

§ 370.31 How does the Secretary reallocate funds?

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

(b) A designated agency shall inform the Secretary at least 90 days before the end of the fiscal year for which CAP funds were received whether the designated agency is making available for reallocation any of those CAP funds that it will be unable to obligate in that fiscal year.

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

(Authority: 29 U.S.C. 711(c) and 732(e)(2))

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

§ 370.40 What are allowable costs?

(a) If the designated agency is a State or local government agency, the designated agency shall apply the cost principles in accordance with 34 CFR 80.22(b).

(b) If the designated agency is a private nonprofit organization, the designated agency shall apply the cost principles in accordance with subpart Q of 34 CFR part 74.

(c) In addition to those allowable costs established in EDGAR, and consistent with the program activities listed in §370.4, the cost of travel in connection with the provision to a client or client applicant of assistance under this program is allowable. The cost of travel includes the cost of travel for an attendant if the attendant must accompany the client or client applicant.

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

(Authority: 29 U.S.C. 711(c) and 732(c)(3))

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

(a) Except as permitted by paragraph (b) of this section, an employee of a designated agency, of a center under contract with a designated agency (as permitted by §370.2(f)), or of an entity or individual under contract with a designated agency, who carries out any CAP duties or responsibilities, while so employed, may not—

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

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

(b) An employee of a designated agency or of a center under contract with a designated agency, as permitted by §370.2(f), may—

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

(2) Provide services under the PAIR program;

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

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

(Authority: 29 U.S.C. 732(g)(1))

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

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

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by sections 101(a) (18) and (23) of the Act.

(Authority: 29 U.S.C. 721(a) (18) and (23) and 732(g)(2))

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

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

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

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

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

(Authority: 29 U.S.C. 732(g)(3))

§ 370.44 What reporting requirement applies to each designated agency?

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

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

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

(c) The number of requests for advocacy services received by the des-

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ignated agency from clients or client applicants;

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

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

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

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(Authority: 29 U.S.C. 732(g) (4) and (5))

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

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

(Authority: 29 U.S.C. 732(d))

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

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

(Authority: 29 U.S.C. 732(c)(2))

§ 370.47 When must grant funds be obligated?

(a) Any funds appropriated for a fiscal year to carry out the CAP that are not expended or obligated by the designated agency prior to the beginning of the succeeding fiscal year remain available for obligation by the designated agency during the succeeding fiscal year in accordance with 34 CFR 76.705 through 76.707.

(b) A designated agency shall inform the Secretary within 90 days after the end of the fiscal year for which the