

§ 361.11

34 CFR Ch. III (7–1–02 Edition)

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.

(Approved by the Office of Management and Budget under control number 1820–0500)

(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))

[66 FR 4382, Jan. 17, 2001, as amended at 66 FR 7253, Jan. 22, 2001]

§ 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.

(Approved by the Office of Management and Budget under control number 1820-0500)

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

[66 FR 4382, Jan. 17, 2001, as amended at 66 FR 7253, Jan. 22, 2001]

§ 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 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