

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