring that an IPE for a student with a disability who is receiving special education services be developed in consideration of the student's IEP and in accordance with the plans, policies, procedures, and interagency agreement required in proposed § 361.22—is retained from the current regulations as a necessary safeguard.

The terms “long-term vocational goal,” “intermediate rehabilitation objectives,” and “individualized written rehabilitation program” would be removed from this section of the current regulations since these terms are no longer used in the Act.

#### *Section 361.46 Content of the Individualized Plan for Employment*

Proposed § 361.46 identifies the mandatory content components of the IPE, as specified in section 102(b)(3) of the Act. These components must be included in each IPE regardless of the approach that the individual selects under proposed § 361.45(b)(1) for developing the IPE.

Because proposed § 361.46 simply amends current regulations by tracking statutory changes, the proposed changes to this section, other than the burden-reducing step of removing the requirements of this section from the State plan, are purely technical. Also, as in proposed § 361.45, the terms “long-term vocational goal,” “intermediate rehabilitation objectives,” and “individualized written rehabilitation program” would be removed from this section of the current regulations since these terms are no longer used in the Act.

#### *Section 361.47 Record of Services*

We propose to modify the regulatory requirements related to the record of services by requiring States to determine, with input from the State Rehabilitation Councils, the type of documentation that they will maintain for each applicant and eligible individual to meet the content items that must be included in each individual's record of services. The proposed regulations also add limited content items that are related to an individual's participation in the VR program.

We believe that States should be given the discretion to determine which sources of documentation to use to meet the record of services requirements (RSA typically examines records of services as part of its periodic monitoring of a State's administration of the VR program). We further believe that consultation with the State Rehabilitation Council (if the State has a Council) is warranted since deciding which type of documentation is sufficient to support determinations affecting an individual's participation in the VR program (e.g., eligibility determinations that must be documented under paragraph (a)(1) of this proposed section) would constitute a policy of general applicability.

The proposed regulations would also move certain content requirements from § 361.46 of the current regulations to the record of services section of the regulations. Documentation requirements specified in proposed § 361.47(a)(2) (ineligibility determinations), (a)(13) (referrals), and

(a)(14) (achievement of an employment outcome), we believe, are more likely to be viewed as components of the individual's record rather than the individual's program of services.

The proposed regulations also incorporate new statutory requirements (e.g., § 361.47(a)(10) related to the annual reviews of individuals in extended employment).

The remaining documentation requirements in proposed § 361.47(a)(4) (level of significance of the disability), (a)(6) (IPE), (a)(9) (verification of competitive employment), and (a)(11) (results of mediation or due process hearing) represent documentation requirements that we consider necessary to ensure that important program requirements are met with respect to each individual participating in the VR program.

Finally, this proposed section would amend the current regulations by no longer requiring that the record of services requirements be addressed in the list of assurances of the State plan.

#### *Section 361.52 Informed Choice*

Proposed § 361.52 would implement the expanded authority in section 102(d) of the Act requiring that applicants and eligible individuals be able to exercise informed choice throughout the rehabilitation process. This proposed section would largely track the statutory requirements provisions and also would retain the current regulatory provisions that specify types of information that could assist eligible individuals to exercise informed choice in the selection of VR services and service providers.

#### *Section 361.53 Comparable Services and Benefits*

Section 101(a)(8) of the Act expands the longstanding provisions regarding comparable services and benefits to require interagency agreements between the designated State agency and other appropriate public entities (including the State agency administering the State's Medicaid program, public institutions of higher education, and other components of the statewide workforce investment system) to ensure that eligible individuals with disabilities receive, in a timely manner, necessary services to which each party to the agreement has an obligation, or the authority, to contribute. The statutory requirements related to this enhanced interagency coordination would be implemented in paragraph (d) of this proposed section.

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

This section of the proposed regulations largely tracks the requirements in the current regulations related to financial needs tests with two primary changes.

First, the list of VR services that are currently exempted from State financial needs tests (*e.g.*, assessment and counseling and guidance), meaning that a State unit cannot require an individual to contribute to the cost of those services, has been expanded to include interpreter services for individuals who are the deaf or hard of hearing, reader services for individuals who are blind, and personal assistance services. We are proposing to exempt these services from financial need assessments since each service is provided to enable an individual to access the VR program or participate in a program of vocational rehabilitation services. Individuals do not apply, nor are they eligible, under the VR program solely to receive these types of support services. Rather, these services allow persons to communicate or perform daily living functions in the course of receiving other VR services that are necessary to their training for employment.

We are interested in commenters' views on this proposed change and request public comment on whether this list of access services that would be exempted from financial needs tests under this section should be modified in any way. We also would like to point out that exempting these additional services from financial needs tests would not affect a State unit's or other service provider's responsibility to comply with section 504 of the Act, the Americans with Disabilities Act, or other Federal statutes and regulations regarding individuals with disabilities. To the extent an entity is obligated under Federal law to provide an accommodation or an auxiliary aid to a VR program participant at no cost to the individual, that entity must provide the necessary service and fulfill those requirements that apply to it.

The proposed regulations also would prohibit State units from applying financial needs tests to individuals receiving SSI or SSDI. As with the requirement that SSI recipients and SSDI beneficiaries be presumed eligible under the VR program, this proposed change is intended to increase efficiency in the way State agencies serve those with disabilities who receive Social Security.

Typically SSI recipients (based on limited income and resources) and SSDI

beneficiaries (based on an inability to engage in substantial gainful activity without assistance such as VR services) have limited ability to contribute to the cost of VR services and, thus, are unlikely to meet the State criteria for contributing to service costs. SSI recipients, in fact, have already been determined by the Social Security Administration (SSA) to fall below federally established income and resource standards. The proposed regulations would ensure that those receiving Social Security disability benefits receive timely VR services without being subject to a largely duplicative (at least with regard to SSI recipients), and unnecessary, financial need test as a condition of receiving needed services.

More importantly, exempting SSI recipients and SSDI beneficiaries from financial needs assessments would support the chief goal behind the practice of referring these individuals to the VR program: Enabling individuals to become gainfully employed and to no longer require Social Security benefits. Requiring Social Security recipients, who typically have very limited resources, to contribute to the cost of VR services serves as a disincentive for these individuals to pursue gainful employment through the VR program. Instead, the proposed regulations would support individuals' efforts to pursue employment and avoid Social Security disability benefits. Moreover, the proposed regulations would not overly burden State units since SSA reimburses State units for the cost of VR services provided to eligible individuals receiving SSI and SSDI after the individual has engaged in substantial gainful activity consistent with SSA criteria.

Finally, we believe that the benefits afforded by the changes to this section—*e.g.*, streamlining the process for accessing VR services and reducing disincentives for remaining on public assistance—outweigh any costs to States since many States use financial needs tests only in very limited circumstances.

*Section 361.56 Requirements for Closing the Record of Services of an Individual Who Has Achieved an Employment Outcome*

We propose to modify § 361.56 of the current regulations to better reflect the requirement that the components of that section must be met before the DSU can close the record of services for an individual who has achieved an employment outcome. Accordingly, the title of § 361.56 of the current regulations ("Individuals determined to have achieved an employment

outcome") would be changed in the proposed regulations to "Requirements for closing the record of services of an individual who has achieved an employment outcome." Proposed § 361.56 would also be removed from the State plan list of assurances.

In order to close the individual's record of services, this proposed section would require that the individual achieve the employment described in the individual's IPE and maintain the employment outcome for an appropriate period of time, but not for less than 90 days. Also, the individual and the qualified VR counselor employed by the DSU must consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment. Each of the proposed provisions is based on criteria specified in § 361.56 of the current regulations. In addition, the proposed regulations would require DSUs to inform individuals of the availability of post-employment services that may be provided after the record of services is closed. We consider each of the proposed provisions to be important protection for individuals by ensuring that the individual's employment outcome is sufficiently stable and that the individual no longer requires VR services to maintain the employment.

*Section 361.57 Review of the Designated State Unit Personnel Determinations*

Section 361.57 of the proposed regulations would implement section 102(c) of the Act by describing the procedural requirements for resolving disputes between individual applicants or eligible individuals in the VR program and the DSU. The proposed regulations would largely track current regulatory requirements related to informal resolution procedures, due process hearings, selection of impartial hearing officers, and other items. In addition, the proposed regulations would establish requirements for implementing two new procedures that were adopted in the 1998 Amendments to the Act—mediation and administrative review of hearing officer decisions. Finally, under this proposed section, the DSU would no longer be required to include its due process procedures as part of its State plan submission.

Designated State units are required by statute to establish mediation procedures in an effort to resolve disputes in a more timely and less confrontational manner and to reduce the number of formal, adversarial hearings. We note, however, that the Act prohibits DSUs from using mediation as

a means of denying or delaying an individual's right to a hearing. Consequently, the proposed regulations would clarify that an applicant or eligible individual must be given a hearing within 45 days from the individual's request for review if, by that time, the dispute has not been resolved informally or through mediation. Additionally, mediation sessions must be conducted by "qualified and impartial mediators," a term that is defined in § 361.5(b)(38) of the proposed regulations.

States also have the option of developing administrative review procedures through which parties can seek review of hearing officer decisions by the designated State agency (that oversees the DSU) or the Office of the Governor. The 1998 Amendments provides for this administrative review process in place of the prior authority for DSU directors to review hearing decisions, an authority that has been removed from the Act.

The proposed regulations also track the statute by explicitly informing parties to disputes concerning the provision of VR services that they may challenge final agency decisions in civil court.

We also propose to clarify one point related to representation during mediation sessions and hearings. Paragraph (a)(3)(ii) of this proposed section, which, consistent with section 102(c)(3)(B) of the Act, gives individuals the opportunity to be represented in mediation sessions or formal hearings by counsel or another advocate that they select, is to be interpreted broadly. In other words, the individual, as the party to the dispute, has full discretion to choose an attorney, a guardian, family member, a friend, or other person to serve as his or her advocate during mediation or a hearing.

#### *Section 361.60 Matching Requirements*

Proposed § 361.60 would revise current regulatory matching requirements for the VR program to reflect a number of statutory changes made by the 1998 Amendments. Specifically, this proposed section would omit the current provisions related to the innovation and expansion grant program since the authority for that program has been removed from the Act. In addition, the regulatory requirements governing sources of State matching funds (*i.e.*, the State's non-Federal share) would be revised to reflect the new statutory provisions governing the use of geographically limited earmarked funds as part of a State's non-Federal share.

Section 361.60(b)(3)(ii) of the proposed regulations would implement section 101(a)(4)(B) of the Act. Section 101(a)(4)(B) of the Act authorizes a State to use funds that are earmarked for a particular geographic area within the State as part of its non-Federal share without obtaining a waiver of statewideness. In these instances, the State must first determine and inform the RSA Commissioner that it cannot provide the full amount of its non-Federal share without using the earmarked funds.

Although section 101(a)(4)(B) of the Act is intended to assist some States in meeting their matching obligations, we emphasize that the Act does not permit States to restrict the use of any Federal funds received under the VR program to certain geographic areas unless the State obtains a waiver of statewideness from the Commissioner of RSA. In the absence of RSA approval, VR services are to be made generally available to individuals with disabilities across the State. The statewideness requirements also apply to the Federal VR program funds that the State receives in return for contributing geographically limited earmarked funds to its non-Federal share. In other words, without a waiver, Federal funds that are matched by privately donated funds must be used on a statewide basis and cannot flow entirely back to the particular geographic area for which the privately donated funds were earmarked.

#### **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 proposed regulations would address the National Education Goal that, by the year 2000, every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

#### **Executive Order 12866**

##### *1. Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action. The potential costs associated with the proposed regulations are those resulting from statutory requirements and those

we have determined as necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

#### **Summary of Potential Costs and Benefits**

We believe that the NPRM would substantially improve the State VR Services Program and would yield substantial benefits in terms of program management, efficiency, and effectiveness. We also believe that the proposed regulations represent the least burdensome way to implement the 1998 Amendments to Title I of the Act and fulfill important policy objectives that we consider to be essential to the success of the program. The NPRM would further reduce paperwork or process requirements that currently apply to DSUs and enhance the flexibility of DSUs to meet non-statutory requirements. Increased flexibility of DSUs and other benefits resulting from the proposed regulations are discussed in the following paragraphs of this section and throughout the section-by-section summary of the preamble.

#### **Definitions and Examples**

The proposed regulations would incorporate certain definitions under the Workforce Investment Act to give a complete listing of defined terms that apply to the VR program. For purposes of further clarification, the NPRM also includes definitions of two terms that are used in the program but are not defined in the Act—"fair hearing board" and "qualified and impartial mediator."

We have also provided additional clarifying information in the proposed regulations through the limited use of examples. In the past, many in the vocational rehabilitation community have stated that they find this information more accessible and more useful if it is included in the regulations rather than issued separately by RSA as subregulatory guidance. Nevertheless, we emphasize that the examples in the proposed regulations are purely

illustrative and are not intended to restrict State flexibility.

### Reduction of Grantee Burden

Non-statutory paperwork requirements have been eliminated or consolidated throughout the NPRM in an effort to reduce regulatory burden on States. In particular, as noted earlier in this preamble, the NPRM would significantly reduce the number of requirements that apply to the DSU's State plan submission. A list of the sections of the current regulations that have been removed from content of the State plan is provided in the Background section of this preamble. Additional burden-reducing steps taken in the NPRM are explained in the section-by-section summary. Those paperwork requirements that would remain in the proposed regulations are considered essential to the proper administration of the program.

### Enhanced Protections for Individuals With Disabilities

The proposed regulations include several provisions that are intended to ensure that individuals with disabilities are more readily provided VR services without unnecessary delay. For example, § 361.42 (Assessment for determining eligibility and priority for services) would provide several safeguards for individuals receiving SSI or SSDI benefits (who, therefore, are presumed eligible under the VR program) to ensure that an individual's SSI or SSDI status is verified quickly and that these individuals receive VR services in a timely manner as the statute intends.

As a second example, § 361.57 (Review of State unit personnel decisions) would clarify that the use of mediation or informal means to resolve disputes between VR agencies and consumers must not serve to delay an individual's right to a due process hearing within 45 days of a request for review. Proposed § 361.57 as a whole is designed to expedite resolution of disputes and avoid disruptions in services.

### Additional Benefits

Aside from establishing certain regulatory safeguards to address specific issues that arise under the VR program, the NPRM generally follows the statutory framework of giving States significant flexibility in operating their VR programs and assisting individuals with disabilities to achieve high-quality employment. Also, the NPRM closely links the VR program to the State workforce investment system as is required by the Act. Several sections of

the NPRM—*e.g.*, § 361.23 (Requirements related to the statewide workforce investment system) and § 361.37 (Information and referral services)—foster increased coordination between VR and the other employment training programs in the workforce system to ensure that individuals with disabilities receive necessary rehabilitation and other services enabling them to achieve an appropriate employment outcome.

### 2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 361.42 *Assessment for determining eligibility and priority for services.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These regulations would impact some public institutions of higher education (IHEs) by requiring States to develop formal agreements between State VR agencies and public IHEs for purposes of providing necessary VR services to eligible individuals attending those IHEs. However, because these proposed regulations impose only minimal requirements on IHEs and otherwise would affect only States and State

agencies, the regulations would not have a significant impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

### Paperwork Reduction Act of 1995

Sections 361.10, 361.12, 361.13, 361.15, 361.16, 361.17, 361.18, 361.19, 361.20, 361.21, 361.22, 361.23, 361.24, 361.25, 361.29, 361.30, 361.31, 361.32, 361.34, 361.35, 361.36; 361.37, 361.40, 361.46, 361.51, 361.52, 361.53, and 361.55 contain information collection requirements. Information collection requirements that pertain to State recordkeeping, but are not associated with the State plan, are contained in §§ 361.14, 361.26, 361.27, 361.28, 361.38, 361.41, 361.47, 361.48, 361.49, 361.50, 361.54, 361.57, 361.60 and 361.62.

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

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

States are eligible to apply for grants under these proposed regulations. The information to be collected includes State plan assurances and descriptions to meet statutory requirements and other required information that the Department considers important to the efficient and effective administration of the program. Required information that is unrelated to the State plan is necessary for purposes of Department monitoring of program performance and compliance.

The Department needs and uses the information related to the State plan for the VR program in order to ensure compliance with Federal requirements. An approved State plan is necessary for a State to receive a grant under the VR program. All State plan information is to be collected and reported once unless the State has submitted the information previously or determines that modifications are necessary, or the Secretary requires modifications due to changes in State policy, Federal law (including regulations), interpretation of the Act by a Federal court or the highest court in the State, or a finding by the Secretary of State noncompliance with the requirements of the Act. However, consistent with statutory requirements, the following State plan information must be submitted annually: Information relating to the comprehensive system of personnel development under § 361.18; reports

relating to assessments, estimates, goals and priorities, and reports of progress under § 361.29; reports on the use of funds reserved for innovation and expansion activities under § 361.35; input provided by the State Rehabilitation Council on State plan revisions in accordance with § 361.16; and other State plan updates of information required under the proposed regulations that are requested by the Secretary.

Annual reporting and recordkeeping burden for this collection of information is estimated to average 12,220 hours for each response for 82 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden for this collection to be 1,002,050 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collections of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

### Intergovernmental Review

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

This document provides early notification of our specific plans and actions for this program.

### Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

### 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 the 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, DC, 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>

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

### List of Subjects in 34 CFR Part 361

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

Dated: February 22, 2000.

**Richard W. Riley,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 361 to read as follows:

## PART 361—STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

### Subpart A—General

Sec.

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

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

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

### Administration

- 361.12 Methods of administration.
- 361.13 State agency for administration.
- 361.14 Substitute State agency.
- 361.15 Local administration.
- 361.16 Establishment of an independent commission or a State Rehabilitation Council.
- 361.17 Requirements for a State Rehabilitation Council.
- 361.18 Comprehensive system of personnel development.
- 361.19 Affirmative action for individuals with disabilities.
- 361.20 Public participation requirements.
- 361.21 Consultations regarding the administration of the State plan.
- 361.22 Coordination with education officials.
- 361.23 Requirements related to the statewide workforce investment system.
- 361.24 Cooperation and coordination with other entities.
- 361.25 Statewideness.
- 361.26 Waiver of statewideness.
- 361.27 Shared funding and administration of joint programs.
- 361.28 Third-party cooperative arrangements involving funds from other public agencies.
- 361.29 Statewide assessment; annual estimates; annual State goals and priorities; strategies; and progress reports.
- 361.30 Services to American Indians.
- 361.31 Cooperative agreements with private nonprofit organizations.
- 361.32 Use of profitmaking organizations for on-the-job training in connection with selected projects.
- 361.33 [Reserved]
- 361.34 Supported employment State plan supplement.
- 361.35 Innovation and expansion activities.
- 361.36 Ability to serve all eligible individuals; order of selection for services.
- 361.37 Information and referral services.
- 361.38 Protection, use, and release of personal information.
- 361.39 State-imposed requirements.
- 361.40 Reports.

### Provision and Scope of Services

- 361.41 Processing referrals and applications.
- 361.42 Assessment for determining eligibility and priority for services.

- 361.43 Procedures for ineligibility determination.
- 361.44 Closure without eligibility determination.
- 361.45 Development of the individualized plan for employment.
- 361.46 Content of the individualized plan for employment.
- 361.47 Record of services.
- 361.48 Scope of vocational rehabilitation services for individuals with disabilities.
- 361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities.
- 361.50 Written policies governing the provision of services for individuals with disabilities.
- 361.51 Standards for facilities and providers of services.
- 361.52 Informed choice.
- 361.53 Comparable services and benefits.
- 361.54 Participation of individuals in cost of services based on financial need.
- 361.55 Annual review of individuals in extended employment or other employment under special certificate provisions of the Fair Labor Standards Act.
- 361.56 Requirements for closing the record of services of an individual who has achieved an employment outcome.
- 361.57 Review of State unit personnel determinations.

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

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

**Authority:** 29 U.S.C. 709(c), unless otherwise noted.

#### Subpart A—General

##### § 361.1 Purpose.

Under the State Vocational Rehabilitation Services Program (Program), the Secretary provides grants to assist States in operating statewide comprehensive, coordinated, effective, efficient, and accountable programs, each of which is—

- (a) An integral part of a statewide workforce investment system; and
- (b) Designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that they may prepare for and engage in gainful employment.

**Authority:** Section 100(a)(2) of the Act; 29 U.S.C. 720(a)(2))

##### § 361.2 Eligibility for a grant.

Any State that submits to the Secretary a State plan that meets the requirements of section 101(a) of the Act and this part is eligible for a grant under this Program.

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

##### § 361.3 Authorized activities.

The Secretary makes payments to a State to assist in—

- (a) The costs of providing vocational rehabilitation services under the State plan; and
- (b) Administrative costs under the State plan.

**Authority:** Section 111(a)(1) of the Act; 29 U.S.C. 731(a)(1))

##### § 361.4 Applicable regulations.

The following regulations apply to this Program:

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

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations), with respect to subgrants to entities that are not State or local governments or Indian tribal organizations.

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

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

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

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

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

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

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

(9) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(b) The regulations in this part 361.

(c) 20 CFR part 662 (Description of One-Stop Service Delivery System under Title I of the Workforce Investment Act of 1998).

(d) 29 CFR part 37, to the extent programs and activities are being conducted as part of the One-Stop service delivery system under section 121(b) of the Workforce Investment Act of 1998.

**Authority:** Section 12(c) of the Act; 29 U.S.C. 709(c))

##### § 361.5 Applicable definitions.

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

*Department EDGAR*  
*Fiscal year*  
*Nonprofit*  
*Private*  
*Public*  
*Secretary*

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

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

(2) *Administrative costs under the State plan* means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program carried out under this part, including expenses related to program planning, development, monitoring, and evaluation, including expenses for—

- (i) Quality assurance;
- (ii) Budgeting, accounting, financial management, information systems, and related data processing;
- (iii) Providing information about the program to the public;
- (iv) Technical assistance and support services to other State agencies, private nonprofit organizations, and businesses and industries, except for technical assistance and support services described in § 361.49(a)(4);
- (v) The State Rehabilitation Council and other advisory committees;
- (vi) Professional organization membership dues for designated State unit employees;
- (vii) The removal of architectural barriers in State vocational rehabilitation agency offices and State-operated rehabilitation facilities;
- (viii) Operating and maintaining designated State unit facilities, equipment, and grounds;
- (ix) Supplies;
- (x) Administration of the comprehensive system of personnel development described in § 361.18, including personnel administration, administration of affirmative action plans, and training and staff development;
- (xi) Administrative salaries, including clerical and other support staff salaries, in support of these administrative functions;
- (xii) Travel costs related to carrying out the program, other than travel costs related to the provision of services;
- (xiii) Costs incurred in conducting reviews of determinations made by personnel of the designated State unit, including costs associated with



mediation and impartial due process hearings under § 361.57; and

(xiv) Legal expenses required in the administration of the program.

(Authority: Section 7(1) of the Act; 29 U.S.C. 705(1))

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

(Authority: Section 7(19)(A) of the Act; 29 U.S.C. 705(19)(A))

(4) *Applicant* means an individual who submits an application for vocational rehabilitation services in accordance with § 361.41(b)(2).

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(5) *Appropriate modes of communication* means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(6) *Assessment for determining eligibility and vocational rehabilitation needs* means, as appropriate in each case—

(i)(A) A review of existing data—

(1) To determine if an individual is eligible for vocational rehabilitation services; and

(2) To assign priority for an order of selection described in § 361.36 in the States that use an order of selection; and

(B) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and assignment;

(ii) To the extent additional data are necessary to make a determination of the employment outcomes and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual. This comprehensive assessment—

(A) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan of employment of the eligible individual;

(B) Uses as a primary source of information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements—

(1) Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in § 361.36 for the individual; and

(2) Information that can be provided by the individual and, if appropriate, by the family of the individual;

(C) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual; and

(D) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment;

(iii) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(iv) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

(Authority: Section 7(2) of the Act; 29 U.S.C. 705(2))

(7) *Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase,

maintain, or improve the functional capabilities of an individual with a disability.

(Authority: Section 7(3) of the Act; 29 U.S.C. 705(3))

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

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

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

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

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

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

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

(Authority: Sections 7(4) and 12(c) of the Act; 29 U.S.C. 705(4) and 709(c))

(9) *Community rehabilitation program*.—(i) *Community rehabilitation program* means a program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

(A) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.

(B) Testing, fitting, or training in the use of prosthetic and orthotic devices.

(C) Recreational therapy.

(D) Physical and occupational therapy.

(E) Speech, language, and hearing therapy.

(F) Psychiatric, psychological, and social services, including positive behavior management.

(G) Assessment for determining eligibility and vocational rehabilitation needs.

(H) Rehabilitation technology.

(I) Job development, placement, and retention services.

(J) Evaluation or control of specific disabilities.

(K) Orientation and mobility services for individuals who are blind.

(L) Extended employment.

(M) Psychosocial rehabilitation services.

(N) Supported employment services and extended services.

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

(P) Personal assistance services.

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

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

(10) *Comparable services and benefits* means—

(i) Services and benefits that are—

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

(B) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with § 361.53; and

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

(ii) For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

(Authority: Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 709(c) and 721(a)(8))

(11) *Competitive employment* means work—

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

(ii) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(Authority: Sections 7(11) and 12(c) of the Act; 29 U.S.C. 705(11) and 709(c))

(12) *Construction of a facility for a public or nonprofit community rehabilitation program* means—

(i) The acquisition of land in connection with the construction of a new building for a community rehabilitation program;

(ii) The construction of new buildings;

(iii) The acquisition of existing buildings;

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

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

(vi) The acquisition of initial fixed or movable equipment of any new, newly acquired, newly expanded, newly remodeled, newly altered, or newly renovated buildings that are to be used for community rehabilitation program purposes; and

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

(Authority: Sections 7(6) and 12(c) of the Act; 29 U.S.C. 705(6) and 709(c))

(13) *Designated State agency or State agency* means the sole State agency, designated in accordance with § 361.13(a), to administer, or supervise the local administration of, the State plan for vocational rehabilitation services. The term includes the State agency for individuals who are blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of individuals who are blind.

(Authority: Sections 7(8)(A) and 101(a)(2)(A) of the Act; 29 U.S.C. 705(8)(A) and 721(a)(2)(A))

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

(i) The State vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the State agency, as required under § 361.13(b); or

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

(Authority: Sections 7(8)(B) and 101(a)(2)(B) of the Act; 29 U.S.C. 705(8)(B) and 721(a)(2)(B))

(15) *Eligible individual* means an applicant for vocational rehabilitation

services who meets the eligibility requirements of § 361.42(a).

(Authority: Sections 7(20)(A) and 102(a)(1) of the Act; 29 U.S.C. 705(20)(A) and 722(a)(1))

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

(Authority: Sections 7(11), 12(c), 100(a)(2), and 102(b)(3)(A) of the Act; 29 U.S.C. 705(11), 709(c), 720(a)(2), and 722(b)(3)(A))

(17) *Establishment, development, or improvement of a public or nonprofit community rehabilitation program* means—

(i) The establishment of a facility for a public or nonprofit community rehabilitation program as defined in paragraph (b)(18) of this section to provide vocational rehabilitation services to applicants or eligible individuals;

(ii) Staffing, if necessary to establish, develop, or improve a community rehabilitation program for the purpose of providing vocational rehabilitation services to applicants or eligible individuals, for a maximum period of 4 years, with Federal financial participation available at the applicable matching rate for the following levels of staffing costs:

(A) 100 percent of staffing costs for the first year.

(B) 75 percent of staffing costs for the second year.

(C) 60 percent of staffing costs for the third year.

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

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

(Authority: Sections 7(12) and 12(c) of the Act; 29 U.S.C. 705(12) and 709(c))

(18) *Establishment of a facility for a public or nonprofit community rehabilitation program* means—

(i) The acquisition of an existing building and, if necessary, the land in

connection with the acquisition, if the building has been completed in all respects for at least 1 year prior to the date of acquisition and the Federal share of the cost of acquisition is not more than \$300,000;

(ii) The remodeling or alteration of an existing building, provided the estimated cost of remodeling or alteration does not exceed the appraised value of the existing building;

(iii) The expansion of an existing building, provided that—

(A) The existing building is complete in all respects;

(B) The total size in square footage of the expanded building, notwithstanding the number of expansions, is not greater than twice the size of the existing building;

(C) The expansion is joined structurally to the existing building and does not constitute a separate building; and

(D) The costs of the expansion do not exceed the appraised value of the existing building;

(iv) Architect's fees, site survey, and soil investigation, if necessary in connection with the acquisition, remodeling, alteration, or expansion of an existing building; and

(v) The acquisition of fixed or movable equipment, including the costs of installation of the equipment, if necessary to establish, develop, or improve a community rehabilitation program.

(Authority: Sections 7(12) and 12(c) of the Act; 29 U.S.C. 705(12) and 709(c))

(19) *Extended employment* means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

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

(Authority: Sections 7(13) and 623 of the Act; 29 U.S.C. 705(13) and 795i)

(21) *Extreme medical risk* means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(Authority: Sections 12(c) and 101(a)(8)(A)(i)(III) of the Act; 29 U.S.C. 709(c) and 721(a)(8)(A)(i)(III))

(22) *Fair hearing board* means a committee, body, or group of persons established by a State prior to January 1, 1985 that—

(i) Is authorized under State law to review determinations made by personnel of the designated State unit that affect the provision of vocational rehabilitation services; and

(ii) Carries out the responsibilities of the impartial hearing officer in accordance with the requirements in § 361.57(i).

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(23) *Family member*, for purposes of receiving vocational rehabilitation services in accordance with § 361.48(i), means an individual—

(i) Who either—

(A) Is a relative or guardian of an applicant or eligible individual; or

(B) Lives in the same household as an applicant or eligible individual;

(ii) Who has a substantial interest in the well-being of that individual; and

(iii) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(Authority: Sections 12(c) and 103(a)(17) of the Act; 29 U.S.C. 709(c) and 723(a)(17))

(24) *Governor* means a chief executive officer of a State.

(Authority: Section 7(15) of the Act; 29 U.S.C. 705(15))

(25) *Impartial hearing officer*.

(i) *Impartial hearing officer* means an individual who—

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(B) Is not a member of the State Rehabilitation Council for the designated State unit;

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

(D) Has knowledge of the delivery of vocational rehabilitation services, the State plan, and the Federal and State regulations governing the provision of services;

(E) Has received training with respect to the performance of official duties; and

(F) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

(ii) An individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.

(Authority: Section 7(16) of the Act; 29 U.S.C. 705(16))

(26) *Indian tribe* means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).

(Authority: Section 7(19)(B) of the Act; 29 U.S.C. 705(19)(B))

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

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(28) *Individual with a disability*, except as provided in § 361.5(b)(29), means an individual—

(i) Who has a physical or mental impairment;

(ii) Whose impairment constitutes or results in a substantial impediment to employment; and

(iii) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(Authority: Section 7(20)(A) of the Act; 29 U.S.C. 705(20)(A))

(29) *Individual with a disability*, for purposes of §§ 361.5(b)(14), 361.13(a), 361.13(b)(1), 361.17(a), (b), (c), and (j), 361.18(b), 361.19, 361.20, 361.23(b)(2), 361.29(a) and (d)(5), and 361.51(b), means an individual—

(i) Who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Authority: Section 7(20)(B) of the Act; 29 U.S.C. 705(20)(B))

(30) *Individual with a most significant disability* means an individual with a significant disability who meets the designated State unit's criteria for an individual with a most significant disability. These criteria must be consistent with the requirements in § 361.36(d)(1) and (2).

(Authority: Sections 7(21)(E)(i) and 101(a)(5)(C) of the Act; 29 U.S.C. 705(21)(E)(i) and 721(a)(5)(C))

(31) *Individual with a significant disability* means an individual with a disability—

(i) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(Authority: Section 7(21)(A) of the Act; 29 U.S.C. 705(21)(A))

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

(Authority: Sections 7(22) and 12(c) of the Act; 29 U.S.C. 705(22) and 709(c))

(33) *Integrated setting*,—

(i) With respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals;

(ii) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals

who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

(34) *Local workforce investment board* means a local workforce investment board established under section 117 of the Workforce Investment Act of 1998.

(Authority: Section 7(25) of the Act; 29 U.S.C. 705(25))

(35) *Maintenance* means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

(Authority: Sections 12(c) and 103(a)(7) of the Act; 29 U.S.C. 709(c) and 723(a)(7))

**Examples:** The following are examples of expenses that would meet the definition of maintenance. The examples are illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment.

**Example 1:** The cost of a uniform or other suitable clothing that is required for an individual's job placement or job-seeking activities.

**Example 2:** The cost of short-term shelter that is required in order for an individual to participate in assessment activities or vocational training at a site that is not within commuting distance of an individual's home.

**Example 3:** The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement.

**Example 4:** The costs of an individual's participation in enrichment activities related to that individual's training program.

(36) *Nonprofit*, with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

(Authority: Section 7(26) of the Act; 29 U.S.C. 705(26))

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

(i) Means services that are—

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

(B) Identified based on a determination by the designated State unit of the individual's need as specified in an individualized plan for employment; and

(C) Furnished by the designated State unit from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment;

(ii) Must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on—

(A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

(B) If under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice monthly meetings with the individual;

(iii) Consist of—

(A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in paragraph (b)(6)(ii) of this section;

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

(C) Job development and training;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of vocational rehabilitation services for individuals, described in § 361.48; or

(I) Any service similar to the foregoing services.

(Authority: Sections 7(27) and 12(c) of the Act; 29 U.S.C. 705(27) and 709(c))

(38) *Personal assistance services* means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

(Authority: Sections 7(28), 102(b)(3)(B)(i)(I), and 103(a)(9) of the Act; 29 U.S.C. 705(28), 722(b)(3)(B)(i)(I), and 723(a)(9))

(39) *Physical and mental restoration services means—*

(i) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(ii) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(iii) Dentistry;

(iv) Nursing services;

(v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(vi) Drugs and supplies;

(vii) Prosthetic and orthotic devices;

(viii) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with State licensure laws;

(ix) Podiatry;

(x) Physical therapy;

(xi) Occupational therapy;

(xii) Speech or hearing therapy;

(xiii) Mental health services;

(xiv) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(xv) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(xvi) Other medical or medically related rehabilitation services.

(Authority: Sections 12(c) and 103(a)(6) of the Act; 29 U.S.C. 709(c) and 723(a)(6))

(40) *Physical or mental impairment means—*

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(Authority: Sections 7(20)(A) and 12(c) of the Act; 29 U.S.C. 705(20)(A) and 709(c))

(41) *Post-employment services* means one or more of the services identified in § 361.48 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 12(c) and 103(a)(18) of the Act; 29 U.S.C. 709(c) and 723(a)(18))

**Note:** Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Post-employment services are to be provided under an amended individualized plan for employment; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements in this part as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, *e.g.*, the individual's employment is jeopardized because of conflicts with supervisors or co-workers, and the individual needs mental health services and counseling to maintain the employment; to regain employment, *e.g.*, the individual's job is eliminated through reorganization and new placement services are needed; and to advance in employment, *e.g.*, the employment is no longer consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(42) *Qualified and impartial mediator.*

(i) *Qualified and impartial mediator* means an individual who—

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(B) Is not a member of the State Rehabilitation Council for the designated State unit;

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

(D) Is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services;

(E) Has been trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements; and

(F) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings.

(ii) An individual serving as a mediator is not considered to be an employee of the designated State agency or designated State unit for the purposes of this definition solely because the individual is paid by the designated State agency or designated State unit to serve as a mediator.

(Authority: Sections 12(c) and 102(c)(4) of the Act; 29 U.S.C. 709(c) and 722(c)(4))

(43) *Rehabilitation technology* means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(Authority: Section 7(30) of the Act; 29 U.S.C. 705(30))

(44) *Reservation* means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Authority: Section 121(c) of the Act; 29 U.S.C. 741(c))

(45) *Sole local agency* means a unit or combination of units of general local government or one or more Indian tribes that has the sole responsibility under an agreement with, and the supervision of, the State agency to conduct a local or tribal vocational rehabilitation program, in accordance with the State plan.

(Authority: Section 7(24) of the Act; 29 U.S.C. 705(24))

(46) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Authority: Section 7(32) of the Act; 29 U.S.C. 705(32))

(47) *State workforce investment board* means a State workforce investment board established under section 111 of the Workforce Investment Act of 1998.

(Authority: Section 7(33) of the Act; 29 U.S.C. 705(33))

(48) *Statewide workforce investment system* means a system described in section 111(d)(2) of the Workforce Investment Act of 1998.

(Authority: Section 7(34) of the Act; 29 U.S.C. 705(34))

(49) *State plan* means the State plan for vocational rehabilitation services submitted under § 361.10.

(Authority: Sections 12(c) and 101 of the Act; 29 U.S.C. 709(c) and 721)

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

(Authority: Sections 7(20)(A) and 12(c) of the Act; 29 U.S.C. 705(20)(A) and 709(c))

(51) *Supported employment* means—

(i) Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities—

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

intermittent as a result of a significant disability; and

(B) Who, because of the nature and severity of their disabilities, need intensive supported employment services from the designated State unit and extended services after transition as described in paragraph (b)(20) of this section to perform this work; or

(ii) Transitional employment, as defined in paragraph (b)(54) of this section, for individuals with the most significant disabilities due to mental illness.

(Authority: Section 7(35) of the Act; 29 U.S.C. 705(35))

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

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

(ii) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(Authority: Sections 7(36) and 12(c) of the Act; 29 U.S.C. 705(36) and 709(c))

(53) *Transition services* means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student's individualized plan for employment.

(Authority: Section 7(37) and 103(a)(15) of the Act; 29 U.S.C. 705(37) and 723(a)(15))

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

(Authority: Sections 7(35)(B) and 12(c) of the Act; 29 U.S.C. 705(35)(B) and 709(c))

(55) *Transportation* means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

(Authority: 103(a)(8) of the Act; 29 U.S.C. 723(a)(8))

**Examples:** The following are examples of expenses that would meet the definition of transportation. The examples are purely illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment.

**Example 1:** Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any vocational rehabilitation service.

**Example 2:** The purchase and repair of vehicles, including vans, but not the modification of these vehicles, as modification would be considered a rehabilitation technology service.

**Example 3:** Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual's current residence.

(56) *Vocational rehabilitation services*—

(i) If provided to an individual, means those services listed in § 361.48; and

(ii) If provided for the benefit of groups of individuals, also means those services listed in § 361.49.

(Authority: Sections 7(38) and 103(a) and (b) of the Act; 29 U.S.C. 705(38), 723(a) and (b))

## Subpart B—State Plan for Vocational Rehabilitation Services

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

(a) *Purpose.* For a State to receive a grant under this part, the designated State agency must submit to the Secretary, and obtain approval of, a State plan that contains a description of

the State's vocational rehabilitation services program, the plans and policies to be followed in carrying out the program, and other information requested by the Secretary, in accordance with the requirements of this part.

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

(c) *State unified plan.* The State may choose to submit the State plan for vocational rehabilitation services as part of the State unified plan under section 501 of the Workforce Investment Act of 1998. The portion of the State unified plan that includes the State plan for vocational rehabilitation services must meet the State plan requirements in this part.

(d) *Public participation.* Prior to the adoption of any substantive policies or procedures governing the provision of vocational rehabilitation services under the State plan, including making any substantive amendment to those policies and procedures, the designated State agency must conduct public meetings throughout the State, in accordance with the requirements of § 361.20.

(e) *Duration.* The State plan remains in effect subject to the submission of modifications the State determines to be necessary or the Secretary may require based on a change in State policy, a change in Federal law, including regulations, an interpretation of the Act by a Federal court or the highest court of the State, or a finding by the Secretary of State noncompliance with the requirements of the Act or this part.

(f) *Submission of the State plan.* The State must submit the State plan for approval—

(1) To the Secretary on the same date that the State submits a State plan relating to the statewide workforce investment system under section 112 of the Workforce Investment Act of 1998;

(2) As part of the State unified plan submitted under section 501 of that Act; or

(3) To the Secretary on the same date that the State submits a State unified plan under section 501 of that Act that does not include the State plan under this part.

(g) *Annual submission.* (1) The State must submit to the Secretary for approval revisions to the State plan in

accordance with paragraph (e) of this section and 34 CFR 76.140.

(2) The State must submit to the Secretary reports containing annual updates of the information required under §§ 361.18, 361.29, and 361.35 and any other updates of the information required under this part that are requested by the Secretary.

(3) The State is not required to submit policies, procedures, or descriptions required under this part that have been previously submitted to the Secretary and that demonstrate that the State meets the requirements of this part, including any policies, procedures, or descriptions submitted under this part that are in effect on August 6, 1998.

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

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

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

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

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

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

(5) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR part 81.

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

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

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

Act. (Authority: Sections 101(a) and (b), and 107(d) of the Act; 20 U.S.C. 1231g(a); and 29 U.S.C. 721(a) and (b), and 727(d))

#### § 361.11 Withholding of funds.

(a) *Basis for withholding.* The Secretary may withhold or limit payments under section 111 or 622(a) of the Act, as provided by section 107(c) and (d) of the Act, if the Secretary determines that—

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

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

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

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

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

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

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

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

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

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

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



## Administration

### § 361.12 Methods of administration.

The State plan must assure that the State agency, and the designated State unit if applicable, employs methods of administration found necessary by the Secretary for the proper and efficient administration of the plan and for carrying out all functions for which the State is responsible under the plan and this part. These methods must include procedures to ensure accurate data collection and financial accountability.

(Authority: Sections 101(a)(6) and (a)(10)(A) of the Act; 29 U.S.C. 721(a)(6) and (a)(10)(A))

### § 361.13 State agency for administration.

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

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

(i) A State agency that is an independent State commission, board, or other agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities; or

(ii) A State agency that includes a vocational rehabilitation unit as provided in paragraph (b) of this section.

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

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

(b) *Designation of State unit.*

(1) If the designated State agency is not of the type specified in paragraph (a)(1)(i) of this section or if the

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

(i) Is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State agency's vocational rehabilitation program under the State plan;

(ii) Has a full-time director;

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

(iv) Is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency.

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

(c) *Responsibility for administration.*

(1) At a minimum, the following activities are the responsibility of the designated State unit or the sole local agency under the supervision of the State unit:

(i) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of these services.

(ii) The determination to close the record of services of an individual who has achieved an employment outcome in accordance with § 361.56.

(iii) Policy formulation and implementation.

(iv) The allocation and expenditure of vocational rehabilitation funds.

(v) Participation as a partner in the One-Stop service delivery system under Title I of the Workforce Investment Act of 1998, in accordance with 20 CFR part 662.

(2) The responsibility for the functions described in paragraph (c)(1)

of this section may not be delegated to any other agency or individual.

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

### § 361.14 Substitute State agency.

(a) *General provisions.*

(1) If the Secretary has withheld all funding from a State under § 361.11, the State may designate another agency to substitute for the designated State agency in carrying out the State's program of vocational rehabilitation services.

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

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

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

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

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

### § 361.15 Local administration.

(a) If the State plan provides for the administration of the plan by a local agency, the designated State agency must—

(1) Ensure that each local agency is under the supervision of the designated State unit and is the sole local agency as defined in § 361.5(b)(45) that is responsible for the administration of the program within the political subdivision that it serves; and

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

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

(Authority: Sections 7(24) and 101(a)(2)(A) of the Act; 29 U.S.C. 705(24) and 721(a)(2)(A))

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

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

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

(i) Is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State and is primarily concerned with vocational rehabilitation or vocational and other rehabilitation services, in accordance with § 361.13(a)(1)(i);

(ii) Is consumer-controlled by persons who—

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

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

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

(iv) Conducts the functions identified in § 361.17(h)(4).

(2) An assurance that—

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

(ii) The designated State unit, in accordance with § 361.29, jointly develops, agrees to, and reviews annually State goals and priorities and jointly submits to the Secretary annual reports of progress with the Council;

(iii) The designated State unit regularly consults with the Council regarding the development, implementation, and revision of State policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services;

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

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

(B) All policies and information on all practices and procedures of general applicability provided to or used by rehabilitation personnel providing vocational rehabilitation services under this part; and

(C) Copies of due process hearing decisions issued under this part and transmitted in a manner to ensure that the identity of the participants in the hearings is kept confidential; and

(v) The State plan, and any revision to the State plan, includes a summary of input provided by the Council, including recommendations from the annual report of the Council, the review and analysis of consumer satisfaction described in § 361.17(h)(4), and other reports prepared by the Council, and the designated State unit's response to the input and recommendations, including explanations of reasons for rejecting any

input or recommendation of the Council.

(b) *Exception for separate State agency for individuals who are blind.* In the case of a State that designates a separate State agency under § 361.13(a)(3) to administer the part of the State plan under which vocational rehabilitation services are provided to individuals who are blind, the State must either establish a separate State Rehabilitation Council for each agency that does not meet the requirements in paragraph (a)(1) of this section or establish one State Rehabilitation Council for both agencies if neither agency meets the requirements of paragraph (a)(1) of this section.

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

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

If the State has established a Council under § 361.16(a)(2) or (b), the Council must meet the following requirements:

(a) *Appointment.* (1) The members of the Council must be appointed by the Governor or, in the case of a State that, under State law, vests authority for the administration of the activities carried out under this part in an entity other than the Governor (such as one or more houses of the State legislature or an independent board), the chief officer of that entity.

(2) The appointing authority must select members of the Council after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities. In selecting members, the appointing authority must consider, to the greatest extent practicable, the extent to which minority populations are represented on the Council.

(b) *Composition.*—(1) *General.* Except as provided in paragraph (b)(3) of this section, the Council must be composed of at least 15 members, including—

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

(ii) At least one representative of a parent training and information center established pursuant to section 682(a) of the Individuals with Disabilities Education Act;

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

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

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

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

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

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

(B) Representatives of individuals with disabilities who have difficulty representing themselves or are unable due to their disabilities to represent themselves;

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

(ix) In a State in which one or more projects are carried out under section 121 of the Act (American Indian Vocational Rehabilitation Services), at least one representative of the directors of the projects;

(x) At least one representative of the State educational agency responsible for the public education of students with disabilities who are eligible to receive services under this part and part B of the Individuals with Disabilities Education Act;

(xi) At least one representative of the State workforce investment board; and

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

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

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

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

(ii) Include—

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

(B) At least one representative of an individual who is blind, has multiple disabilities, and has difficulty

representing himself or herself or is unable due to disabilities to represent himself or herself.

(4) *Exception.* If State law in effect on October 29, 1992 requires a separate Council under paragraph (b)(3) of this section to have fewer than 15 members, the separate Council is in compliance with the composition requirements in paragraphs (b)(1)(vi) and (b)(1)(viii) of this section if it includes at least one representative who meets the requirements for each of those paragraphs.

(c) *Majority.* A majority of the Council members must be individuals with disabilities who meet the requirements of § 361.5(b)(29) and are not employed by the designated State unit.

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

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

(2) In States in which the Governor does not have veto power pursuant to State law, the appointing authority described in paragraph (a)(1) of this section must designate a member of the Council to serve as the chairperson of the Council or must require the Council to designate a member to serve as chairperson.

(e) *Terms of appointment.*—(1) Each member of the Council must be appointed for a term of no more than 3 years, and each member of the Council, other than a representative identified in paragraph (b)(1)(iii) or (ix) of this section, may serve for no more than two consecutive full terms.

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

(3) The terms of service of the members initially appointed must be, as specified by the appointing authority as described in paragraph (a)(1) of this section, for varied numbers of years to ensure that terms expire on a staggered basis.

(f) *Vacancies.* (1) A vacancy in the membership of the Council must be filled in the same manner as the original appointment, except the appointing authority as described in paragraph (a)(1) of this section may delegate the authority to fill that vacancy to the remaining members of the Council after making the original appointment.

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

(g) *Conflict of interest.* No member of the Council shall cast a vote on any matter that would provide direct

financial benefit to the member or the member's organization or otherwise give the appearance of a conflict of interest under State law.

(h) *Functions.* The Council must, after consulting with the State workforce investment board—

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

(i) Eligibility, including order of selection;

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

(iii) Functions performed by State agencies that affect or potentially affect the ability of individuals with disabilities in achieving employment outcomes under this part;

(2) In partnership with the designated State unit—

(i) Develop, agree to, and review State goals and priorities in accordance with § 361.29(c); and

(ii) Evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the Secretary in accordance with § 361.29(e);

(3) Advise the designated State agency and the designated State unit regarding activities carried out under this part and assist in the preparation of the State plan and amendments to the plan, applications, reports, needs assessments, and evaluations required by this part;

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

(i) The functions performed by the designated State agency;

(ii) The vocational rehabilitation services provided by State agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under the Act; and

(iii) The employment outcomes achieved by eligible individuals receiving services under this part, including the availability of health and other employment benefits in connection with those employment outcomes;

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

(6) To avoid duplication of efforts and enhance the number of individuals served, coordinate activities with the activities of other councils within the

State, including the Statewide Independent Living Council established under 34 CFR part 364, the advisory panel established under section 612(a)(21) of the Individuals with Disabilities Education Act, the State Developmental Disabilities Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, the State mental health planning council established under section 1914(a) of the Public Health Service Act, and the State workforce investment board;

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

(8) Perform other comparable functions, consistent with the purpose of this part, as the Council determines to be appropriate, that are comparable to the other functions performed by the Council.

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

(2) The resource plan must, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan.

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

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

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

(j) *Meetings.* The Council must—

(1) Convene at least four meetings a year in locations determined by the Council to be necessary to conduct Council business. The meetings must be publicly announced, open, and accessible to the general public, including individuals with disabilities, unless there is a valid reason for an executive session; and

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

(k) *Compensation.* Funds appropriated under Title I of the Act, except funds to carry out sections 112 and 121 of the Act, may be used to compensate and reimburse the expenses of Council members in accordance with section 105(g) of the Act.

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

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

The State plan must describe the procedures and activities the State agency will undertake to establish and maintain a comprehensive system of personnel development designed to ensure an adequate supply of qualified rehabilitation personnel, including professionals and paraprofessionals, for the designated State unit. If the State agency has a State Rehabilitation Council, this description must, at a minimum, specify that the Council has an opportunity to review and comment on the development of plans, policies, and procedures necessary to meet the requirements of paragraphs (b) through (d) of this section. This description must also conform with the following requirements:

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

(1) Data on qualified personnel needs must include—

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

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

(iii) Projections of the number of personnel, broken down by personnel category, who will be needed by the State agency to provide vocational rehabilitation services in the State in 5 years based on projections of the number of individuals to be served, including individuals with significant disabilities, the number of personnel expected to retire or leave the field, and other relevant factors.

(2) Data on personnel development must include—

(i) A list of the institutions of higher education in the State that are preparing

vocational rehabilitation professionals, by type of program;

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

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

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

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

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

(ii) To the extent that existing standards are not based on the highest requirements in the State, the steps the State is currently taking and the steps the State plans to take to retrain or hire personnel to meet standards that are based on the highest requirements in the State, including measures to notify State unit personnel, the institutions of higher education identified under paragraph (a)(2)(i) of this section, and other public

agencies of these steps and the timelines for taking each step. The steps taken by the State unit under this paragraph must be described in a written plan that includes—

(A) Specific strategies for retraining, recruiting, and hiring personnel;

(B) The specific time period by which all State unit personnel will meet the standards described in paragraph (c)(1)(i) of this section;

(C) Procedures for evaluating the State unit's progress in hiring or retraining personnel to meet applicable personnel standards within the time period established under paragraph (c)(1)(ii)(B) of this section; and

(D) In instances in which the State unit is unable to immediately hire new personnel who meet the requirements in paragraph (c)(1)(i) of this section, the initial minimum qualifications that the designated State unit will require of newly hired personnel and a plan for training those individuals to meet applicable requirements within the time period established under paragraph (c)(1)(ii)(B) of this section.

(2) As used in this section—

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

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

(A) Provides rehabilitation services to individuals with disabilities;

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

(C) Has a specified scope of responsibility.

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

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

(ii) Procedures for acquiring and disseminating to rehabilitation professionals and paraprofessionals within the designated State unit significant knowledge from research and other sources.

(2) The specific training areas for staff development must be based on the needs of each State unit and may include, but are not limited to—

(i) Training regarding the Workforce Investment Act of 1998 and the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1998;

(ii) Training with respect to the requirements of the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and Social Security work incentive programs, including programs under the Ticket to Work and Work Incentives Improvement Act of 1999, training to facilitate informed choice under this program, and training to improve the provision of services to culturally diverse populations; and

(iii) Activities related to—

(A) Recruitment and retention of qualified rehabilitation personnel;

(B) Succession planning; and

(C) Leadership development and capacity building.

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

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

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

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

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

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

The State plan must assure that the State agency takes affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms

and conditions as stated in section 503 of the Act.

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

**§ 361.20 Public participation requirements.**

(a) *Conduct of public meetings.* The State plan must assure that prior to the adoption of any substantive policies or procedures governing the provision of vocational rehabilitation services under the State plan, including making any substantive amendments to the policies and procedures, the designated State agency conducts public meetings throughout the State to provide the public, including individuals with disabilities, an opportunity to comment on the policies or procedures.

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

(1) State law governing public meetings; or

(2) In the absence of State law governing public meetings, procedures developed by the designated State agency in consultation with the State Rehabilitation Council.

(c) *Summary of input of the State Rehabilitation Council.* The State plan must provide a summary of the input of the State Rehabilitation Council, if the State agency has a Council, into the State plan and any amendment to the plan, in accordance with § 361.16(a)(2)(v).

(d) *Special consultation requirements.* The State plan must assure that the State agency actively consults with the director of the Client Assistance Program, the State Rehabilitation Council, if the State agency has a Council, and, as appropriate, Indian tribes, tribal organizations, and native Hawaiian organizations on its policies and procedures governing the provision of vocational rehabilitation services under the State plan.

(e) *Appropriate modes of communication.* The State unit must provide to the public, through appropriate modes of communication, notices of the public meetings, any materials furnished prior to or during the public meetings, and the policies and procedures governing the provision of vocational rehabilitation services under the State plan.

(Authority: Sections 101(a)(16)(A) and 105(c)(3) of the Act; 29 U.S.C. 721(a)(16)(A), and 725(c)(3))

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

The State plan must assure that, in connection with matters of general policy arising in the administration of the State plan, the designated State agency takes into account the views of—

(a) Individuals and groups of individuals who are recipients of vocational rehabilitation services or, as appropriate, the individuals' representatives;

(b) Personnel working in programs that provide vocational rehabilitation services to individuals with disabilities;

(c) Providers of vocational rehabilitation services to individuals with disabilities;

(d) The director of the Client Assistance Program; and

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

(Authority: Sections 101(a)(16)(B) of the Act; 29 U.S.C. 721(a)(16)(B))

**§ 361.22 Coordination with education officials.**

(a) *Plans, policies, and procedures.* The State plan must contain plans, policies, and procedures for coordination between the designated State agency and education officials responsible for the public education of students with disabilities that are designed to facilitate the transition of students with disabilities from the receipt of educational services in school to the receipt of vocational rehabilitation services under the responsibility of the designated State agency. These plans, policies, and procedures must provide for the development and completion of an individualized plan for employment in accordance with § 361.45 before each student determined to be eligible for vocational rehabilitation services leaves the school setting or, if the designated State unit is operating under an order of selection, before each eligible student able to be served under the order leaves the school setting.

(b) *Formal interagency agreement.* The State plan must include information on a formal interagency agreement with the State educational agency that, at a minimum, provides for—

(1) Consultation and technical assistance to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including vocational rehabilitation services;

(2) Transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and completion of

their individualized education programs (IEPs) under section 614(d) of the Individuals with Disabilities Education Act;

(3) The roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services; and

(4) Procedures for outreach to and identification of students with disabilities who are in need of transition services.

(Authority: Section 101(a)(11)(D) of the Act; 29 U.S.C. 721 (a)(11)(D)).

**§ 361.23 Requirements related to the statewide workforce investment system.**

(a) *Responsibilities as a partner of the One-Stop service delivery system.* As a required partner in the One-Stop service delivery system (which is part of the statewide workforce investment system under Title I of the Workforce Investment Act of 1998), the designated State unit must carry out the following functions consistent with the Act, this part, Title I of the Workforce Investment Act of 1998, and the regulations in 20 CFR part 662:

(1) Make available to participants through the One-Stop service delivery system the core services (as described in 20 CFR 662.240) that are applicable to the Program administered by the designated State unit under this part.

(2) Use a portion of funds made available to the Program administered by the designated State unit under this part, consistent with the Act and this part, to—

(i) Create and maintain the One-Stop service delivery system; and

(ii) Provide core services (as described in 20 CFR 662.240).

(3) Enter into a memorandum of understanding (MOU) with the Local Workforce Investment Board under section 117 of the Workforce Investment Act of 1998 relating to the operation of the One-Stop service delivery system that meets the requirements of section 121(c) of the Workforce Investment Act and 20 CFR 662.300, including a description of services, how the cost of the identified services and operating costs of the system will be funded, and methods for referrals.

(4) Participate in the operation of the One-Stop service delivery system consistent with the terms of the MOU and the requirements of the Act and this part.

(5) Serve as a representative on the Local Workforce Investment Board under section 117 of the Workforce Investment Act of 1998.

(b) *Cooperative agreements with One-Stop partners.* (1) The State plan must assure that the designated State unit or the designated State agency enters into cooperative agreements with the other entities that are partners under the One-Stop service delivery system under Title I of the Workforce Investment Act of 1998 and replicates those agreements at the local level between individual offices of the designated State unit and local entities carrying out the One-Stop service delivery system or other activities through the statewide workforce investment system.

(2) Cooperative agreements developed under paragraph (b)(1) of this section may provide for—

(i) Intercomponent training and technical assistance regarding—

(A) The availability and benefits of, and information on eligibility standards for, vocational rehabilitation services; and

(B) The promotion of equal, effective and meaningful participation by individuals with disabilities in the One-Stop service delivery system and other workforce investment activities through the promotion of program accessibility consistent with the requirements of the Americans with Disabilities Act of 1990 and section 504 of the Act, the use of nondiscriminatory policies and procedures, and the provision of reasonable accommodations, auxiliary aids and services, and rehabilitation technology for individuals with disabilities;

(ii) The use of information and financial management systems that link all of the partners of the One-Stop service delivery system to one another and to other electronic networks, including nonvisual electronic networks, and that relate to subjects such as employment statistics, job vacancies, career planning, and workforce investment activities;

(iii) The use of customer service features such as common intake and referral procedures, customer databases, resource information, and human services hotlines;

(iv) The establishment of cooperative efforts with employers to facilitate job placement and carry out other activities that the designated State unit and the employers determine to be appropriate;

(v) The identification of staff roles, responsibilities, and available resources and specification of the financial responsibility of each partner of the One-Stop service delivery system with respect to providing and paying for necessary services, consistent with the requirements of the Act, this part, other Federal requirements, and State law; and

(vi) The specification of procedures for resolving disputes among partners of the One-Stop service delivery system.

(Authority: Section 101(a)(11)(A) of the Act; 29 U.S.C. 721(a)(11)(A); Sections 121 and 134 of the Workforce Investment Act of 1998; 29 U.S.C. 2841 and 2864)

**§ 361.24 Cooperation and coordination with other entities**

(a) *Interagency cooperation.* The State plan must describe the designated State agency's cooperation with and use of the services and facilities of Federal, State, and local agencies and programs, including programs carried out by the Under Secretary for Rural Development of the Department of Agriculture and State use contracting programs, to the extent that those agencies and programs are not carrying out activities through the statewide workforce investment system.

(b) *Coordination with the Statewide Independent Living Council and independent living centers.* The State plan must assure that the designated State unit, the Statewide Independent Living Council established under 34 CFR part 364, and the independent living centers established under 34 CFR part 366 have developed working relationships and coordinate their activities.

(c) *Cooperative agreement with recipients of grants for services to American Indians.*

(1) *General.* In applicable cases, the State plan must assure that the designated State agency has entered into a formal cooperative agreement with each grant recipient in the State that receives funds under part C of the Act (American Indian Vocational Rehabilitation Services).

(2) *Contents of formal cooperative agreement.* The agreement required under paragraph (a)(1) of this section must describe strategies for collaboration and coordination in providing vocational rehabilitation services to American Indians who are individuals with disabilities, including—

(i) Strategies for interagency referral and information sharing that will assist in eligibility determinations and the development of individualized plans for employment;

(ii) Procedures for ensuring that American Indians who are individuals with disabilities and are living near a reservation or tribal service area are provided vocational rehabilitation services; and

(iii) Provisions for sharing resources in cooperative studies and assessments, joint training activities, and other collaborative activities designed to

improve the provision of services to American Indians who are individuals with disabilities.

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

(Authority: Sections 12(c) and 101(a)(11) (C), (E), and (F) of the Act; 29 U.S.C. 709(c) and 721(a)(11) (C), (E), and (F))

#### **§ 361.25 Statewide.**

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

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

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

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

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

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

(3) For purposes other than those specified in § 361.60(b)(3)(i) and consistent with the requirements in § 361.60(b)(3)(ii), the State includes in its State plan, and the Secretary approves, a waiver of the statewide requirement, in accordance with the requirements of paragraph (b) of this section.

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

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

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

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

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

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

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

(a) The designated State agency may share funding and administrative responsibility with another State agency or local public agency to carry out a joint program to provide services to individuals with disabilities, if the State submits to the Secretary, and the Secretary approves, a plan describing its shared funding and administrative arrangement.

(b) The plan under paragraph (a) of this section must include—

(1) A description of the nature and scope of the joint program;

(2) The services to be provided under the joint program;

(3) The respective roles of each participating agency in the administration and provision of services; and

(4) The share of the costs to be assumed by each agency.

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

(Authority: Section 101(a)(2)(A) of the Act; 29 U.S.C. 721(a)(2)(A))

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

(a) The designated State unit may enter into a third-party cooperative arrangement for providing or administering vocational rehabilitation services with another State agency or a local public agency that is furnishing part or all of the non-Federal share, if the designated State unit ensures that—

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

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

(3) Program expenditures and staff providing services under the

cooperative arrangement are under the administrative supervision of the designated State unit; and

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

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

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

#### **§ 361.29 Statewide assessment; annual estimates; annual State goals and priorities; strategies; and progress reports.**

(a) *Comprehensive statewide assessment.* (1) The State plan must include—

(i) The results of a comprehensive, statewide assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the State unit has a Council) every 3 years describing the rehabilitation needs of individuals with disabilities residing within the State, particularly the vocational rehabilitation services needs of—

(A) Individuals with the most significant disabilities, including their need for supported employment services;

(B) Individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program carried out under this part; and

(C) Individuals with disabilities served through other components of the statewide workforce investment system as identified by those individuals and personnel assisting those individuals through the components of the system; and

(ii) An assessment of the need to establish, develop, or improve community rehabilitation programs within the State.

(2) The State plan must assure that the State will submit to the Secretary a report containing information regarding updates to the assessments under paragraph (a) of this section for any year in which the State updates the assessments.

(b) *Annual estimates.* The State plan must include, and must assure that the State will annually submit a report to the Secretary that includes, State estimates of—

(1) The number of individuals in the State who are eligible for services under this part;



(2) The number of eligible individuals who will receive services provided with funds provided under part B of Title I of the Act and under part B of Title VI of the Act, including, if the designated State agency uses an order of selection in accordance with § 361.36, estimates of the number of individuals to be served under each priority category within the order; and

(3) The costs of the services described in paragraph (b)(1) of this section, including, if the designated State agency uses an order of selection, the service costs for each priority category within the order.

(c) *Goals and priorities.*—(1) *In general.* The State plan must identify the goals and priorities of the State in carrying out the program.

(2) *Council.* The goals and priorities must be jointly developed, agreed to, reviewed annually, and, as necessary, revised by the designated State unit and the State Rehabilitation Council, if the State unit has a Council.

(3) *Submission.* The State plan must assure that the State will submit to the Secretary a report containing information regarding revisions in the goals and priorities for any year in which the State revises the goals and priorities.

(4) *Basis for goals and priorities.* The State goals and priorities must be based on an analysis of—

(i) The comprehensive statewide assessment described in paragraph (a) of this section, including any updates to the assessment;

(ii) The performance of the State on the standards and indicators established under section 106 of the Act; and

(iii) Other available information on the operation and the effectiveness of the vocational rehabilitation program carried out in the State, including any reports received from the State Rehabilitation Council under § 361.17(h) and the findings and recommendations from monitoring activities conducted under section 107 of the Act.

(5) *Service and outcome goals for categories in order of selection.* If the designated State agency uses an order of selection in accordance with § 361.36, the State plan must identify the State's service and outcome goals and the time within which these goals may be achieved for individuals in each priority category within the order.

(d) *Strategies.*

The State plan must describe the strategies the State will use to address the needs identified in the assessment conducted under paragraph (a) of this section and achieve the goals and

priorities identified in paragraph (c) of this section, including—

(1) The methods to be used to expand and improve services to individuals with disabilities, including how a broad range of assistive technology services and assistive technology devices will be provided to those individuals at each stage of the rehabilitation process and how those services and devices will be provided to individuals with disabilities on a statewide basis;

(2) Outreach procedures to identify and serve individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program;

(3) As applicable, the plan of the State for establishing, developing, or improving community rehabilitation programs;

(4) Strategies to improve the performance of the State with respect to the evaluation standards and performance indicators established pursuant to section 106 of the Act; and

(5) Strategies for assisting other components of the statewide workforce investment system in assisting individuals with disabilities.

(e) *Evaluation and reports of progress.*

(1) The State plan must include—

(i) The results of an evaluation of the effectiveness of the vocational rehabilitation program; and

(ii) A joint report by the designated State unit and the State Rehabilitation Council, if the State unit has a Council, to the Secretary on the progress made in improving the effectiveness of the program from the previous year. This evaluation and joint report must include—

(A) An evaluation of the extent to which the goals and priorities identified in paragraph (c) of this section were achieved;

(B) A description of the strategies that contributed to the achievement of the goals and priorities;

(C) To the extent to which the goals and priorities were not achieved, a description of the factors that impeded that achievement; and

(D) An assessment of the performance of the State on the standards and indicators established pursuant to section 106 of the Act.

(2) The State plan must assure that the designated State unit and the State Rehabilitation Council, if the State unit has a Council, will jointly submit to the Secretary an annual report that contains the information described in paragraph (e)(1) of this section.

(Authority: Section 101(a)(15) of the Act; 29 U.S.C. 721(a)(15))

### § 361.30 Services to American Indians.

The State plan must assure that the designated State agency provides vocational rehabilitation services to American Indians who are individuals with disabilities residing in the State to the same extent as the designated State agency provides vocational rehabilitation services to other significant populations of individuals with disabilities residing in the State.

(Authority: Sections 101(a)(13) and 121(b)(3) of the Act; 29 U.S.C. 721(a)(13) and 741(b)(3))

### § 361.31 Cooperative agreements with private nonprofit organizations.

The State plan must describe the manner in which cooperative agreements with private nonprofit vocational rehabilitation service providers will be established.

(Authority: Sections 101(a)(24)(B); 29 U.S.C. 721(a)(24)(B))

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

The State plan must assure that the designated State agency has the authority to enter into contracts with for-profit organizations for the purpose of providing, as vocational rehabilitation services, on-the-job training and related programs for individuals with disabilities under the Projects With Industry program, 34 CFR part 379, if the designated State agency has determined that for-profit agencies are better qualified to provide needed vocational rehabilitation services than nonprofit agencies and organizations.

(Authority: Section 101(a)(24)(A) of the Act; 29 U.S.C. 721(a)(24)(A))

### § 361.33 [Reserved]

### § 361.34 Supported employment State plan supplement.

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

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

(Authority: Sections 101(a)(22) and 625(a) of the Act; 29 U.S.C. 721(a)(22) and 795(k))

### § 361.35 Innovation and expansion activities.

(a) The State plan must assure that the State will reserve and use a portion of the funds allotted to the State under section 110 of the Act—

(1) For the development and implementation of innovative

approaches to expand and improve the provision of vocational rehabilitation services to individuals with disabilities, particularly individuals with the most significant disabilities, consistent with the findings of the comprehensive, statewide assessment of the rehabilitation needs of individuals with disabilities under § 361.29(a) and the State's goals and priorities under § 361.29(c); and

(2) To support the funding of—

(i) The State Rehabilitation Council, if the State has a Council, consistent with the resource plan identified in § 361.17(i); and

(ii) The Statewide Independent Living Council, consistent with the plan prepared under 34 CFR 364.21(i).

(b) The State plan must—

(1) Describe how the reserved funds will be used; and

(2) Include, on an annual basis, a report describing how the reserved funds were used during the preceding year.

(Authority: Section 101(a)(18) of the Act; 29 U.S.C. 721(a)(18))

**§ 361.36 Ability to serve all eligible individuals; order of selection for services.**

(a) *General provisions.* (1) The designated State unit either must be able to provide the full range of services listed in section 103(a) of the Act and § 361.48, as appropriate, to all eligible individuals or, in the event that vocational rehabilitation services cannot be provided to all eligible individuals in the State who apply for the services, include in the State plan the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services.

(2) The ability of the designated State unit to provide the full range of vocational rehabilitation services to all eligible individuals must be supported by a determination that satisfies the requirements of paragraph (b) or (c) of this section and a determination that, on the basis of the designated State unit's projected fiscal and personnel resources and its assessment of the rehabilitation needs of individuals with significant disabilities within the State, it can—

(i) Continue to provide services to all individuals currently receiving services;

(ii) Provide assessment services to all individuals expected to apply for services in the next fiscal year;

(iii) Provide services to all individuals who are expected to be determined eligible in the next fiscal year; and

(iv) Meet all program requirements.

(3) If the designated State unit is unable to provide the full range of vocational rehabilitation services to all eligible individuals in the State who

apply for the services, the State plan must—

(i) Show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;

(ii) Provide a justification for the order of selection;

(iii) Identify service and outcome goals and the time within which the goals may be achieved for individuals in each priority category within the order, as required under § 361.29(c)(5); and

(iv) Assure that—

(A) In accordance with criteria established by the State for the order of selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services; and

(B) Individuals who do not meet the order of selection criteria will have access to services provided through the information and referral system established under § 361.37.

(b) *Basis for assurance that services can be provided to all eligible individuals.*

(1) For a designated State unit that determined, for the current fiscal year and the preceding fiscal year, that it is able to provide the full range of services, as appropriate, to all eligible individuals, the State unit, during the current fiscal and preceding fiscal year, must have in fact—

(i) Provided assessment services to all applicants and the full range of services, as appropriate, to all eligible individuals;

(ii) Made referral forms widely available throughout the State;

(iii) Conducted outreach efforts to identify and serve individuals with disabilities who have been unserved or underserved by the vocational rehabilitation system; and

(iv) Not delayed, through waiting lists or other means, determinations of eligibility, the development of individualized plans for employment for individuals determined eligible for vocational rehabilitation services, or the provision of services for eligible individuals for whom individualized plans for employment have been developed.

(2) For a designated State unit that was unable to provide the full range of services to all eligible individuals during the current or preceding fiscal year or that has not met the requirements in paragraph (b)(1) of this section, the determination that the designated State unit is able to provide the full range of vocational rehabilitation services to all eligible individuals in the next fiscal year must be based on—

(i) Circumstances that have changed that will allow the designated State unit to meet the requirements of paragraph (a)(2) of this section in the next fiscal year, including—

(A) An estimate of the number of and projected costs of serving, in the next fiscal year, individuals with existing individualized plans for employment;

(B) The projected number of individuals with disabilities who will apply for services and will be determined eligible in the next fiscal year and the projected costs of serving those individuals;

(C) The projected costs of administering the program in the next fiscal year, including, but not limited to, costs of staff salaries and benefits, outreach activities, and required statewide studies; and

(D) The projected revenues and projected number of qualified personnel for the program in the next fiscal year;

(ii) Comparable data, as relevant, for the current or preceding fiscal year, or for both years, of the costs listed in paragraphs (b)(2)(i)(A) through (C) of this section and the resources identified in paragraph (b)(2)(i)(D) of this section and an explanation of any projected increases or decreases in these costs and resources; and

(iii) A determination that the projected revenues and the projected number of qualified personnel for the program in the next fiscal year are adequate to cover the costs identified in paragraphs (b)(2)(i)(A) through (C) of this section to ensure the provision of the full range of services, as appropriate, to all eligible individuals.

(c) *Time for determining need for an order of selection.*

(1) The designated State unit must determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection.

(2) If the designated State unit determines that it does not need to establish an order of selection, it must reevaluate this determination whenever changed circumstances during the 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.

(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(b)(31).

(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, gender, race, color, or national origin;
- (iv) Source of referral;
- (v) Type of expected employment outcome;
- (vi) The need for specific services 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 all needed services to any eligible individual who has begun to receive services under an individualized plan for employment prior to the effective date of the order of selection, irrespective of the severity of the individual's disability; and
- (4) Ensure that its funding arrangements for providing services under the 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.

(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 Act; 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 services.

(a) *General provisions*. The 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, 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 investment system.

(b) *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 investment 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.

(c) *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.

(Authority: Sections 101(a)(5)(D) and (20) and 101(a)(10)(C)(ii) of the Act; 29 U.S.C. 721(a)(5)(D) and (20) and (a)(10)(C)(ii))

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

(a) *General provisions*. (1) The State agency and the State unit must adopt and implement written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must ensure that—

- (i) Specific safeguards are established to protect current and stored personal information;
- (ii) All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;
- (iii) All applicants or their representatives are informed about the State unit's need to collect personal information and the policies governing its use, including—
  - (A) Identification of the authority under which information is collected;
  - (B) Explanation of the principal purposes for which the State unit intends to use or release the information;
  - (C) Explanation of whether providing requested information to the State unit is mandatory or voluntary and the effects of not providing requested information;
  - (D) Identification of those situations in which the State unit requires or does not require informed written consent of the individual before information may be released; and
  - (E) Identification of other agencies to which information is routinely released;
- (iv) An explanation of State policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and
- (v) These policies and procedures provide no fewer protections for individuals than State laws and regulations.

(2) The State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and must establish policies and procedures governing access to records.

(b) *State program use*. All personal information in the possession of the State agency or the designated State unit must be used only for the purposes directly connected with the administration of the vocational rehabilitation program. Information

containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) *Release to applicants and eligible individuals.*

(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by an applicant or eligible individual, the State unit must make all requested information in that individual's record of services accessible to and must release the information to the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(4) An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request that the designated State unit amend the information. If the information is not amended, the request for an amendment must be documented in the record of services, consistent with § 361.47(a)(12).

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

(e) *Release to other programs or authorities.*

(1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the State unit may release personal information to another agency or organization for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

(2) Medical or psychological information that the State unit determines may be harmful to the individual may be released if the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The State unit must release personal information if required by Federal law or regulations.

(4) The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

(5) The State unit also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: Sections 12(c) and 101(a)(6)(A) of the Act; 29 U.S.C. 709(c) and 721(a)(6)(A))

#### § 361.39 State-imposed requirements.

The designated State unit must, upon request, identify those regulations and policies relating to the administration or operation of its vocational rehabilitation program that are State-imposed, including any regulations or policy based on State interpretation of any Federal law, regulations, or guideline.

(Authority: Section 17 of the Act; 29 U.S.C. 714)

#### § 361.40 Reports.

(a) The State plan must assure that the designated State agency will submit reports, including reports required under sections 13, 14, and 101(a)(10) of the Act—

(1) In the form and level of detail and at the time required by the Secretary regarding applicants for and eligible individuals receiving services under this part; and

(2) In a manner that provides a complete count (other than the information obtained through sampling consistent with section 101(a)(10)(E) of the Act) of the applicants and eligible individuals to—

(i) Permit the greatest possible cross-classification of data; and

(ii) Protect the confidentiality of the identity of each individual.

(b) The designated State agency must comply with any requirements necessary to ensure the accuracy and verification of those reports.

(Authority: Section 101(a)(10)(A) and (F) of the Act; 29 U.S.C. 721(a)(10)(A) and (F))

#### Provision and Scope of Services

##### § 361.41 Processing referrals and applications.

(a) *Referrals.* The designated State unit must establish and implement standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services, including referrals of individuals made through the One-Stop service delivery systems established under section 121 of the Workforce Investment Act of 1998. The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

(b) *Applications.* (1) Once an individual has submitted an application for vocational rehabilitation services, including applications made through common intake procedures in One-Stop centers established under section 121 of the Workforce Investment Act of 1998, an eligibility determination must be made within 60 days, unless—

(i) Exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 60 days and the designated State unit and the individual agree to a specific extension of time; or

(ii) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out in accordance with § 361.42(e) or, if appropriate, an extended evaluation is

carried out in accordance with § 361.42(f).

(2) An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate—

(i)(A) Has completed and signed an agency application form;

(B) Has completed a common intake application form in a One-Stop center requesting vocational rehabilitation services; or

(C) Has otherwise requested services from the designated State unit;

(ii) Has provided to the designated State unit information necessary to initiate an assessment to determine eligibility and priority for services; and

(iii) Is available to complete the assessment process.

(3) The designated State unit must ensure that its application forms are widely available throughout the State, particularly in the One-Stop centers established under section 121 of the Workforce Investment Act of 1998.

(Authority: Sections 101(a)(6)(A) and 102(a)(6) of the Act; 29 U.S.C. 721(a)(6)(A) and 722(a)(6))

**§ 361.42 Assessment for determining eligibility and priority for services.**

In order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the State is operating under an order of selection), the designated State unit must conduct an assessment for determining eligibility and priority for services. The assessment must be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the following provisions:

(a) *Eligibility requirements*—(1) *Basic requirements.* The designated State unit's determination of an applicant's eligibility for vocational rehabilitation services must be based only on the following requirements:

(i) A determination by qualified personnel that the applicant has a physical or mental impairment.

(ii) A determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant.

(iii) A determination by a qualified vocational rehabilitation counselor employed by the designated State unit that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the applicant's unique strengths, resources, priorities,

concerns, abilities, capabilities, interests, and informed choice.

(iv) A presumption, in accordance with paragraph (a)(2) of this section, that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(2) *Presumption of benefit.* The designated State unit must presume that an applicant who meets the eligibility requirements in paragraphs (a)(1)(i) and (ii) of this section can benefit in terms of an employment outcome unless it demonstrates, based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the applicant's disability.

(3) *Presumption of eligibility for Social Security recipients and beneficiaries.*

(i) Any applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act is—

(A) Presumed eligible for vocational rehabilitation services under paragraphs (a)(1) and (2) of this section; and

(B) Considered an individual with a significant disability as defined in § 361.5(b)(31).

(ii) If an applicant for vocational rehabilitation services asserts that he or she is eligible for Social Security benefits under Title II or Title XVI of the Social Security Act (and, therefore, is presumed eligible for vocational rehabilitation services under paragraph (a)(3)(i)(A) of this section), but is unable to provide appropriate evidence, such as an award letter, to support that assertion, the State unit must verify the applicant's eligibility under Title II or Title XVI of the Social Security Act by contacting the Social Security Administration. This verification must be made within a reasonable period of time that enables the State unit to determine the applicant's eligibility for vocational rehabilitation services within 60 days of the individual submitting an application for services in accordance with § 361.41(b)(2).

(4) *Achievement of an employment outcome.* Any eligible individual, including an individual whose eligibility for vocational rehabilitation services is based on the individual being eligible for Social Security benefits under Title II or Title XVI of the Social Security Act, must intend to achieve an employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(i) The State unit is responsible for informing individuals, through its application process for vocational rehabilitation services, that individuals who receive services under the program must intend to achieve an employment outcome.

(ii) The applicant's completion of the application process for vocational rehabilitation services is sufficient evidence of the individual's intent to achieve an employment outcome, and no additional demonstration on the part of the applicant is required for purposes of satisfying paragraph (a)(4) of this section.

(5) *Interpretation.* Nothing in this section, including paragraph (a)(3)(i), is to be construed to create an entitlement to any vocational rehabilitation service.

(b) *Interim determination of eligibility.*

(1) The designated State unit may initiate the provision of vocational rehabilitation services for an applicant on the basis of an interim determination of eligibility prior to the 60-day period described in § 361.41(b)(2).

(2) If a State chooses to make interim determinations of eligibility, the designated State unit must—

(i) Establish criteria and conditions for making those determinations;

(ii) Develop and implement procedures for making the determinations; and

(iii) Determine the scope of services that may be provided pending the final determination of eligibility.

(3) If a State elects to use an interim eligibility determination, the designated State unit must make a final determination of eligibility within 60 days of the individual submitting an application for services in accordance with § 361.41(b)(2).

(c) *Prohibited factors.*

(1) The State plan must assure that the State unit will not impose, as part of determining eligibility under this section, a duration of residence requirement that excludes from services any applicant who is present in the State.

(2) In making a determination of eligibility under this section, the designated State unit also must ensure that—

(i) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability; and

(ii) The eligibility requirements are applied without regard to the—

(A) Age, gender, race, color, or national origin of the applicant;

(B) Type of expected employment outcome;

(C) Source of referral for vocational rehabilitation services; and

(D) Particular service needs or anticipated cost of services required by

an applicant or the income level of an applicant or applicant's family.

(d) *Review and assessment of data for eligibility determination.* Except as provided in paragraph (e) of this section, the designated State unit—

(1) Must base its determination of each of the basic eligibility requirements in paragraph (a) of this section on—

(i) A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, particularly information used by education officials, and determinations made by officials of other agencies; and

(ii) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including trial work experiences, assistive technology devices and services, personal assistance services, and any other support services that are necessary to determine whether an individual is eligible; and

(2) Must base its presumption under paragraph (a)(3)(i) of this section that an applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act satisfies each of the basic eligibility requirements in paragraph (a) of this section on determinations made by the Social Security Administration.

(e) *Trial work experiences for individuals with significant disabilities.*

(1) Prior to any determination that an individual with a significant disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability, the designated State unit must conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations to determine whether or not there is clear and convincing evidence to support such a determination.

(2)(i) The designated State unit must develop a written plan to assess periodically the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences, which must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

(ii) Trial work experiences include supported employment, on-the-job

training, and other experiences using realistic work settings.

(iii) Trial work experiences must be of sufficient variety and over a sufficient period of time for the designated State unit to determine that—

(A) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or

(B) There is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability.

(iv) The designated State unit must provide appropriate supports, including assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.

(f) *Extended evaluation for certain individuals with significant disabilities.*

(1) Under limited circumstances if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the State unit is able to make the determinations described in paragraph (e)(2)(iii) of this section, the designated State unit must conduct an extended evaluation to make these determinations.

(2) During the extended evaluation period, vocational rehabilitation services must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

(3) During the extended evaluation period, the designated State unit must develop a written plan for providing services necessary to make a determination under paragraph (e)(2)(iii) of this section.

(4) During the extended evaluation period, the designated State unit provides only those services that are necessary to make the determinations described in paragraph (e)(2)(iii) of this section and terminates extended evaluation services when the State unit is able to make the determinations.

(g) *Data for determination of priority for services under an order of selection.* If the designated State unit is operating under an order of selection for services, as provided in § 361.36, the State unit must base its priority assignments on—

(1) A review of the data that was developed under paragraphs (d) and (e) of this section to make the eligibility determination; and

(2) An assessment of additional data, to the extent necessary.

(Authority: Sections 7(2)(A), 7(2)(B)(ii)(I), 7(2)(C), 7(2)(D), 101(a)(12), 102(a)(1), 102(a)(2), 102(a)(3), 102(a)(4)(A), 102(a)(4)(B), 102(a)(4)(C), 103(a)(1), 103(a)(9), 103(a)(10) and 103(a)(14) of the Act; 29 U.S.C. 705(2)(A), 705(2)(B)(ii)(I), 705(2)(C), 705(2)(D), 721(a)(12), 722(a)(1), 722(a)(2), 722(a)(3), 722(a)(4)(A), 722(a)(4)(B), 722(a)(4)(C), 723(a)(1), 723(a)(9), 723(a)(10) and 723(a)(14))

#### § 361.43 Procedures for ineligibility determination.

If the State unit determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized plan for employment is no longer eligible for services, the State unit must—

(a) Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;

(b) Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for that determination, the requirements under this section, and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of State unit personnel determinations in accordance with § 361.57;

(c) Provide the individual with a description of services available from a client assistance program established under 34 CFR part 370 and information on how to contact that program;

(d) Refer the individual to other training or employment-related programs that are part of the One-Stop service delivery system under the Workforce Investment Act; and

(e) Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. This review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the State, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

(Authority: Sections 102(a)(5) and 102(c) of the Act; 29 U.S.C. 722(a)(5) and 722(c))

#### § 361.44 Closure without eligibility determination.

The designated State unit may not close an applicant's record of services prior to making an eligibility

determination unless the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and the State unit has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

**§ 361.45 Development of the individualized plan for employment.**

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

(1) An individualized plan for employment (IPE) meeting the requirements of this section and § 361.46 is developed and implemented in a timely manner for each individual determined to be eligible for vocational rehabilitation services or, if the designated State unit is operating under an order of selection in accordance with § 361.36, for each eligible individual to whom the State unit is able to provide services; and

(2) Services will be provided in accordance with the provisions of the IPE.

(b) *Purpose.* (1) The designated State unit must conduct an assessment for determining vocational rehabilitation needs, if appropriate, for each eligible individual or, if the State is operating under an order of selection, for each eligible individual to whom the State is able to provide services. The purpose of this assessment is to determine the employment outcome, and the nature and scope of vocational rehabilitation services to be included in the IPE.

(2) The IPE must—

(i) Be designed to achieve the specific employment outcome that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(ii) To the maximum extent appropriate, result in employment in an integrated setting.

(c) *Required information.* The State unit must provide the following information to each eligible individual or, as appropriate, the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or the individual's representative:

(1) *Options for developing an IPE.* Information on the available options for developing the IPE, including the option that an eligible individual or, as appropriate, the individual's

representative may develop all or part of the IPE—

(i) Without assistance from the State unit or other entity; or

(ii) With assistance from—

(A) A qualified vocational rehabilitation counselor employed by the State unit;

(B) A qualified vocational rehabilitation counselor who is not employed by the State unit; or

(C) Other resources outside of the designated State unit.

(2) *Additional information.*

Additional information to assist the eligible individual or, as appropriate, the individual's representative in developing the IPE, including—

(i) Information describing the full range of components that must be included in an IPE;

(ii) As appropriate to each eligible individual—

(A) An explanation of agency guidelines and criteria for determining an eligible individual's financial commitments under an IPE;

(B) Information on the availability of assistance in completing State unit forms required as part of the IPE; and

(C) Additional information that the eligible individual requests or the State unit determines to be necessary to the development of the IPE;

(iii) A description of the rights and remedies available to the individual, including, if appropriate, recourse to the processes described in § 361.57; and

(iv) A description of the availability of a client assistance program established under 34 CFR part 370 and information on how to contact the client assistance program.

(d) *Mandatory procedures.* The designated State unit must ensure that—

(1) The IPE is a written document prepared on forms provided by the State unit;

(2) The IPE is developed and implemented in a manner that gives eligible individuals the opportunity to exercise informed choice, consistent with § 361.52, in selecting—

(i) The employment outcome, including the employment setting;

(ii) The specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided;

(iii) The entity or entities that will provide the vocational rehabilitation services; and

(iv) The methods available for procuring the services;

(3) The IPE is—

(i) Agreed to and signed by the eligible individual or, as appropriate, the individual's representative; and

(ii) Approved and signed by a qualified vocational rehabilitation counselor employed by the designated State unit;

(4) A copy of the IPE and a copy of any amendments to the IPE are provided to the eligible individual or, as appropriate, to the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, the individual's representative;

(5) The IPE is reviewed at least annually by a qualified vocational rehabilitation counselor and the eligible individual or, as appropriate, the individual's representative to assess the eligible individual's progress in achieving the identified employment outcome;

(6) The IPE is amended, as necessary, by the individual or, as appropriate, the individual's representative, in collaboration with a representative of the State unit or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services;

(7) Amendments to the IPE do not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual's representative and by a qualified vocational rehabilitation counselor employed by the designated State unit; and

(8) An IPE for a student with a disability receiving special education services is developed—

(i) In consideration of the student's IEP; and

(ii) In accordance with the plans, policies, procedures, and terms of the interagency agreement required under § 361.22.

(e) *Standards for developing the IPE.* The designated State unit must establish and implement standards for the prompt development of IPEs for the individuals identified under paragraph (a) of this section, including timelines that take into consideration the needs of the individuals.

(f) *Data for preparing the IPE.—*(1) *Preparation without comprehensive assessment.* To the extent possible, the employment outcome and the nature and scope of rehabilitation services to be included in the individual's IPE must be determined based on the data used for the assessment of eligibility and priority for services under § 361.42.

(2) *Preparation based on comprehensive assessment.*



(i) If additional data are necessary to determine the employment outcome and the nature and scope of services to be included in the IPE of an eligible individual, the State unit must conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment services, of the eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual in accordance with the provisions of § 361.5(b)(6)(ii).

(ii) In preparing the comprehensive assessment, the State unit must use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the IPE, including—

(A) Information available from other programs and providers, particularly information used by education officials and the Social Security Administration;

(B) Information provided by the individual and the individual's family; and

(C) Information obtained under the assessment for determining the individual's eligibility and vocational rehabilitation needs.

(Authority: Sections 7(2)(B), 101(a)(9), 102(b)(1), 102(b)(2), 102(c) and 103(a)(1); 29 U.S.C. 705(2)(B), 721(a)(9), 722(b)(1), 722(b)(2), 722(c) and 723(a)(1))

#### **§ 361.46 Content of the individualized plan for employment.**

(a) *Mandatory components.*

Regardless of the approach in § 361.45(c)(1) that an eligible individual selects for purposes of developing the IPE, each IPE must include—

(1) A description of the specific employment outcome that is chosen by the eligible individual that—

(i) Is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice; and

(ii) To the maximum extent appropriate, results in employment in an integrated setting;

(2) A description of the specific rehabilitation services under § 361.48 that are—

(i) Needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices, assistive technology services, and personal assistance services, including training in the management of those services; and

(ii) Provided in the most integrated setting that is appropriate for the

services involved and is consistent with the informed choice of the eligible individual;

(3) Timelines for the achievement of the employment outcome and for the initiation of services;

(4) A description of the entity or entities chosen by the eligible individual or, as appropriate, the individual's representative that will provide the vocational rehabilitation services and the methods used to procure those services;

(5) A description of the criteria that will be used to evaluate progress toward achievement of the employment outcome; and

(6) The terms and conditions of the IPE, including, as appropriate, information describing—

(i) The responsibilities of the designated State unit;

(ii) The responsibilities of the eligible individual, including—

(A) The responsibilities the individual will assume in relation to achieving the employment outcome;

(B) If applicable, the extent of the individual's participation in paying for the cost of services; and

(C) The responsibility of the individual with regard to applying for and securing comparable services and benefits as described in § 361.53; and

(iii) The responsibilities of other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in § 361.53.

(b) *Supported employment requirements.* An IPE for an individual with a most significant disability for whom an employment outcome in a supported employment setting has been determined to be appropriate must—

(1) Specify the supported employment services to be provided by the designated State unit;

(2) Specify the expected extended services needed, which may include natural supports;

(3) Identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the IPE is developed, include a description of the basis for concluding that there is a reasonable expectation that those sources will become available;

(4) Provide for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the IPE by the time of transition to extended services;

(5) Provide for the coordination of services provided under an IPE with services provided under other individualized plans established under other Federal or State programs;

(6) To the extent that job skills training is provided, identify that the training will be provided on site; and

(7) Include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.

(c) *Post-employment services.* The IPE for each individual must contain, as determined to be necessary, statements concerning—

(1) The expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;

(2) A description of the terms and conditions for the provision of any post-employment services; and

(3) If appropriate, a statement of how post-employment services will be provided or arranged through other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in § 361.53.

(d) *Coordination of services for students with disabilities who are receiving special education services.* The IPE for a student with a disability who is receiving special education services must be coordinated with the IEP for that individual in terms of the goals, objectives, and services identified in the IEP.

(Authority: Sections 101(a)(8), 101(a)(9), 102(b)(3), and 625(b)(6) of the Act; 29 U.S.C. 721(a)(8), 721(a)(9), 722(b)(3), and 795(k))

#### **§ 361.47 Record of services.**

(a) The designated State unit must maintain for each applicant and eligible individual a record of services that includes, to the extent pertinent, the following documentation:

(1) If an applicant has been determined to be an eligible individual, documentation supporting that determination in accordance with the requirements under § 361.42.

(2) If an applicant or eligible individual receiving services under an IPE has been determined to be ineligible, documentation supporting that determination in accordance with the requirements under § 361.43.

(3) Documentation that describes the justification for closing an applicant's or eligible individual's record of services if that closure is based on reasons other than ineligibility, including, as appropriate, documentation indicating that the State unit has satisfied the requirements in § 361.44.

(4) If an individual has been determined to be an individual with a significant disability or an individual with a most significant disability, documentation supporting that determination.

(5) If an individual with a significant disability requires an exploration of abilities, capabilities, and capacity to perform in realistic work situations through the use of trial work experiences or, as appropriate, an extended evaluation to determine whether the individual is an eligible individual, documentation supporting the need for, and the plan relating to, that exploration or, as appropriate, extended evaluation and documentation regarding the periodic assessments carried out during the trial work experiences or, as appropriate, the extended evaluation, in accordance with the requirements under § 361.42(e) and (f).

(6) The IPE, and any amendments to the IPE, consistent with the requirements under § 361.46.

(7) Documentation describing the extent to which the applicant or eligible individual exercised informed choice regarding the provision of assessment services and the extent to which the eligible individual exercised informed choice in the development of the IPE with respect to the selection of the specific employment outcome, the specific vocational rehabilitation services needed to achieve the employment outcome, the entity to provide the services, the employment setting, the settings in which the services will be provided, and the methods to procure the services.

(8) In the event that the IPE provides for services or an employment outcome in a non-integrated setting, a justification to support the non-integrated setting.

(9) In the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals in accordance with § 361.5(b)(11)(ii).

(10) In the event that an individual obtains an employment outcome in an extended employment setting in a community rehabilitation program or any other employment under section 14(c) of the Fair Labor Standards Act, documentation of the results of the annual reviews required under § 361.55, the individual's input into those reviews, and the individual's or, if appropriate, the individual's

representative's acknowledgement that those reviews were conducted.

(11) Documentation concerning any action or decision resulting from a request by an individual under § 361.57 for a review of determinations made by designated State unit personnel.

(12) In the event that an applicant or eligible individual requests under § 361.38(c)(4) that documentation in the record of services be amended and the documentation is not amended, documentation of the request.

(13) In the event an individual is referred to another program through the State unit's information and referral system under § 361.37, including other components of the statewide workforce investment system, documentation on the nature and scope of services provided by the designated State unit to the individual and on the referral itself, consistent with the requirements of § 361.37.

(14) In the event an individual's record of service is closed under § 361.56, documentation that demonstrates the services provided under the individual's IPE contributed to the achievement of the employment outcome.

(15) In the event an individual's record of service is closed under § 361.56, documentation verifying that the provisions of § 361.56 have been satisfied.

(b) The State unit, in consultation with the State Rehabilitation Council if the State has a Council, must determine the type of documentation that the State unit must maintain for each applicant and eligible individual in order to meet the requirements in paragraph (a) of this section.

(Authority: Sections 101(a)(6), (9), (14), (20) and 102(a), (b), and (d) of the Act; 29 U.S.C. 721(a)(6), (9), (14), (20) and 722(a), (b), and (d))

**§ 361.48 Scope of vocational rehabilitation services for individuals with disabilities.**

As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, the designated State unit must ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

(a) Assessment for determining eligibility and priority for services by qualified personnel, including, if appropriate, an assessment by personnel

skilled in rehabilitation technology, in accordance with § 361.42.

(b) Assessment for determining vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with § 361.45.

(c) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice in accordance with § 361.52.

(d) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system, in accordance with §§ 361.23 and 361.24, and to advise those individuals about client assistance programs established under 34 CFR part 370.

(e) In accordance with the definition in § 361.5(b)(39), physical and mental restoration services, to the extent that financial support is not readily available from a source other than the designated State unit (such as through health insurance or a comparable service or benefit as defined in § 361.5(b)(10)).

(f) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the State unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

(g) Maintenance, in accordance with the definition of that term in § 361.5(b)(35).

(h) Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the definition of that term in § 361.5(b)(55).

(i) Vocational rehabilitation services to family members, as defined in § 361.5(b)(23), of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(j) Interpreter services for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel.

(k) Reader services, rehabilitation teaching services, and orientation and

mobility services for individuals who are blind.

(l) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(m) Supported employment services in accordance with the definition of that term in § 361.5(b)(52).

(n) Personal assistance services in accordance with the definition of that term in § 361.5(b)(38).

(o) Post-employment services in accordance with the definition of that term in § 361.5(b)(41).

(p) Occupational licenses, tools, equipment, initial stocks, and supplies.

(q) Rehabilitation technology in accordance with the definition of that term in § 361.5(b)(43), including vehicular modification, telecommunications, sensory, and other technological aids and devices.

(r) Transition services in accordance with the definition of that term in § 361.5(b)(53).

(s) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

(t) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

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

**§ 361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities.**

(a) The designated State unit may also provide for the following vocational rehabilitation services for the benefit of groups of individuals with disabilities:

(1) The establishment, development, or improvement of a public or other nonprofit community rehabilitation program that is used to provide vocational rehabilitation services that promote integration and competitive employment, including, under special circumstances, the construction of a facility for a public or nonprofit community rehabilitation program. Examples of "special circumstances" include the destruction by natural disaster of the only available center serving an area or a State determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are

currently able to provide vocational rehabilitation services to individuals.

(2) Telecommunications systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities, including telephone, television, video description services, satellite, tactile-vibratory devices, and similar systems, as appropriate.

(3) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, Braille, sound recordings, or other appropriate media; captioned television, films, or video cassettes for individuals who are deaf or hard of hearing; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media.

(4) Technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990 and that are seeking to employ individuals with disabilities.

(5) In the case of any small business enterprise operated by individuals with significant disabilities under the supervision of the designated State unit, including enterprises established under the Randolph-Sheppard program, management services and supervision provided by the State unit along with the acquisition by the State unit of vending facilities or other equipment, initial stocks and supplies, and initial operating expenses, in accordance with the following requirements:

(i) "Management services and supervision" includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by individuals with significant disabilities. "Management services and supervision" may be provided throughout the operation of the small business enterprise.

(ii) "Initial stocks and supplies" includes those items necessary to the establishment of a new business enterprise during the initial establishment period, which may not exceed 6 months.

(iii) Costs of establishing a small business enterprise may include operational costs during the initial establishment period, which may not exceed 6 months.

(iv) If the designated State unit provides for these services, it must ensure that only individuals with

significant disabilities will be selected to participate in this supervised program.

(v) If the designated State unit provides for these services and chooses to set aside funds from the proceeds of the operation of the small business enterprises, the State unit must maintain a description of the methods used in setting aside funds and the purposes for which funds are set aside. Funds may be used only for small business enterprises purposes, and benefits that are provided to operators from set-aside funds must be provided on an equitable basis.

(6) Other services that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized plan for employment of any one individual. Examples of those other services might include the purchase or lease of a bus to provide transportation to a group of applicants or eligible individuals or the purchase of equipment or instructional materials that would benefit a group of applicants or eligible individuals.

(7) Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

(b) If the designated State unit provides for vocational rehabilitation services for groups of individuals, it must—

(1) Develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services it provides and the criteria under which each service is provided; and

(2) Maintain information to ensure the proper and efficient administration of those services in the form and detail and at the time required by the Secretary, including the types of services provided, the costs of those services, and, to the extent feasible, estimates of the numbers of individuals benefiting from those services.

(Authority: Sections 12(c), 101(a)(6)(A), and 103(b) of the Act; 29 U.S.C. 709(c), 721(a)(6), and 723(b))

**§ 361.50 Written policies governing the provision of services for individuals with disabilities.**

(a) *Policies.* The State unit must develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in § 361.48 and the criteria under which each service is provided. The policies must ensure that the provision of services is based on the

rehabilitation needs of each individual as identified in that individual's IPE and is consistent with the individual's informed choice. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome. The policies must be developed in accordance with the following provisions:

(b) *Out-of-State services.*

(1) The State unit may establish a preference for in-State services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an out-of-State service at a higher cost than an in-State service, if either service would meet the individual's rehabilitation needs, the designated State unit is not responsible for those costs in excess of the cost of the in-State service.

(2) The State unit may not establish policies that effectively prohibit the provision of out-of-State services.

(c) *Payment for services.* (1) The State unit must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

(2) The State unit may establish a fee schedule designed to ensure a reasonable cost to the program for each service, if the schedule is—

(i) Not so low as to effectively deny an individual a necessary service; and  
(ii) Not absolute and permits exceptions so that individual needs can be addressed.

(3) The State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.

(d) *Duration of services.* (1) The State unit may establish reasonable time periods for the provision of services provided that the time periods are—

(i) Not so short as to effectively deny an individual a necessary service; and  
(ii) Not absolute and permit exceptions so that individual needs can be addressed.

(2) The State unit may not establish absolute time limits on the provision of specific services or on the provision of services to an individual. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual's individualized plan for employment.

(e) *Authorization of services.* The State unit must establish policies related to the timely authorization of services, including any conditions under which verbal authorization can be given.

(Authority: Sections 12(c) and 101(a)(6) of the Act and 29 U.S.C. 709(c) and 721(a)(6))

**§ 361.51 Standards for facilities and providers of services.**

(a) *Accessibility of facilities.* The State plan must assure that any facility used in connection with the delivery of vocational rehabilitation services under this part meets program accessibility requirements consistent with the requirements, as applicable, of the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, section 504 of the Act, and the regulations implementing these laws.

(b) *Affirmative action.* The State plan must assure that community rehabilitation programs that receive assistance under part B of Title I of the Act take affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as in section 503 of the Act.

(c) *Special communication needs personnel.* The designated State unit must ensure that providers of vocational rehabilitation services are able to communicate—

(1) In the native language of applicants and eligible individuals who have limited English speaking ability; and

(2) By using appropriate modes of communication used by applicants and eligible individuals.

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

**§ 361.52 Informed choice.**

(a) *General provision.* The State plan must assure that applicants and eligible individuals or, as appropriate, their representatives are provided information and support services to assist applicants and eligible individuals in exercising informed choice throughout the rehabilitation process consistent with the provisions of section 102(d) of the Act and the requirements of this section.

(b) *Written policies and procedures.* The designated State unit, in consultation with its State Rehabilitation Council, if it has a Council, must develop and implement written policies and procedures that enable an applicant or eligible individual to exercise informed choice throughout the vocational rehabilitation process. These policies and procedures must provide for—

(1) Informing each applicant and eligible individual (including students with disabilities who are making the transition from programs under the responsibility of an educational agency to programs under the responsibility of the designated State unit), through appropriate modes of communication, about the availability of and

opportunities to exercise informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice throughout the vocational rehabilitation process;

(2) Assisting applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;

(3) Developing and implementing flexible procurement policies and methods that facilitate the provision of vocational rehabilitation services and that afford eligible individuals meaningful choices among the methods used to procure vocational rehabilitation services;

(4) Assisting eligible individuals or, as appropriate, the individuals' representatives in acquiring information that enables them to exercise informed choice in the development of their IPEs with respect to the selection of the—

(i) Employment outcome;  
(ii) Specific vocational rehabilitation services needed to achieve the employment outcome;

(iii) Entity that will provide the services;

(iv) Employment setting and the settings in which the services will be provided; and

(v) Methods available for procuring the services; and

(5) Ensuring that the availability and scope of informed choice is consistent with the obligations of the designated State agency under this part.

(c) *Information and assistance in the selection of vocational rehabilitation services and service providers.* In developing an individual's IPE, the designated State unit must provide the individual or the individual's representative, or assist the individual or the individual's representative in acquiring information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual's employment outcome. This information must include, at a minimum, information relating to the—

(1) Cost, accessibility, and duration of potential services;

(2) Consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available;

(3) Qualifications of potential service providers;

(4) Types of services offered by the potential providers; and

(5) Degree to which services are provided in integrated settings.

(d) *Methods or sources of information.* In providing or assisting the individual or the individual's representative in acquiring the information required under paragraph (c) of this section, the State unit may use, but is not limited to, the following methods or sources of information:

- (1) State or regional lists of services and service providers.
- (2) Periodic consumer satisfaction surveys and reports.
- (3) Referrals to other consumers, local consumer groups, or disability advisory councils qualified to discuss the services or service providers.
- (4) Relevant accreditation, certification, or other information relating to the qualifications of service providers.

(Authority: Sections 12(c), 101(a)(19); 102(b)(2)(B) and 102(d) of the Act; 29 U.S.C. 709(c), 721(a)(19); 722(b)(2)(B) and 722(d))

**§ 361.53 Comparable services and benefits.**

(a) *Determination of availability.* The State plan must assure that prior to providing any vocational rehabilitation services, except those services listed in paragraph (b) of this section, to an eligible individual, or to members of the individual's family, the State unit must determine whether comparable services and benefits, as defined in § 361.5(b)(10), exist under any other program and whether those services and benefits are available to the individual unless such a determination would interrupt or delay—

- (1) The progress of the individual toward achieving the employment outcome identified in the individualized plan for employment;
- (2) An immediate job placement; or
- (3) The provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.

(b) *Exempt services.* The following vocational rehabilitation services described in § 361.48(a) are exempt from a determination of the availability of comparable services and benefits under paragraph (a) of this section:

- (1) Assessment for determining eligibility and vocational rehabilitation needs.
- (2) Counseling and guidance, including information and support services to assist an individual in exercising informed choice.
- (3) Referral and other services to secure needed services from other agencies, including other components of the statewide workforce investment

system, if those services are not available under this part.

(4) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(5) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices.

(6) Post-employment services consisting of the services listed under paragraphs (b)(1) through (5) of this section.

(c) *Provision of services.* (1) If comparable services or benefits exist under any other program and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE, the designated State unit must use those comparable services or benefits to meet, in whole or part, the costs of the vocational rehabilitation services.

(2) If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE, the designated State unit must provide vocational rehabilitation services until those comparable services and benefits become available.

(d) *Interagency coordination.* (1) The State plan must assure that the Governor, in consultation with the entity in the State responsible for the vocational rehabilitation program and other appropriate agencies, will ensure that an interagency agreement or other mechanism for interagency coordination takes effect between the designated State vocational rehabilitation unit and any appropriate public entity, including the State entity responsible for administering the State Medicaid program, a public institution of higher education, and a component of the statewide workforce investment system, to ensure the provision of vocational rehabilitation services (other than those services listed in paragraph (b) of this section) that are included in the IPE, including the provision of those vocational rehabilitation services during the pendency of any interagency dispute in accordance with the provisions of paragraph (d)(3)(iii) of this section.

(2) The Governor may meet the requirements of paragraph (d)(1) of this section through—

- (i) A State statute or regulation;
- (ii) A signed agreement between the respective officials of the public entities that clearly identifies the

responsibilities of each public entity for the provision of the services; or

(iii) Another appropriate mechanism as determined by the designated State vocational rehabilitation unit.

(3) The interagency agreement or other mechanism for interagency coordination must include the following:

(i) *Agency financial responsibility.* An identification of, or description of a method for defining, the financial responsibility of the public entity for providing the vocational rehabilitation services other than those listed in paragraph (b) of this section and a provision stating the financial responsibility of the public entity for providing those services.

(ii) *Conditions, terms, and procedures of reimbursement.* Information specifying the conditions, terms, and procedures under which the designated State unit must be reimbursed by the other public entities for providing vocational rehabilitation services based on the terms of the interagency agreement or other mechanism for interagency coordination.

(iii) *Interagency disputes.* Information specifying procedures for resolving interagency disputes under the interagency agreement or other mechanism for interagency coordination, including procedures under which the designated State unit may initiate proceedings to secure reimbursement from other public entities or otherwise implement the provisions of the agreement or mechanism.

(iv) *Procedures for coordination of services.* Information specifying policies and procedures for public entities to determine and identify interagency coordination responsibilities of each public entity to promote the coordination and timely delivery of vocational rehabilitation services other than those listed in paragraph (b) of this section.

(e) *Responsibilities under other law.*

(1) If a public entity (other than the designated State unit) is obligated under Federal law (such as the Americans with Disabilities Act, section 504 of the Act, or section 188 of the Workforce Investment Act) or State law, or assigned responsibility under State policy or an interagency agreement established under this section, to provide or pay for any services considered to be vocational rehabilitation services (e.g., interpreter services under § 361.48(j)), other than those services listed in paragraph (b) of this section, the public entity must fulfill that obligation or responsibility through—

(i) The terms of the interagency agreement or other requirements of this section;

(ii) Providing or paying for the service directly or by contract; or

(iii) other arrangement.

(2) If a public entity other than the designated State unit fails to provide or pay for vocational rehabilitation services for an eligible individual as established under this section, the designated State unit must provide or pay for those services to the individual and may claim reimbursement for the services from the public entity that failed to provide or pay for those services. The public entity must reimburse the designated State unit pursuant to the terms of the interagency agreement or other mechanism described in paragraph (d) of this section in accordance with the procedures established in the agreement or mechanism pursuant to paragraph (d)(3)(ii) of this section.

(Authority: Sections 12(c) and 101(a)(8) of the Act; 29 U.S.C. 709(c) and 721(a)(8))

**§ 361.54 Participation of individuals in cost of services based on financial need.**

(a) *No Federal requirement.* There is no Federal requirement that the financial need of individuals be considered in the provision of vocational rehabilitation services.

(b) *State unit requirements.* (1) The State unit may choose to consider the financial need of eligible individuals or individuals who are receiving services through trial work experiences under § 361.42(e) or during an extended evaluation under § 361.42(f) for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, other than those services identified in paragraph (b)(3) of this section.

(2) If the State unit chooses to consider financial need—

(i) It must maintain written policies—

(A) Explaining the method for determining the financial need of an eligible individual; and

(B) Specifying the types of vocational rehabilitation services for which the unit has established a financial needs test;

(ii) The policies must be applied uniformly to all individuals in similar circumstances;

(iii) The policies may require different levels of need for different geographic regions in the State, but must be applied uniformly to all individuals within each geographic region; and

(iv) The policies must ensure that the level of an individual's participation in the cost of vocational rehabilitation services is—

(A) Reasonable;

(B) Based on the individual's financial need, including consideration of any disability-related expenses paid by the individual; and

(C) Not so high as to effectively deny the individual a necessary service.

(3) The designated State unit may not apply a financial needs test, or require the financial participation of the individual—

(i) As a condition for furnishing the following vocational rehabilitation services:

(A) Assessment for determining eligibility and priority for services under § 361.48(a), except those non-assessment services that are provided to an individual with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences under § 361.42(e) or an extended evaluation under § 361.42(f).

(B) Assessment for determining vocational rehabilitation needs under § 361.48(b).

(C) Vocational rehabilitation counseling and guidance under § 361.48(c).

(D) Referral and other services under § 361.48(d).

(E) Interpreter services under § 361.48(j).

(F) Reader services under § 361.48(k).

(G) Job-related services under § 361.48(l).

(H) Personal assistance services under § 361.48(n); or

(ii) As a condition for furnishing any vocational rehabilitation service if the individual in need of the service has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act.

(Authority: Section 12(c) of the Act; 29 U.S.C. 709(c))

**§ 361.55 Annual review of individuals in extended employment or other employment under special certificate provisions of the Fair Labor Standards Act.**

The State plan must assure that the designated State unit—

(a) Annually reviews and reevaluates the status of each individual with a disability served under the vocational rehabilitation program who has achieved an employment outcome either in an extended employment setting in a community rehabilitation program or in any other employment setting in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act for 2 years after the individual achieves the employment outcome (and thereafter if requested by the individual or, if

appropriate, the individual's representative) to determine the interests, priorities, and needs of the individual with respect to competitive employment or training for competitive employment;

(b) Enables the individual or, if appropriate, the individual's representative to provide input into the review and reevaluation and documents that input in the record of services, consistent with § 361.47(a)(10), with the individual's or, as appropriate, the individual's representative's signed acknowledgment that the review and reevaluation have been conducted; and

(c) Makes maximum efforts, including identifying and providing vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individuals identified in paragraph (a) of this section in engaging in competitive employment as defined in § 361.5(b)(11).

(Authority: Section 101(a)(14) of the Act; 29 U.S.C. 721(a)(14))

**§ 361.56 Requirements for closing the record of services of an individual who has achieved an employment outcome.**

The record of services of an individual who has achieved an employment outcome may be closed only if all of the following requirements are met:

(a) *Employment outcome achieved.* The individual has achieved the employment outcome that is described in the individual's IPE in accordance with § 361.46(a)(1) and is—

(1) Consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(2) In the most integrated setting possible, consistent with the individual's informed choice.

(b) *Employment outcome maintained.* The individual has maintained the employment outcome for an appropriate period of time, but not less than 90 days, necessary to ensure the stability of the employment outcome, and the individual no longer needs vocational rehabilitation services.

(c) *Satisfactory outcome.* At the end of the appropriate period under paragraph (b) of this section, the individual and the qualified rehabilitation counselor employed by the designated State unit consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.

(d) *Post-employment services.* The individual is informed through appropriate modes of communication of

the availability of post-employment services.

(Authority: Sections 12(c), 101(a)(6), and 106(a)(2) of the Act; 29 U.S.C. 711(c), 721(a)(6), and 726(a)(2))

**§ 361.57 Review of State unit personnel determinations.**

(a) *Procedures.* The designated State unit must develop and implement procedures to ensure that an applicant or eligible individual who is dissatisfied with any determination made by personnel of the designated State unit that affects the provision of vocational rehabilitation services may request, or, if appropriate, may request through the individual's representative, a timely review of that determination. The procedures must be in accordance with paragraphs (b) through (k) of this section:

(b) *General requirements.*—(1) *Notification.* Procedures established by the State unit under this section must provide an applicant or eligible individual or, as appropriate, the individual's representative notice of—

(i) The right to obtain review of State unit determinations that affect the provision of vocational rehabilitation services through an impartial due process hearing under paragraph (e) of this section;

(ii) The right to pursue mediation under paragraph (d) of this section with respect to determinations made by designated State unit personnel that affect the provision of vocational rehabilitation services to an applicant or eligible individual;

(iii) The names and addresses of individuals with whom requests for mediation or due process hearings may be filed;

(iv) The manner in which a mediator or impartial hearing officer may be selected consistent with the requirements of paragraphs (d) and (f) of this section; and

(v) The availability of the client assistance program, established under 34 CFR part 370, to assist the applicant or eligible individual during mediation sessions or impartial due process hearings.

(2) *Timing.* Notice described in paragraph (b)(1) of this section must be provided in writing—

(i) At the time the individual applies for vocational rehabilitation services under this part;

(ii) At the time the individual is assigned to a category in the State's order of selection, if the State has established an order of selection under § 361.36;

(iii) At the time the IPE is developed; and

(iv) Whenever vocational rehabilitation services for an individual are reduced, suspended, or terminated.

(3) *Evidence and representation.*

Procedures established under this section must—

(i) Provide an applicant or eligible individual or, as appropriate, the individual's representative with an opportunity to submit during mediation sessions or due process hearings evidence and other information that supports the applicant's or eligible individual's position; and

(ii) Enable an applicant or eligible individual to be represented during mediation sessions or due process hearings by counsel or other advocate selected by the applicant or eligible individual.

(4) *Impact on provision of services.*

The State unit may not institute a suspension, reduction, or termination of vocational rehabilitation services being provided to an applicant or eligible individual, including evaluation and assessment services and IPE development, pending a decision by a mediator, hearing officer, or reviewing official or pending informal resolution under this section unless—

(i) The individual or, in appropriate cases, the individual's representative requests a suspension, reduction, or termination of services; or

(ii) The State agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.

(5) *Ineligibility.* Applicants who are found ineligible for vocational rehabilitation services and previously eligible individuals who are determined to be no longer eligible for vocational rehabilitation services pursuant to § 361.43 are permitted to challenge the determinations of ineligibility under the procedures described in this section.

(c) *Informal dispute resolution.* The State unit may develop an informal process for resolving a request for review without conducting mediation or a formal hearing. A State's informal process must not be used to deny the right of an applicant or eligible individual to a hearing under paragraph (e) of this section or any other right provided under this part, including the right to pursue mediation under paragraph (d) of this section. If informal resolution under this paragraph or mediation under paragraph (d) of this section is not successful in resolving the dispute within the time period established under paragraph (e)(1) of this section, a formal hearing must be conducted within that same time

period, unless the parties agree to a specific extension of time.

(d) *Mediation.* (1) The State must establish and implement procedures, as required under paragraph (b)(1)(ii) of this section, to allow an applicant or eligible individual and the State unit to resolve disputes involving State unit determinations that affect the provision of vocational rehabilitation services through a mediation process that must be made available, at a minimum, whenever an applicant or eligible individual or, as appropriate, the individual's representative requests an impartial due process hearing under this section.

(2) Mediation procedures established by the State unit under paragraph (d) must ensure that—

(i) Participation in the mediation process is voluntary on the part of the applicant or eligible individual, as appropriate, and on the part of the State unit;

(ii) Use of the mediation process is not used to deny or delay the applicant's or eligible individual's right to pursue resolution of the dispute through an impartial hearing held within the time period specified in paragraph (e)(1) of this section or any other rights provided under this part. At any point during the mediation process, either party may elect to terminate the mediation and pursue resolution through an impartial hearing;

(iii) The mediation process is conducted by a qualified and impartial mediator, as defined in § 361.5(b)(42), who must be selected from a list of qualified and impartial mediators maintained by the State—

(A) On a random basis; or

(B) By agreement between the director of the designated State unit and the applicant or eligible individual or, as appropriate, the individual's representative; and

(iv) Mediation sessions are scheduled and conducted in a timely manner and are held in a location and manner that is convenient to the parties to the dispute.

(3) Discussions that occur during the mediation process must be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(4) An agreement reached by the parties to the dispute in the mediation process must be described in a written mediation agreement that is issued by the impartial and qualified mediator



and signed by both parties. Copies of the agreement must be sent to both parties.

(5) The costs of the mediation process must be paid by the State. The State is not required to pay for any costs related to the representation of an applicant or eligible individual authorized under paragraph (b)(3)(ii) of this section.

(e) *Impartial due process hearings.*

The State unit must establish and implement formal review procedures, as required under paragraph (b)(1)(i) of this section, that provide that—

(1) A hearing conducted by an impartial hearing officer, selected in accordance with paragraph (f) of this section, must be held within 45 days of an applicant's or eligible individual's request for review of a determination made by personnel of the State unit that affects the provision of vocational rehabilitation services to the individual, unless informal resolution or a mediation agreement is achieved prior to the 45th day or the parties agree to a specific extension of time;

(2) In addition to the rights described in paragraph (b)(3) of this section, the applicant or eligible individual or, if appropriate, the individual's representative must be given the opportunity to present witnesses during the hearing and to examine all witnesses and other relevant sources of information and evidence;

(3) The impartial hearing officer must—

(i) Make a decision based on the provisions of the approved State plan, the Act, Federal vocational rehabilitation regulations, and State regulations and policies that are consistent with Federal requirements; and

(ii) Provide to the individual or, if appropriate, the individual's representative and to the State unit a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing; and

(4) The hearing officer's decision is final, except that a party may request an impartial review under paragraph (g)(1) of this section if the State has established procedures for that review, and a party involved in a hearing may bring a civil action under paragraph (i) of this section.

(f) *Selection of impartial hearing officers.* The impartial hearing officer for a particular case must be selected—

(1) From a list of qualified impartial hearing officers maintained by the State unit. Impartial hearing officers included on the list must be—

(i) Identified by the State unit if the State unit is an independent commission; or

(ii) Jointly identified by the State unit and the State Rehabilitation Council if the State has a Council; and

(2)(i) On a random basis; or

(ii) By agreement between the director of the designated State unit and the applicant or eligible individual or, as appropriate, the individual's representative.

(g) *Administrative review of hearing officer's decision.* The State may establish procedures to enable a party who is dissatisfied with the decision of the impartial hearing officer to seek an impartial administrative review of the decision under paragraph (e)(3) of this section in accordance with the following requirements:

(1) A request for administrative review under paragraph (g) of this section must be made within 20 days of the mailing of the impartial hearing officer's decision.

(2) Administrative review of the hearing officer's decision must be conducted by—

(i) The chief official of the designated State agency if the State has established both a designated State agency and a designated State unit under § 361.13(b); or

(ii) An official from the office of the Governor.

(3) The reviewing official described in paragraph (g)(2)(i) of this section—

(i) Provides both parties with an opportunity to submit additional evidence and information relevant to a final decision concerning the matter under review;

(ii) May not overturn or modify the hearing officer's decision, or any part of that decision, that supports the position of the applicant or eligible individual unless the reviewing official concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous on the basis of being contrary to the approved State plan, the Act, Federal vocational rehabilitation regulations, or State regulations and policies that are consistent with Federal requirements;

(iii) Makes an independent, final decision following a review of the entire hearing record and provides the decision in writing, including a full report of the findings and the statutory, regulatory, or policy grounds for the decision, to the applicant or eligible individual or, as appropriate, the individual's representative and to the State unit within 30 days of the request for administrative review under paragraph (g)(1) of this section; and

(iv) May not delegate the responsibility for making the final decision under paragraph (g) of this

section to any officer or employee of the designated State unit.

(4) The reviewing official's decision under paragraph (g) of this section is final unless either party brings a civil action under paragraph (i) of this section.

(h) *Implementation of final decisions.* If a party brings a civil action under paragraph (h) of this section to challenge the final decision of a hearing officer under paragraph (e) of this section or to challenge the final decision of a State reviewing official under paragraph (g) of this section, the final decision of the hearing officer or State reviewing official must be implemented pending review by the court.

(i) *Civil action.* (1) Any party who disagrees with the findings and decision of an impartial hearing officer under paragraph (e) of this section in a State that has not established administrative review procedures under paragraph (g) of this section and any party who disagrees with the findings and decision under paragraph (g)(3)(iii) of this section have a right to bring a civil action with respect to the matter in dispute. The action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

(2) In any action brought under paragraph (i) of this section, the court—

(i) Receives the records related to the impartial due process hearing and the records related to the administrative review process, if applicable;

(ii) Hears additional evidence at the request of a party; and

(iii) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(j) *State fair hearing board.* A fair hearing board as defined in § 361.5(b)(22) is authorized to carry out the responsibilities of the impartial hearing officer under paragraph (e) of this section in accordance with the following criteria:

(1) The fair hearing board may conduct due process hearings either collectively or by assigning responsibility for conducting the hearing to one or more members of the fair hearing board.

(2) The final decision issued by the fair hearing board following a hearing under paragraph (j)(1) of this section must be made collectively by, or by a majority vote of, the fair hearing board.

(3) The provisions of paragraphs (b) (1), (2), and (3) of this section that relate to due process hearings and of paragraphs (e), (f), (g), and (h) of this

section do not apply to fair hearing boards under this paragraph (j).

(k) *Data collection.* (1) The director of the designated State unit must collect and submit, at a minimum, the following data to the Commissioner of the Rehabilitation Services Administration (RSA) for inclusion each year in the annual report to Congress under section 13 of the Act:

(i) A copy of the standards used by State reviewing officials for reviewing decisions made by impartial hearing officers under this section.

(ii) The number of mediations held, including the number of mediation agreements reached.

(iii) The number of hearings and reviews sought from impartial hearing officers and State reviewing officials, including the type of complaints and the issues involved.

(iv) The number of hearing officer decisions that were not reviewed by administrative reviewing officials.

(v) The number of hearing decisions that were reviewed by State reviewing officials and, based on these reviews, the number of hearing decisions that were—

(A) Sustained in favor of an applicant or eligible individual;

(B) Sustained in favor of the designated State unit;

(C) Reversed in whole or in part in favor of the applicant or eligible individual; and

(D) Reversed in whole or in part in favor of the State unit.

(2) The State unit director also must collect and submit to the Commissioner of RSA copies of all final decisions issued by impartial hearing officers under paragraph (e) of this section and by State review officials under paragraph (g) of this section.

(3) The confidentiality of records of applicants and eligible individuals maintained by the State unit may not preclude the access of the RSA Commissioner to those records for the purposes described in this section.

(Authority: Section 102(c) of the Act; 29 U.S.C. 722(c))

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

#### § 361.60 Matching requirements.

(a) *Federal share.*—(1) *General.* Except as provided in paragraph (a)(2) of this section, the Federal share for expenditures made by the State under the State plan, including expenditures for the provision of vocational rehabilitation services and the administration of the State plan, is 78.7 percent.

(2) *Construction projects.* The Federal share for expenditures made for the

construction of a facility for community rehabilitation program purposes may not be more than 50 percent of the total cost of the project.

(b) *Non-Federal share.*—(1) *General.* Except as provided in paragraph (b) (2) and (3) of this section, expenditures made under the State plan to meet the non-Federal share under this section must be consistent with the provisions of 34 CFR 80.24.

(2) *Third party in-kind contributions.* Third party in-kind contributions specified in 34 CFR 80.24(a)(2) may not be used to meet the non-Federal share under this section.

(3) *Contributions by private entities.* Expenditures made from contributions by private organizations, agencies, or individuals that are deposited in the account of the State agency or sole local agency in accordance with State law and that are earmarked, under a condition imposed by the contributor, may be used as part of the non-Federal share under this section if the funds are earmarked for—

(i) Meeting in whole or in part the State's share for establishing a community rehabilitation program or constructing a particular facility for community rehabilitation program purposes;

(ii) Particular geographic areas within the State for any purpose under the State plan, other than those described in paragraph (b)(3)(i) of this section, in accordance with the following criteria:

(A) Before funds that are earmarked for a particular geographic area may be used as part of the non-Federal share, the State must notify the Secretary that the State cannot provide the full non-Federal share without using these funds.

(B) Funds that are earmarked for a particular geographic area may be used as part of the non-Federal share without requesting a waiver of statewideness under § 361.26.

(C) Except as provided in paragraph (b)(3)(i) of this section, all Federal funds must be used on a statewide basis consistent with § 361.25, unless a waiver of statewideness is obtained under § 361.26; and

(iii) Any other purpose under the State plan, provided the expenditures do not benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest. The Secretary does not consider a donor's receipt from the State unit of a grant, subgrant, or contract with funds allotted under this part to be a benefit for the purposes of this paragraph if the grant, subgrant, or

contract is awarded under the State's regular competitive procedures.

(Authority: Sections 7(14), 101(a)(3), 101(a)(4) and 104 of the Act; 29 U.S.C. 706(14), 721(a)(3), 721(a)(4) and 724))

*Example:* Contributions may be earmarked in accordance with § 361.60(b)(3)(iii) for providing particular services (e.g., rehabilitation technology services); serving individuals with certain types of disabilities (e.g., individuals who are blind), consistent with the State's order of selection, if applicable; providing services to special groups that State or Federal law permits to be targeted for services (e.g., students with disabilities who are receiving special education services), consistent with the State's order of selection, if applicable; or carrying out particular types of administrative activities permissible under State law. Contributions also may be restricted to particular geographic areas to increase services or expand the scope of services that are available statewide under the State plan in accordance with the requirements in § 361.60(b)(3)(ii).

#### § 361.61 Limitation on use of funds for construction expenditures.

No more than 10 percent of a State's allotment for any fiscal year under section 110 of the Act may be spent on the construction of facilities for community rehabilitation program purposes.

(Authority: Section 101(a)(17)(A) of the Act; 29 U.S.C. 721(a)(17)(A))

#### § 361.62 Maintenance of effort requirements.

(a) *General requirements.* (1) The Secretary reduces the amount otherwise payable to a State for a fiscal year by the amount by which the total expenditures from non-Federal sources under the State plan for the previous fiscal year were less than the total of those expenditures for the fiscal year 2 years prior to the previous fiscal year.

*Example:* For fiscal year 2000, a State's maintenance of effort level is based on the amount of its expenditures from non-Federal sources for fiscal year 1998. Thus, if the State's non-Federal expenditures in 2000 are less than they were in 1998, the State has a maintenance of effort deficit, and the Secretary reduces the State's allotment in 2001 by the amount of that deficit.

(2) If, at the time the Secretary makes a determination that a State has failed to meet its maintenance of effort requirements, it is too late for the Secretary to make a reduction in accordance with paragraph (a)(1) of this section, then the Secretary recovers the amount of the maintenance of effort deficit through audit disallowance.

(b) *Specific requirements for construction of facilities.* If the State provides for the construction of a facility for community rehabilitation

program purposes, the amount of the State's share of expenditures for vocational rehabilitation services under the plan, other than for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation purposes, must be at least equal to the expenditures for those services for the second prior fiscal year. If a State fails to meet the requirements of this paragraph, the Secretary recovers the amount of the maintenance of effort deficit through audit disallowance.

(c) *Separate State agency for vocational rehabilitation services for individuals who are blind.* If there is a separate part of the State plan administered by a separate State agency to provide vocational rehabilitation services for individuals who are blind—

(1) Satisfaction of the maintenance of effort requirements under paragraphs (a) and (b) of this section are determined based on the total amount of a State's non-Federal expenditures under both parts of the State plan; and

(2) If a State fails to meet any maintenance of effort requirement, the Secretary reduces the amount otherwise payable to the State for that fiscal year under each part of the plan in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan in the previous fiscal year were less than they were for that part of the plan for the fiscal year 2 years prior to the previous fiscal year.

(d) *Waiver or modification.* (1) The Secretary may waive or modify the maintenance of effort requirement in paragraph (a)(1) of this section if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that—

(i) Cause significant unanticipated expenditures or reductions in revenue that result in a general reduction of programs within the State; or

(ii) Require the State to make substantial expenditures in the vocational rehabilitation program for

long-term purposes due to the one-time costs associated with the construction of a facility for community rehabilitation program purposes, the establishment of a facility for community rehabilitation program purposes, or the acquisition of equipment.

(2) The Secretary may waive or modify the maintenance of effort requirement in paragraph (b) of this section or the 10 percent allotment limitation in § 361.61 if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster, that result in significant destruction of existing facilities and require the State to make substantial expenditures for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation program purposes in order to provide vocational rehabilitation services.

(3) A written request for waiver or modification, including supporting justification, must be submitted to the Secretary as soon as the State determines that an exceptional or uncontrollable circumstance will prevent it from making its required expenditures from non-Federal sources.

(Authority: Sections 101(a)(17) and 111(a)(2) of the Act; 29 U.S.C. 721(a)(17) and 731(a)(2))

#### **§ 361.63 Program income.**

(a) *Definition.* For purposes of this section, *program income* means gross income received by the State that is directly generated by an activity supported under this part.

(b) *Sources.* Sources of program income include, but are not limited to, payments from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes, payments received from workers' compensation funds, fees for services to defray part or all of the costs of services provided to particular individuals, and income generated by a State-operated community rehabilitation program.

(c) *Use of program income.* (1) Except as provided in paragraph (c)(2) of this

section, program income, whenever earned, must be used for the provision of vocational rehabilitation services and the administration of the State plan. Program income is considered earned when it is received.

(2) Payments provided to a State from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes may also be used to carry out programs under part B of Title I of the Act (client assistance), part B of Title VI of the Act (supported employment), and Title VII of the Act (independent living).

(3) The State is authorized to treat program income as—

(i) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 34 CFR 80.25(g)(2); or

(ii) A deduction from total allowable costs, in accordance with 34 CFR 80.25(g)(1).

(4) Program income cannot be used to meet the non-Federal share requirement under § 361.60.

(Authority: Section 108 of the Act; 29 U.S.C. 728; 34 CFR 80.25)

#### **§ 361.64 Obligation of Federal funds and program income.**

(a) Except as provided in paragraph (b) of this section, any Federal funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated by the State by the beginning of the succeeding fiscal year and any program income received during a fiscal year that is not obligated by the State by the beginning of the succeeding fiscal year remain available for obligation by the State during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year remain available for obligation in the succeeding fiscal year only to the extent that the State met the matching requirement for those Federal funds by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(Authority: Section 19 of the Act; 29 U.S.C. 716)

**§ 361.65 Allotment and payment of Federal funds for vocational rehabilitation services.**

(a) *Allotment.* (1) The allotment of Federal funds for vocational rehabilitation services for each State is computed in accordance with the requirements of section 110 of the Act, and payments are made to the State on a quarterly basis, unless some other period is established by the Secretary.

(2) If the State plan designates one State agency to administer, or supervise the administration of, the part of the plan under which vocational rehabilitation services are provided for

individuals who are blind and another State agency to administer the rest of the plan, the division of the State's allotment is a matter for State determination.

(b) *Reallotment.* (1) The Secretary determines not later than 45 days before the end of a fiscal year which States, if any, will not use their full allotment.

(2) As soon as possible, but not later than the end of the fiscal year, the Secretary reallots these funds to other States that can use those additional funds during the current or subsequent fiscal year, provided the State can meet

the matching requirement by obligating the non-Federal share of any reallotted funds in the fiscal year for which the funds were appropriated.

(3) Funds reallotted to another State are considered to be an increase in the recipient State's allotment for the fiscal year for which the funds were appropriated.

(Authority: Sections 110 and 111 of the Act; 29 U.S.C. 730 and 731)

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