

§§ 359.33—359.39

34 CFR Ch. III (7–1–99 Edition)

extent possible, a geographic distribution of projects.

(Authority: Sec. 204(b)(4)(C); 29 U.S.C. 762(b)(4)(C))

[52 FR 30066, Aug. 12, 1987]

§§ 359.33—359.39 [Reserved]

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

Subpart A—General

Sec.

- 361.1 Purpose.
- 361.2 Eligibility for a grant.
- 361.3 Authorized activities.
- 361.4 Applicable regulations.
- 361.5 Applicable definitions.

Subpart B—State Plan for Vocational Rehabilitation Services

- 361.10 Submission, approval, and disapproval of the State plan.
- 361.11 Withholding of funds.

STATE PLAN CONTENT: ADMINISTRATION

- 361.12 Methods of administration.
- 361.13 State agency for administration.
- 361.14 Substitute State agency.
- 361.15 Local administration.
- 361.16 Establishment of an independent commission or a State Rehabilitation Advisory Council.
- 361.17 Requirements for a State Rehabilitation Advisory Council.
- 361.18 Comprehensive system of personnel development.
- 361.19 Affirmative action for individuals with disabilities.
- 361.20 State plan development.
- 361.21 Consultations regarding the administration of the State plan.
- 361.22 Cooperation with agencies responsible for students with disabilities.
- 361.23 Cooperation with other public agencies.
- 361.24 Coordination with the Statewide Independent Living Council.
- 361.25 Statewideness.
- 361.26 Waiver of statewideness.
- 361.27 Shared funding and administration of joint programs.
- 361.28 Third-party cooperative arrangements involving funds from other public agencies.
- 361.29 Statewide studies and evaluations.
- 361.30 Services to special groups of individuals with disabilities.
- 361.31 Utilization of community resources.
- 361.32 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.

- 361.33 Use, assessment, and support of community rehabilitation programs.
- 361.34 Supported employment plan.
- 361.35 Strategic plan.
- 361.36 Ability to serve all eligible individuals; order of selection for services.
- 361.37 Establishment and maintenance of information and referral programs.
- 361.38 Protection, use, and release of personal information.
- 361.39 State-imposed requirements.
- 361.40 Reports.

STATE PLAN CONTENT: PROVISION AND SCOPE OF SERVICES

- 361.41 Processing referrals and applications.
- 361.42 Assessment for determining eligibility and priority for services.
- 361.43 Procedures for ineligibility determination.
- 361.44 Closure without eligibility determination.
- 361.45 Development of the individualized written rehabilitation program.
- 361.46 Content of the individualized written rehabilitation program.
- 361.47 Record of services.
- 361.48 Scope of vocational rehabilitation services for individuals with disabilities.
- 361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities.
- 361.50 Written policies governing the provision of services for individuals with disabilities.
- 361.51 Written standards for facilities and providers of services.
- 361.52 Opportunity to make informed choices.
- 361.53 Availability of comparable services and benefits.
- 361.54 Participation of individuals in cost of services based on financial need.
- 361.55 Review of extended employment in community rehabilitation programs or other employment under section 14(c) of the Fair Labor Standards Act.
- 361.56 Individuals determined to have achieved an employment outcome.
- 361.57 Review of rehabilitation counselor or coordinator determinations.

Subpart C—Financing of State Vocational Rehabilitation Programs

- 361.60 Matching requirements.
- 361.61 Limitation on use of funds for construction expenditures.
- 361.62 Maintenance of effort requirements.
- 361.63 Program income.
- 361.64 Obligation of Federal funds and program income.
- 361.65 Allotment and payment of Federal funds for vocational rehabilitation services.

Subpart D—Strategic Plan for Innovation and Expansion of Vocational Rehabilitation Services

- 361.70 Purpose of the strategic plan.
- 361.71 Procedures for developing the strategic plan.
- 361.72 Content of the strategic plan.
- 361.73 Use of funds.
- 361.74 Allotment of Federal funds.

AUTHORITY: 29 U.S.C. 711(c), unless otherwise noted.

SOURCE: 62 FR 6334, Feb. 11, 1997, unless otherwise noted.

Subpart A—General

§361.1 Purpose.

Under the State Vocational Rehabilitation Services Program (program), the Secretary provides grants to assist States in operating a comprehensive, coordinated, effective, efficient, and accountable program that is designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, so that they may prepare for and engage in gainful employment.

(Authority: Sec. 12(c) and 100(a)(2) of the Act; 29 U.S.C. 711(c) and 720(a)(2))

§361.2 Eligibility for a grant.

Any State that submits to the Secretary a State plan that meets the requirements of section 101(a) of the Act and this part is eligible for a grant under this program.

(Authority: Sec. 101(a) of the Act; 29 U.S.C. 721(a))

§361.3 Authorized activities.

The Secretary makes payments to a State to assist in—

- (a) The costs of providing vocational rehabilitation services under the State plan;
- (b) Administrative costs under the State plan; and
- (c) The costs of developing and implementing the strategic plan.

(Authority: Sec. 111(a)(1) of the Act; 29 U.S.C. 731(a)(1))

§361.4 Applicable regulations.

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

- (1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), with respect to subgrants to entities that are not State or local governments or Indian tribal organizations.
- (2) 34 CFR part 76 (State-Administered Programs).
- (3) 34 CFR part 77 (Definitions that Apply to Department Regulations).
- (4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
- (5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), except for §80.24(a)(2).
- (6) 34 CFR part 81 (General Education Provisions Act-Enforcement).
- (7) 34 CFR part 82 (New Restrictions on Lobbying).
- (8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).
- (9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 361.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

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§361.5 Applicable definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

- Department
- EDGAR
- Fiscal year
- Nonprofit
- Private
- Public
- Secretary

(b) *Other definitions.* The following definitions also apply to this part:

(1) *Act* means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

(2) *Administrative costs under the State plan* means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program. Administrative costs include expenses related to program planning, development, monitoring, and evaluation, including, but not limited to, quality assurance; budgeting, accounting, financial management, information systems, and related data processing; providing information about the program to the public; technical assistance to other State agencies, private nonprofit organizations, and businesses and industries, except for technical assistance and support services described in § 361.49(a)(4); the State Rehabilitation Advisory Council and other advisory committees; professional organization membership dues for State unit employees; the removal of architectural barriers in State vocational rehabilitation agency offices and State-operated rehabilitation facilities; operating and maintaining State unit facilities, equipment, and grounds; supplies; administration of the comprehensive system of personnel development, including personnel administration, administration of affirmative action plans, and training and staff development; administrative salaries, including clerical and other support staff salaries, in support of these functions; travel costs related to carrying out the program, other than travel costs related to the provision of services; costs incurred in conducting reviews of rehabilitation counselor or coordinator determinations under § 361.57; and legal expenses required in the administration of the program.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

(3) *American Indian* means an individual who is a member of an Indian tribe.

(Authority: Sec. 7(20) of the Act; 29 U.S.C. 706(20))

(4) *Applicant* means an individual who submits an application for vocational rehabilitation services in accordance with § 361.41(b)(2).

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

(5) *Appropriate modes of communication* means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

(6) *Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

(Authority: Sec. 7(23) of the Act; 29 U.S.C. 706(23))

(7) *Assistive technology service* means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including—

(i) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his or her customary environment;

(ii) Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;

(iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(v) Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

(vi) Training or technical assistance for professionals (including individuals

providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

(Authority: Sec. 7(24) and 12(c) of the Act; 29 U.S.C. 706(24) and 711(c))

(8) *Community rehabilitation program.*

(i) *Community rehabilitation program* means a program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

(A) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.

(B) Testing, fitting, or training in the use of prosthetic and orthotic devices.

(C) Recreational therapy.

(D) Physical and occupational therapy.

(E) Speech, language, and hearing therapy.

(F) Psychiatric, psychological, and social services, including positive behavior management.

(G) Assessment for determining eligibility and vocational rehabilitation needs.

(H) Rehabilitation technology.

(I) Job development, placement, and retention services.

(J) Evaluation or control of specific disabilities.

(K) Orientation and mobility services for individuals who are blind.

(L) Extended employment.

(M) Psychosocial rehabilitation services.

(N) Supported employment services and extended services.

(O) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(P) Personal assistance services.

(Q) Services similar to the services described in paragraphs (A) through (P) of this definition.

(ii) For the purposes of this definition, the word *program* means an agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions.

(Authority: Sec. 7(25) and 12(c) of the Act; 29 U.S.C. 706(25) and 711(c))

(9) *Comparable services and benefits* means services and benefits that are—

(i) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

(ii) Available to the individual at the time needed to achieve the intermediate rehabilitation objectives in the individual's Individualized Written Rehabilitation Program (IWRP) in accordance with §361.53; and

(iii) Commensurate to the services that the individual would otherwise receive from the vocational rehabilitation agency.

(Authority: Sec. 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

(10) *Competitive employment* means work—

(i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(ii) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(Authority: Sec. 7(5), 7(18), and 12(c) of the Act; 29 U.S.C. 706(5), 706(18), and 711(c))

(11) *Construction of a facility for a public or nonprofit community rehabilitation program* means—

(i) The acquisition of land in connection with the construction of a new building for a community rehabilitation program;

(ii) The acquisition of existing buildings;

(iii) The remodeling, alteration, or renovation of existing buildings;

(iv) The construction of new buildings and expansion of existing buildings;

(v) Architect's fees, site surveys, and soil investigation, if necessary, in connection with the construction project;

(vi) The acquisition of initial fixed or movable equipment of any new, newly acquired, newly expanded, newly remodeled, newly altered, or newly renovated buildings that are to be used for community rehabilitation program purposes; and

(vii) Other direct expenditures appropriate to the construction project, except costs of off-site improvements.

(Authority: Sec. 7(1) and 12(c) of the Act; 29 U.S.C. 706(1) and 711(c))

(12) *Designated State agency* or *State agency* means the sole State agency, designated in accordance with §361.13(a), to administer, or supervise local administration of, the State plan for vocational rehabilitation services. The term includes the State agency for individuals who are blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of individuals who are blind.

(Authority: Sec. 7(3)(A) and 101(a)(1)(A) of the Act; 29 U.S.C. 706(3)(A) and 721(a)(1)(A))

(13) *Designated State unit* or *State unit* means either—

(i) The State agency vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the State agency, as required under §361.13(b); or

(ii) The independent State commission, board, or other agency that has vocational rehabilitation, or vocational and other rehabilitation, as its primary function.

(Authority: Sec. 7(3)(B) and 101(a)(2)(A) of the Act; 29 U.S.C. 706(3)(B) and 721(a)(2)(A))

(14) *Eligible individual* means an applicant for vocational rehabilitation services who meets the eligibility requirements of §361.42(a).

(Authority: Sec. 7(8)(a) and 102(a)(1) of the Act; 29 U.S.C. 706(8) and 722(a)(1))

(15) *Employment outcome* means, with respect to an individual, entering or re-

taining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sec. 7(5), 12(c), 100(a)(2), and 102(b)(1)(B)(i) of the Act; 29 U.S.C. 706(5), 711(c), 720(a)(2), and 722(b)(1)(B)(i))

(16) *Establishment, development, or improvement of a public or nonprofit community rehabilitation program* means—

(i) The establishment of a facility for a public or nonprofit community rehabilitation program as defined in paragraph (b)(17) of this section to provide vocational rehabilitation services to applicants or eligible individuals;

(ii) Staffing, if necessary to establish, develop, or improve a community rehabilitation program for the purpose of providing vocational rehabilitation services to applicants or eligible individuals, for a maximum period of four years, with Federal financial participation available at the applicable matching rate for the following levels of staffing costs:

(A) 100 percent of staffing costs for the first year.

(B) 75 percent of staffing costs for the second year.

(C) 60 percent of staffing costs for the third year.

(D) 45 percent of staffing costs for the fourth year; and

(iii) Other expenditures related to the establishment, development, or improvement of a community rehabilitation program that are necessary to make the program functional or increase its effectiveness in providing vocational rehabilitation services to applicants or eligible individuals, but are not ongoing operating expenses of the program.

(Authority: Secs. 7(6) and 12(c) of the Act; 29 U.S.C. 706(6) and 711(c))

(17) *Establishment of a facility for a public or nonprofit community rehabilitation program* means—

(i) The acquisition of an existing building, and if necessary the land in connection with the acquisition, if the

building has been completed in all respects for at least one year prior to the date of acquisition and the Federal share of the cost of the acquisition is not more than \$300,000;

(ii) The remodeling or alteration of an existing building, provided the estimated cost of remodeling or alteration does not exceed the appraised value of the existing building;

(iii) The expansion of an existing building, provided that—

(A) The existing building is complete in all respects;

(B) The total size in square footage of the expanded building, notwithstanding the number of expansions, is not greater than twice the size of the existing building;

(C) The expansion is joined structurally to the existing building and does not constitute a separate building; and

(D) The costs of the expansion do not exceed the appraised value of the existing building;

(iv) Architect's fees, site survey, and soil investigation, if necessary in connection with the acquisition, remodeling, alteration, or expansion of an existing building; and

(v) The acquisition of fixed or movable equipment, including the costs of installation of the equipment, if necessary to establish, develop, or improve a community rehabilitation program;

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

(18) *Extended employment* means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

(19) *Extended services*, as used in the definition of "Supported employment," means ongoing support services and other appropriate services that are needed to support and maintain an in-

dividual with a most severe disability in supported employment and that are provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this part, 34 CFR part 363, 34 CFR part 376, or 34 CFR part 380, after an individual with a most severe disability has made the transition from support provided by the designated State unit.

(Authority: Sec. 7(27) of the Act; 29 U.S.C. 706(27))

(20) *Extreme medical risk* means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(Authority: Secs. 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

(21) *Family member*, for purposes of receiving vocational rehabilitation services in accordance with §361.48(a)(9), means an individual—

(i) Who either—

(A) Is a relative or guardian of an applicant or eligible individual; or

(B) Lives in the same household as an applicant or eligible individual;

(ii) Who has a substantial interest in the well-being of that individual; and

(iii) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(Authority: Secs. 12(c) and 103(a)(3) of the Act; 29 U.S.C. 711(c) and 723(a)(3))

(22) *Impartial hearing officer*. (i) "Impartial hearing officer" means an individual who—

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(B) Is not a member of the State Rehabilitation Advisory Council for the designated State unit;

(C) Has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual;

(D) Has knowledge of the delivery of vocational rehabilitation services, the State plan, and the Federal and State

§ 361.5

34 CFR Ch. III (7–1–99 Edition)

regulations governing the provision of services;

(E) Has received training with respect to the performance of official duties; and

(F) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

(ii) An individual may not be considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.

(Authority: Sec. 7(28) of the Act; 29 U.S.C. 706(28))

(23) *Indian tribe* means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).

(Authority: Sec. 7(21) of the Act; 29 U.S.C. 706(21))

(24) *Individual who is blind* means a person who is blind within the meaning of the applicable State law.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

(25) *Individual with a disability*, except in §§ 361.17 (a), (b), (c), and (j), 361.19, 361.20, and 361.51(b)(2), means an individual—

(i) Who has a physical or mental impairment;

(ii) Whose impairment constitutes or results in a substantial impediment to employment; and

(iii) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(Authority: Sec. 7(8)(A) of the Act; 29 U.S.C. 706(8)(A))

(26) *Individual with a disability*, for purposes of §§ 361.17 (a), (b), (c), and (j), 361.19, 361.20, and 361.51(b)(2), means an individual—

(i) Who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Authority: Sec. 7(8)(B) of the Act; 29 U.S.C. 706(8)(B))

(27) *Individual with a most severe disability* means an individual with a severe disability who meets the designated State unit's criteria for an individual with a most severe disability. These criteria must be consistent with the requirements in § 361.36(c)(3).

(Authority: Sec. 101(a)(5) of the Act; 29 U.S.C. 721(a)(5))

(28) *Individual with a severe disability* means an individual with a disability—

(i) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(Authority: Sec. 7(15)(A) of the Act; 29 U.S.C. 708(15)(A))

(29) *Individual's representative* means any representative chosen by an applicant or eligible individual, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case

the court-appointed representative is the individual's representative.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

(30) *Integrated setting*—

(i) With respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals;

(ii) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

(31) *Maintenance* means monetary support provided to an eligible individual or an individual receiving extended evaluation services for those expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in a program of vocational rehabilitation services.

(Authority: Secs. 12(c) and 103(a)(5) of the Act; 29 U.S.C. 711(c) and 723(a)(5))

NOTE: The following are examples of expenses that would meet the definition of maintenance. The examples are purely illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgement.

Example: The cost of a uniform or other suitable clothing that is required for an individual's job placement or job seeking activities.

Example: The cost of short-term shelter that is required in order for an individual to participate in vocational training at a site that is not within commuting distance of an individual's home.

Example: The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement.

Example: The costs of an individual's participation in enrichment activities related to that individual's training program.

(32) *Nonprofit*, with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

(Authority: Sec. 7(10) of the Act; 29 U.S.C. 706(10))

(33) *Ongoing support services*, as used in the definition of "Supported employment"—

(i) Means services that are—

(A) Needed to support and maintain an individual with a most severe disability in supported employment;

(B) Identified based on a determination by the designated State unit of the individual's needs as specified in an individualized written rehabilitation program; and

(C) Furnished by the designated State unit from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment;

(ii) Must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on—

(A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

(B) If under special circumstances, especially at the request of the individual, the individualized written rehabilitation program provides for off-site monitoring, twice-monthly meetings with the individual;

(iii) Consist of—

(A) Any particularized assessment supplementary to the comprehensive

assessment of rehabilitation needs described in this part;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(C) Job development and placement;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of vocational rehabilitation services for individuals, described in § 361.48; or

(I) Any service similar to the foregoing services.

(Authority: Sec. 7(33) and 12(c) of the Act; 29 U.S.C. 706(33) and 711(c))

(34) *Personal assistance services* means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

(Authority: Sec. 7(11) and 103(a)(15) of the Act; 29 U.S.C. 706(11) and 29 U.S.C. 723)

(35) *Physical and mental restoration services* means—

(i) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(ii) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(iii) Dentistry;

(iv) Nursing services;

(v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(vi) Drugs and supplies;

(vii) Prosthetic, orthotic, or other assistive devices, including hearing aids;

(viii) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with State licensure laws;

(ix) Podiatry;

(x) Physical therapy;

(xi) Occupational therapy;

(xii) Speech or hearing therapy;

(xiii) Mental health services;

(xiv) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(xv) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(xvi) Other medical or medically related rehabilitation services.

(Authority: Sec. 12(c) and 103(a)(4) of the Act; 29 U.S.C. 711(c) and 723(a)(4))

(36) *Physical or mental impairment* means an injury, disease, or other condition that materially limits, or if not treated is expected to materially limit, mental or physical functioning.

(Authority: Sec. 7(8)(A) and 12(c) of the Act; 29 U.S.C. 706(8)(A) and 711(c))

(37) *Post-employment services* means one or more of the services identified in § 361.48 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources,

priorities, concerns, abilities, capabilities, and interests.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

NOTE: Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Post-employment services are to be provided under an amended individualized written rehabilitation program; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements in this part as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, e.g., the individual's employment is jeopardized because of conflicts with supervisors or co-workers and the individual needs mental health services and counseling to maintain the employment; to regain employment, e.g., the individual's job is eliminated through reorganization and new placement services are needed; and to advance in employment, e.g., the employment is no longer consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests.

(38) *Rehabilitation engineering* means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

(Authority: Secs. 7(13) and 12(c) of the Act; 29 U.S.C. 706(13) and 711(c))

(39) *Rehabilitation technology* means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation

engineering, assistive technology devices, and assistive technology services.

(Authority: Sec. 7(13) of the Act; 29 U.S.C. 706(13))

(40) *Reservation* means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Authority: Sec. 130(c) of the Act; 29 U.S.C. 750(c))

(41) *Sole local agency* means a unit or combination of units of general local government or one or more Indian tribes that has the sole responsibility under an agreement with, and the supervision of, the State agency to conduct a local or tribal vocational rehabilitation program, in accordance with the State plan.

(Authority: Sec. 7(9) of the Act; 29 U.S.C. 706(9))

(42) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Authority: Sec. 7(16) of the Act; 29 U.S.C. 706(16))

(43) *State plan* means the State plan for vocational rehabilitation services or the vocational rehabilitation services part of a consolidated rehabilitation plan under § 361.10(c).

(Authority: Secs. 12(c) and 101 of the Act; 29 U.S.C. 711(c) and 721)

(44) *Substantial impediment to employment* means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

(Authority: Secs. 7(8)(A) and 12(c) of the Act; 29 U.S.C. 706(8)(A) and 711(c))

(45) *Supported employment* means—

(i) Competitive employment in an integrated setting with ongoing support services for individuals with the most severe disabilities—

(A) For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(B) Who, because of the nature and severity of their disabilities, need intensive supported employment services from the designated State unit and extended services after transition in order to perform this work; or

(ii) Transitional employment for individuals with the most severe disabilities due to mental illness.

(Authority: Sec. 7(18) of the Act; 29 U.S.C. 706(18)(A))

(46) *Supported employment services* means ongoing support services and other appropriate services needed to support and maintain an individual with a most severe disability in supported employment that are provided by the designated State unit—

(i) For a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time in order to achieve the rehabilitation objectives identified in the individualized written rehabilitation program; and

(ii) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(Authority: Sec. 7(34) and 12(c) of the Act; 29 U.S.C. 706(34) and 711(c))

(47) *Transition services* means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's pref-

erences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives identified in the student's IWRP.

(Authority: Section 7(35) and 103(a)(14) of the Act; 29 U.S.C. 706(35) and 723(a)(14))

(48) *Transitional employment*, as used in the definition of "Supported employment," means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most severe disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

(Authority: Secs. 7(18) and 12(c) of the Act; 29 U.S.C. 706(18) and 711(c))

(49) *Transportation* means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service.

(Authority: Secs. 12(c) and 103(a)(10) of the Act; 29 U.S.C. 711(c) and 723(a)(10))

NOTE: The following are examples of expenses that would meet the definition of transportation. The examples are purely illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgement.

Example: Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any vocational rehabilitation service.

Example: Short-term travel-related expenses, such as food and shelter, incurred by an applicant participating in evaluation or assessment services that necessitates travel.

Example: Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual's current residence.

Example: The purchase and repair of vehicles, including vans, but not the modification of these vehicles, as modification would

be considered a rehabilitation technology service.

(50) *Vocational rehabilitation services*—

(i) If provided to an individual, means those services listed in § 361.48; and

(ii) If provided for the benefit of groups of individuals, also means those services listed in § 361.49.

(Authority: Sec. 103 (a) and (b) of the Act; 29 U.S.C. 723 (a) and (b))

Subpart B—State Plan for Vocational Rehabilitation Services

§ 361.10 Submission, approval, and disapproval of the State plan.

(a) *Purpose.* In order for a State to receive a grant under this part, the designated State agency shall submit to the Secretary, and obtain approval of, a State plan that contains a description of the State's vocational rehabilitation services program, the plans and policies to be followed in carrying out the program, and other information requested by the Secretary, in accordance with the requirements of this part.

(b) *Separate part relating to rehabilitation of individuals who are blind.* If a separate State agency administers or supervises the administration of a separate part of the State plan relating to the rehabilitation of individuals who are blind, that part of the State plan must separately conform to all requirements under this part that are applicable to a State plan.

(c) *Consolidated rehabilitation plan.* The State may choose to submit a consolidated rehabilitation plan that includes the State plan for vocational rehabilitation services and the State's plan for its program for persons with developmental disabilities. The State planning and advisory council for developmental disabilities and the agency administering the State's program for persons with developmental disabilities must concur in the submission of a consolidated rehabilitation plan. A consolidated rehabilitation plan must comply with, and be administered in accordance with, the Act and the Developmental Disabilities Assistance and Bill of Rights Act, as amended.

(d) *Public participation.* The State shall develop the State plan with input from the public, through public meetings, in accordance with the requirements of § 361.20.

(e) *Duration.* The State plan must cover a multi-year period to be determined by the Secretary.

(f) *Submission of the State plan.* The State shall submit the State plan to the Secretary for approval—

(1) No later than July 1 of the year preceding the first fiscal year for which the State plan is submitted; or

(2) With the prior approval of the Secretary, no later than the date on which the State is required to submit a State plan under another Federal law.

(g) *Revisions to the State plan.* The State shall submit to the Secretary for approval revisions to the State plan in accordance with the requirements of this part and 34 CFR 76.140.

(h) *Approval.* The Secretary approves a State plan and 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 a 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 a 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

§ 361.11

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: Sec. 6, 101 (a) and (b), and 107(d) of the Act; 20 U.S.C. 1231g(a); and 29 U.S.C. 705, 721 (a) and (b), and 727(d))

§ 361.11 Withholding of funds.

(a) *Basis for withholding.* The Secretary may withhold or limit payments under section 111, 124, or 632(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 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 ac-

34 CFR Ch. III (7-1-99 Edition)

cordance 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: Secs. 101(b), 107(c), and 107(d) of the Act; 29 U.S.C. 721(b), 727(c)(1) and (2), and 727(d))

STATE PLAN CONTENT: 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.

(Authority: Sec. 101(a)(6) of the Act; 29 U.S.C. 721(a)(6))

§ 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 an independent State commission, board, or other agency that has as its major function vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities.

(ii) The State agency administering or supervising the administration of education or vocational education in the State, provided that it includes a vocational rehabilitation unit as provided in paragraph (b) of this section.

(iii) A State agency that includes a vocational rehabilitation unit, as provided in paragraph (b) of this section, and at least two other major organizational units, each of which administers one or more of the State's major programs of public education, public health, public welfare, or labor.

(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 its administration in a political subdivision of the State by a sole local agency.

(b) *Designation of State unit.* (1) If the designated State agency is of the type specified in paragraph (a)(1)(ii) or (a)(1)(iii) of this section, or if the designated State agency specified in paragraph (a)(3) of this section does not have as its major function vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities, the State plan must assure that the agency (or each agency if two agencies are designated) includes a vocational rehabilitation bureau, division, or unit that—

(i) Is primarily concerned with vocational rehabilitation or vocational and

other rehabilitation of individuals with disabilities and is responsible for the administration of the State agency's vocational rehabilitation program under the State plan, including those responsibilities specified in paragraph (c) of this section;

(ii) Has a full-time director;

(iii) Has a staff, at least 90 percent of whom are employed full time on the rehabilitation work of the organizational unit; and

(iv) Is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency or, in the case of an agency described in paragraph (a)(1)(ii) of this section, is so located and has that status or has a director who is the executive officer of the State agency.

(2) In the case of a State that has not designated a separate State agency for individuals who are blind, as provided for in paragraph (a)(3) of this section, the State may assign responsibility for the part of the plan under which vocational rehabilitation services are provided to individuals who are blind to one organizational unit of the designated State agency and may assign responsibility for the rest of the plan to another organizational unit of the designated State agency, with the provisions of paragraph (b)(1) of this section applying separately to each of these units.

(c) *Responsibility for administration.* (1) The State plan must assure that, at a minimum, the following activities are the responsibility of the designated State unit or the sole local agency under the supervision of the State unit:

(i) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of these services.

(ii) The determination that an individual has achieved an employment outcome under §361.56.

(iii) Policy formulation and implementation.

(iv) The allocation and expenditure of vocational rehabilitation funds.

§ 361.14

(2) This responsibility may not be delegated to any other agency or individual.

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

(Authority: Sec. 101(a)(1) and 101(a)(2) of the Act; 29 U.S.C. 721(a)(1) and 721(a)(2))

§361.14 Substitute State agency.

(a) *General provisions.* (1) If the Secretary has withheld all funding from a State under §361.11, the State may designate another agency to substitute for the designated State agency in carrying out the State’s program of vocational rehabilitation services.

(2) Any public or nonprofit private organization or agency within the State or any political subdivision of the State is eligible to be a substitute agency.

(3) The substitute agency shall submit a State plan that meets the requirements of this part.

(4) The Secretary makes no grant to a substitute agency until the Secretary approves its plan.

(b) *Substitute agency matching share.* The Secretary does not make any payment to a substitute agency unless it has provided assurances that it will contribute the same matching share as the State would have been required to contribute if the State agency were carrying out the vocational rehabilitation program.

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

(Authority: Sec. 107(c)(3) of the Act; 29 U.S.C. 727(c)(3))

§361.15 Local administration.

(a) If the State plan provides for local administration, it must—

(1) Identify each local agency;

(2) Assure that each local agency is under the supervision of the designated State unit and is the sole local agency as defined in §361.5(b)(41) that is responsible for the administration of the program within the political subdivision that it serves; and

(3) Describe the methods each local agency will use to administer the vocational rehabilitation program, in accordance with the State plan.

(b) A separate local agency serving individuals who are blind may admin-

34 CFR Ch. III (7-1-99 Edition)

ister that part of the plan relating to vocational rehabilitation of individuals who are blind, under the supervision of the designated State unit for individuals who are blind.

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

(Authority: Sec. 7(9) and 101(a)(1)(A) of the Act; 29 U.S.C. 706(9) and 721(a)(1)(A))

§361.16 Establishment of an independent commission or a State Rehabilitation Advisory Council.

(a) *General requirement.* Except as provided in paragraph (b) of this section, the State plan must contain one of the following two assurances:

(1) An assurance that the State agency is an independent State commission that—

(i) Is primarily concerned with vocational rehabilitation or vocational and other rehabilitation services, in accordance with §361.13(a)(1)(i);

(ii) Is consumer-controlled by persons who—

(A) Are individuals with physical or mental impairments that substantially limit major life activities; and

(B) Represent individuals with a broad range of disabilities;

(iii) Includes individuals representing family members, advocates, and authorized representatives of individuals with mental impairments; and

(iv) Conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers in the State, in accordance with the provisions in §361.17(h)(3).

(2) An assurance that—

(i) The State has established a State Rehabilitation Advisory Council (Council) that meets the requirements of §361.17;

(ii) The designated State unit seeks and seriously considers, on a regular and ongoing basis, advice from the Council regarding the development, implementation, and amendment of the State plan, the strategic plan, and other policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services in the State;

(iii) The designated State unit transmits to the Council—

(A) All plans, reports, and other information required under the Act to be submitted to the Secretary;

(B) Copies of all written policies, practices, and procedures of general applicability provided to or used by rehabilitation personnel; and

(C) Copies of due process hearing decisions in a manner that preserves the confidentiality of the participants in the hearings; and

(iv) The State plan summarizes annually the advice provided by the Council, including recommendations from the annual report of the Council, the survey of consumer satisfaction, and other reports prepared by the Council, and the State agency's response to the advice and recommendations, including the manner in which the State will modify its policies and procedures based on the survey of consumer satisfaction and explanations of reasons for rejecting any advice or recommendations of the Council.

(b) *Exception for separate State agency for individuals who are blind.* In the case of a State that designates a separate State agency, under § 361.13(a)(3), to administer the part of the State plan under which vocational rehabilitation services are provided to individuals who are blind, the State plan must contain one of the following four assurances:

(1) An assurance that an independent commission in accordance with paragraph (a)(1) of this section is responsible under State law for operating or overseeing the operation of the vocational rehabilitation program of both the State agency that administers the part of the State plan under which vocational rehabilitation services are provided to individuals who are blind and the State agency that administers the remainder of the State plan.

(2) An assurance that—

(i) An independent commission that is consumer-controlled by, and represents the interests of, individuals who are blind and conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers, in accordance with the provisions of § 361.17(h)(3), is responsible under State law for operating, or overseeing the operation of, the vocational rehabilita-

tion program in the State for individuals who are blind; and

(ii) An independent commission that is consumer-controlled in accordance with paragraph (a)(1)(i) of this section and conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers, in accordance with § 361.17(h)(3), is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State for all individuals with disabilities, except individuals who are blind.

(3) An assurance that—

(i) An independent commission that is consumer-controlled by, and represents the interests of, individuals who are blind and that conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers, in accordance with § 361.17(h)(3), is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State for individuals who are blind; and

(ii) The State has established a State Rehabilitation Advisory Council that meets the criteria in § 361.17 and carries out the duties of a Council with respect to functions for, and services provided to, individuals with disabilities, except for individuals who are blind.

(4) An assurance that—

(i) An independent commission that is consumer-controlled in accordance with paragraph (a)(1)(i) of this section and conducts a review and analysis of the effectiveness of and consumer satisfaction with vocational rehabilitation services and providers, in accordance with the provisions of § 361.17(h)(3), is responsible under State law for operating or overseeing the operation of the vocational rehabilitation services for all individuals in the State, except individuals who are blind; and

(ii) The State has established a State Rehabilitation Advisory Council that meets the criteria in § 361.17 and carries out the duties of a Council with respect

to functions for, and services provided to, individuals who are blind.

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

(Authority: Sec. 101(a)(32) and 101(a)(36) of the Act; 29 U.S.C. 721(a)(32) and 721(a)(36))

§ 361.17 Requirements for a State Rehabilitation Advisory Council.

If the State plan contains an assurance that the State has established a Council under § 361.16(a)(2), (b)(3)(ii), or (b)(4)(ii), the State plan must also contain an assurance that the Council meets the following requirements:

(a) *Appointment.* (1) The members of the Council shall be—

- (i) Appointed by the Governor; or
- (ii) If State law vests appointment authority in an entity other than, or in conjunction with, the Governor (such as one or more houses of the State legislature or an independent board that has general appointment authority), appointed by that entity or entities.

(2) The appointing authority shall select members of the Council after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities.

(b) *Composition—*(1) *General.* Except as provided in paragraph (b)(3) of this section, the Council shall be composed of at least 13 members, including—

(i) At least one representative of the Statewide Independent Living Council, who shall be the chairperson of, or other individual recommended by, the Statewide Independent Living Council;

(ii) At least one representative of a parent training and information center established pursuant to section 631(e)(1) of IDEA;

(iii) At least one representative of the Client Assistance Program (CAP), established under 34 CFR part 370, who shall be the director of, or other individual recommended by, the CAP;

(iv) At least one vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member if employed by the designated State agency;

(v) At least one representative of community rehabilitation program service providers;

(vi) Four representatives of business, industry, and labor;

(vii) Representatives of disability groups that include a cross section of—

(A) Individuals with physical, cognitive, sensory, and mental disabilities; and

(B) Parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities who have difficulty representing themselves due to their disabilities;

(viii) Current or former applicants for, or recipients of, vocational rehabilitation services; and

(ix) The director of the designated State unit as an ex officio, nonvoting member.

(2) *Employees of the designated State agency.* Employees of the designated State agency may serve only as nonvoting members of the Council.

(3) *Composition of a separate Council for a separate State agency for individuals who are blind.* Except as provided in paragraph (b)(4) of this section, if the State establishes a separate Council for a separate State agency for individuals who are blind, that Council shall—

(i) Conform with all of the composition requirements for a Council under paragraph (b)(1) of this section, except the requirements in paragraph (b)(1)(vii), unless the exception in paragraph (b)(4) of this section applies; and

(ii) Include—

(A) At least one representative of a disability advocacy group representing individuals who are blind; and

(B) At least one parent, family member, guardian, advocate, or authorized representative of an individual who is blind, has multiple disabilities, and has difficulty representing himself or herself due to disabilities.

(4) *Exception.* If State law in effect on October 29, 1992 requires a separate Council under paragraph (b)(3) of this section to have fewer than 13 members, the separate Council is deemed to be in compliance with the composition requirements in paragraphs (b)(1)(vi) and (b)(1)(viii) of this section if it includes at least one representative who meets the requirements for each of those paragraphs.

(c) *Majority.* A majority of the Council members shall be individuals with disabilities who are not employed by the designated State unit.

(d) *Chairperson.* The chairperson shall be—

(1) Selected by the members of the Council from among the voting members of the Council, subject to the veto power of the Governor; or

(2) If the Governor does not have veto power pursuant to State law, selected by the Governor, or by the Council if required by the Governor, from among the voting members of the Council.

(e) *Terms of appointment.* (1) Each member of the Council shall be appointed for a term of no more than three years and may serve for no more than two consecutive full terms.

(2) A member appointed to fill a vacancy occurring prior to the end of the term for which the predecessor was appointed shall be appointed for the remainder of the predecessor's term.

(3) The terms of service of the members initially appointed must be for varied numbers of years to ensure that terms expire on a staggered basis.

(f) *Vacancies.* (1) A vacancy in the membership of the Council must be filled in the same manner as the original appointment.

(2) No vacancy affects the power of the remaining members to execute the duties of the Council.

(g) *Conflict of interest.* No member of the Council shall cast a vote on any matter that would provide direct financial benefit to the member or the member's organization or otherwise give the appearance of a conflict of interest under State law.

(h) *Functions.* The Council shall—

(1) Review, analyze, and advise the designated State unit regarding the performance of the State unit's responsibilities under this part, particularly responsibilities related to—

(i) Eligibility, including order of selection;

(ii) The extent, scope, and effectiveness of services provided; and

(iii) Functions performed by State agencies that affect or potentially affect the ability of individuals with disabilities to achieve rehabilitation goals and objectives under this part;

(2) Advise, and at the discretion of the State agency assist, the State unit in the preparation of applications, the State plan, the strategic plan, and amendments to the plans, reports, needs assessments, and evaluations required by this part;

(3) To the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with—

(i) The functions performed by State agencies and other public and private entities responsible for serving individuals with disabilities; and

(ii) The vocational rehabilitation services provided by State agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities from funds made available under the Act or through other public or private sources;

(4) Prepare and submit to the Governor, or appropriate State entity, and to the Secretary no later than 90 days after the end of the Federal fiscal year an annual report on the status of vocational rehabilitation programs operated within the State and make the report available to the public through appropriate modes of communication;

(5) Coordinate with other councils within the State, including the Statewide Independent Living Council established under 34 CFR part 364, the advisory panel established under section 613(a)(12) of IDEA, the State Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, and the State mental health planning council established under section 1916(e) of the Public Health Service Act;

(6) Advise the designated State agency and provide for coordination and the establishment of working relationships between the designated State agency and the Statewide Independent Living Council and centers for independent living within the State; and

(7) Perform other comparable functions, consistent with the purpose of this part, that the Council determines to be appropriate.

(i) *Resources.* (1) The Council, in conjunction with the designated State unit, shall prepare a plan for the provision of resources, including staff and other personnel, that may be necessary

for the Council to carry out its functions under this part.

(2) In implementing the resources plan, the Council shall rely on existing resources to the maximum extent possible.

(3) Any disagreements between the designated State unit and the Council regarding the amount of resources necessary must be resolved by the Governor or other appointing entity, consistent with paragraphs (i)(1) and (2) of this section.

(4) The Council shall, consistent with State law, supervise and evaluate the staff and personnel that are necessary to carry out its functions.

(5) Those staff and personnel that are assisting the Council in carrying out its functions may not be assigned duties by the designated State unit or any other agency or office of the State that would create a conflict of interest.

(j) *Meetings.* The Council shall—

(1) Convene at least four meetings a year to conduct Council business that are publicly announced, open and accessible to the public, including individuals with disabilities, unless there is a valid reason for an executive session; and

(2) Conduct forums or hearings, as appropriate, that are publicly announced, open and accessible to the public, including individuals with disabilities.

(k) *Compensation.* Funds appropriated under title I of the Act, except funds to carry out sections 112 and 130 of the Act, may be used to compensate and reimburse the expenses of Council members in accordance with section 105(g) of the Act.

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

(Authority: Sec. 105 of the Act; 29 U.S.C. 725)

§ 361.18 Comprehensive system of personnel development.

The State plan must describe the procedures and activities the State agency will undertake to establish and maintain a comprehensive system of personnel development designed to ensure an adequate supply of qualified rehabilitation personnel, including professionals and paraprofessionals, for the designated State unit. If the State agency has a State Rehabilitation Ad-

visory Council, this description must, at a minimum, specify that the Council has an opportunity to review and comment on the development of plans, policies, and procedures necessary to meet the requirements of paragraphs (b) through (d) and paragraph (f) of this section. This description must also conform with the following requirements:

(a) *Data system on personnel and personnel development.* The State plan must describe the development and maintenance of a system by the State agency for collecting and analyzing on an annual basis data on qualified personnel needs and personnel development, in accordance with the following requirements:

(1) Data on qualified personnel needs must include—

(i) The number of personnel who are employed by the State agency in the provision of vocational rehabilitation services in relation to the number of individuals served, broken down by personnel category;

(ii) The number of personnel currently needed by the State agency to provide vocational rehabilitation services, broken down by personnel category; and

(iii) Projections of the number of personnel, broken down by personnel category, who will be needed by the State agency to provide vocational rehabilitation services in the State in five years based on projections of the number of individuals to be served, including individuals with severe disabilities, the number of personnel expected to retire or leave the field, and other relevant factors.

(2) Data on personnel development must include—

(i) A list of the institutions of higher education in the State that are preparing vocational rehabilitation professionals, by type of program;

(ii) The number of students enrolled at each of those institutions, broken down by type of program; and

(iii) The number of students who graduated during the prior year from each of those institutions with certification or licensure, or with the credentials for certification or licensure, broken down by the personnel category for which they have received, or have the

credentials to receive, certification or licensure.

(b) *Plan for recruitment, preparation, and retention of qualified personnel.* The State plan must describe the development, updating, and implementation of a plan to address the current and projected needs for personnel who are qualified in accordance with paragraph (c) of this section. The plan must identify the personnel needs based on the data collection and analysis system described in paragraph (a) of this section and must provide for the coordination and facilitation of efforts between the designated State unit and institutions of higher education and professional associations to recruit, prepare, and retain personnel who are qualified in accordance with paragraph (c) of this section, including personnel from minority backgrounds and personnel who are individuals with disabilities.

(c) *Personnel standards.* (1) The State plan must include the State agency's policies and describe the procedures the State agency will undertake to establish and maintain standards to ensure that professional and paraprofessional personnel needed within the State unit to carry out this part are appropriately and adequately prepared and trained, including—

(i) Standards that are consistent with any national or State-approved or -recognized certification, licensing, or registration requirements, or, in the absence of these requirements, other comparable requirements (including State personnel requirements), that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services; and

(ii) To the extent that existing standards are not based on the highest requirements in the State, the steps the State is currently taking and the steps the State plans to take to retrain or hire personnel to meet standards that are based on the highest requirements in the State, including measures to notify State unit personnel, the institutions of higher education identified under paragraph (a)(2)(i) of this section, and other public agencies of these steps and the timelines for taking each step.

(2) As used in this section—

(i) *Highest requirements in the State applicable to that profession or discipline* means the highest entry-level academic degree needed for any national or State-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline. The current requirements of all State statutes and regulations of other agencies in the State applicable to that profession or discipline must be considered and must be kept on file by the designated State unit and available to the public.

(ii) *Profession or discipline* means a specific occupational category, including any paraprofessional occupational category, that—

(A) Provides rehabilitation services to individuals with disabilities;

(B) Has been established or designated by the State; and

(C) Has a specified scope of responsibility.

(d) *Staff development.* (1) The State plan must include the State agency's policies and describe the procedures and activities the State agency will undertake to ensure that all personnel employed by the State unit receive appropriate and adequate training, including a description of—

(i) A system of staff development for rehabilitation professionals and paraprofessionals within the State unit, particularly with respect to rehabilitation technology; and

(ii) Procedures for acquiring and disseminating to rehabilitation professionals and paraprofessionals within the designated State unit significant knowledge from research and other sources, including procedures for providing training regarding the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1992.

(2) The specific training areas for staff development must be based on the needs of each State unit and may include, but are not limited to, training with respect to the requirements of the Americans with Disabilities Act, IDEA, and Social Security work incentive programs, training to facilitate informed choice under this program, and training to improve the provision of

§ 361.19

services to culturally diverse populations.

(e) *Personnel to address individual communication needs.* The State plan must describe how the State unit—

(1) Includes among its personnel, or obtains the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability; and

(2) Includes among its personnel, or obtains the services of, individuals able to communicate with applicants and eligible individuals in appropriate modes of communication.

(f) *Performance evaluation system.* The State plan must describe how the system for evaluating the performance of rehabilitation counselors, coordinators, and other personnel used in the State unit facilitates, and in no way impedes, the accomplishment of the purpose and policy of the program as described in sections 100(a)(2) and 100(a)(3) of the Act, including the policy of serving, among others, individuals with the most severe disabilities.

(g) *Coordination with personnel development under IDEA.* The State plan must describe the procedures and activities the State agency will undertake to coordinate its comprehensive system of personnel development under the Act with personnel development under IDEA.

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

(Authority: Sec. 101 (a)(7) and (a)(35) of the Act; 29 U.S.C. 721(a) (7) and (35))

NOTE: Under the Act and the regulations in this part, the State agency is required to collect and analyze data regarding personnel needs by type or category of personnel. The personnel data must be collected and analyzed according to personnel category breakdowns that are based on the major categories of staff in the State unit. Similarly, the data from institutions of higher education must be broken down by type of program to correspond as closely as possible with the personnel categories of the State unit.

§ 361.19 Affirmative action for individuals with disabilities.

The State plan must assure that the State agency takes affirmative action

to employ and advance in employment qualified individuals with disabilities.

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

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

§ 361.20 State plan development.

(a) *Public participation requirements—*

(1) *Plan development and revisions.* The State plan must assure that the State unit conducts public meetings throughout the State to provide all segments of the public, including interested groups, organizations, and individuals, an opportunity to comment on the State plan prior to its development and to comment on any revisions to the State plan.

(2) *Notice requirements.* The State plan must assure that the State unit, prior to conducting public meetings, provides appropriate and sufficient notice throughout the State of the meetings in accordance with—

(i) State law governing public meetings; or

(ii) In the absence of State law governing public meetings, procedures developed by the State unit in consultation with the State Rehabilitation Advisory Council.

(3) *Revisions based on consumer satisfaction surveys.* The State plan must describe the manner in which the State's policies and procedures will be revised based on the results of consumer satisfaction surveys conducted by the State Rehabilitation Advisory Council under § 361.17(h)(3) or by the State agency if it is an independent commission in accordance with the requirements of § 361.16.

(b) *Special consultation requirements.* The State plan must assure that, as appropriate, the State unit actively consults in the development and revision of the State plan with the CAP director, the State Rehabilitation Advisory Council, and, as appropriate, those Indian tribes, tribal organizations, and native Hawaiian organizations that represent significant numbers of individuals with disabilities within the State.

(c) *Summary of public comments.* The State plan must include a summary of the public comments on the State plan, including comments on revisions to the

State plan and the State unit's response to those comments.

(d) *Appropriate modes of communication.* The State unit shall provide, through appropriate modes of communication, the notices of the public meetings, any materials furnished prior to or during the public meetings, and the approved State plan.

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

(Authority: Sec. 101(a)(20), 101(a)(23), 101(a)(32), and 105(c)(2) of the Act; 29 U.S.C. 721(a)(20), (23), and (32) and 725(c)(2))

§361.21 Consultations regarding the administration of the State plan.

(a) The State plan must assure that, in connection with matters of general policy development and implementation arising in the administration of the State plan, the State unit seeks and takes into account the views of—

- (1) Individuals who receive vocational rehabilitation services or, as appropriate, the individuals' representatives;
- (2) Personnel working in the field of vocational rehabilitation;
- (3) Providers of vocational rehabilitation services;
- (4) The CAP director; and
- (5) The State Rehabilitation Advisory Council, if the State has a Council.

(b) The State plan must specifically describe the manner in which the State unit will take into account the views regarding State policy and administration of the State plan that are expressed in the consumer satisfaction surveys conducted by the State Rehabilitation Advisory Council under §361.17(h)(3) or by the State agency if it is an independent commission in accordance with the requirements of §361.16(a)(1).

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

(Authority: Secs. 101(a)(18), 101(a)(32), and 105(c)(2) of the Act; 29 U.S.C. 721(a)(18), 721(a)(32), and 725(c)(2))

§361.22 Cooperation with agencies responsible for students with disabilities.

(a) *Students with disabilities who are receiving special education services—(1) General.* The State plan must contain

plans, policies, and procedures that are designed to facilitate the transition of students who are receiving special education services from the provision of a free appropriate public education under the responsibility of an educational agency to the provision of vocational rehabilitation services under the responsibility of the designated State unit. These plans, policies, and procedures must provide for the development and completion of the IWRP before the student leaves the school setting for each student determined to be eligible for vocational rehabilitation services or, if the designated State unit is operating under an order of selection, for each eligible student able to be served under the order. The IWRP must, at a minimum, identify the long-term rehabilitation goals, intermediate rehabilitation objectives, and goals and objectives related to enabling the student to live independently, to the extent these goals and objectives are included in the student's individualized education program.

(2) *Formal interagency agreement.* The State plan must assure that the State unit enters into formal interagency agreements with the State educational agency and, as appropriate, with local educational agencies, that are responsible for the free appropriate public education of students with disabilities who are receiving special education services. Formal interagency agreements must, at a minimum, identify—

- (i) Policies, practices, and procedures that can be coordinated between the agencies, including definitions, standards for eligibility, policies and procedures for making referrals, procedures for outreach to and identification of youth who are receiving special education services and are in need of transition services, and procedures and timeframes for evaluation and follow-up of those students;
- (ii) The roles of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services;
- (iii) Procedures for providing training for staff of State and local educational agencies as to the availability, benefits of, and eligibility standards for vocational rehabilitation services, to the extent practicable;

(iv) Available resources, including sources of funds for the development and expansion of services;

(v) The financial responsibility of each agency in providing services to students with disabilities who are receiving special education services, consistent with State law;

(vi) Procedures for resolving disputes between the agencies that are parties to the agreement; and

(vii) All other components necessary to ensure meaningful cooperation among agencies, including procedures to facilitate the development of local teams to coordinate the provision of services to individuals, sharing data, and coordinating joint training of staff in the provision of transition services.

(b) *Students with disabilities who are not receiving special education services.* The State plan must contain plans, policies, and procedures, including cooperation with appropriate agencies, designed to ensure that students with disabilities who are not receiving special education services have access to and can receive vocational rehabilitation services, if appropriate, and to ensure outreach to and identification of those students.

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

(Authority: Secs. 101(a)(11)(C), 101(a)(24) and 101(a)(30) of the Act; 29 U.S.C. 721 (a)(11), (a)(24), and (a)(30))

NOTE: The following excerpt from page 33 of Senate Report No. 102-357 further clarifies the provision of transition services by the State vocational rehabilitation agency:

The overall purpose of this provision is to ensure that all students who require vocational rehabilitation services receive those services in a timely manner. There should be no gap in services between the education system and the vocational rehabilitation system * * *. The committee intends that students with disabilities who are eligible for, and who need, vocational rehabilitation services will receive those services as soon as possible, consistent with Federal and State law. These provisions are not intended in any way to shift the responsibility of service delivery from education to rehabilitation during the transition years. School officials will continue to be responsible for providing a free and appropriate public education as defined by the IEP. The role of the rehabilitation system is primarily one of planning for the student's years after leaving school. (S. Rep. No. 357, 102d Cong., 2d. Sess. 33 (1992))

§ 361.23 Cooperation with other public agencies.

(a) *Coordination of services with vocational education and Javits-Wagner-O'Day programs.* The State plan must assure that specific arrangements or agreements are made for the coordination of services for any individual who is eligible for vocational rehabilitation services and is also eligible for services under the Carl D. Perkins Vocational and Applied Technology Education Act or the Javits-Wagner-O'Day Act.

(b) *Cooperation with other Federal, State, and local public agencies providing services related to the rehabilitation of individuals with disabilities.* (1) The State plan must assure that the State unit cooperates with other Federal, State, and local public agencies providing services related to the rehabilitation of individuals with disabilities, including, as appropriate, establishing inter-agency working groups or entering into formal interagency cooperative agreements with, and using the services and facilities of—

(i) Federal agencies providing services related to the rehabilitation of individuals with disabilities, including the Social Security Administration, the Office of Workers' Compensation Programs of the Department of Labor, and the Department of Veterans Affairs; and

(ii) State and local public agencies providing services related to the rehabilitation of individuals with disabilities, including State and local public agencies administering the State's social services and financial assistance programs and other State programs for individuals with disabilities, such as the State's developmental disabilities program, veterans programs, health and mental health programs, education programs (including adult education, higher education, and vocational education programs), workers' compensation programs, job training and placement programs, and public employment offices.

(2) Interagency cooperation under paragraph (b)(1) of this section, to the extent practicable, must provide for training for staff of the agencies as to the availability, benefits of, and eligibility standards for vocational rehabilitation services.

(3) If the State unit chooses to enter into formal interagency cooperative agreements developed under paragraph (b)(1) of this section, the agreements must—

(i) Identify policies, practices, and procedures that can be coordinated among the agencies (particularly definitions, standards for eligibility, the joint sharing and use of evaluations and assessments, and procedures for making referrals);

(ii) Identify available resources and define the financial responsibility of each agency for paying for necessary services (consistent with State law) and procedures for resolving disputes between agencies; and

(iii) Include all additional components necessary to ensure meaningful cooperation and coordination.

(c) *Reciprocal referral services with a separate agency for individuals who are blind.* If there is a separate State unit for individuals who are blind, the State plan must assure that the two State units establish reciprocal referral services, use each other's services and facilities to the extent feasible, jointly plan activities to improve services in the State for individuals with multiple impairments, including visual impairments, and otherwise cooperate to provide more effective services, including, if appropriate, entering into a written cooperative agreement.

(Authority: Secs. 101(a)(11) and 101(a)(22) of the Act; 29 U.S.C. 721(a)(11) and 721(a)(22))

§ 361.24 Coordination with the Statewide Independent Living Council.

The State plan must assure that the State unit will coordinate and establish working relationships with the Statewide Independent Living Council established under 34 CFR part 364 and with independent living centers within the State.

(Authority: Sec. 101(a)(33) of the Act; 29 U.S.C. 721(a)(33))

§ 361.25 Statewideness.

The State plan must assure that services provided under the State plan will be available in all political subdivisions of the State, unless a waiver

of statewideness is requested and approved in accordance with § 361.26.

(Authority: Section 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

§ 361.26 Waiver of statewideness.

(a) *Availability.* The State unit may provide services in one or more political subdivisions of the State that increase services or expand the scope of services that are available statewide under the State plan if—

(1) The non-Federal share of the cost of these services is met from funds provided by a local public agency, including funds contributed to a local public agency by a private agency, organization, or individual;

(2) The services are likely to promote the vocational rehabilitation of substantially larger numbers of individuals with disabilities or of individuals with disabilities with particular types of impairments; and

(3) The State includes in its State plan, and the Secretary approves, a request for a waiver of the statewideness requirement, in accordance with the requirements of paragraph (b) of this section.

(b) *Request for waiver.* The request for a waiver of statewideness must—

(1) Identify the types of services to be provided;

(2) Contain a written assurance from the local public agency that it will make available to the State unit the non-Federal share of funds;

(3) Contain a written assurance that State unit approval will be obtained for each proposed service before it is put into effect; and

(4) Contain a written assurance that all other State plan requirements, including a State's order of selection requirements, will apply to all services approved under the waiver.

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

(Authority: Sec. 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

§ 361.27 Shared funding and administration of joint programs.

(a) If the State plan provides for a joint program involving shared funding and administrative responsibility with another State agency or a local public

§ 361.28

34 CFR Ch. III (7–1–99 Edition)

agency to provide services to individuals with disabilities, the plan must include a description of the nature and scope of the joint program, the services to be provided, the respective roles of each participating agency in the provision of services and in their administration, and the share of the costs to be assumed by each agency.

(b) If a proposed joint program does not comply with the statewideness requirement in §361.25, the State unit shall obtain a waiver of statewideness, in accordance with §361.26.

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

(Authority: Section 101(a)(1)(A) of the Act; 29 U.S.C.721(a)(1)(A))

§361.28 Third-party cooperative arrangements involving funds from other public agencies.

(a) If the designated State unit enters into a third-party cooperative arrangement for providing or administering vocational rehabilitation services with another State agency or a local public agency that is furnishing part or all of the non-Federal share, the State plan must assure that—

(1) The services provided by the cooperating agency are not the customary or typical services provided by that agency but are new services that have a vocational rehabilitation focus or existing services that have been modified, adapted, expanded, or reconfigured to have a vocational rehabilitation focus;

(2) The services provided by the cooperating agency are only available to applicants for, or recipients of, services from the designated State unit;

(3) Program expenditures and staff providing services under the cooperative arrangement are under the administrative supervision of the designated State unit; and

(4) All State plan requirements, including a State's order of selection, will apply to all services provided under the cooperative program.

(b) If a third party cooperative agreement does not comply with the statewideness requirement in §361.25, the State unit shall obtain a waiver of

statewideness, in accordance with §361.26.

(Authority: Sec. 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§361.29 Statewide studies and evaluations.

(a) *Statewide studies.* The State plan must assure that the State unit conducts continuing statewide studies to determine the current needs of individuals with disabilities within the State and the best methods to meet those needs. As part of the development of the State plan, the continuing statewide studies, at a minimum, must include—

(1) A triennial comprehensive assessment of the rehabilitation needs of individuals with severe disabilities who reside in the State;

(2) A triennial review of the effectiveness of outreach procedures used to identify and serve individuals with disabilities who are minorities and individuals with disabilities who are unserved and underserved by the vocational rehabilitation system; and

(3) A triennial review of a broad variety of methods to provide, expand, and improve vocational rehabilitation services to individuals with the most severe disabilities, including individuals receiving supported employment services under 34 CFR part 363.

(b) *Annual evaluation.* The State plan must assure that the State unit conducts an annual evaluation of the effectiveness of the State's vocational rehabilitation program in providing vocational rehabilitation and supported employment services, especially to individuals with the most severe disabilities. The annual evaluation must analyze the extent to which—

(1) The State has achieved the goals and priorities established in the State plan and annual amendments to the plan; and

(2) The State is in compliance with the evaluation standards and performance indicators established by the Secretary pursuant to section 106 of the Act.

(c) *Reporting requirements.* (1) The State plan must describe annually those changes that have been adopted in policy, in the State plan and its amendments, and in the strategic plan

and its amendments as a result of the statewide studies and the annual program evaluation.

(2) The State plan must contain an annual description of the methods used to expand and improve vocational rehabilitation services to individuals with the most severe disabilities, including the State unit's criteria for determining which individuals are individuals with the most severe disabilities.

(3) The State plan must contain an annual analysis of the characteristics of individuals determined to be ineligible for services and the reasons for the ineligibility determinations.

(4) The State unit shall maintain copies of the statewide studies and the annual evaluations and shall make the copies available to the Secretary upon request.

(d) *Role of the State Rehabilitation Advisory Council.* The State plan must assure that the State unit seeks the advice of the State Rehabilitation Advisory Council, if the State has a Council, regarding the continuing statewide studies and the annual evaluation and, at the discretion of the State agency, seeks assistance from the Council in the preparation and analysis of the studies and evaluation.

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

(Authority: Sections 101(a)(5) (A) and (B), 101(a)(9)(D), 101(a)(15) (A), (C), and (D), 101(a)(19), and 105(c)(2) of the Act; 29 U.S.C. 721(a) (5), (9), (15), and (19) and 725(c)(2))

§ 361.30 Services to special groups of individuals with disabilities.

(a) *Civil employees of the United States.* The State plan must assure that vocational rehabilitation services are available to civil employees of the U.S. Government who are disabled in the line of duty, under the same terms and conditions applied to other individuals with disabilities.

(b) *Public safety officers.* (1) The State plan must assure that special consideration will be given to those individuals with disabilities whose disability arose from an impairment sustained in the line of duty while performing as a public safety officer and the immediate cause of that impairment was a criminal act, apparent criminal act, or a hazardous condition resulting directly

from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities.

(2) For the purposes of paragraph (b) of this section, *special consideration* for States under an order of selection means that those public safety officers who meet the requirements of paragraph (b)(1) of this section must receive priority for services over other eligible individuals in the same priority category of the order of selection.

(3) For the purposes of paragraph (b) of this section, *criminal act* means any crime, including an act, omission, or possession under the laws of the United States, a State, or a unit of general local government that poses a substantial threat of personal injury, notwithstanding that by reason of age, insanity, intoxication, or otherwise, the person engaging in the act, omission, or possession was legally incapable of committing a crime.

(4) For the purposes of paragraph (b) of this section, *public safety officer* means a person serving the United States or a State or unit of local government, with or without compensation, in any activity pertaining to—

(i) The enforcement of the criminal laws, including highway patrol, or the maintenance of civil peace by the National Guard or the Armed Forces;

(ii) A correctional program, facility, or institution if the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees;

(iii) A court having criminal or juvenile delinquent jurisdiction if the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees; or

(iv) Firefighting, fire prevention, or emergency rescue missions.

(c) *American Indians.* (1) The State plan must assure that vocational rehabilitation services are provided to American Indians with disabilities residing in the State to the same extent that these services are provided to other significant groups of individuals with disabilities residing in the State.

(2) The State plan also must assure that the designated State unit continues to provide vocational rehabilitation services, including, as appropriate, services traditionally used by Indian tribes, to American Indians with disabilities who reside on reservations and are eligible for services by a special tribal program under 34 CFR part 371.

(Authority: Secs. 7, 101(a)(13), 101(a)(20), and 130(b)(3) of the Act; 29 U.S.C. 706, 721(a)(13), 721(a)(20), and 750(b)(3))

§361.31 Utilization of community resources.

The State plan must assure that, in providing vocational rehabilitation services, public or other vocational or technical training programs or other appropriate community resources are used to the maximum extent feasible.

(Authority: Sec. 101(a)(12)(A) of the Act; 29 U.S.C. 721(a)(12)(A))

§361.32 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.

The State plan must assure that the State unit has the authority to enter into contracts with profitmaking organizations for the purpose of providing on-the-job training and related programs for individuals with disabilities under the Projects With Industry program, 34 CFR part 379, if it has been determined that they are better qualified to provide needed services than nonprofit agencies, organizations, or programs in the State.

(Authority: Sec. 101(a)(21) of the Act; 29 U.S.C. 721(a)(21))

§361.33 Use, assessment, and support of community rehabilitation programs.

(a) The State plan must contain a description of how the designated State unit uses community rehabilitation programs to the maximum extent feasible to provide vocational rehabilitation services in the most integrated settings possible, consistent with the informed choices of the individuals. This description must—

(1) Include the methods the designated State unit uses to ensure the appropriate use of community rehabilitation programs;

(2) Provide, as appropriate, for entering into agreements with the operators of those community rehabilitation programs;

(3) Specify the manner in which the designated State unit will establish cooperative agreements with private nonprofit vocational rehabilitation service providers;

(4) Contain the findings resulting from an assessment of the capacity and effectiveness of community rehabilitation programs, including programs under the Javits-Wagner-O'Day Act, based on the use of those programs; and

(5) Contain plans for improving community rehabilitation programs based on the assessment in paragraph (a)(4) of this section.

(b) If the State plan provides for the establishment, development, or improvement of a public or nonprofit community rehabilitation program, the State plan must contain a description of the need to establish, develop, or improve, as appropriate, the community rehabilitation program to provide vocational rehabilitation services to applicants and eligible individuals, based on the assessment and improvement plans required in paragraphs (a)(4) and (a)(5) of this section.

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

(Authority: Secs. 101(a)(5)(A), 101(a)(12)(B), 101(a)(15)(B), 101(a)(27), 101(a)(28), and 103(b)(2) of the Act; 29 U.S.C. 721(a)(5), (12), (15), (27), and (28) and 723(b)(2))

§361.34 Supported employment plan.

(a) The State plan must assure that the State has an acceptable plan under 34 CFR part 363 that provides for the use of funds under that part to supplement funds under this part for the cost of services leading to supported employment.

(b) The supported employment plan, including any needed annual revisions, must be submitted as a supplement to the State plan.

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

(Authority: Secs. 101(a)(25) and 635(a) of the Act; 29 U.S.C. 721(a)(25))

§ 361.35 Strategic plan.

(a) The State plan must assure that the State—

(1) Has developed and implemented a strategic plan for expanding and improving vocational rehabilitation services for individuals with disabilities on a statewide basis in accordance with subpart D of this part; and

(2) Will use at least 1.5 percent of its allotment under this program for expansion and improvement activities in accordance with § 361.73(b).

(b) The strategic plan must be submitted at the same time as the State plan.

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

(Authority: Secs. 101(a)(34) and 120 of the Act; 29 U.S.C. 721(a)(34) and 740)

§ 361.36 Ability to serve all eligible individuals; order of selection for services.

(a) *General provisions.* (1) The State plan must contain—

(i) An assurance that the designated State unit is able to provide the full range of services listed in section 103(a) of the Act, as appropriate, to all eligible individuals. The assurance must be supported by an explanation that satisfies the requirements of paragraph (a)(2) or (a)(3) of this section and describes how, on the basis of the designated State unit's projected fiscal and personnel resources and its assessment of the rehabilitation needs of individuals with severe disabilities within the State, it will—

(A) Continue to provide services to all individuals currently receiving services;

(B) Provide assessment services to all individuals expected to apply for services in the next fiscal year;

(C) Provide services to all individuals who are expected to be determined eligible in the next fiscal year; and

(D) Meet all program requirements; or

(ii) The order to be followed in selecting eligible individuals to be provided services, a justification of that order of selection, and a description of the outcome and service goals and service costs to be achieved for individuals with disabilities in each category with-

in the order and the time within which these goals may be achieved.

(2) For those designated State units that provided assurances in their State plans for the current fiscal year and the preceding fiscal year that they are able to provide the full range of services, as appropriate, to all eligible individuals, the explanation required by paragraph (a)(1)(i) of this section must include a statement that, during the current fiscal year and the preceding fiscal year, the DSU has in fact—

(i) Provided assessment services to all applicants and the full range of services, as appropriate, to all eligible individuals;

(ii) Made referral forms widely available throughout the State;

(iii) Conducted outreach efforts to identify and serve individuals with disabilities who have been unserved or underserved by the vocational rehabilitation system; and

(iv) Not delayed, through waiting lists or other means, determinations of eligibility, the development of individualized written rehabilitation programs (IWRPs) for individuals determined eligible, or the provision of services for eligible individuals for whom IWRPs have been developed.

(3) For those designated State units unable to provide the full range of services to all eligible individuals during the current or preceding fiscal year, or unable to provide the statement required in paragraph (a)(2) of this section, the explanation required by paragraph (a)(1)(i) of this section must include—

(i) A description of the circumstances that have changed that will allow the DSU to meet the requirements of paragraph (a)(1)(i) of this section in the next fiscal year, including a description of—

(A) The estimated number of and projected costs of serving, in the next fiscal year, individuals with existing IWRPs;

(B) The projected number of individuals with disabilities who will apply for services and will be determined eligible in the next fiscal year and the projected costs of serving those individuals;

(C) The projected costs of administering the program in the next fiscal

year, including, but not limited to, costs of staff salaries and benefits, outreach activities, and required statewide studies; and

(D) The projected revenues and projected number of qualified personnel for the program in the next fiscal year;

(ii) Comparable data, as relevant, for the current or preceding fiscal year, or for both years, of the costs listed in paragraphs (a)(3)(i) (A) through (C) of this section and the resources identified in paragraph (a)(3)(i)(D) of this section and an explanation of any projected increases or decreases in these costs and resources; and

(iii) A demonstration that the projected revenues and the projected number of qualified personnel for the program in the next fiscal year are adequate to cover the costs identified in paragraphs (a)(3)(i) (A) through (C) of this section so as to ensure the provision of the full range of services, as appropriate, to all eligible individuals.

(b) *Time for determining need for an order of selection.* (1) The designated State unit shall determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection.

(2) If the designated State unit determines that it does not need to establish an order of selection, it shall reevaluate this determination whenever changed circumstances during the course of a fiscal year, such as a decrease in its fiscal or personnel resources or an increase in its program costs, indicate that it may no longer be able to provide the full range of services, as appropriate, to all eligible individuals.

(c) *Establishing an order of selection—*
(1) *Basis for order of selection.* An order of selection must be based on a refinement of the three criteria in the definition of “individual with a severe disability” in section 7(15)(A) of the Act.

(2) *Factors that cannot be used in determining order of selection of eligible individuals.* An order of selection may not be based on any other factors, including—

(i) Any duration of residency requirement, provided the individual is present in the State;

(ii) Type of disability;

(iii) Age, gender, race, color, creed, or national origin;

(iv) Source of referral;

(v) Type of expected employment outcome;

(vi) The need for specific services or anticipated cost of services required by an individual; or

(vii) The income level of an individual or an individual’s family.

(3) *Priority for individuals with the most severe disabilities.* The State plan must assure that those individuals with the most severe disabilities are selected for service before other individuals with disabilities. The designated State unit shall establish criteria for determining which individuals are individuals with the most severe disabilities. The criteria must be consistent with the definition of “individual with a severe disability” in section 7(15)(A) of the Act and the requirements in paragraphs (c) (1) and (2) of this section.

(d) *Administrative requirements.* In administering the order of selection, the designated State unit shall—

(1) Implement the order of selection on a statewide basis;

(2) Notify all eligible individuals of the priority categories in a State’s order of selection, their assignment to a particular category, and their right to appeal their category assignment;

(3) Continue to provide all needed services to any eligible individual who has begun to receive services under an IWRP prior to the effective date of the order of selection, irrespective of the severity of the individual’s disability;

(4) Ensure that its funding arrangements for providing services under the State plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the designated State unit shall renegotiate these funding arrangements so that they are consistent with the order of selection.

(e) *State Rehabilitation Advisory Council.* The designated State unit shall consult with and seriously consider the advice of the State Rehabilitation Advisory Council regarding the—

(1) Need to establish an order of selection, including any reevaluation of

the need under paragraph (b)(2) of this section;

(2) Priority categories of the particular order of selection;

(3) Criteria for determining individuals with the most severe disabilities; and

(4) Administration of the order of selection.

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

(Authority: Sec. 7(15)(A); 12(d); 17; 101(a)(4); 101(a)(5)(A); 101(a)(7); 101(a)(11)(A); 101(a)(15)(D); 101(a)(24); 101(a)(30); 101(a)(36)(A)(ii); 107(a)(4)(B); and 504(a) of the Act; 29 U.S.C. 706(15)(A), 711(d), 716, 721(a)(4), 721(a)(5)(A), 721(a)(7), 721(a)(11)(A), 721(a)(15)(D), 721(a)(24), 721(a)(30), 721(a)(36)(A)(ii), 727(a)(4)(B), and 794(a))

§361.37 Establishment and maintenance of information and referral programs.

(a) *General provisions.* The State plan must assure that—

(1) The designated State unit will establish and maintain information and referral programs adequate to ensure that individuals with disabilities within the State are given accurate information about State vocational rehabilitation services, independent living services, vocational rehabilitation services available from other agencies, organizations, and community rehabilitation programs, and, to the extent possible, other Federal and State services and programs that assist individuals with disabilities, including client assistance and other protection and advocacy programs;

(2) The State unit will refer individuals with disabilities to other appropriate Federal and State programs that might be of benefit to them; and

(3) The State unit will use existing information and referral systems in the State to the greatest extent possible.

(b) *Appropriate modes of communication.* The State plan further must assure that information and referral programs use appropriate modes of communication.

(c) *Special circumstances.* If the State unit is operating under an order of selection for services, the State unit may elect to establish an expanded information and referral program that includes counseling, guidance, and referral for job placements for those eligible individuals

who are not in the priority category or categories to receive vocational rehabilitation services under the State's order of selection.

(1) If a State unit elects to establish an expanded information and referral program under paragraph (c) of this section, the State plan must include—

(i) A description of how the expanded information and referral program will be established and how it will function, including the level of commitment of State unit staff and resources; and

(ii) An assurance that, in carrying out this program, the State unit will not use funds that are needed to provide vocational rehabilitation services under IWRPs for eligible individuals in the priority category or categories receiving services under the State unit's order of selection or for other eligible individuals who have begun to receive services prior to the effective date of the order of selection.

(2) If the designated State unit chooses to track the individuals who obtain employment through participation in an expanded information and referral program established under paragraph (c) of this section, the State plan must include a report of the number of individuals served and the number of individuals who obtain employment through this program.

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

(Authority: Sec. 101(a)(22) of the Act; 29 U.S.C. 721(a)(22))

§361.38 Protection, use, and release of personal information.

(a) *General provisions.* (1) The State plan must assure that the State agency and the State unit will adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that—

(i) Specific safeguards protect current and stored personal information;

(ii) All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of

the confidentiality of personal information and the conditions for accessing and releasing this information; §361.38

(iii) All applicants or their representatives are informed about the State unit need to collect personal information and the policies governing its use, including—

(A) Identification of the authority under which information is collected;

(B) Explanation of the principal purposes for which the State unit intends to use or release the information;

(C) Explanation of whether providing requested information to the State unit is mandatory or voluntary and the effects of not providing requested information;

(D) Identification of those situations in which the State unit requires or does not require informed written consent of the individual before information may be released; and

(E) Identification of other agencies to which information is routinely released;

(iv) An explanation of State policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and

(v) These policies and procedures provide no fewer protections for individuals than State laws and regulations.

(2) The State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and shall establish policies and procedures governing access to records.

(b) *State program use.* All personal information in the possession of the State agency or the designated State unit must be used only for the purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under

paragraphs (c), (d), and (e) of this section.

(c) *Release to applicants and eligible individuals.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by an applicant or eligible individual, the State unit shall make all requested information in that individual's record of services accessible to and shall release the information to the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(4) An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request that the designated State unit amend the information. If the information is not amended, the request for an amendment must be documented in the record of services.

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

(e) *Release to other programs or authorities.* (1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the State unit may release personal information to another agency or organization for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

(2) Medical or psychological information that the State unit determines may be harmful to the individual may be released if the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The State unit shall release personal information if required by Federal law or regulations.

(4) The State unit shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

(5) The State unit also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: Secs. 12(c) and 101(a)(6)(A) of the Act; 29 U.S.C. 711(c) and 721(a)(6)(A))

§361.39 State-imposed requirements.

The State plan must assure that the designated State unit identifies upon

request those regulations and policies relating to the administration or operation of its vocational rehabilitation program that are State-imposed, including any regulations or policy based on State interpretation of any Federal law, regulations, or guideline.

(Authority: Sect. 17 of the Act; 29 U.S.C. 716)

§361.40 Reports.

The State plan must assure that the State unit—

(a) Will submit reports in the form and detail and at the time required by the Secretary, including reports required under sections 13, 14, and 101(a)(10) of the Act; and

(b) Will comply with any requirements necessary to ensure the correctness and verification of those reports.

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

(Authority: Sec. 101(a)(10) of the Act; 29 U.S.C. 721(a)(10))

STATE PLAN CONTENT: PROVISION AND SCOPE OF SERVICES

§361.41 Processing referrals and applications.

(a) *Referrals.* The State plan must assure that the designated State unit has established and implemented standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services. The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

(b) *Applications.* (1) The State plan must assure that once an individual has submitted an application for vocational rehabilitation services, an eligibility determination will be made within 60 days, unless—

(i) Exceptional and unforeseen circumstances beyond the control of the agency preclude a determination within 60 days and the agency and the individual agree to a specific extension of time; or

(ii) An extended evaluation is necessary, in accordance with §361.42(d).

(2) An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate,—

(i) Has completed and signed an agency application form or has otherwise requested services;

(ii) Has provided information necessary to initiate an assessment to determine eligibility and priority for services; and

(iii) Is available to complete the assessment process.

(3) The designated State unit shall ensure that its application forms are widely available throughout the State.

(Authority: Sec. 101(a)(6)(A) and 102(a)(5)(A) of the Act; 29 U.S.C. 721(a)(6)(A) and 722(a)(5)(A))

§361.42 Assessment for determining eligibility and priority for services.

The State plan must assure that, in order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the State is operating under an order of selection), the designated State unit will conduct an assessment for determining eligibility and priority for services. The assessment must be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the following provisions:

(a) *Eligibility requirements*—(1) *Basic requirements.* The State plan must assure that the State unit's determination of an applicant's eligibility for vocational rehabilitation services is based only on the following requirements:

(i) A determination that the applicant has a physical or mental impairment.

(ii) A determination that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant.

(iii) A presumption, in accordance with paragraph (a)(2) of this section, that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(iv) A determination that the applicant requires vocational rehabilitation services to prepare for, enter into, engage in, or retain gainful employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

(2) *Presumption of benefit.* The State plan must assure that the designated State unit will presume that an applicant who meets the eligibility requirements in paragraphs (a)(1) (i) and (ii) of this section can benefit in terms of an employment outcome unless it demonstrates, based on clear and convincing evidence, that the applicant is incapable of benefitting in terms of an employment outcome from vocational rehabilitation services.

(3) *Limited presumption for Social Security beneficiaries.* The State plan must assure that, if an applicant has appropriate evidence, such as an award letter, that establishes the applicant's eligibility for Social Security benefits under title II or title XVI of the Social Security Act, the designated State unit will presume that the applicant—

(i) Meets the eligibility requirements in paragraphs (a)(1) (i) and (ii) of this section; and

(ii) Has a severe physical or mental impairment that seriously limits one or more functional capacities in terms of an employment outcome.

(b) *Prohibited factors.* The State plan must assure that—

(1) No duration of residence requirement is imposed that excludes from services any applicant who is present in the State;

(2) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability;

(3) The eligibility requirements are applied without regard to the age, gender, race, color, creed, or national origin of the applicant; and

(4) The eligibility requirements are applied without regard to the particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

(c) *Review and assessment of data for eligibility determination.* Except as provided in paragraph (d) of this section,

the designated State unit shall base its determination of each of the basic eligibility requirements in paragraph (a) of this section on—

(1) A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, information used by the Social Security Administration, and determinations made by officials of other agencies; and

(2) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including assistive technology devices and services and worksite assessments, that are necessary to determine whether an individual is eligible.

(d) *Extended evaluation for individuals with severe disabilities.* (1) Prior to any determination that an individual with a severe disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability, the State unit shall conduct an extended evaluation to determine whether or not there is clear and convincing evidence to support such a determination.

(2) During the extended evaluation period, which may not exceed 18 months, vocational rehabilitation services must be provided in the most integrated setting possible, consistent with the informed choice of the individual.

(3) During the extended evaluation period, the State unit shall develop a written plan for determining eligibility and for determining the nature and scope of services required to achieve an employment outcome. The State unit may provide during this period only those services that are necessary to make these two determinations.

(4) The State unit shall assess the individual's progress as frequently as necessary, but at least once every 90 days, during the extended evaluation period.

(5) The State unit shall terminate extended evaluation services at any point during the 18-month extended evalua-

tion period if the State unit determines that—

(i) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or

(ii) There is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome.

(e) *Data for determination of priority for services under an order of selection.* If the State unit is operating under an order of selection for services, as provided in §361.36, the State unit shall base its priority assignments on—

(1) A review of the data that was developed under paragraphs (c) and (d) of this section to make the eligibility determination; and

(2) An assessment of additional data, to the extent necessary.

(Authority: Secs. 7(22)(A)(ii), 7(22)(C)(iii), 101(a)(9)(A), 101(a)(14), 101(a)(31), 102(a)(1), 102(a)(2), 102(a)(3), 102(a)(4), 103(a)(4), and 103(a)(6) of the Act; 29 U.S.C. 706(22)(A)(ii), 706(22)(C)(iii), 721(a)(9)(a), 721(a)(14), 721(a)(31), 722(a)(1), 722(a)(2), 722(a)(3), 722(a)(4), 723(a)(4), and 723(a)(6))

NOTE: *Clear and convincing evidence* means that the designated State unit shall have a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The "clear and convincing" standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term *clear* means unequivocal. Given these requirements, a review of existing information generally would not provide clear and convincing evidence. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of "clear and convincing evidence" must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings. (S. Rep. No. 357, 102d Cong., 2d. Sess. 37-38 (1992))

§ 361.43 Procedures for ineligibility determination.

The State plan must assure that if the State unit determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized written rehabilitation program is no longer eligible for services, the State unit shall—

(a) Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;

(b) Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for that determination, the requirements under this section, and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of a determination by the rehabilitation counselor or coordinator in accordance with § 361.57;

(c) Provide the individual with a description of services available from a client assistance program established under 34 CFR part 370 and information on how to contact that program; and

(d) Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. This review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the State, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

(Authority: Secs. 101(a)(9)(D), 102(a)(6), and 102(c) of the Act; 29 U.S.C. 721(a)(9), 722(a)(6), and 722(c))

§ 361.44 Closure without eligibility determination.

The State plan must assure that the State unit may not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is

unavailable to complete an assessment for determining eligibility and priority for services, and the State unit has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

(Authority: Secs. 12(c) and 101(a)(6)(A) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.45 Development of the individualized written rehabilitation program.

(a) *Purpose.* The State plan must assure that the State unit conducts an assessment for determining vocational rehabilitation needs for each eligible individual or, if the State is operating under an order of selection, for each eligible individual to whom the State is able to provide services. The purpose of this assessment is to determine the long-term vocational goal, intermediate rehabilitation objectives, and the nature and scope of vocational rehabilitation services to be included in the IWRP, which must be designed to achieve an employment outcome that is consistent with the individual's unique strengths, priorities, concerns, abilities, capabilities, career interests, and informed choice.

(b) *Procedural requirements.* The State plan must assure that—

(1) The IWRP is developed jointly, agreed to, and signed by the vocational rehabilitation counselor or coordinator and the individual or, as appropriate, the individual's representative within the framework of a counseling and guidance relationship;

(2) The State unit has established and implemented standards for the prompt development of IWRPs for the individuals identified under paragraph (a) of this section, including timelines that take into consideration the needs of the individual;

(3) The State unit advises each individual or, as appropriate, the individual's representative of all State unit procedures and requirements affecting the development and review of an IWRP, including the availability of appropriate modes of communication;

(4) In developing an IWRP for a student with a disability who is receiving special education services, the State

unit considers the student's individualized education program;

(5) The State unit reviews the IWRP with the individual or, as appropriate, the individual's representative as often as necessary, but at least once each year to assess the individual's progress in meeting the objectives identified in the IWRP;

(6) The State unit incorporates into the IWRP any revisions that are necessary to reflect changes in the individual's vocational goal, intermediate objectives, or vocational rehabilitation services, and obtains the agreement and signature of the individual or, as appropriate, of the individual's representative to the revisions; and

(7) The State unit promptly provides each individual or, as appropriate, the individual's representative, a copy of the IWRP and its amendments in the native language, or appropriate mode of communication, of the individual or, as appropriate, of the individual's representative.

(c) *Data for preparing the IWRP*—(1) *Preparation without comprehensive assessment.* To the extent possible, the vocational goal, intermediate objectives, and the nature and scope of rehabilitation services to be included in the individual's IWRP must be determined based on the data used for the assessment of eligibility and priority for services under § 361.42.

(2) *Preparation based on comprehensive assessment.* (i) If additional data are necessary to prepare the IWRP, the designated State unit shall conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and needs, including the need for supported employment services, of an eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual.

(ii) The comprehensive assessment must be limited to information that is necessary to identify the rehabilitation needs of the individual and develop the IWRP and may, to the extent needed, include—

(A) An analysis of pertinent medical, psychiatric, psychological, neuropsychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental fac-

tors, and related functional limitations, that affect the employment and rehabilitation needs of the individual;

(B) An analysis of the individual's personality, career interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities;

(C) An appraisal of the individual's patterns of work behavior and services needed to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance; and

(D) An assessment, through provision of rehabilitation technology services, of the individual's capacities to perform in a work environment, including in an integrated setting, to the maximum extent feasible and consistent with the individual's informed choice.

(iii) In preparing a comprehensive assessment, the State unit shall use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information, including information that is provided by the individual, the family of the individual, and education agencies.

(Authority: Secs. 7(22)(B), 102(b)(1)(A), and 102(b)(2); 29 U.S.C. 706(5), 721(a)(9), 722, and 723(a)(1))

§ 361.46 Content of the individualized written rehabilitation program.

(a) *General requirements.* The State plan must assure that each IWRP includes, as appropriate, statements concerning—

(1) The specific long-term vocational goal, which must be based on the assessment for determining vocational rehabilitation needs, including the individual's career interests, and must be, to the extent appropriate and consistent with the informed choice of the individual, in an integrated setting;

(2) The specific intermediate rehabilitation objectives related to the attainment of the long-term vocational goal, based on the assessment for determining vocational rehabilitation needs and consistent with the informed choice of the individual;

(3) The specific rehabilitation services under § 361.48 to be provided to achieve the established intermediate rehabilitation objectives, including, if appropriate, rehabilitation technology services and on-the-job and related personal assistance services;

(4) The projected dates for the initiation of each vocational rehabilitation service, the anticipated duration of each service, and the projected timeframe for the achievement of the individual's vocational goal;

(5) A procedure and schedule for periodic review and evaluation of progress toward achieving intermediate rehabilitation objectives based upon objective criteria;

(6) How, in the words of the individual or, as appropriate, in the words of the individual's representative, the individual was informed about and involved in choosing among alternative goals, objectives, services, providers, and methods used to procure or provide services;

(7) The terms and conditions for the provision of vocational rehabilitation services, including—

(i) The responsibilities of the individual in implementing the IWRP;

(ii) The extent of the individual's participation in the cost of services;

(iii) The extent to which goods and services will be provided in the most integrated settings possible, consistent with the informed choices of the individual;

(iv) The extent to which comparable services and benefits are available to the individual under any other program; and

(v) The entity or entities that will provide the services and the process used to provide or procure the services;

(8) The rights of the individual under this part and the means by which the individual may express and seek remedy for any dissatisfaction, including the opportunity for a review of rehabilitation counselor or coordinator determinations under § 361.57;

(9) The availability of a client assistance program established under 34 CFR part 370; and

(10) The basis on which the individual has been determined to have achieved an employment outcome in accordance with § 361.56.

(b) *Supported employment requirements.* The State plan must assure that the IWRP for individuals with the most severe disabilities for whom a vocational goal in a supported employment setting has been determined to be appropriate will also contain—

(1) A description of the supported employment services to be provided by the State unit; and

(2) A description of the extended services needed and identification of the source of extended services or, in the event that identification of the source is not possible at the time the IWRP is developed, a statement explaining the basis for concluding that there is a reasonable expectation that services will become available.

(c) *Post-employment services.* The State plan must assure that the IWRP for each individual contains statements concerning—

(1) The expected need for post-employment services, based on an assessment during the development of the IWRP;

(2) A reassessment of the need for post-employment services prior to the determination that the individual has achieved an employment outcome;

(3) A description of the terms and conditions for the provision of any post-employment services, including the anticipated duration of those services, subsequent to the achievement of an employment outcome by the individual; and

(4) If appropriate, a statement of how post-employment services will be provided or arranged through cooperative agreements with other service providers.

(d) *Coordination of services for students with disabilities who are receiving special education services.* The State plan must assure that the IWRP for a student with a disability who is receiving special education services is coordinated with the individualized education program (IEP) for that individual in terms of the goals, objectives, and services identified in the IEP.

(e) *Ineligibility.* The State plan must assure that the decision that an individual is not capable of achieving an employment outcome and is no longer eligible to receive services under an IWRP is made in accordance with the

requirements in § 361.43. The decision, and the reasons on which the decision was based, must be included as an amendment to the IWRP.

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

(Authority: Secs. 101(a)(9), 102(b)(1), 102(c), and 635(b)(6) of the Act; 29 U.S.C. 721(a)(9), 722, and 795n)

§ 361.47 Record of services.

The State plan must assure that the designated State unit maintains for each applicant or eligible individual a record of services that includes, to the extent pertinent, the following documentation:

(a) If an applicant has been determined to be an eligible individual, documentation supporting that determination in accordance with the requirements in § 361.42.

(b) If an applicant has been determined to be ineligible, documentation supporting that determination in accordance with the requirements of § 361.43.

(c) Documentation supporting the determination that an individual has a severe disability or a most severe disability.

(d) If an individual with a severe disability requires an extended evaluation in order to determine whether the individual is an eligible individual, documentation supporting the need for an extended evaluation, documentation supporting the periodic assessments conducted during the extended evaluation, and the written plan developed during the extended evaluation, in accordance with the requirements in § 361.42(d).

(e) The IWRP, and any amendments to the IWRP, containing the information required under § 361.46.

(f) In accordance with § 361.45(a), documentation supporting the development of the long-term vocational goal, intermediate rehabilitation objectives, and nature and scope of services included in the individual's IWRP and, for students with disabilities who are receiving special education services, in the student's IEP.

(g) In the event that an individual's IWRP provides for services or a job placement in a non-integrated setting,

a justification for that non-integrated setting.

(h) Documentation of the periodic reviews and evaluations of progress toward achieving intermediate rehabilitation objectives conducted under § 361.46(a)(5).

(i) In the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals in accordance with § 361.5(b)(10)(ii).

(j) Documentation concerning any action and decision resulting from a request by an individual for review of a rehabilitation counselor or coordinator determination under § 361.57.

(Authority: Secs. 101(a)(6) and 101(a)(9) of the Act; 29 U.S.C. 721(a)(6) and 721(a)(9))

§ 361.48 Scope of vocational rehabilitation services for individuals with disabilities.

(a) The State plan must assure that, as appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, the following vocational rehabilitation services are available:

(1) Assessment for determining eligibility and priority for services in accordance with § 361.42.

(2) Assessment for determining vocational rehabilitation needs in accordance with § 361.45.

(3) Vocational rehabilitation counseling and guidance.

(4) Referral and other services necessary to help applicants and eligible individuals secure needed services from other agencies and to advise those individuals about client assistance programs established under 34 CFR part 370.

(5) Physical and mental restoration services in accordance with the definition of that term in § 361.5(b)(35).

(6) Vocational and other training services, including personal and vocational adjustment training, books,

tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the State unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

(7) Maintenance, in accordance with the definition of that term in §361.5(b)(31).

(8) Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the definition of that term in §361.5(b)(49).

(9) Vocational rehabilitation services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(10) Interpreter services for individuals who are deaf and tactile interpreting services for individuals who are deaf-blind.

(11) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.

(12) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate public service employment.

(13) Job search and placement assistance and job retention services.

(14) Supported employment services in accordance with the definition of that term in §361.5(b)(46).

(15) Personal assistance services in accordance with the definition of that term in §361.5(b)(34).

(16) Post-employment services in accordance with the definition of that term in §361.5(b)(37).

(17) Occupational licenses, tools, equipment, initial stocks, and supplies.

(18) Rehabilitation technology in accordance with the definition of that term in §361.5(b)(39), including vehicular modification, telecommunications, sensory, and other technological aids and devices.

(19) Transition services in accordance with the definition of that term in §361.5(b)(47).

(20) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

(b) The State plan also must describe—

(1) The manner in which a broad range of rehabilitation technology services will be provided at each stage of the rehabilitation process and on a statewide basis;

(2) The training that will be provided to vocational rehabilitation counselors, client assistance personnel, and other related services personnel on the provision of rehabilitation technology services;

(3) The manner in which assistive technology devices and services will be provided or worksite assessments will be made as part of the assessment for determining eligibility and vocational rehabilitation needs of an individual; and

(4) The manner in which on-the-job and other related personal assistance services will be provided to assist individuals while they are receiving vocational rehabilitation services.

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

(Authority: Secs. 101(a)(5)(C), 101(a)(26), 101(a)(31), and 103(a) of the Act; 29 U.S.C. 721(a)(5)(C), 721(a)(26), 721(a)(31), and 723(a))

§361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities.

(a) The State plan may also provide for the following vocational rehabilitation services for the benefit of groups of individuals with disabilities:

(1) The establishment, development, or improvement of a public or other nonprofit community rehabilitation program that is used to provide services that promote integration and competitive employment, including under special circumstances, the construction of a facility for a public or nonprofit community rehabilitation program. Examples of “special circumstances” include the destruction by natural disaster of the only available center serving an area or a State determination that construction is

necessary in a rural area because no other public agencies or private non-profit organizations are currently able to provide services to individuals.

(2) Telecommunications systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities, including telephone, television, video description services, satellite, tactile-vibratory devices, and similar systems, as appropriate.

(3) Special services to provide recorded material or video description services for individuals who are blind, captioned television, films, or video cassettes for individuals who are deaf, tactile materials for individuals who are deaf-blind, and other special services that provide information through tactile, vibratory, auditory, and visual media.

(4) Technical assistance and support services, such as job site modification and other reasonable accommodations, to businesses that are not subject to title I of the Americans with Disabilities Act of 1990 and that are seeking to employ individuals with disabilities.

(5) In the case of small business enterprises operated by individuals with the most severe disabilities under the supervision of the State unit, including enterprises established under the Randolph-Sheppard program, management services and supervision, acquisition of equipment, initial stocks and supplies, and initial operating expenses, in accordance with the following requirements:

(i) "Management services and supervision" includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by individuals with the most severe disabilities. "Management services and supervision" may be provided throughout the operation of the small business enterprise.

(ii) "Initial stocks and supplies" includes those items necessary to the establishment of a new business enterprise during the initial establishment

period, which may not exceed six months.

(iii) Costs of establishing a small business enterprise may include operational costs during the initial establishment period, which may not exceed six months.

(iv) If the State plan provides for these services, it must contain an assurance that only individuals with the most severe disabilities will be selected to participate in this supervised program.

(v) If the State plan provides for these services and the State unit chooses to set aside funds from the proceeds of the operation of the small business enterprises, the State plan also must assure that the State unit maintains a description of the methods used in setting aside funds and the purposes for which funds are set aside. Funds may be used only for small business enterprises purposes, and benefits that are provided to operators from set-aside funds must be provided on an equitable basis.

(6) Other services that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the IWRP of any one individual. Examples of those other services might include the purchase or lease of a bus to provide transportation to a group of applicants or eligible individuals or the purchase of equipment or instructional materials that would benefit a group of applicants or eligible individuals.

(b) If the State plan provides for vocational rehabilitation services for groups of individuals, the State plan must assure that the designated State unit—

(1) Develops and maintains written policies covering the nature and scope of each of the vocational rehabilitation services it provides and the criteria under which each service is provided; and

(2) Maintains information to ensure the proper and efficient administration of those services in the form and detail and at the time required by the Secretary, including the types of services provided, the costs of those services, and, to the extent feasible, estimates of

the numbers of individuals benefitting from those services.

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

(Authority: Secs. 12(c), 101(a)(6), and 103(b) of the Act; 29 U.S.C. 711(c), 721(a)(6), and 723(b))

§361.50 Written policies governing the provision of services for individuals with disabilities.

The State plan must assure that the State unit develops and maintains written policies covering the nature and scope of each of the vocational rehabilitation services specified in §361.48 and the criteria under which each service is provided. The policies must ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual's IWRP and is consistent with the individual's informed choice. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome. The policies must be developed in accordance with the following provisions:

(a) *Out-of-State services.* (1) The State unit may establish a preference for in-State services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an out-of-State service at a higher cost than an in-State service, if either service would meet the individual's rehabilitation needs, the designated State unit is not responsible for those costs in excess of the cost of the in-State service.

(2) The State unit may not establish policies that effectively prohibit the provision of out-of-State services.

(b) *Payment for services.* (1) The State unit shall establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

(2) The State unit may establish a fee schedule designed to ensure a reasonable cost to the program for each service, provided that the schedule is—

(i) Not so low as to effectively deny an individual a necessary service; and

(ii) Not absolute and permits exceptions so that individual needs can be addressed.

(3) The State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.

(c) *Duration of services.* (1) The State unit may establish reasonable time periods for the provision of services provided that the time periods are—

(i) Not so short as to effectively deny an individual a necessary service; and

(ii) Not absolute and permit exceptions so that individual needs can be addressed.

(2) The State unit may not establish absolute time limits on the provision of specific services or on the provision of services to an individual. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual's IWRP.

(d) *Authorization of services.* The State unit shall establish policies related to the timely authorization of services, including any conditions under which verbal authorization can be given.

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

(Authority: Secs. 12(c), 12(e)(2)(A), and 101(a)(6) of the Act and 29 U.S.C. 711(c), 711(e)(2)(A), and 721(a)(6))

§361.51 Written standards for facilities and providers of services.

The State plan must assure that the designated State unit establishes, maintains, makes available to the public, and implements written minimum standards for the various types of facilities and providers of services used by the State unit in providing vocational rehabilitation services, in accordance with the following requirements:

(a) *Accessibility of facilities.* Any facility in which vocational rehabilitation services are provided must be accessible to individuals receiving services and must comply with the requirements of the Architectural Barriers Act of 1968, the Uniform Accessibility Standards and their implementing regulations in 41 CFR part 101, subpart 101-19.6, the Americans with Disabilities Act of 1990, and section 504 of the Act.

(b) *Personnel standards.* (1) *Qualified personnel.* Providers of vocational rehabilitation services shall use qualified

personnel, in accordance with any applicable national or State-approved or -recognized certification, licensing, or registration requirements, or, in the absence of these requirements, other comparable requirements (including State personnel requirements), that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services.

(2) *Affirmative action.* Providers of vocational rehabilitation services shall take affirmative action to employ and advance in employment qualified individuals with disabilities.

(3) *Special communication needs personnel.* Providers of vocational rehabilitation services shall—

(i) Include among their personnel, or obtain the services of, individuals able to communicate in the native languages of applicants and eligible individuals who have limited English speaking ability; and

(ii) Ensure that appropriate modes of communication for all applicants and eligible individuals are used.

(c) *Fraud, waste, and abuse.* Providers of vocational rehabilitation services shall have adequate and appropriate policies and procedures to prevent fraud, waste, and abuse.

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

(Authority: Secs. 12(e)(2) (B), (D), and (E) and 101(a)(6)(B) of the Act; 29 U.S.C. 711(e) and 721(a)(6)(B))

§ 361.52 Opportunity to make informed choices.

The State plan must describe the manner in which the State unit will provide each applicant, including individuals who are receiving services during an extended evaluation, and each eligible individual the opportunity to make informed choices throughout the vocational rehabilitation process in accordance with the following requirements:

(a) Each State unit, in consultation with its State Rehabilitation Advisory Council, if it has one, shall develop and implement written policies and procedures that enable each individual to make an informed choice with regard to the selection of a long-term vocational goal, intermediate rehabilita-

tion objectives, vocational rehabilitation services, including assessment services, and service providers. These policies and procedures must ensure that each individual receives, through appropriate modes of communication, information concerning the availability and scope of informed choice, the manner in which informed choice may be exercised, and the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice.

(b) In developing an individual's IWRP, the State unit shall provide the individual, or assist the individual in acquiring, information necessary to make an informed choice about the specific services, including the providers of those services, that are needed to achieve the individual's vocational goal. This information must include, at a minimum, information relating to the cost, accessibility, and duration of potential services, the consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available, the qualifications of potential service providers, the types of services offered by those providers, and the degree to which services are provided in integrated settings.

(c) In providing, or assisting the individual in acquiring, the information required under paragraph (b) of this section, the State unit may use, but is not limited to, the following methods or sources of information:

(1) State or regional lists of services and service providers.

(2) Periodic consumer satisfaction surveys and reports.

(3) Referrals to other consumers, local consumer groups, or disability advisory councils qualified to discuss the services or service providers.

(4) Relevant accreditation, certification, or other information relating to the qualifications of service providers.

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

(Authority: Secs. 12(e)(1), 12(e)(2) (C) and (F), and 101(a)(29) of the Act; 29 U.S.C. 711(e) and 721(a)(29))

§ 361.53 Availability of comparable services and benefits.

(a) The State plan must assure that—
 (1) Prior to providing any vocational rehabilitation services to an eligible individual, or to members of the individual's family, except those services listed in paragraph (b) of this section, the State unit shall determine whether comparable services and benefits exist under any other program and whether those services and benefits are available to the individual;

(2) If comparable services or benefits exist under any other program and are available to the eligible individual at the time needed to achieve the rehabilitation objectives in the individual's IWRP, the State unit shall use those comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation services; and

(3) If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to satisfy the rehabilitation objectives in the individual's IWRP, the State unit shall provide vocational rehabilitation services until those comparable services and benefits become available.

(b) The following services are exempt from a determination of the availability of comparable services and benefits under paragraph (a) of this section:

(1) Assessment for determining eligibility and priority for services.

(2) Assessment for determining vocational rehabilitation needs.

(3) Vocational rehabilitation counseling, guidance, and referral services.

(4) Vocational and other training services, such as personal and vocational adjustment training, books (including alternative format books accessible by computer and taped books), tools, and other training materials in accordance with § 361.48(a)(6).

(5) Placement services.

(6) Rehabilitation technology.

(7) Post-employment services consisting of the services listed under paragraphs (b) (1) through (6) of this section.

(c) The requirements of paragraph (a) of this section also do not apply if—

(1) The determination of the availability of comparable services and ben-

efits under any other program would delay the provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional; or

(2) An immediate job placement would be lost due to a delay in the provision of comparable services and benefits.

(Authority: Sec. 101(a)(8) of the Act; 29 U.S.C. 721(a)(8))

§ 361.54 Participation of individuals in cost of services based on financial need.

(a) *No Federal requirement.* There is no Federal requirement that the financial need of individuals be considered in the provision of vocational rehabilitation services.

(b) *State unit requirements.* (1) The State unit may choose to consider the financial need of eligible individuals or individuals who are receiving services during an extended evaluation 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 shall maintain written policies covering the determination of financial need;

(ii) The State plan must specify the types of vocational rehabilitation services for which the unit has established a financial needs test;

(iii) The policies must be applied uniformly to all individuals in similar circumstances;

(iv) 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

(v) 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 State plan must assure that no financial needs test is applied and no financial participation is required as a condition for furnishing the following vocational rehabilitation services:

- (i) Assessment for determining eligibility and priority for services, except those non-assessment services that are provided during an extended evaluation for an individual with a severe disability under § 361.42(d).
- (ii) Assessment for determining vocational rehabilitation needs.
- (iii) Vocational rehabilitation counseling, guidance, and referral services.
- (iv) Placement services.

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

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§361.55 Review of extended employment in community rehabilitation programs or other employment under section 14(c) of the Fair Labor Standards Act.

The State plan must assure that the State unit—

- (a) Reviews and re-evaluates at least annually the status of each individual determined by the State unit to have achieved an employment outcome in an extended employment setting in a community rehabilitation program or other employment setting in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act. This review or re-evaluation must include input from the individual or, in an appropriate case, the individual's representative to determine the interests, priorities, and needs of the individual for employment in, or training for, competitive employment in an integrated setting in the labor market;
- (b) Makes maximum effort, including the identification of vocational rehabilitation services, reasonable accommodations, and other support services, to enable the eligible individual to benefit from training in, or to be placed in employment in, an integrated setting; and
- (c) Provides services designed to promote movement from extended em-

ployment to integrated employment, including supported employment, independent living, and community participation.

(Authority: Sec. 101(a)(16) of the Act; 29 U.S.C. 721(a)(16))

§361.56 Individuals determined to have achieved an employment outcome.

The State plan must assure that an individual is determined to have achieved an employment outcome only if the following requirements are met:

- (a) The provision of services under the individual's IWRP has contributed to the achievement of the employment outcome.
- (b) The employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- (c) The employment outcome is in the most integrated setting possible, consistent with the individual's informed choice.

(d) The individual has maintained the employment outcome for a period of at least 90 days.

(e) At the end of the appropriate period under paragraph (d) of this section, the individual and the rehabilitation counselor or coordinator consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

(Authority: Secs. 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))

§361.57 Review of rehabilitation counselor or coordinator determinations.

The State plan must contain procedures, including standards of review under paragraph (b)(7) of this section, established by the director of the designated State unit to ensure that any applicant or eligible individual who is dissatisfied with any determinations made by a rehabilitation counselor or coordinator concerning the furnishing or denial of services may request, or, if appropriate, may request through the individual's representative, a timely review of those determinations. The procedures established by the director

of the State unit must be in accordance with the following provisions:

(a) *Informal resolution.* The State unit may establish an informal process to resolve a request for review without conducting a formal hearing. However, a State's informal process must be conducted and concluded within the time period established under paragraph (b)(1) of this section for holding a formal hearing. If informal resolution is not successful, a formal hearing must be conducted by the end of this same period, unless the parties agree to a specific extension of time.

(b) *Formal hearing procedures.* Except as provided in paragraph (d) of this section, the State unit shall establish formal review procedures that provide that—

(1) A hearing by an impartial hearing officer, selected in accordance with paragraph (c) of this section, must be held within 45 days of an individual's request for review, unless informal resolution is achieved prior to the 45th day or the parties agree to a specific extension of time;

(2) The State unit may not institute a suspension, reduction, or termination of services being provided under an IWRP pending a final determination of the formal hearing under this paragraph or informal resolution under paragraph (a) of this section, unless the individual or, in an appropriate case, the individual's representative so requests or the agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual;

(3) The individual or, if appropriate, the individual's representative must be afforded an opportunity to present additional evidence, information, and witnesses to the impartial hearing officer, to be represented by counsel or other appropriate advocate, and to examine all witnesses and other relevant sources of information and evidence;

(4) The impartial hearing officer shall make a decision based on the provisions of the approved State plan, the Act, Federal vocational rehabilitation regulations, and State regulations and policies that are consistent with Federal requirements and shall provide to the individual or, if appropriate, the in-

dividual's representative and to the director of the designated State unit a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing;

(5) If the director of the designated State unit decides to review the decision of the impartial hearing officer, the director shall notify in writing the individual or, if appropriate, the individual's representative of that intent within 20 days of the mailing of the impartial hearing officer's decision;

(6) If the director of the designated State unit fails to provide the notice required by paragraph (b)(5) of this section, the impartial hearing officer's decision becomes a final decision;

(7) The decision of the director of the designated State unit to review any impartial hearing officer's decision must be based on standards of review contained in written State unit policy;

(8) If the director of the designated State unit decides to review the decision of the impartial hearing officer, the director shall provide the individual or, if appropriate, the individual's representative an opportunity to submit additional evidence and information relevant to the final decision;

(9) The director may not overturn or modify a decision, or part of a decision, of an impartial hearing officer that supports the position of the individual unless the director concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous because it is contrary to the approved State plan, the Act, Federal vocational rehabilitation regulations, or State regulations or policies that are consistent with Federal requirements;

(10) Within 30 days of providing notice of intent to review the impartial hearing officer's decision, the director of the designated State unit shall make a final decision and provide a full report in writing of the decision, including the findings and the statutory, regulatory, or policy grounds for the decision, to the individual or, if appropriate, the individual's representative;

(11) The director of the designated State unit may not delegate responsibility to make any final decision to any other officer or employee of the designated State unit; and

(12) Except for the time limitations established in paragraphs (b)(1) and (b)(5) of this section, each State's review procedures may provide for reasonable time extensions for good cause shown at the request of a party or at the request of both parties.

(c) *Selection of impartial hearing officers.* Except as provided in paragraph (d) of this section, the impartial hearing officer for a particular case must be selected—

(1) From among the pool of persons qualified to be an impartial hearing officer, as defined in § 361.5(b)(22), who are identified by the State unit, if the State unit is an independent commission, or jointly by the designated State unit and those members of the State Rehabilitation Advisory Council designated in section 102(d)(2)(C) of the Act, if the State has a Council; and

(2)(i) On a random basis; or

(ii) By agreement between the director of the designated State unit and the individual or, if appropriate, the individual's representative.

(d) *State fair hearing board.* The provisions of paragraphs (b) and (c) of this section are not applicable if the State has a fair hearing board that was established before January 1, 1985, that is authorized under State law to review rehabilitation counselor or coordinator determinations and to carry out the responsibilities of the director of the designated State unit under this section.

(e) *Informing affected individuals.* The State unit shall inform, through appropriate modes of communication, all applicants and eligible individuals of—

(1) Their right to review under this section, including the names and addresses of individuals with whom appeals may be filed; and

(2) The manner in which an impartial hearing officer will be selected consistent with the requirements of paragraph (c) of this section.

(f) *Data collection.* The director of the designated State unit shall collect and submit, at a minimum, the following data to the Secretary for inclusion each year in the annual report to Congress under section 13 of the Act:

(1) The number of appeals to impartial hearing officers and the State director, including the type of complaints and the issues involved.

(2) The number of decisions by the State director reversing in whole or in part a decision of the impartial hearing officer.

(3) The number of decisions affirming the position of the dissatisfied individual assisted through the client assistance program, when that assistance is known to the State unit.

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

(Authority: Secs. 102(b) and 102(d) of the Act; 29 U.S.C. 722(b) and 722(d))

Subpart C—Financing of State Vocational Rehabilitation Programs

§ 361.60 Matching requirements.

(a) *Federal share*—(1) *General.* Except as provided in paragraphs (a)(2) and (a)(3) of this section, the Federal share for expenditures made by the State unit under the State plan, including expenditures for the provision of vocational rehabilitation services, administration of the State plan, and the development and implementation of the strategic 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.

(3) *Innovation and expansion grant activities.* The Federal share for the cost of innovation and expansion grant activities funded by appropriations under part C of title I of the Act is 90 percent.

(b) *Non-Federal share*—(1) *General.* Except as provided in paragraphs (b)(2) and (b)(3) of this section, expenditures made under the State plan to meet the non-Federal share 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 following requirements are met:

(i) The funds are earmarked for 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) If the funds are earmarked for any other purpose under the State plan, 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 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: Secs. 7(7), 101(a)(3), and 104 of the Act; 29 U.S.C. 706(7), 721(a)(3) and 724)

NOTE: The Secretary notes that contributions may be earmarked in accordance with paragraph (b)(3)(ii) of this section 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. However, if a contribution is earmarked for a restricted geographic area, expenditures from that contribution may be used to meet the non-Federal share requirement only if the State unit requests and the Secretary approves a waiver of statewideness, in accordance with § 361.26.

§ 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: Sec. 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 two years prior to the previous fiscal year. For example, for fiscal year 1996, a State's maintenance of effort level is based on the amount of its expenditures from non-Federal sources for fiscal year 1994. Thus, if the State's non-Federal expenditures in 1996 are less than they were in 1994, the State has a maintenance of effort deficit, and the Secretary reduces the State's allotment in 1997 by the amount of that deficit.

(2) If, at the time the Secretary makes a determination that a State has failed to meet its maintenance of effort requirements, it is too late for the Secretary to make a reduction in accordance with paragraph (a)(1) of this section, then the Secretary recovers the amount of the maintenance of effort deficit through audit disallowance.

(b) *Specific requirements for construction of facilities.* If the State plan provides for the construction of a facility for community rehabilitation program purposes, the amount of the State's share of expenditures for vocational rehabilitation services under the plan, other than for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation purposes, must be at least equal to the expenditures for those services for the second prior fiscal year. If a State fails to meet the requirements of this paragraph, the Secretary recovers the amount of the maintenance of effort deficit through audit disallowance.

(c) *Separate State agency for vocational rehabilitation services for individuals who are blind.* If there is a separate part of

the State plan administered by a separate State agency to provide vocational rehabilitation services for individuals who are blind—

(1) Satisfaction of the maintenance of effort requirements under paragraphs (a) and (b) of this section are determined based on the total amount of a State's non-Federal expenditures under both parts of the State plan; and

(2) If a State fails to meet any maintenance of effort requirement, the Secretary reduces the amount otherwise payable to the State for that fiscal year under each part of the plan in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan in the previous fiscal year were less than they were for that part of the plan for the fiscal year two years prior to the previous fiscal year.

(d) *Waiver or modification.* (1) The Secretary may waive or modify the maintenance of effort requirement in paragraph (a)(1) of this section if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that—

(i) Cause significant unanticipated expenditures or reductions in revenue; and

(ii) Result in—

(A) A general reduction of programs within the State; or

(B) The State making substantial expenditures in the vocational rehabilitation program for long-term purposes due to the one-time costs associated with the construction of a facility for community rehabilitation program purposes, the establishment of a facility for community rehabilitation program purposes, or the acquisition of equipment.

(2) The Secretary may waive or modify the maintenance of effort requirement in paragraph (b) of this section or the 10 percent allotment limitation in § 361.61 if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster, that result in significant destruction of existing facilities and re-

quire the State to make substantial expenditures for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation program purposes in order to provide vocational rehabilitation services.

(3) A written request for waiver or modification, including supporting justification, must be submitted to the Secretary as soon as the State determines that an exceptional or uncontrollable circumstance will prevent it from making its required expenditures from non-Federal sources.

(Authority: Secs. 101(a)(17) and 111(a)(2) of the Act; 29 U.S.C. 721(a)(17) and 731(a)(2))

§ 361.63 Program income.

(a) *Definition—Program income* means gross income received by the State that is directly generated by an activity supported under this part.

(b) *Sources.* Sources of program income include, but are not limited to, payments from the Social Security Administration for rehabilitating Social Security beneficiaries, payments received from workers' compensation funds, fees for services to defray part or all of the costs of services provided to particular individuals, and income generated by a State-operated community rehabilitation program.

(c) *Use of program income.* (1) Except as provided in paragraph (c)(2) of this section, program income, whenever earned, must be used for the provision of vocational rehabilitation services, the administration of the State plan, and developing and implementing the strategic plan. Program income is considered earned when it is received.

(2) Payments provided to a State from the Social Security Administration for rehabilitating Social Security beneficiaries may also be used to carry out programs under part B of title I of the Act (client assistance), part C of title I of the Act (innovation and expansion), part C of title VI of the Act (supported employment) and title VII of the Act (independent living).

(3) The State is authorized to treat program income as—

(i) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 34 CFR 80.25(g)(2); or

§ 361.64

(ii) A deduction from total allowable costs, in accordance with 34 CFR 80.25(g)(1).

(4) Program income may not be used to meet the non-Federal share requirement under §361.60.

(Authority: Sec. 108 of the Act; 29 U.S.C. 728; 34 CFR 80.25)

§361.64 Obligation of Federal funds and program income.

(a) Except as provided in paragraph (b) of this section, any Federal funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated by the State unit by the beginning of the succeeding fiscal year and any program income received during a fiscal year that is not obligated by the State unit by the beginning of the succeeding fiscal year must remain available for obligation by the State unit during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year remain available for obligation in the succeeding fiscal year only to the extent that the State unit met the matching requirement for those Federal funds by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(Authority: Sec. 19 of the Act; 29 U.S.C. 718)

§361.65 Allotment and payment of Federal funds for vocational rehabilitation services.

(a) *Allotment.* (1) The allotment of Federal funds for vocational rehabilitation services for each State is computed in accordance with the requirements of section 110 of the Act, and payments are made to the State on a quarterly basis, unless some other period is established by the Secretary.

(2) If the State plan designates one State agency to administer, or supervise the administration of, the part of the plan under which vocational rehabilitation services are provided for individuals who are blind and another State agency to administer the rest of the plan, the division of the State's allotment is a matter for State determination.

(b) *Reallotment.* (1) The Secretary determines not later than 45 days before

34 CFR Ch. III (7-1-99 Edition)

the end of a fiscal year which States, if any, will not use their full allotment.

(2) As soon as possible, but not later than the end of the fiscal year, the Secretary reallots these funds to other States that can use those additional funds during the current or subsequent fiscal year, provided the State can meet the matching requirement by obligating the non-Federal share of any reallotted funds in the fiscal year for which the funds were appropriated.

(3) Funds reallotted to another State are considered to be an increase in the recipient State's allotment for the fiscal year for which the funds were appropriated.

(Authority: Secs. 110 and 111 of the Act; 29 U.S.C. 730 and 731)

Subpart D—Strategic Plan for Innovation and Expansion of Vocational Rehabilitation Services

§361.70 Purpose of the strategic plan.

The State shall prepare a statewide strategic plan, in accordance with §361.71, to develop and use innovative approaches for achieving long-term success in expanding and improving vocational rehabilitation services, including supported employment services, provided under the State plan, including the supported employment supplement to the State plan required under 34 CFR part 363.

(Authority: Sec. 120 of the Act; 29 U.S.C. 740)

§361.71 Procedures for developing the strategic plan.

(a) *Public input.* (1) The State unit shall meet with and receive recommendations from members of the State Rehabilitation Advisory Council, if the State has a Council, and the Statewide Independent Living Council prior to developing the strategic plan.

(2) The State unit shall solicit public input on the strategic plan prior to or at the public meetings on the State plan, in accordance with the requirements of §361.20.

(3) The State unit shall consider the recommendations received under paragraphs (a)(1) and (a)(2) of this section and, if the State rejects any recommendations, shall include a written

explanation of the reasons for those rejections in the strategic plan.

(4) The State unit shall develop a procedure to ensure ongoing comment from the Council or Councils, if applicable, as the plan is being implemented.

(b) *Duration.* The strategic plan must cover a three-year period.

(c) *Revisions.* The State unit shall revise the strategic plan on an annual basis to reflect the unit's actual experience over the previous year and input from the State Rehabilitation Advisory Council, if the State has a Council, individuals with disabilities, and other interested parties.

(d) *Dissemination.* The State unit shall disseminate widely the strategic plan to individuals with disabilities, disability organizations, rehabilitation professionals, and other interested persons and shall make the strategic plan available in accessible formats and appropriate modes of communication.

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

(Authority: Sec. 122 of the Act; 29 U.S.C. 742)

§361.72 Content of the strategic plan.

The strategic plan must include—

(a) A statement of the mission, philosophy, values, and principles of the vocational rehabilitation program in the State;

(b) Specific goals and objectives for expanding and improving the system for providing vocational rehabilitation services;

(c) Specific multi-faceted and systemic approaches for accomplishing the objectives, including interagency coordination and cooperation, that build upon state-of-the-art practices and research findings and that implement the State plan and the supplement to the State plan submitted under 34 CFR part 363;

(d) A description of the specific programs, projects, and activities funded under this subpart, including how the programs, projects, and activities accomplish the objectives of the subpart, and the resource allocation and budget for the programs, projects, and activities; and

(e) Specific criteria for determining whether the objectives have been achieved, including an assurance that

the State will conduct an annual evaluation to determine the extent to which the objectives have been achieved and, if specific objectives have not been achieved, the reasons that the objectives have not been achieved and a description of alternative approaches that will be taken.

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

(Authority: Sec. 121 of the Act; 29 U.S.C. 741)

§361.73 Use of funds.

(a) A State unit shall use all grant funds received under title I, part C of the Act to carry out programs and activities that are identified under the State's strategic plan, including but not limited to those programs and activities that are identified in paragraph (b) of this section.

(b) A State unit shall use at least 1.5 percent of the funds received under section 111 of the Act to carry out one or more of the following types of programs and activities that are identified in the State's strategic plan:

(1) Programs to initiate or expand employment opportunities for individuals with severe disabilities in integrated settings that allow for the use of on-the-job training to promote the objectives of title I of the Americans with Disabilities Act of 1990.

(2) Programs or activities to improve or expand the provision of employment services in integrated settings to individuals with sensory, cognitive, physical, and mental impairments who traditionally have not been served by the State vocational rehabilitation agency.

(3) Programs or activities to maximize the ability of individuals with disabilities to use rehabilitation technology in employment settings.

(4) Programs or activities that assist employers in accommodating, evaluating, training, or placing individuals with disabilities in the workplace of the employer consistent with the provisions of the Act and title I of the Americans with Disabilities Act of 1990. These programs or activities may include short-term technical assistance or other effective strategies.

(5) Programs or activities that expand and improve the extent and type of an individual's involvement in the

review and selection of his or her training and employment goals.

(6) Programs or activities that expand and improve opportunities for career advancement for individuals with severe disabilities.

(7) Programs, projects, or activities designed to initiate, expand, or improve working relationships between vocational rehabilitation services provided under title I of the Act and independent living services provided under title VII of the Act.

(8) Programs, projects, or activities designed to improve functioning of the system for delivering vocational rehabilitation services and to improve coordination and working relationships with other State agencies and local public agencies, business, industry, labor, community rehabilitation programs, and centers for independent living, including projects designed to—

(i) Increase the ease of access to, timeliness of, and quality of vocational rehabilitation services through the development and implementation of policies, procedures, systems, and inter-agency mechanisms for providing vocational rehabilitation services;

(ii) Improve the working relationships between State vocational rehabilitation agencies and other State agencies, centers for independent living, community rehabilitation programs, educational agencies involved in higher education, adult basic education, and continuing education, and businesses, industry, and labor organizations, in order to create and facilitate cooperation in—

(A) Planning and implementing services; and

(B) Developing an integrated system of community-based vocational rehabilitation services that includes appropriate transitions between service systems; and

(iii) Improve the ability of professionals, advocates, business, industry, labor, and individuals with disabilities to work in cooperative partnerships to improve the quality of vocational rehabilitation services and job and career opportunities for individuals with disabilities.

(9) Projects or activities that ensure that the annual evaluation of the effectiveness of the program in meeting the

goals and objectives in the State plan, including the system for evaluating the performance of rehabilitation counselors, coordinators, and other personnel used in the State, facilitates and does not impede the accomplishment of the purpose of this part, including serving individuals with the most severe disabilities.

(10) Projects or activities to support the initiation, expansion, and improvement of a comprehensive system of personnel development.

(11) Programs, projects, or activities to support the provision of training and technical assistance to individuals with disabilities, business, industry, labor, community rehabilitation programs, and others regarding the implementation of the Rehabilitation Act Amendments of 1992, of title V of the Act, and of the Americans with Disabilities Act of 1990.

(12) Projects or activities to support the funding of the State Rehabilitation Advisory Council and the Statewide Independent Living Council.

(Authority: Secs. 101(a)(34)(B) and 123 of the Act; 29 U.S.C. 721(a)(34)(B) and 743)

§361.74 Allotment of Federal funds.

(a) The allotment and any reallocation of Federal funds under title I, part C of the Act are computed in accordance with the requirements of section 124 of the Act.

(b) If at any time the Secretary determines that any amount will not be expended by a State in carrying out the purpose of this subpart, the Secretary makes that amount available to one or more other States that the Secretary determines will be able to use additional amounts during the fiscal year. Any amount made available to any State under this paragraph of this section is regarded as an increase in the State's allotment for that fiscal year.

(Authority: Sec. 124 of the Act; 29 U.S.C. 744)

PART 363—THE STATE SUPPORTED EMPLOYMENT SERVICES PROGRAM

Subpart A—General

Sec.
363.1 What is the State Supported Employment Services Program?