

§ 361.55

34 CFR Ch. III (7–1–02 Edition)

(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) Job-related services under §361.48(l).

(F) Personal assistance services under §361.48(m).

(G) Any auxiliary aid or service (e.g., interpreter services under §361.48(j), reader services under §361.48(k)) that an individual with a disability requires under section 504 of the Act (29 U.S.C. 794) or the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*), or regulations implementing those laws, in order for the individual to participate in the VR program as authorized under this part; 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 Titles II or XVI of the Social Security Act.

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

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

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

§ 361.55 Annual review of individuals in extended employment and other employment under special certificate provisions of the Fair Labor Standards Act.

(a) The State plan must assure that the designated State unit conducts an annual review and reevaluation in accordance with the requirements in paragraph (b) of this section for an individual with a disability served under this part—

(1) Who has achieved an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act; or

(2) Whose record of services is closed while the individual is in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with §361.5(b)(16) or that the individual

made an informed choice to remain in extended employment.

(b) For each individual with a disability who meets the criteria in paragraph (a) of this section, the designated State unit must—

(1) Annually review and reevaluate the status of each individual for 2 years after the individual's record of services is closed (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;

(2) Enable the individual or, if appropriate, the individual's representative to provide input into the review and reevaluation and must document 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

(3) Make maximum efforts, including identifying and providing vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individual in engaging in competitive employment as defined in §361.5(b)(11).

(AUTHORITY: Sections 12(c) and 101(a)(14) of the Act; 29 U.S.C. 709(c) and 721(a)(14))

[66 FR 7253, Jan. 22, 2001]

§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 consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and 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))

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

§361.57 Review of determinations made by designated State unit personnel.

(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