

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.

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

(Authority: Section 102(c) of the Act; 29 U.S.C. 722(c))

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

**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

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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

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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 for paragraph (b)(3):* 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).

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

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

### § 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 2001, a State's maintenance of effort level is based on the amount of its expenditures from non-Federal sources for fiscal year 1999. Thus, if the